



May 13, 2016

The Honorable Jeff Landry
Louisiana Department of Justice
Office of the Attorney General
1885 N. Third Street
Baton Rouge, LA 70802

RE: Request for Attorney General Opinion

Dear Attorney General Landry:

Recent developments in our state and nation necessitate this formal request for an Attorney General Opinion regarding how the State of Louisiana and its citizens and public entities should respond to new directives issued by the executive branches of our federal and state government.

As you aware, the Obama administration has announced today that it will issue a 25 page letter and order ("the Obama Directive") that every public school in America must implement new policies to allow "transgender" students to use the bathrooms and locker rooms of the opposite sex. This directive follows the U.S. Department of Justice lawsuit filed earlier this week against the State of North Carolina to challenge its new statute that prohibits people from entering bathrooms that do not match the sex listed on their birth certificates.

It our belief that the Obama Directive violates the constitutional principles of federalism and states' rights, and that no provision of federal law allows the president to take these actions. Indeed, it is our understanding that both federal and state courts around the country have already rejected arguments that Title IX and related federal regulations require schools to provide student access to opposite-sex restrooms and changing areas.

The legislators submitting this letter have long advocated that all persons should be treated fairly and equally, regardless of race, color, religion, sex, national origin, or disability, as is required by federal law and by Louisiana law (*see* La. R.S. 23:332, 323). Above and beyond the law, we also strongly believe that every person deserves respect and dignity as a human being, endowed with inalienable rights and inestimable value by their Creator. At the same time, we believe that keeping the sexes separate for the purposes of bathroom and locker room access, for example, is important for the privacy and safety of the children and adults of our state.

Accordingly, we request your official opinion as Louisiana Attorney General regarding whether or not the school districts in our state must comply with the Obama Directive, and/or whether a legal challenge to the Directive may be appropriate at this time.

As a related matter, we have similar questions concerning recent developments in our state government. As you know, on April 13, 2016, Governor John Bel Edwards issued Executive Order No. JBE 16-11 ("the Edwards Order"), entitled "Equal Opportunity and Non-Discrimination." The Edwards Order provides that "state agencies, offices, commissions, boards, entities, or officers of the State of Louisiana" shall not "discriminate" on various grounds, including "gender identity." This prohibition encompasses the provision of any "service" by the specified entities and persons (Order, at § 1), as well as a wide range of employment matters (*id.* at § 2). The Edwards Order also extends to any "contracts for the purchase of services" by the specified entities and persons (*id.* at § 3) and, further, requires that those contracts "include a provision" that the contractor will not discriminate on any of the prohibited grounds, including "gender identity" (*id.*). The Edwards Order also directs all state entities, officials, and "any political subdivision" of the State of Louisiana to "cooperate with the implementation" of the Order (*id.* at § 5).

Moreover, by adding new and ambiguous protected categories to Louisiana anti-discrimination law, the Edwards Order—like the Obama Directive—raises troubling legal and practical questions. By way of example, the Edwards Order and the Obama Directive introduce into Louisiana law the concept of "gender identity," a category which does not exist in current state employment or public accommodation law, and which is absent from the United States Code. This term also lacks predictable, concrete definitions among professional organizations, such that its inclusion in the Edwards Order and Obama Directive may raise serious constitutional questions.

Furthermore, the Edwards Order appears to stray outside the executive branch, purporting to bind all state "officers" as well as all "political subdivisions," raising serious structural questions under the Louisiana Constitution. Finally, the Edwards Order—while purporting to exempt certain "religious" organizations—appears to violate the religious liberty guaranteed to all persons by the United States Constitution, the Louisiana Constitution, and Louisiana law.

Listed below are the specific questions on which we request your official opinion as Louisiana Attorney General:

1. By using the term "gender identity," is the Edwards Order unconstitutionally vague under the United States Constitution, the Louisiana Constitution, or both?

- a. If you do not consider the term "gender identity" unconstitutionally vague, then, as the state's chief legal officer, what meaning do you ascribe to that term as used in the Edwards Order?
2. The Edwards Order requires non-discrimination on the basis of "gender identity."
 - a. Does this mean that all "state agencies, departments, offices, commissions, boards, [and] entities" of the State of Louisiana must allow persons to use public restrooms of the gender with which they "identify," regardless of their biological sex?
 - b. The Edwards Order also requires private businesses who contract with the State not to discriminate on the basis of "gender identity." Does this mean that those private business contractors must allow persons to use public restrooms of the gender with which they "identify," regardless of their biological sex?
3. The Edwards Order purports to bind "officers of the State of Louisiana." Does this term encompass state officials outside the executive branch, such as state legislators or justices of the Louisiana Supreme Court? If so, does the Edwards Order thereby violate the separation of powers in the Louisiana Constitution?
4. The Edwards Order purports to bind "any political subdivision" of the State of Louisiana. Does the Order thereby exceed the authority of the executive branch under the Louisiana Constitution? Does the Order thereby violate the separation of powers in the Louisiana Constitution by purporting to enact legislation?
5. The Edwards Order exempts from its contractor non-discrimination provision certain religious entities, namely "a religious corporation, religious association, religious educational institution, or religious society."
 - a. The terms "religious corporation," "religious association," "religious educational institution," and "religious society" are not defined by reference to state or federal law. As the state's chief legal officer, what meaning do you ascribe to these terms?
 - b. Does the use of these terms mean that no private business contractor is exempted from the Edwards Order, regardless of the sincere religious beliefs of the owners of that business?
 - c. Does the use of these terms mean that no individual contractor is exempted from the Edwards Order, regardless of that individual's sincere religious beliefs?

