

19TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DOCKET NO: 652283

SECTION: SEC. 27

THE LOUISIANA DEPARTMENT OF JUSTICE and
JEFF LANDRY, in his official capacity as
ATTORNEY GENERAL FOR THE STATE OF LOUISIANA

VERSUS

JOHN BEL EDWARDS, in his official capacity as
GOVERNOR OF THE STATE OF LOUISIANA

PETITION FOR INJUNCTIVE RELIEF AND
DECLARATORY JUDGMENT

FILED
EAST BATON ROUGE PARISH, LA
OCT 20 AM 9:30

DEPUTY CLERK OF COURT

NOW INTO COURT, through undersigned counsel, comes JEFF LANDRY appearing in his official capacity as the Attorney General for the State of Louisiana, and as the executive head and chief administrative officer of the LOUISIANA DEPARTMENT OF JUSTICE, who respectfully represents that:

1.

Petitioner, JEFF LANDRY, is the duly elected Attorney General for the State of Louisiana, and is the chief legal officer of the State charged with the assertion and protection of the rights and interests of the State of Louisiana, its taxpayers and citizens, and he has a sworn duty to uphold the Constitution and laws of this State.

2.

THE LOUISIANA DEPARTMENT OF JUSTICE is a department of the executive branch of the State of Louisiana with the power to sue and be sued. Its executive head and chief administrative officer is the Attorney General.

3.

Petitioner, **JEFF LANDRY**, is required by the laws and Constitution of this state to review, approve, and/or render advice on a wide scope of legal matters, including matters arising out of and related to execution, negotiation, and terms and conditions of contracts between state agencies, boards, and commissions and private persons, firms, and entities. Additionally, petitioners are called upon frequently to enter into written agreements with various persons, firms, and entities in the performance of their duties and obligations, including legal services contracts, contracts for goods and services, expert witness contracts, technology contracts, among others. Petitioners employ more than 400 individuals.

4.

Made defendant herein is **JOHN BEL EDWARDS**, the duly elected Governor of the State of Louisiana, who is made a defendant solely in his official capacity.

JURISDICTION AND VENUE

5.

This Honorable Court has jurisdiction to entertain this action under Article V, §16(A) of the Louisiana Constitution.

6.

Venue is proper in East Baton Rouge Parish in that the defendant is the duly elected Governor and is sued as a consequence of conduct associated with his official capacity as Governor.

ENACTMENT OF EXECUTIVE ORDER JBE 16-11

7.

Defendant herein, **GOVERNOR JOHN BEL EDWARDS**, issued on April 23, 2016, Executive Order JBE 16-11 entitled, "Equal Opportunity and Non-Discrimination." This Executive Order in Sections 1 and 2 thereof expressly

directs that no state agencies, departments, offices, commissions, boards, entities, or offices of the State shall on the basis of “gender identity”:

- A. Harass or discriminate against any person in the provision of any service or benefit; and,
- B. Harass or discriminate against and person in any manner pertaining to employment by the State including, but not limited to, hiring, promotions, tenure, recruitment, or compensation.

8.

Moreover, Section 3 of Executive Order JBE 16-11, referenced in Section 4, declares in part:

“All contracts for the purchase of services by state agencies, departments, offices, commissions, boards, entities, or officers of the state of Louisiana shall be awarded without discrimination on the basis of ...gender identity... Further all such contracts shall include a provision that the contractor shall not discriminate on the basis [of] ... gender identity... in any matter relating to employment.”

9.

The entirety of Executive Order JBE 16-11 is pled *in extensio* and is incorporated herein by reference. Moreover, a replica is appended as “Exhibit A.”

COUNT ONE

Executive Order JBE 16-11 Conflicts With Existing Law

10.

During the 2016 Regular Session of the Louisiana Legislature, House Bills 501, 925 and Senate Bills 332, and 436 were introduced, all with the intent of expanding the application of various provisions in law relative to prohibited discrimination and/or unlawful conduct by adding the term “gender identity” with the intent of recognizing transgender individuals as a protected group, thus restricting the State as well as other individuals’ conduct in a wide variety of public and private affairs. In the 2015 Regular Session, House Bills 612 and 632 proposed similar changes and failed to pass. In the 2014 Regular Session, House Bills 199, 369, 804, 871, 887, and Senate Bills 164 and 424, proposed similar

changes and also failed. And in the 2013, 2012, and 2011 Regular Sessions, similar proposed legislation also has failed to pass. In short, the Louisiana Legislature has consistently rejected every effort to expand the law to add these categories as statutorily protected classes, as evidenced by public record. Although a court may take judicial notice of the public record, the entirety of these proposed bills are hereby pled *in extensio* and incorporated herein by reference.

