

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

NUMBER: C-700923

DIVISION: 23

GOVERNOR JOHN BEL EDWARDS

VERSUS

LOUISIANA STATE LEGISLATURE, LOUISIANA HOUSE OF REPRESENTATIVES, AND
CLAY SCHEXNAYDER, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE
LOUISIANA HOUSE OF REPRESENTATIVES

ANSWER AND RECONVENTIONAL DEMAND
BY CLAY SCHEXNAYDER, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE
LOUISIANA HOUSE OF REPRESENTATIVES

ANSWER

NOW INTO COURT, through undersigned counsel, comes Clay Schexnayder, in his official capacity as Speaker of the Louisiana House of Representatives, made Defendant herein, who in response to the Petition for Declaratory Judgment and Injunctive Relief filed by the Governor does answer as follows:

Speaker Schexnayder does not waive any exceptions filed or that may be filed as permitted under law. Further, Speaker Schexnayder asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction over the Governor's request for declaratory and injunctive relief. The Governor's petition sets forth a political question, and the relief requested would violate the separation of powers doctrine and non-delegation clause.

SECOND AFFIRMATIVE DEFENSE

The Governor failed to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

The Governor failed to state a cause of action concerning any constitutional claims raised in the petition and/or claims against Speaker Schexnayder.

FOURTH AFFIRMATIVE DEFENSE

Much of the relief requested by the Governor is non-justiciable and does not create a case and controversy.

FIFTH AFFIRMATIVE DEFENSE

The Governor has improperly cumulated actions.

ANSWER TO SPECIFIC PARAGRAPHS OF GOVERNOR'S PETITION

1.

The allegations in Paragraph 1 are denied as written.

2.

The allegations in Paragraph 2 are denied as written and for lack of information.

3.

The allegations in Paragraph 3 are admitted in part to the extent that the Governor declared emergencies pursuant to the Louisiana Homeland Security and Emergency Assistance Act and the Louisiana Health Emergency Powers Act found in Title 29 of the Revised Statutes. The remaining allegations are denied as written and for lack of information.

4.

The allegations in Paragraph 4 are denied as written and for lack of information. Further, the allegations go beyond a single set of circumstances as required by La. Code. Civ. P. art. 854.

5.

The allegations of Paragraph 5 are denied as written and for lack of information. Further, the allegations go beyond a single set of circumstances as required by La. Code. Civ. P. art. 854.

6.

The allegations of Paragraph 6 are denied. Further, the allegations go beyond a single set of circumstances as required by La. Code. Civ. P. art. 854.

7.

The allegations of Paragraph 7 are denied.

8.

The allegations of Paragraph 8 are admitted-Plaintiff, John Bel Edwards, is the duly elected Governor of the State of Louisiana and a resident of East Baton Rouge Parish.

9.

The allegations in of Paragraph 9 contain legal conclusions and do not require an answer, to the extent an answer is required:

a. Speaker Schexnayder admits that the Louisiana State Legislature is named as a defendant in this matter. To the extent any other response is required, the allegations are denied, as the Louisiana Constitution and state law are the best evidence of their own contents.

b. Speaker Schexnayder admits that the Louisiana House of Representatives is a named defendant in this matter. To the extent any other response is required, the allegations are denied, as the Louisiana Constitution and state law are the best evidence of their own contents.

c. Speaker Schexnayder admits that he is named as a defendant in this matter. To the extent any other response is required, the allegations are denied, as the Louisiana Constitution and state law are the best evidence of their own contents.

d. The allegations do not require a response.

10.

The allegations in Paragraph 10 are denied.

11.

The allegations contained in Paragraph 11 are legal conclusions and therefore do not require a response. However, insofar as a response is required, the allegations are denied as state law and statutes are the best evidence of their own contents.

12.

The allegations of Paragraph 12 are denied.

13.

The allegations contained in Paragraph 13 are legal conclusions and therefore do not require a response. However, insofar as a response is required, the allegations are denied as state law and statutes are the best evidence of their own contents.

14.

The allegations contained in Paragraph 14 are denied for lack of information. The date when China first identified a novel coronavirus is unknown.

15.

The allegation contained in Paragraph 15 is admitted to the extent WHO declared the virus a pandemic in March of 2020 and called for countries to take urgent and aggressive action. The remaining allegations are denied as written.

16.

The allegations contained in Paragraph 16 are denied for lack of information as to the exact number of people world-wide that have been diagnosed with COVID-19 and died. The allegations

are admitted to the extent that millions of people worldwide have been diagnosed with COVID-19, and more than a million people worldwide have died from the disease.

17.

The allegations contained in Paragraph 17 are denied for lack of information as to the exact number of people in the United States that have been diagnosed with COVID-19 and died. The allegations are admitted to the extent that millions of people in the United States have been diagnosed with COVID-19, and more than two hundred thousand Americans have died reportedly from COVID-19.

18.

The allegations contained in Paragraph 18 are denied for lack of information as the CDC guidance continues to change, except to admit that the novel coronavirus is highly contagious.

19.

The allegations contained in Paragraph 19 are denied as written.

20.

