



Jeff Landry
Attorney General

State of Louisiana
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE
70804-9005

June 29, 2022

Via Electronic Mail

Louisiana State Medical Society
Mr. Jeff Williams, Executive Vice President
5555 Hilton Avenue, Ste. 420
Baton Rouge, LA 70808
Email: jeff@lsms.org

Mr. Williams:

I write to make clear the status of Louisiana's statutes criminalizing abortion.

As you know, the United States Supreme Court recently held "the Constitution does not confer a right to abortion" and "does not prohibit the citizens of each State from regulating or prohibiting abortion." *Dobbs v. Jackson Women's Health Organization*, __ S. Ct. __, 2022 WL 2276808 (June 24, 2022). Accordingly, the Supreme Court "overrule[d]" *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

On Monday, New York-based abortion activists obtained a temporary restraining order from a single judge in Orleans Parish purporting to enjoin statewide the enforcement of three criminal statutes regulating abortion. I believe the injunction has limited reach and the claims underlying that order are meritless.

The temporary restraining order does not – and cannot – immunize medical providers from liability from criminal conduct. Rather, the order merely prohibits the Secretary of the Louisiana Department of Health and the Attorney General from enforcing or implementing certain statutes while the order is in effect. On that point, the Supreme Court's opinion in *Edgar v. MITE Corp.*, 457 U.S. 624 (1982), is illuminating. The Court found a live controversy where the State of Illinois threatened to enforce a criminal statute if a lower court injunction were reversed. *Id.* at 630. The Court thus implicitly rejected a dissenting argument that the preliminary injunction in that case "would have barred the [State] from seeking either civil or criminal penalties for violations" that occurred while the injunction was in effect. *Id.* at 655-64 (Marshall, J., dissenting); *see also id.* at 647-55 (Stephens, J., concurring in part).

Louisiana law is in accord. State laws are presumed constitutional, and the constitutionality of those laws cannot be addressed in a temporary restraining order or preliminary injunction. *See, e.g., Women's Health Clinic v. State*, 2001-2645 (La. 11/9/01), 804 S.2d 625, 626. Similarly, Louisiana's mistake of law defense only "shield[s] defendants who relied on constitutional pronouncements from the Supreme Court of the United States or the state supreme court ... not those who relied on preliminary

injunctions or rulings from trial or intermediate appellate courts.” Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 994 (2018) (discussing La. R.S. 14:17).

I thus close with a word of caution: Louisiana medical providers should not fall prey to breathless media reports of injunctions. Subject to certain exceptions, abortion is a criminal offense in the State of Louisiana, and it has been since last Friday. It is incumbent on this office to advise you that any medical provider who would perform or has performed an elective abortion after the Supreme Court’s decision in *Dobbs* is jeopardizing his or her liberty and medical license. It is the intent of this office to see the laws and Constitution of the State of Louisiana are upheld. I trust you will disseminate this information to your members.

For Louisiana,



Jeff Landry
Attorney General