11.

As consequence of Executive Order 16-11, several members of the Louisiana Legislature requested the defendants, in accordance with La. R.S. 49:251, issue a formal opinion relative to the legality and enforceability of the subject executive order. On May 24, 2016, defendants issued its Opinion Number 16-0078 finding that Executive Order 16-11 was invalid. Despite their being the chief legal officer of the State, this opinion has gone unheeded. A copy of the said Opinion Number 16-0078 is attached as Exhibit B.

12.

Executive Order JBE 16-11 purports to create through executive fiat a protected class repeatedly rejected by the Louisiana Legislature as protected, as set forth in Paragraph 10. The Executive Order implicates the interpretation and application of *hundreds* of state laws and regulations using or relying on traditional interpretations and applications of the terms “sex,” “male” and “female,” or “mother” and “father.” These laws include but are not limited to issuance of driver’s licenses and birth certificates, coverage for health insurance benefits, access to school facilities at every level, access to scholarship opportunities, privacy protections for genetic and other information, coverage of abortion laws, and others. In addition, the Executive Order immediately impacts and purports to change the rights and obligations in the employment relationships between the State and all its employees and retirees.

COUNT TWO
Executive Order JBE 16-11 Violates the Doctrine of
Separation of Powers

13.

Executive Order JBE 16-11 purports to have the force and effect of law, in violation of separation of powers established by Article II, §§1 and 2 of the Louisiana Constitution and Article III, §1, vesting the legislative power solely in the Legislature. The Governor in his public statements regarding the Executive Order has affirmed his belief and intent that the Executive Order has the force and effect of law across the entirety of the Executive Branch of government.

14.

In addition to generally violating the separation of powers vested in the State Legislature, the Executive Order encroaches upon the independent policy and regulatory executive branch authority vested by the State Constitution in separate constitutionally-created public officers, agencies, boards, commissions, and political subdivisions, including but not limited to that of other Statewide Elected Officials (including Petitioners specifically), the Civil Service Commission, the Board of Secondary and Elementary Education, the Board of Regents, Fire and Police Civil Service, State Police Service, constitutionally created and independently managed systems of higher education, and other special political subdivisions.

15.

The enforcement of Executive Order JBE 16-11, affording protection from “discrimination” based upon “gender identity,” undermines this State’s anti-discrimination laws and hundreds of other laws in that it creates a protected class which is premised *solely* upon subjective and arbitrary factors unlike other recognized and legislatively established protected classes.

COUNT THREE

Executive Order JBE 16-11 creates a protected class which does not exist under the current Constitution, and without adherence to the procedure mandated for amendment to the Constitution

16.

The constitutional infirmity of Executive Order JBE 16-11 is further demonstrated by the fact that it attempts to establish by executive act a protected class of persons on the basis of gender identity which has not been recognized or defined by the State Constitution, by legislative act, or judicial decree. Repeated rejection of such proposed language by the Legislature further demonstrates that no ambiguity exists in the law and that use of the term “sex” in antidiscrimination laws, “male” and “female,” and “mother” and “father” in hundreds of other laws does not correspond to a *subjective* “gender identity” within its legislative or constitutional meaning but rather corresponds to the traditional biological sex of the individual.

17.

Executive Order JBE 16-11 unconstitutionally amends existing and statutory and constitutional law. Under Article III of the Louisiana Constitution, only the Louisiana Legislature has the power and authority to legislate. Furthermore, an amendment to the Constitution of this State requires the adherence to specific procedures enunciated in Article XIII, §1 of the Constitution, none of which were followed in the issuance of Executive Order JBE 16-11.

18.

Executive Order JBE 16-11, therefore, is an attempt by defendant to circumvent the procedure, formalities, voting requirements, and opportunity for legislative approval and a vote of the electorate with respect to establishing a protected class under the Constitution.

COUNT FOUR
Executive Order JBE 16-11 violates the Commerce Clause

19.

In mandating that no contract for services can be effected without obligating the contracting party to embrace a new and legislatively-rejected protected class, the Executive Order imposes a substantive and restrictive term upon private persons, both individual and corporate, and associations in other states; therefore, Executive Order JBE 16-11 also creates an unreasonable burden on commerce in violation of Article I, Section 8 of the United States Constitution.

COUNT FIVE
Executive Order JBE 16-11 violates Privacy Interests
And First Amendment Rights

20.

Furthermore, the Executive Order JBE 16-11 invades the constitutional rights and privacy interests of individual state employees, potential contracting parties, and private individuals guaranteed under Article I, §5, of the Louisiana Constitution, including the right to privacy and freedom of association, speech, and religious freedom in Article I, §§5, 7, 8, and 9 of the Louisiana Constitution and the guarantees contained in the First Amendment of the United States Constitution.