The allegations in Paragraph 20 are denied as written and for lack of information. Further, the allegations go beyond a single set of circumstances as required by La. Code. Civ. P. art. 854.

21.

The allegations in Paragraph 21 are admitted in part and denied in part. The allegations are admitted to the extent that Louisiana saw its first reported case of COVID-19 on March 9, 2020, and, on March 11, 2020, the Governor declared a statewide public health emergency and has since issued a series of emergency proclamations. The remaining allegations are denied for lack of information.

22.

The allegations in Paragraph 22 are denied as written.

23.

The allegations in Paragraph 23 are denied as written.

24.

The allegation in Paragraph 24 are denied as written.

25.

The allegations in Paragraph 25 are denied as written and for lack of information.

26.

The allegations in Paragraph 26 are admitted.

27.

The allegations in Paragraph 27 are denied as written and for lack of information. Further, the allegations go beyond a single set of circumstances as required by La. Code. Civ. P. art. 854.

28.

The allegations in Paragraph 28 are denied as written and for lack of information.

29.

The allegations in Paragraph 29 are admitted.

30.

The allegations in Paragraph 30 are denied.

31.

The allegations in Paragraph 31 are denied as written. Further, the allegations go beyond a single set of circumstances as required by La. Code. Civ. P. art. 854.

32.

The allegations in Paragraph 32 are denied.

33.

The allegations in Paragraph 33 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied, as state law HB 4 of the 2020 Second Extraordinary Session is the best evidence of its contents.

34.

The allegations in Paragraph 34 are admitted to the extent that HB 4 was sent to the Governor for signature. However, on October 27, 2020, after the Governor filed this petition, the Governor John Bel Edwards vetoed House Bill 4.

35.

The allegations in Paragraph 35 are denied as written except to admit to that on October 23, 2020, a majority of the House of Representatives signed a Petition to Terminate State of Public Health Emergency under La. R.S. 29:768, a copy of the Petition appearing as Exhibit 1 to the Governor's Petition for Declaratory Judgment and Injunctive Relief.

36.

The allegations in Paragraph 36 are denied as written. The Plaintiff attached a copy of the Petition to Terminate State of Public Health Emergency to his Petition, and that is the best evidence of its contents.

37.

The allegations in Paragraph 37 are denied as written. The Plaintiff attached a copy of the Petition to Terminate State of Public Health Emergency to his Petition, and that is the best evidence of its contents.

38.

The allegations in Paragraph 36 are denied in part and admitted in part. The Plaintiff attached a copy of the Petition to Terminate State of Public Health Emergency to his Petition, and that is the best evidence of its contents. It is admitted that the petition states that house members consulted with the public health authority.

39.

The allegations in Paragraph 39 are admitted.

40.

The allegations in Paragraph 40 are denied, except to admit that the Governor was delivered the Legislature's petition to terminate on October 23, 2020.

41.

The allegations in Paragraph 41 do not require a response. To the extent a response is required, the responses to Paragraphs 1-41 above are incorporated in extensio as set forth herein.

42.

The allegations in Paragraph 42 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

43.

The allegations in Paragraph 43 are denied, as the relief the Governor is requesting is non-justiciable.

44.

The allegations in Paragraph 44 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as the Constitution is the best evidence of its contents.

45.

The allegations in Paragraph 45 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as the Constitution is the best evidence of its contents.

46.

The allegations in Paragraph 46 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as the Constitution is the best evidence of its contents.

47.

The allegations in Paragraph 47 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

48.

The allegations in Paragraph 48 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

49.

The allegations in Paragraph 49 are denied. The Governor has enumerated powers pursuant to the La. R.S. 29:724.

50.

The allegations in Paragraph 50 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

51.

The allegations in Paragraph 51 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

52.

The allegations in Paragraph 52 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

53.

The allegations in Paragraph 53 are denied.

54.

The allegations in Paragraph 54 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

55.

The allegations in Paragraph 55 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

56.

The allegations in Paragraph 56 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

57.

The allegations in Paragraph 57 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

58.

The allegations in Paragraph 58 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

59.

The allegations in Paragraph 59 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

60.

The allegations in Paragraph 60 are denied as written.

61.

The allegations in Paragraph 61 are denied.

62.

The allegations in Paragraph 62 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

63.

The allegations in Paragraph 63 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

64.

The allegations in Paragraph 64 are denied.

65.

The allegations in Paragraph 65 are denied.

66.

The allegations in Paragraph 66 are denied.

67.

The allegations in Paragraph 67 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

68.

The allegations in Paragraph 68 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

69.

The allegations in Paragraph 69 are denied.

70.

The allegations in Paragraph 70 are denied as written. The Plaintiff attached a copy of the Petition to Terminate State of Public Health Emergency to his Petition, and that is the best evidence of its contents.

71.

The allegations in Paragraph 71 are denied as written and appear to be a legal conclusion, to the extent that the Plaintiff cites a case out of the United States Ninth Circuit. The case cited is the best evidence of its contents.

72.

The allegations in Paragraph 72 are denied.

73.

The allegations in Paragraph 73 are denied.

74.

The allegations in Paragraph 74 are denied.

