

CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER: 2022-00866

DISTRICT COURT

DIVISION: G

CHYNA ANDREWS, ET AL

VERSUS

LATOYA CANTRELL, in her official capacity as Mayor of the City of New Orleans; NEW ORLEANS HEALTH DEPARTMENT; and JENNIFER AVEGNO, M.D., in her official capacity as Director of Health for the New Orleans Health Department

THE STATE OF LOUISIANA’S MOTION TO INTERVENE

MAY IT PLEASE THE COURT:

NOW INTO COURT, through undersigned counsel, comes the State of Louisiana, appearing through Jeff Landry, in his official capacity as Attorney General and chief legal officer of the State of Louisiana, who moves to intervene.

1.

Jeff Landry is the duly elected Attorney General for the State of Louisiana and is the chief legal officer of the State of Louisiana 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 the this State.

2.

Louisiana Constitution Article IV, § 8 provides:

Section 8. There shall be a Department of Justice, headed by the attorney general, who shall be the chief legal officer of the state. The attorney general shall be elected for a term of four years at the state general election. The assistant attorneys general shall be appointed by the attorney general to serve at his pleasure.

As necessary for the assertion or protection of any right or interest of the state, the attorney general shall have authority (1) to institute, prosecute, or intervene in any civil action or proceeding; (2) upon the written request of a district attorney, to advise and assist in the prosecution of any criminal case; and (3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review, (a) to institute, prosecute, or intervene in any criminal action or proceeding, or (b) to supersede any attorney representing the state in any civil or criminal action.

The attorney general shall exercise other powers and perform other duties authorized by this constitution or by law.

(Emphasis added.)

3.

Intervention is necessary here as a matter of right, through its constitutionally designated officer, the Attorney General of Louisiana.

4.

Further, the Plaintiffs' petition calls into question the constitutionality of state law.

5.

The Attorney General has a right under state law to be heard on any matter where the constitutionality of a law is at issue pursuant to La. Code Civ. P. art. 1880.

6.

La. Code Civ. P. art. 1880, states that “[i]f the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.”

7.

The Attorney General is exercising his discretion to be heard in this matter.


8.

Additionally, the Attorney General has the responsibility to ensure that the balance of power under La. Const. art. II, § 2 is upheld and to protect the interests of the State, ensuring that no branch of government or any person holding office in one of them shall exercise power belonging to either of the others.

WHEREFORE, for the reasons detailed in the attached Memorandum of Law, the State of Louisiana, appearing through Jeff Landry, prays that this Court grant the Motion to Intervene.

Respectfully submitted,

JEFF LANDRY
ATTORNEY GENERAL

By: 
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Attorneys for Defendant-Intervenor
STATE OF LOUISIANA, through Jeff Landry, in
his official capacity as Attorney General

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 1st day of February 2022.


ANGELIQUE DUHON FREEL

Please Serve:

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New Orleans Health Department and Jennifer Avegno, M.D.
Through the New Orleans City Attorney
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CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER: 2022-00866

2022 FEB -1 -PM 4 21
CIVIL DISTRICT COURT DIVISION: D

CHYNA ANDREWS, ET AL

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LATOYA CANTRELL, in her official capacity as Mayor of the City of New Orleans; NEW ORLEANS HEALTH DEPARTMENT; and JENNIFER AVEGNO, M.D., in her official capacity as Director of Health for the New Orleans Health Department

MEMORANDUM IN SUPPORT OF THE STATE OF LOUISIANA’S MOTION TO INTERVENE

MAY IT PLEASE THE COURT:

NOW INTO COURT, through undersigned counsel, comes the State of Louisiana, appearing through Jeff Landry, in his official capacity as Attorney General and chief legal officer of the State of Louisiana, who moves to intervene.

Jeff Landry is the duly elected Attorney General for the State of Louisiana and is the chief legal officer of the State of Louisiana 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 the this State.

Louisiana Constitution Article IV, § 8, provides a right to intervention, as set forth below:

Section 8. There shall be a Department of Justice, headed by the attorney general, who shall be the chief legal officer of the state. The attorney general shall be elected for a term of four years at the state general election. The assistant attorneys general shall be appointed by the attorney general to serve at his pleasure.