COUNT SIX
Executive Order JBE 16-11 violates the Due Process Clause

21.

The term “gender identity” in Executive Order JBE 16-11 is unconstitutionally vague and overly broad; and therefore, it violates the Due Process Clause of the Louisiana and United States Constitutions. The Louisiana and United States Constitutions guarantee that no person shall be deprived of life, liberty, or property, except by due process of law. *See* La. Const. art. I, §2; U.S. Const. Amend. V and U.S. Const. Amend. XIV, §1.

22.

The language of Executive Order JBE 16-11 is so vague and ambiguous that men of common intelligence must guess at its meaning and its effect. Moreover, it allows for arbitrary and capricious application.

23.

Louisiana law, including but not limited to La. R.S. 49:215, provides that the *sole purpose* of an executive order is to afford the Governor a mechanism to “faithfully execute the *laws* of the State of Louisiana.” Executive Order JBE 16-11 states no law and cannot state any law that it purports to enforce; therefore, it exceeds the legal parameters of an executive order, seeking to legislate as opposed to seeking to *execute* legislation. On that basis alone the Executive Order constitutes an *ultra vires* act, and is void *ab initio*.

24.

Executive Order JBE 16-11 is unlawful for the reasons set forth herein, and its implementation and enforcement would produce results prohibited by law and in contravention of public policy.

25.

Furthermore, under the law of this State, a showing of irreparable harm is not required for injunctive relief when the deprivation of a constitutional right is implicated. Also, no demonstration of irreparable harm is required when the action sought to be enjoined is in violation of prohibitory law. The structure and language of the State Constitution prohibits one branch from unlawfully encroaching on the power of another branch of government and further prohibits one executive agency or officer from encroaching on the power given to another executive agency or office. Moreover, both State and federal Constitutions guarantee certain rights as inalienable and prohibit infringement without due

process of law. Because the Executive Order is in violation of prohibitory law, no showing of irreparable harm is required; however, to any extent this Court requires such a showing, petitioners allege that the unconstitutionality of Executive Order JBE 16-11 alone causes irreparable harm *per se* and that their ability to effectively carry out their duties under the law as the Chief Legal Officer of the State and as the chief executive of the Department of Justice have been irreparably harmed. Specifically, the Attorney General has been sued by the Governor to force the attorney general to approve and to enter into contracts containing the *ultra vires* language. Moreover, the Order purports to apply to direct his actions relating to employees under his supervision and control, as well as the rights and obligations of those employees vis-à-vis the Attorney General and other supervisors as their employer.

26.

In addition to the statutory and constitutional deficiencies set forth herein, the implementation and execution of Executive Order JBE 16-11 unreasonably and unnecessarily exposes the State of Louisiana to liability in employment relationships, contracting, and tort by purporting to create a new protected class and requiring mandatory language in the award and execution of contracts. The Attorney General has a direct and substantial interest in this exposure as the Chief Legal Officer who has exclusive statutory responsibility over litigation arising out of tort, contract, and worker's compensation, as well as a wide variety of legal duties to defend agencies, boards and commissions in government and protect the public fisc from litigation exposure.

27.

The implementation of this Order further interferes with the public order by interfering with the management of schools, prisons, state office buildings, and other facilities.

28.

Furthermore, the execution of the Order will unreasonably invade the public fisc with respect to constructing, or otherwise providing access to, gender neutral facilities and/or modifying existing facilities such as, but not limited to, restrooms and locker rooms.

29.

The implementation and enforcement of Executive Order JBE 16-11 not only infringes upon the constitutional and statutory rights of the citizens of the State of Louisiana, but also causes citizens and taxpayers to suffer irreparable harm which cannot be measured by pecuniary standards.

30.

Petitioners seek a preliminary injunction to maintain the legal *status quo*. The interests of the petitioners and the citizens of the State of Louisiana outweigh any perceived injury to the defendant which might ensue from granting a preliminary injunction, said relief and injunction specifically being in the public's best interests and serving to protect the integrity of the Constitutions of this State and United States.

31.

The *status quo* corresponds the term "sex" to one's biological sex and prohibiting discrimination based upon "gender identity" is not only a new term but an entirely new legal construct which, if allowed to be imposed by executive order, impacts the interpretation and application of hundreds of state laws and directly

impacts employment and contracting relationships of the state and employment relationships of any private contractor.

32.