75.

The allegations in Paragraph 75 are denied as written.

76.

The allegations in Paragraph 76 are denied as written.

77.

The allegations in Paragraph 77 are denied. Further, the allegations go beyond a single set of circumstances as required by La. Code. Civ. P. art. 854.

78.

The allegations in Paragraph 78 are denied. Further, the allegations go beyond a single set of circumstances as required by La. Code. Civ. P. art. 854.

79.

The allegations in Paragraph 79 are denied.

80.

The allegations in Paragraph 80 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

81.

The allegations in Paragraph 81 are denied.

82.

The allegations in Paragraph 36 are denied as written. The Plaintiff attached a copy of the Petition to Terminate State of Public Health Emergency to his Petition, and that is the best evidence of its contents.

83.

The allegations in Paragraph 83 are denied.

84.

The allegation in Paragraph 84 are denied.

85.

The allegations in Paragraph 85 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

86.

The allegations in Paragraph 86 are denied.

87.

The allegations in Paragraph 87 are denied.

88.

The allegations in Paragraph 88 are denied as written.

89.

The allegations in Paragraph 89 are denied.

90.

The allegations in Paragraph 90 are denied.

91.

The allegations in Paragraph 91 are denied.

92.

The allegations in Paragraph 92 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

93.

The allegations in Paragraph 93 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

94.

The allegations in Paragraph 94 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied, the quote in the petition is not an accurate statement of what the case held.

95.

The allegations in Paragraph 95 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

96.

The allegations in Paragraph 96 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

97.

The allegations in Paragraph 97 are denied.

98.

The allegations in Paragraph 98 do not require a response, to the extent a response is required the responses to Paragraphs 1-98 are incorporated in extensio as set forth above herein.

99.

The allegations in Paragraph 99 are legal conclusions and no response is required. However, insofar as a response is required, the allegations are denied as state law is the best evidence of its contents.

100.

The allegations in Paragraph 100 are denied.

101.

The allegations in Paragraph 101 are essentially part of the prayer and are mere legal conclusions; therefore, no response is required. To the extent a response is required, the allegations in the prayer are denied.

The allegations contained in the prayer are mere legal conclusions; therefore, no response is required. To the extent a response is required, the allegations in the prayer are denied.

WHEREFORE Speaker Clay Schexnayder prays that his Answer be deemed good and sufficient and that after the lapse of legal delays and proceedings are had, there be judgment rendered herein in favor of him and against the Governor, dismissing the Petition for Declaratory Judgment and Injunctive Relief filed by the Governor with prejudice and at his costs.

AND FOR ALL GENERAL AND EQUITABLE RELIEF, ETC.

RECONVENTIONAL DEMAND

NOW INTO COURT, through undersigned counsel, comes Plaintiff-in-Reconvention, Clay Schexnayder, in his official capacity as Speaker of the Louisiana House of Representatives, who makes Defendant-in-Reconvention, John Bel Edwards, in his official capacity as Governor of the State of Louisiana, and who respectfully represents:

102.

Speaker Schexnayder is a member of the Louisiana House of Representatives, representing District 81. On January 13, 2020, he was elected by his peers to serve as the Speaker of the Louisiana House of Representatives.

103.

Speaker Schexnayder brings this suit on behalf of the House of Representatives pursuant to House Rule 2.5 (20), which enables him to do and perform such duties as may be required by the Constitution and laws of this state, or by the legislature or the House of Representatives and such other duties as may be properly appertained to the office of the Speaker of the House.

104.

Made Defendant-in-Reconvention 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

105.

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

106.

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 and inaction associated with his official capacity as Governor.

EMERGENCY DECLARATIONS

107.

On March 11, 2020, the Governor declared a statewide public health emergency due to COVID-19, pursuant to the Louisiana Health Emergency Powers Act, La. R.S. 29:760, *et seq.*, through April 9, 2020. *See* Proclamation Number 25 JBE 2020.

108.

On April 2, 2020, the Governor renewed and extended the statewide public health emergency through April 30, 2020. *See* Proclamation Number 41 JBE 2020.

109.

On April 30, 2020, the Governor renewed and extended the statewide public health emergency through May 15, 2020. *See* Proclamation Number 52 JBE 2020.

110.

On May 14, 2020, the Governor renewed and extended the statewide public health emergency through June 5, 2020. *See* Proclamation Number 58 JBE 2020 and 59 JBE 2020.

111.

On June 4, 2020, the Governor renewed and extended the statewide public health emergency through June 26, 2020. *See* Proclamation Number 74 JBE 2020 and 75 JBE 2020.

112.

On June 25, 2020, the Governor renewed and extended the statewide public health emergency through July 24, 2020. *See* Proclamation Number 83 JBE 2020 and 84 JBE 2020.

113.

On July 23, 2020, the Governor renewed and extended the statewide public health emergency through August 7, 2020, and declared a public health emergency pursuant to the Louisiana Homeland Security and Emergency Assistance Disaster Act, La. R.S. 29:721, *et seq.* See Proclamation Number 96 JBE 2020 and 97 JBE 2020.

114.