As necessary for the assertion or protection of any right or interest of the state, the attorney general shall have authority (1) to institute, prosecute, or intervene in any civil action or proceeding; (2) upon the written request of a district attorney, to advise and assist in the prosecution of any criminal case; and (3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review, (a) to institute, prosecute, or intervene in any criminal action or proceeding, or (b) to supersede any attorney representing the state in any civil or criminal action.

The attorney general shall exercise other powers and perform other duties authorized by this constitution or by law.

(Emphasis added.)

In addition to the constitutional provision cited above, the Attorney General has a right to be heard on constitutional challenges pursuant to La. Code Civ.P. art. 1880. Louisiana Code of Civil Procedure Article 1880 provides that “[i]f the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.” In this case, the Plaintiffs challenged the constitutionality of the mayor’s use of La. R.S. 29:721, et seq. and La. R.S. 29:727(F)(7) as her authority to mandate vaccines. This is a constitutional challenge to state law, and the Attorney General has the right to be heard in this matter.

The Plaintiffs allege that the Mayor is applying powers delegated to her by the Legislature in a manner which violates the nondelegation doctrine. We agree. The Mayor’s interpretation of these provisions appears to violate Louisiana law and the authority delegated to her. To the extent the mayor is using these provisions as her authority to enact and enforce vaccine mandates in Orleans, she has exceeded her authority under Louisiana law.

Louisiana Constitution Article II governs the distribution of powers in Louisiana’s state government and provides:

§ 1. Three Branches

The powers of government of the state are divided into three separate branches: legislative, executive and judicial.

§ 2 Limitations on Each Branch.

Except as otherwise provided by this constitution, no one of these branches, or any person holding office in one of them, shall exercise power belonging to either of the others.

La. Const. art. II, §§ 1 and 2 (emphasis added).

There is no express delegation of authority by the Legislature to the New Orleans Mayor that authorizes her to order and enforce vaccine mandates. By issuing a vaccine mandate, the Mayor determined what the law shall be and exercised primary and independent discretion — all in violation of the separation of powers, La. Const. art. II, §§ 1 and 2.

WHEREFORE, the State of Louisiana, appearing through Jeff Landry, prays that this Court grant the Motion to Intervene and he be allowed to be heard on the constitutional issues.

Respectfully submitted,

**JEFF LANDRY
ATTORNEY GENERAL**

By: 

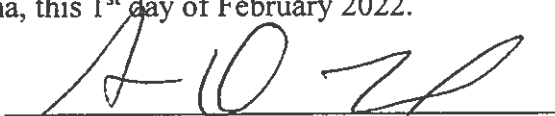
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Attorneys for Defendant-Intervenor
STATE OF LOUISIANA, through Jeff Landry, in
his official capacity as Attorney General

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 1st day of February 2022.


ANGÉLIQUE DUHON FREEL

CIVIL DISTRICT COURT
PARISH OF ORLEANS, STATE OF LOUISIANA

2022 FEB 11 PM 4:21
CIVIL DISTRICT COURT

NUMBER: 2022-00866

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LATOYA CANTRELL, in her official capacity as Mayor of the City of New Orleans; NEW ORLEANS HEALTH DEPARTMENT; and JENNIFER AVEGNO, M.D., in her official capacity as Director of Health for the New Orleans Health Department

ORDER

Before the Court is the State of Louisiana’s Motion to Intervene. After considering the motion, the Court is of the opinion it should be GRANTED.

IT IS THEREFORE ORDERED that the State of Louisiana, through Jeff Landry, in his official capacity as Attorney General, may intervene in the above captioned matter as an Intervenor-Plaintiffs.

It is further ORDERED that the Intervenor-Plaintiff is hereby instructed to file any necessary pleadings in accordance with the delays allowed under law.

Signed in New Orleans, Louisiana, this ____ day of February, 2022.

Judge Robin M. Giarrusso
Division G
Civil District Court

PLEASE SERVE:

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