- d. Are these terms as broad as the term "person" as used in the Preservation of Religious Freedom Act ("PRFA"), La. R.S. § 13:5234(1), and in La. R.S. 1:10?
 - i. If not, can the Edwards Order be read to be consistent with PRFA (as it purports to be in section 4)?
 - ii. If the Edwards Order cannot be read to be consistent with PRFA, is the Order invalid to that extent? If so, could an aggrieved person sue the state under PRFA for injunctive relief, damages, attorneys' fees, and costs?

6. Does the Edwards Order further empower or expand the jurisdiction of the Louisiana Commission on Human Rights (LCHR) in these matters, and/or allow LCHR to define or adjudicate using the term "gender identity," and/or fine businesses and employers who may be accused of violating the Edwards Order? If so, would that expansion of jurisdiction over such a matter violate the LCHR limitations currently provided by R.S. 51:2232, *et seq.*?

We thank you in advance for your attention to these important matters, and for providing us with a formal legal opinion on these consequential questions.

Sincerely,

STATE REPRESENTATIVES



Mike Johnson
District 8



Mark Abraham
District 36



Beryl Amedee
District 51



Tony Bacala
District 59



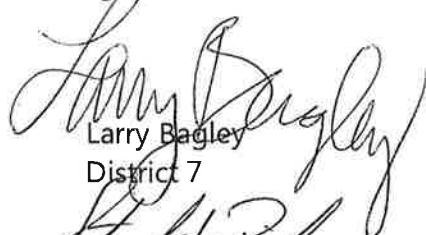
Paul Hollis
District 104



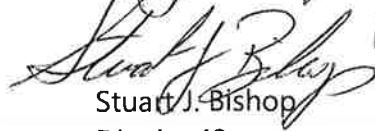
Dodie Horton
District 9



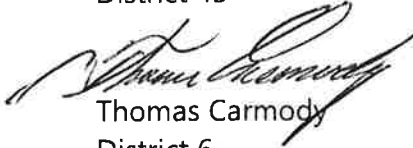
Mike Huval
District 46



Larry Bagley
District 7



Stuart J. Bishop
District 43



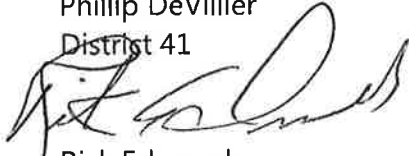
Thomas Carmody
District 6



Jean-Paul Coussan
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Phillip DeVillier
District 41



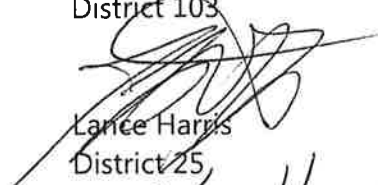
Rick Edmonds
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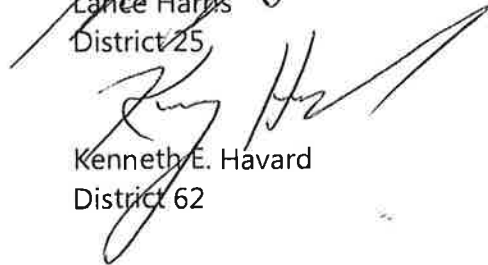
Julie Emerson
District 39



Raymond E. Garafalo
District 103



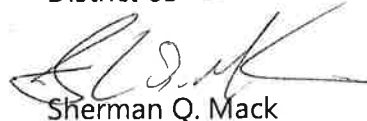
Lance Harris
District 25



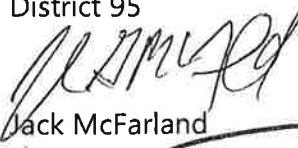
Kenneth E. Havard
District 62



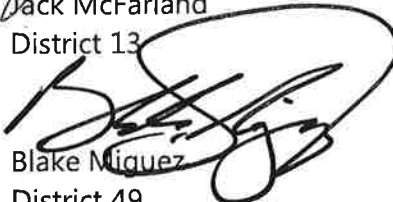
Barry Ivey
District 65



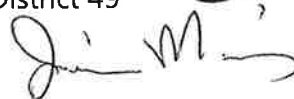
Sherman Q. Mack
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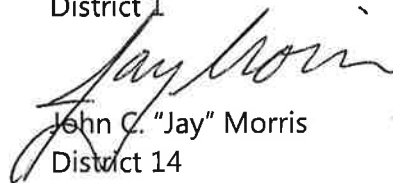
Jack McFarland
District 13



Blake Miguez
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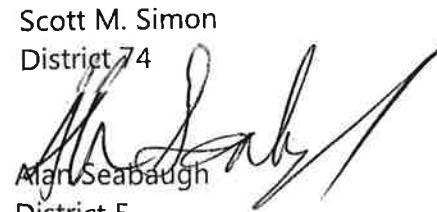
James "Jim:" Morris
District 1



John C. "Jay" Morris
District 14



Jerome Richard
District 55



Scott M. Simon
District 74

Alan Seabaugh
District 5



Julie Stokes
District 79

Attorney General Landry

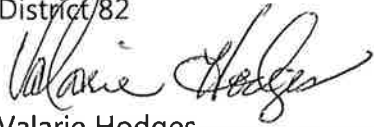
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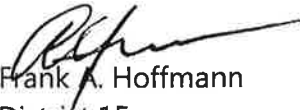
Cameron Henry

District 82



Valarie Hodges

District 64



Frank A. Hoffmann

District 15



Kirk Talbot

District 78



Thomas P. Willmott

District 92