On August 6, 2020, the Governor renewed and extended the statewide public health emergency declared under both Acts through August 28, 2020. See Proclamation Number 101 JBE 2020 and 102 JBE 2020.

115.

On August 26, 2020, the Governor renewed and extended the statewide public health emergency declared under both Acts through September 11, 2020. See Proclamation Number 110 JBE 2020 and Proclamation 111 JBE 2020.

116.

On September 11, 2020, the Governor renewed and extended the statewide public health emergency through October 9, 2020, in Proclamation 117 JBE 2020 and Proclamation Number 118 JBE 2020.

117.

On September 17, 2020, the Governor issued COVID-19 Public Health Emergency Phase 3 of Resilient Louisiana, supplementing Proclamation 117 JBE 2020. See Proclamation Number 123 JBE 2020.

118.

On October 8, 2020, the Governor renewed and extended the statewide public health emergency, including renewal of Phase 3 through November 6, 2020. See Proclamation Number 134 JBE 2020 and Proclamation Number 135 JBE 2020.

**GOVERNOR'S ENUMERATED POWERS FOR
DECLARING A PUBLIC HEALTH EMERGENCY**

119.

Provisions of the Louisiana Constitution are not grants of power for the legislature but are instead limitations on the otherwise plenary power of the people of the state exercised through its Legislature. *Board of Commissioners v. Orleans Levee District*, 496 So.2d 281 (La. 1986). The Legislature granted the Governor enumerated powers for declaring an emergency or disaster under

two statutory schemes: The Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721–739, and The Louisiana Health Emergency Powers Act, La. R.S. 29:760–772.

120.

The Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721–739, and The Louisiana Health Emergency Powers Act, La. R.S. 29:760–772 delegate certain powers to the Governor for a limited time.

121.

The Louisiana Homeland Security and Emergency Assistance and Disaster Act, at La. R.S. 29:724(B)(1)-(2), provides as follows relative to the authority of the Governor and the Legislature in the context of a disaster or emergency:

(1) A disaster or emergency, or both, shall be declared by executive order or proclamation of the governor if he finds that a disaster or emergency has occurred or the threat thereof is imminent. The state of disaster or emergency shall continue until the governor finds that the threat of danger has passed or the disaster or emergency has been dealt with to the extent that the emergency conditions no longer exist and terminates the state of disaster or emergency by executive order or proclamation, but no state of disaster or emergency may continue for longer than thirty days unless renewed by the governor.

(2) The legislature, by petition signed by a majority of the surviving members of either house, may terminate a state of disaster or emergency at any time. This petition terminating the state of emergency or disaster may establish a period during which no other declaration of emergency or disaster may be issued. Thereupon, the governor shall issue an executive order or proclamation ending the state of disaster or emergency.

122.

Similarly, the Louisiana Health Emergency Powers Act, at La. R.S. 29:768, provides as follows:

A. The state of public health emergency shall continue until the governor finds that the threat of danger has passed or the disaster or emergency has been dealt with to the extent that the emergency conditions no longer exist and terminates the state of public health or emergency by executive order or proclamation, but no state of public health emergency may continue for longer than thirty days unless renewed by the governor.

B. The legislature, in consultation with the public health authority, by a petition signed by a majority of the surviving members of either house, may terminate a state of public health emergency at any time. This petition terminating the public health emergency may establish a period during which no other declaration of public health emergency may be issued. Thereupon, the governor shall issue an executive order or proclamation ending the state of public health or emergency.

123.

In an emergency, these two acts create a statutory scheme that permit the Governor to take certain *enumerated* actions—but only those actions—by executive order or proclamation. *Neither* permits the Governor to make law with an Executive Order or Proclamation, *even during an emergency*.

124.

This legislative scheme is a derogation from common rights and procedures (*i.e.*, the ordinary means of creating law through the legislative process and promulgating regulations pursuant to procedures outlined in the Louisiana Administrative Procedures Act, subject to legislative oversight) it must be strictly construed. *See e.g., State, Dep't of Transp. & Dev. v. Estate of Griffin*, 95-1464 (La. App. 1 Cir. 2/23/96), 669 So. 2d 566, 568.

125.

Therefore, the legislature set forth a procedure to terminate an emergency, to ensure that there is a checks and balances on the extraordinary power exercised by the Governor. The exercise of legislative oversight by one house of the legislature is not a foreign concept. Routinely, the legislature exercises oversight over the executive branch through the Louisiana Administrative Procedures Act, and this action is not undertaken by the entire legislature. *See* La. R.S. 49:968.

126.

Without this legislative oversight and the legislature's ability to terminate an emergency, the governor's powers under La. R.S. 29:724 and La. R.S. 29:768, would violate the separation of powers doctrine and non-delegation doctrine.

**LEGISLATURE'S AUTHORITY TO TERMINATE
A PUBLIC HEALTH EMERGENCY**

127.

The Louisiana Health Emergency Powers Act requires that the Legislature consult with the public health authority before terminating the declaration of public health emergency. La. R.S. 29:768(B). The statute provides that the Legislature must act "in consultation with the public health authority" (defined in La. R.S. 29:762(11) as "the secretary of the Louisiana Department of Health, or his designee, and the state health officer"). *Id.*

128.