The United States Supreme Court and a federal district court in Texas have recognized the *status quo*, particularly as it relates to anti-discrimination laws. The stay order issued by the United States Supreme Court in *Gloucester County School Board v. G.G.*, 579 U.S. _____, 136 S.Ct. 2442 (2016) (the single outlier in the federal case law interpreting anti-discrimination laws and agency authority to interpret them) and the *nationwide* preliminary injunction issued by a Texas Federal District Court regarding federal regulatory actions purporting to re-interpret “sex” to include “gender identity” are attached hereto in support of the Petitioner’s request to issue a preliminary injunction herein. The *Gloucester* decision is attached as Exhibit C and the Texas District Court decrees are appended as Exhibit D. *Amicus* briefs joined by the Attorney General on behalf of the State, also attached hereto as Exhibit E, further discuss the impact of imposing a new legal construct upon pre-existing laws that were clearly written interpreting “sex” as corresponding to biological sex, not a subjective identity. These briefs also show that the effort to redefine laws reflects a pervasive effort to avoid both state legislatures and Congress and to make new law by executive overreach and *ultra vires* executive action.

33.

There is *no* justification for Executive Order JBE 16-11 other than to serve a legislative function, which is beyond the scope and authority of the executive branch of state government.

34.

In view of the foregoing, and as previously alleged, petitioners seek, and are entitled to, a preliminary injunction and, after the appropriate proceedings, permanent injunctive relief directed to the defendant, **GOVERNOR JOHN BEL EDWARDS, and any officers under his direction or control**, restraining, enjoining, and prohibiting them from adopting, requiring, or enforcing any action toward the implementation of Executive Order JBE 16-11.

35.

Additionally, Petitioners seek a declaratory judgment from this Honorable Court that Executive Order JBE 16-11 is void *ab initio* in that it is the product of an *ultra vires* act of **GOVERNOR JOHN BEL EDWARDS** based upon the Constitutions of the State of Louisiana and the United States, and is in contravention of the law of this State.

36.

Petitioner asserts that there is a substantial likelihood that he will prevail on the merits of this litigation for injunctive relief and declaratory judgment.

WHEREFORE, Petitioners pray that:

I. Defendants be ordered to show cause on a date and at a time to be fixed by this Honorable Court why a preliminary injunction should not issue restraining defendant, **GOVERNOR JOHN BEL EDWARDS, and any officers under his direction or control**, from implementing and enforcing JBE 16-11;

II. After due proceedings, a permanent injunction issue in the form and substance of the preliminary injunction mentioned above should be issued;

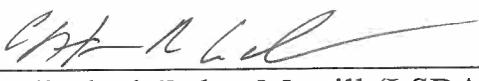
III. After due proceedings, there be judgment in favor of petitioners and against the defendants, **GOVERNOR JOHN BEL EDWARDS, and any officers under his direction or control**, declaring that Executive Order JBE 16-11 is void

ab initio since it constitutes an *ultra vires* act of the governor and violates the Constitutions of the State of Louisiana and United States, and violates the dictates of Louisiana statutory law;

- IV. All costs of these proceedings be taxed against the defendants; and,
- V. Petitioners be granted all other general and equitable relief.

Respectfully submitted:

JEFF LANDRY
ATTORNEY GENERAL

By: 
Elizabeth Baker Murrill (LSBA# 20685)
Solicitor General and Dir., Civil Division
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Attorneys for Defendant
Attorney General Jeff Landry

PLEASE SERVE:

Governor John Bel Edwards
Officer of Governor
State Capitol, 4th Floor
Baton Rouge, La.

STATE OF LOUISIANA :

PARISH OF EAST BATON ROUGE :

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the aforesaid parish and state,

PERSONALLY CAME AND APPEARED:

WILBUR L. STILES, III, the Chief Deputy Attorney General for the State of Louisiana, appearing herein in his official capacity and on behalf of Attorney General Jeff Landry,

who, after being duly sworn, did depose and state that:

1.

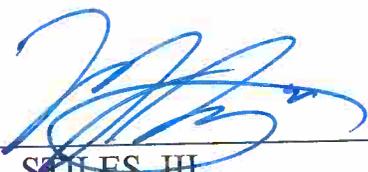
He has read the above and foregoing petition.

2.

He hereby verifies that all of the allegations contained in the above and foregoing petition are true and correct to the best of his knowledge, information, and belief.

3.

He is duly authorized and empowered to execute this verification on behalf of both Attorney General Jeff Landry and the Louisiana Department of Justice.



WILBUR L. STILES, III

SWORN TO AND SUBSCRIBED before me, Notary Public, on this 20 day of October, 2016, in Baton Rouge, East Baton Rouge Parish, Louisiana.



NOTARY PUBLIC
Chester Le Cedars
Notary 2014 # 11057