



3.

VENUE

Defendant's principal offices are located in the City of Baton Rouge, East Baton Rouge Parish, Louisiana, and venue is proper in this Court under La. R.S. 44:35(A).

4.

FACTS

DHHS is a department of the State of Louisiana and a public body that is included within the scope of the Louisiana Public Records Law (La. R.S. 44:1, *et seq.*). Defendant Kliebert, as the Secretary of DHHS, is a "custodian" of the public records of DHHS, and is ultimately responsible for responding to any citizen's request to examine the public records. La. R.S. 44:1(A)3. Defendant Kliebert has an affirmative duty to allow inspection of said public records. La. R.S. 40:32.

5.

DHHS is required to collect certain verified information for each abortion performed in Louisiana, within thirty days after the date of each abortion, pursuant to La. R.S. 40:1299.35.10(C) and (D). Included in this information is the age of each patient. *Id.* at §1299.35.10(A)(5); La. R.S. 40:64. To collect this statutorily required vital information, DHHS utilizes a form entitled, "Report of Induced Termination of Pregnancy." (*See* Exhibit "A," attached hereto.) La. R.S. 40:64 further requires abortion providers to obtain and report the age of each unborn child's biological father.

6.

DHHS is further required to collect all abortion reports and to collate and evaluate all data gathered therefrom, and to annually publish a statistical report based on the data obtained. La. R.S. 40:1299.35.10(D).

7.

La. R.S. 40:63 provides that the purposes of collecting certain information for each abortion performed in Louisiana "shall be the compilation of relevant maternal life and health factors and data concerning abortions which may be used in the improvement of maternal health and life," and "shall be to serve as a monitor on all induced terminations of pregnancies

performed in the state of Louisiana to assure that they are performed only in accordance with the provisions of law.”

8.

Due to the importance of maintaining and publishing this accurate information, Louisiana law provides that abortion providers who fail to complete and timely transmit to DHHS a required abortion report shall be imprisoned for 90 days or fined \$500 per violation. La. R.S. 40:66. “Such failure to complete such form and to timely transmit same shall be admissible as evidence that the unreported abortion was illegal.” *Id.*

9.

Plaintiff desires to obtain, and has repeatedly requested from DHHS in multiple requests since October 19, 2011, specific, required information that is collected and maintained by DHHS for abortions performed in Louisiana. This includes, but is not limited to, the following basic statistics:

- 1) the total number of abortions performed on minors in Louisiana over the past seven years;
- 2) the age of each minor on whom an abortion was performed; and
- 3) the age of the listed biological father of each unborn child who was aborted.
- 4) Complications from the pregnancy termination and any additional procedures used in lieu of complications from the abortion procedure.

10.

Plaintiff has filed and presented multiple requests since October 19, 2011, (*See, e.g.*, Exhibit “B”), to either have the above-described data submitted to him, or in the alternative, to visit the offices of DHHS to examine the appropriate files of DHHS to obtain the above data.

11.

Plaintiff has not requested, and does not desire to obtain, any other personal data or confidential or identifiable information on any abortion performed.

12.

Plaintiff's repeated, respectful, written and verbal requests for production and/or inspection of the said public information have either been denied or ignored by the Defendant and DHHS.

13.

The requested information is clearly included with the scope of what is required by statutes as part of the "records, writings,...and papers..., or any other documentary materials" that have been "used, being used, or prepared, possessed, or retained for the use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state," and fall within the category of "public records." La. R.S. 44:1(A)2(a).

14.

Pursuant to La. R.S. 44:31 and 44:32, Plaintiff has an absolute right to examine, inspect, copy or reproduce the above-described public records, and providing such access is a responsibility and duty of Defendant and her DHHS employees.

15.

La. R.S. 44:31(B)(3) affirms "[t]he burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian," and 44:32(B) provides "[i]f any record contains material which is not a public record, the custodian may separate the nonpublic record and make the public record available for examination."

16.