The legislature is required to consult with the Department of Health and the state health officer, but the law does not require the concurrence or agreement of those officers in order for the legislature to proceed with termination. *See* La. R.S. 29:768(B).

129.

Termination requires simply “a petition signed by a majority of the surviving members of either house.” *See* La. R.S. 29:768(B).

130.

The legislature has the authority to terminate a public health emergency at any time, and thus need not be in session for the petition to be valid. *See* La. R.S. 29:768(B).

131.

The petition *may* provide for a definitive period of time in which no other declaration of public health emergency may be issued. *See* La. R.S. 29:768(B).

132.

Once signed by a majority of the surviving members of either house, thereupon, “the governor *shall* issue an executive order or proclamation ending the state of public health or emergency.” *See* La. R.S. 29:768(B). (Emphasis added).

133.

The Governor’s action under La. R.S. 29:768(B) is not discretionary.

134.

Upon termination of the power granted to the Governor during the declaration of an emergency, the authority of the branches returns to its normal state, save for the possibility that the Governor will be prohibited from declaring another state of public health emergency for the period of time provided for in the petition, if any.

135.

The legislature has essentially the same authority to terminate the state of disaster or emergency under the Louisiana Homeland Security and Emergency Assistance and Disaster Act. *See* La. R.S. 29:724(B)(2). The only procedural difference is that there is no requirement for the legislature to consult with the public health authority prior to terminating a disaster or emergency declared pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster

Act. Termination still only requires simply “a petition signed by a majority of the surviving members of either house.” *Id.*

136.

The legislature has the authority to terminate a disaster or emergency declared pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act at any time, and thus need not be in session for the petition to be valid. *See* La. R.S. 29:724(B)(2).

137.

The petition may provide for a definitive period of time in which no other declaration of disaster or emergency under the Louisiana Homeland Security and Emergency Assistance and Disaster Act may be issued. *See* La. R.S. 29:724(B)(2).

138.

Once signed by a majority of the surviving members of either house, thereupon “the governor *shall* issue an executive order or proclamation ending the state of public health or emergency.” *See* La. R.S. 29:724(B)(2).

PETITION TO TERMINATE PUBLIC HEALTH EMERGENCY

139.

Throughout the pandemic, the legislature has consulted with the public health authority continuously throughout the public health emergency by way of conference calls, daily reports, zoom meetings, committee hearings, weekly reports, other meetings, etc.

140.

Throughout the pandemic, the legislature has consulted specifically regarding the object of this petition by a consultation meeting with the legislature.

141.

On October 23, 2020, the legislature, by a petition signed by a majority of the surviving members of the Louisiana House of Representatives, terminated the state of public health emergency declared by Proclamation Number 134 JBE 2020, in accordance with La. R.S. 29:768(B). (See Exhibit A, Petition)

142.

Although not mandated by La. R.S. 29:768(B), the legislature included reasons for the “Petition to Terminate State of Public Health Emergency” in the petition, which included:

WHEREAS, . . . many Louisiana small businesses have gone out of business, and many more are in danger of going out of business as a consequence of the restrictive measures put in place to combat COVID-19; and

WHEREAS, the measures imposed to slow the spread of COVID-19 have also resulted in a lack of social interaction and feelings of isolation which can be detrimental to the mental health and well-being of Louisiana residents; and

WHEREAS, students in Louisiana have been hindered in their academic and extracurricular pursuits which are critical to their overall personal growth and development, and such hindrance can greatly limit future academic and employment opportunities; and

WHEREAS, in the eight months following the initial declaration of a public health emergency by Governor Edwards, the medical supply chain has recovered and is capable of meeting the current demands for COVID-19 related medical equipment and supplies; and

(Exhibit A, Petition at p. 3 of 7)

143.

Once a majority of the surviving members of the House of Representatives signed the petition, *thereupon*, the governor was mandated by law to issue an executive order or proclamation ending the state of public health or emergency. *See* La. R.S. 29:768(B).

144.

The petition, on its face, terminated Proclamation 134 JBE 2020, effective upon receipt of the petition by the governor. (See Exhibit A, Petition at page 3 of 7)

145.

The governor received the petition on October 23, 2020.

146.

In accordance with La. R.S. 29:768(B), the petition also established a time during which the governor may issue no other declaration of public health emergency.

147.

The petition established that commencing upon presentation of the petition to the governor and ending seven days after the governor issues his proclamation terminating Proclamation Number 134 JBE 2020 no additional gubernatorial orders declaring, renewing, extending, or

supplementing the declaration of public health emergency may be issued. (See Exhibit A, Petition at page 3 of 7)

148.

As of the filing of the this Petition, John Bel Edwards has not performed his ministerial duty of issuing an executive order or proclamation terminating the state of public health emergency declared in 134 JBE 2020.

149.

John Bel Edwards' refusal to perform his ministerial duty of issuing an executive order or proclamation ending the state of public health emergency declared in 134 JBE 2020 is causing ever-increasing confusion and disruption amongst citizens in the State of Louisiana.