To date, after nearly three years following Plaintiff's initial requests for the said public information, Defendant has failed to meet its burden to show the requested information is not subject to inspection, copying, or reproduction by Plaintiff. Indeed, Defendant cannot meet such a burden because the requested information is plainly subject to public review.

17.

If the requested statistics are not compiled by DHHS as it is required by law to do, then Plaintiff must be allowed to examine the original records of DHHS to calculate the numbers

himself. If the original records or abortion reports contain information that Defendant contends is not public, such information must be redacted prior to Plaintiff's examination of the original records.

18.

As a result of Defendant's denial or ignoring of Plaintiff's repeated requests, Plaintiff has been denied access to public records in possession of DHHS when Defendant was obliged by law to produce them.

19.

As the custodian of the public records at issue in this proceeding and as the Secretary of the public body in possession, custody, or control of those public records, Defendant knew or should have known that:

- (a) the public's right to inspect and obtain copies of those public records was and is a fundamental right guaranteed by the Louisiana Constitution of 1974;
- (b) the public's right to inspect and obtain copies of those public records can only be denied when the Louisiana Constitution of 1974 or the Louisiana Public Records Act (La. R.S. 44:1 et seq.) specifically and unequivocally so provides; and
- (c) any exceptions to, exceptions from, or limitations upon the public's right to inspect and obtain copies of public records contained in the Louisiana Public Records Act (La. R.S. 44:1 et seq.) are in derogation of the public's right to be reasonably informed and will be strictly and narrowly construed.

*See, e.g.,* La. Const. Art. 12, § 3; *City of Baton Rouge/Parish of East Baton Rouge v. Capital City Press, L.L.C.*, No. 07-1088, p. 13-15 (La. App 1 Cir. 10/10/08), 4 So. 3d 807, 816-817. "Any doubt must be resolved in favor of the right to access." *Id.* at 817.

20.

Defendant has acted arbitrarily, capriciously, and unreasonably by denying or ignoring the requests made by the Plaintiff.

21.

Plaintiff is entitled to recover all costs of litigation that Plaintiff has incurred and will incur in connection with this proceeding from Defendant, pursuant to and in accordance with the provisions of La. R.S. 44:35(D) and (E).

22.

Plaintiff is further entitled to an award of actual damages that have resulted from the actions of the Defendant custodian, as Defendant has unreasonably or arbitrarily failed to respond to the respectful requests of Plaintiff. La. R.S. 44:35(E) provides that this civil penalty may be granted in an amount not exceeding \$100.00 per day, exclusive of Saturdays, Sundays, and legal public holidays for each such day of Defendant's failure to properly respond to Plaintiff. Defendant shall be held personally liable for the payment of such damages, and shall be liable *in solido* with DHH for the payment of Plaintiff's costs of litigation. *Id.*

23.

Plaintiff is entitled to have this proceeding to enforce the provisions of the Louisiana Public Records Law against Defendant tried by preference and in a summary manner, pursuant to and in accordance with the provisions of La. R.S. 44:35(C).

WHEREFORE, Plaintiff, Richard Mahoney, prays, that an alternative writ of mandamus be issued herein to Defendant, Kathy Kliebert, Secretary of the Department of Health and Human Services of the State of Louisiana, directing Defendant to produce all of the public records requested or to show cause on a date and at a time to be fixed by the Court, no less than two (2) nor more than ten (10) days after service of the alternative writ of mandamus on the Defendant, why the alternative writ of mandamus should not be issued, and why Defendant should not be ordered to pay all costs of litigation, and an appropriate amount in damages as civil penalty, as all provided by the applicable statutes.

Plaintiff further prays for full general and equitable relief and for all orders and decrees which are necessary or proper in the premises.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

By: \_\_\_\_\_  
Richard Mahoney  
1831 Old Plantation Lane  
Baton Rouge, LA 70806  
Phone: (225) 235-3226

**PLEASE SERVE:**

Hon. Kathy Kliebert  
Secretary, La. Department of Health and Human Services  
628 N. 4th Street  
Baton Rouge, Louisiana 70802