150.

Mandamus is proper to direct a public officer to compel the performance of a ministerial duty required by law. La. Code Civ. P. art. 3863.

151.

The police power belongs to the state, and the Constitution . . . vests the legislative power of the State in the Legislature," which "includes all of the police power." *Plebst v. Barnwell Drilling Co.*, 148 So. 2d 584, 589 (La. 1963) "Under that power the state may enact laws to protect and preserve social order, to restrict and punish crime, to preserve the public peace, to safeguard and protect the health and morals of the people. . . ." *State v. Edwards*, 00-1246 (La. 6/1/2001) 787 So.2d 981, 992.

152.

The Legislature delegated certain limited authority to the Governor of the State of Louisiana pursuant to the Louisiana Health Emergency Powers Act. *See* La. R.S. 29:760, *et. seq.* This delegation of authority includes granting the Governor the ability to declare a state of public health emergency pursuant to La. R.S. 29:766. Upon this declaration, additional emergency powers vests with the Governor, which he may exercise during the existence of the Public Health Emergency.

153.

However, in delegating this authority the Legislature did not give away all its inherent authority (indeed to do so would have been unconstitutional). Instead, the Legislature reserved to one house the ability to terminate a declaration of public health emergency. Such a check is

necessary if the Louisiana Health Emergency Powers Act, La. R.S. 29:760, *et. seq.*, is to withstand constitutional security.

154.

The law is well established that although, the *legislature may delegate* the exercise of police power, *the power belongs to the state and its delegation can be recalled, abrogated, or modified.*" *Polk v. Edwards*, 626 So.2d at 1142 (La. 1993). (Emphasis added.)

155.

In the instant case, the Governor has refused to acknowledge the Legislature's modification and recall of the delegated police powers. The executive like any other citizen must follow the law and here the law requires him to issue a proclamation terminating the Proclamation of State of Emergency so that that the general public is put on notice that the state of emergency has been terminated.

156.

Accordingly, Clay Schexnayder petitions the Court for the immediate issuance of a writ of mandamus to John Bel Edwards, setting a rule to show cause why the writ of mandamus should not be made peremptory in accordance with La. Code Civ. P. art. 3782.

157.

Alternatively, since La. R.S. 29:768(B) allows either house of the Legislature to terminate a state of public health emergency and the House of Representatives, as evidenced by Exhibit 1 to the Governor's Petition, has terminated the State of Public Health Emergency the Speaker files this mandamus and prays for a judgment declaring 134 JBE 2020 null and void.

WHEREFORE, the Clay Schexnayder, appearing through undersigned counsel, prays that this Court:

1. Set a hearing on the writ of mandamus in accordance with La. Code Civ. P. art. 3782;
2. Hold the hearing in open court;
3. Render judgment making the writ peremptory and directing Defendant-in Reconviction, JOHN BEL EDWARDS, to issue an executive order or proclamation terminating the state of public health emergency declared in 134 JBE 2020.
4. Declare 134 JBE 2020 null and void.

5. Grant such other or further relief the Court deems appropriate under the law.

Respectfully submitted,

JEFF LANDRY
ATTORNEY GENERAL

By: 

ELIZABETH BAKER MURRILL (#20685)
Solicitor General

ANGELIQUE DUHON FREEL (#28561)

ALEXANDER T. REINBOTH (#34048)

Assistant Attorneys General

Louisiana Department of Justice

Post Office Box 94005

Baton Rouge, LA 70804

Telephone: 225.326.6000

Fax: 225.326.6098

Email: MurrillE@ag.louisiana.gov

FreelA@ag.louisiana.gov

ReinbothA@ag.louisiana.gov

*Attorneys for Defendant and Plaintiff in
Reconvention*

Clay Schexnayder, in his official capacity as Speaker
of the Louisiana House of Representatives

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has on this date been served upon all known counsel of record, all by electronic mail, hand delivery, and/or depositing same in the United States mail, postage prepaid, and properly addressed.

Baton Rouge, Louisiana, this 29th day of October 2020.



ANGELIQUE DUHON FREEL

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

NUMBER: C-700923

DIVISION: 23

GOVERNOR JOHN BEL EDWARDS

VERSUS

LOUISIANA STATE LEGISLATURE, LOUISIANA HOUSE OF REPRESENTATIVES, AND
CLAY SCHEXNAYDER, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE
LOUISIANA HOUSE OF REPRESENTATIVES

ORDER

Considering the foregoing Reconventional Demand;

IT IS HEREBY ORDERED that an alternative writ of mandamus issue, directing Governor John Bel Edwards, either to issue an executive order or proclamation ending the state of public health emergency declared in 134 JBE 2020, or to show cause why the writ of mandamus should not be made peremptory and/or why this Court should not declare 134 JBE 2020 null and void, on the ____ day of _____, 2020, at _____ a.m./p.m.

Baton Rouge, Louisiana this ____ day of _____, 2020.

Judge William Morvant
District Court Judge
19th Judicial District Court

PLEASE SERVE:

Governor John Bel Edwards
Office of the Governor
State Capitol
900 North Third Street, Fourth Floor
Baton Rouge, LA 70802

Louisiana Legislature
Through Jeff Landry, Louisiana Attorney General
Louisiana Department of Justice
1885 North Third Street
Baton Rouge, LA 70802

Louisiana House of Representatives
Through Jeff Landry, Louisiana Attorney General
1885 North Third Street
Baton Rouge, LA 70802



STATE OF LOUISIANA

MICHELLE D. FONTENOT
CLERK, HOUSE OF REPRESENTATIVES

POST OFFICE BOX 44281
BATON ROUGE, LOUISIANA 70804-4281
(225) 342-7259

October 23, 2020

Secretary Kyle Ardoin
Louisiana Secretary of State
Post Office Box 94125
Baton Rouge, LA 70804

ATTENTION: Secretary Kyle Ardoin

Enclosed is a hard copy of a petition entitled "Petition to Terminate State of Public Health Emergency" delivered to me by Cinthia Mancuso, Executive Counsel to the Speaker in my office on the ground floor of the State Capitol, on the 23rd day of October, 2020. An electronic copy of the petition will be delivered via email on the same day.

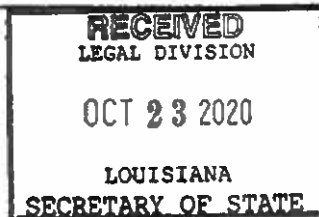
Sincerely,

Michelle D. Fontenot

Enclosures (1)

RECEIVED BY: _____

DATE: _____



State of Louisiana
House of Representatives

RECEIVED
OCT 23 2020
4:12 pm
House of Representatives
Clerk's Office



**PETITION TO TERMINATE
STATE OF PUBLIC HEALTH EMERGENCY**

WHEREAS, on March 11, 2020, the World Health Organization declared the novel coronavirus (COVID-19) outbreak a global pandemic; and

WHEREAS, on March 11, 2020, Governor Edwards issued Proclamation Number 25 JBE 2020 to declare a statewide public health emergency due to the imminent threat posed to Louisiana citizens by COVID-19; and

WHEREAS, on March 13, 2020, President Trump issued Proclamation 9994 declaring a national emergency concerning COVID-19; and

WHEREAS, the governor, after consulting with medical experts, understood that the spread of COVID-19 posed a significant risk of substantial future harm and even death to a large number of Louisiana residents; and

WHEREAS, the extraordinary threat posed by COVID-19 initially caused critical shortages of healthcare equipment and personal protective equipment for healthcare workers and serious concerns about reduced beds and capacity in hospitals to care for our citizens; and

WHEREAS, without the protective measures imposed by the governor to slow the spread of COVID-19, Louisiana healthcare facilities and other resources were at risk of being overwhelmed; and

WHEREAS, Governor Edwards' proactive actions and measures at the onset of COVID-19 were necessary to protect the health and safety of the citizens of Louisiana; and

WHEREAS, the impact of COVID-19 on our national and state economies prompted congress to provide an unprecedented amount of federal aid to citizens, businesses, and state and local governments; and

WHEREAS, despite this aid, many Louisiana small businesses have gone out of business, and many more are in danger of going out of business as a consequence of the restrictive measures put in place to combat COVID-19; and

WHEREAS, the measures imposed to slow the spread of COVID-19 have also resulted in a lack of social interaction and feelings of isolation which can be detrimental to the mental health and well-being of Louisiana residents; and

WHEREAS, students in Louisiana have been hindered in their academic and extracurricular pursuits which are critical to their overall personal growth and development, and such hindrance can greatly limit future academic and employment opportunities; and

WHEREAS, in the eight months following the initial declaration of a public health emergency by Governor Edwards, the medical supply chain has recovered and is capable of meeting the current demands for COVID-19-related medical equipment and supplies; and

WHEREAS, after eight months of state-directed efforts, the emergency systems and procedures that have been put in place, along with a sustainable medical supply chain and an informed public, have overcome what was initially an imminent threat to our residents and healthcare system caused by the spread of COVID-19 and a strained medical supply chain; and

WHEREAS, the legislature has generally consulted with the public health authority continuously throughout the public health emergency by way of conference calls, daily reports, weekly updates, and has consulted with the public health authority specifically regarding the object of this petition by a consultation meeting with the legislature; and

WHEREAS, it is the will of the Louisiana House of Representatives that, during the duration of the suspension of the executive authority to issue public health emergencies in accordance with R.S. 29:768, Governor Edwards consult with the Legislature of Louisiana for the purpose of receiving the approval of the Legislature of Louisiana prior to the declaration of a post-suspension public health emergency; and

WHEREAS, should the governor determine that a declaration of a post-suspension public health emergency is necessary and due to the different impacts of COVID-19 across the state, it is the will of the Louisiana House of Representatives that the declaration include provisions allowing each parish president and each chief executive officer of a municipality to withdraw from the declared state of public health emergency.

WHEREAS, if the governor believes a post-suspension emergency proclamation or order related to COVID-19 is necessary, it is the will of the House of Representatives of the Legislature of Louisiana that the governor consult with the speaker of the House of Representatives, the president of the Senate, the speaker pro tempore of the House of Representatives, and the president pro tempore of the Senate in order to determine the appropriate measures to respond to the issue.

BE IT RESOLVED that the termination of Proclamation Number 134 JBE 2020 shall have no effect on the continuation of hurricane-related declarations of emergency, including Proclamation Number 141 JBE 2020, and such other hurricane-related proclamations.

NOW THEREFORE, we, the undersigned members of the House of Representatives of the Legislature of Louisiana, constituting a majority of the elected members of the House of Representatives thereof, and in consultation with the public health authority, do hereby terminate Proclamation Number 134 JBE 2020, effective upon receipt of this petition by the governor; do hereby prohibit, for a period commencing upon presentation of this petition to the governor and ending seven days after issuance of the proclamation terminating Proclamation Number 134 JBE 2020, any additional gubernatorial orders declaring, renewing, extending, or supplementing any state of public health emergency; and do hereby instruct the governor to issue an executive order or proclamation terminating Proclamation Number 134 JBE 2020.

Respectfully Submitted,


Members of the Louisiana House of Representatives


Speaker Clay Schexnayder



Representative Roy Daryl Adams


Representative Beryl A. Amedée


Representative Tony Bacala


Representative Lawrence A. Warry Bagley


Representative Gerald Alphonse Beaulieu


Representative Stuart J. Bishop


Representative Ryan Joseph Esparriague

Representative Kendricks "Ken" Brass

Representative Marcus Anthony Bryant

Representative Barbara W. Carpenter

Representative Gary M. Carter, Jr.

Representative Wilford Dan Carter, Sr.

Representative Jean-Paul P. Coussan

Representative Raymond J. Crews

Representative Phillip R. DeVillier

Representative Mary DuBuisson

Representative Stephen C. Dwight

Representative Rick Edmonds

Representative Julie Emerson

Representative Michael "Gabe" Firment

Representative Aimee Adatto Freeman

Representative Chad Brown

Representative Rhonda Gaye Butler

Representative R. Dewith Carrier

Representative Robby Carter

Representative Mack Marcel Cormier

Representative Kenny R. Cox

Representative Paula P. Davis

Representative Daryl Andrew Deshotel

Representative Royce Duplessis

Representative Michael Charles Echols

Representative Kathy Edmonston

Representative Les Farnum

Representative Bryan Fontenot

Representative Barbara Reich Freiberg

Representative Lawrence "Larry" Frieman

Representative Randal L. Gaines

Representative Cedric B. Glover

Representative Kyle M. Green, Jr.

Representative Charles Alexander Henry

Representative Valarie Hodges

Representative Dodie Horton

Representative Mike Huval

Representative Barry Ivey

Representative Patrick O. Jefferson

Representative C. Travis Johnson

Representative Frederick Douglass Jones

Representative Timothy P. Kerner

Representative Mandie Landry

Representative Foy Bryan Gaddberry

Representative Raymond E. Garofalo, Jr.

Representative Jonathan Goudeau, I

Representative Lance Harris

Representative Stephanie Hilferty

Representative Paul Hollis

Representative Jason Hughes

Representative John R. Hig, Jr.

Representative Edward C. "Ted" James, II

Representative Sam L. Jenkins, Jr.

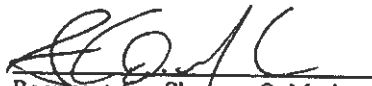
Representative Michael T. Johnson

Representative Edmond Jordan

Representative Jeremy S. LaCombe

Representative Ed Larvadain III

Representative Rodney Lyons


Representative Sherman Q. Mack


Representative Tanner D. Magee

Representative C. Denise Marcelle

Representative Joseph A. Marino, III


Representative Danny McCormick


Representative Jack G. McFarland


Representative Markham Scott McKnight


Representative Wayne McMahan


Representative Blake Miguez

Representative Dustin Miller


Representative Gregory A. Miller



Representative Buddy Mincey Jr.

Representative Patricia "Pat" Moore


Representative Nicholas Muscarello, Jr.


Representative Richard James Nelson

Representative Candace N. Newell

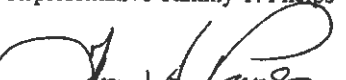

Representative Joseph A. Orgeron



Representative Charles Anthony Owen



Representative Robert "Bob" Owen

Representative Tammy T. Phelps


Representative Vincent J. Pierre


Representative Thomas A. Pressly



Representative Neil Riser


Representative Troy D. Romero

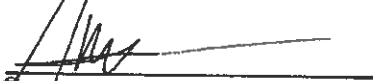

Representative Rodney Wayne Schamerhorn


Representative Alan Seabaugh

Representative Larry Selders


Representative Vincent J. St. Blanc III

Representative Joseph A. Stagni


Representative John M. Stefanski


Representative Phillip Eric Tarver


Representative Polly Thomas

Representative Francis C. Thompson


Representative Christopher Turner



Representative Debbie Villio


Representative William "Bill" Wheat, Jr.

Representative Malinda B. White

Representative Matthew Willard


Representative Mark Wright


Representative Jerome "Zee" Zeringue

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