

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**JANE DOE I, JANE DOE II, and
JANE DOE III**

CIVIL ACTION NO. 16-14876

VERSUS

JUDGE

**JUANA MARINE-LOMBARD, in her
official capacity as Commissioner,
Louisiana Office of Alcohol and Tobacco
Control**

MAGISTRATE JUDGE

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW INTO COURT, through undersigned counsel, come Plaintiffs Jane Doe I, Jane Doe II, and Jane Doe III (collectively, “Plaintiffs”) who file this Complaint against Defendant Juana Marine-Lombard, in her official capacity as Commissioner, Louisiana Office of Alcohol and Tobacco Control. Based on information and belief, Plaintiffs respectfully aver as follows:

PARTIES

1. Plaintiffs Jane Doe I, Jane Doe II, and Jane Doe III are natural persons of the age of majority, and are citizens and residents of the State of Louisiana.

2. Defendant Juana Marine-Lombard (“Marine-Lombard”) is sued in her official capacity as Commissioner, Louisiana Office of Alcohol and Tobacco Control (“ATC”). Marine-Lombard is a person within the meaning of 42 U.S.C. § 1983 and was acting and continues to act under color of state law at all times relevant to this Complaint.

JURISDICTION

3. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the United States Constitution and, pursuant to this Court’s supplemental jurisdiction, the Louisiana Constitution of 1974.

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. Jurisdiction to grant the declaratory relief requested is provided under 28 U.S.C. § 2201.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1981(b) because a substantial portion of the events giving rise to Plaintiffs' claims occurred in this district.

NATURE OF THIS ACTION

6. This is an action for declaratory and injunctive relief in connection with a recent act of the Legislature of Louisiana, namely Act No. 395 ("Act No. 395"), and Defendant's enforcement of that Act. As described below, Act No. 395 violates Plaintiffs' constitutional rights under the First and Fourteenth Amendments to the United States Constitution, as well as Article I, § 10 of the United States Constitution, and Article I, §§ 2, 3, 7, and 23 of the Louisiana Constitution of 1974. Plaintiffs are thus entitled to (i) declaratory relief under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring Act No. 395 unconstitutional under the First and Fourteenth Amendments to the United States Constitution, as well as Article I, § 10 of the United States Constitution, and Article I, §§ 2, 3, 7, and 23 of the Louisiana Constitution of 1974, and (ii) preliminary and permanent injunctive relief under Rule 65 of the Federal Rules of Civil Procedure enjoining the enforcement of Act No. 395.

FACTUAL ALLEGATIONS

Act No. 395

7. The age of majority in Louisiana is eighteen. *See* LA. CIV. CODE art. 29.

8. On or about June 5, 2016, Louisiana Governor John Bel Edwards signed into law Act No. 395.

9. Act No. 395 purports to amend Louisiana Revised Statutes 26:90(E) and 286(E).

The full text of Act No. 395 reads as follows:

To amend and reenact R.S. 26:90(E) and 286(E), relative to holders of alcohol retail dealer's permits for beverages of high alcoholic content; relative to holders of alcohol retail dealer's permits for beverages of low alcoholic content; to provide for live entertainment; to provide for age restrictions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 26:90(E) and 286(E) are hereby amended and reenacted to read as follows:

§90. Acts prohibited on licensed premises; suspension or revocation of permits

E. Subject to the provisions of Subsection D of this Section, entertainers whose breasts or buttocks are exposed to view shall perform only upon a stage at least eighteen inches above the immediate floor level and removed at least three feet from the nearest patron and shall be twenty-one years of age or older.

§286. Acts prohibited on licensed premises; suspension or revocation of permits

E. Subject to the provisions of Subsection D of this Section, entertainers whose breasts or buttocks are exposed to view shall perform only upon a stage at least eighteen inches above the immediate floor level and removed at least three feet from the nearest patron and shall be twenty-one years of age or older.

10. Act No. 395 introduces age-based restrictions to Louisiana Revised Statutes 26:90(E) and 286(E) which did not exist prior to the enactment of Act No. 395. Specifically, Act No. 395 prohibits adults who have reached the age of majority in Louisiana but who have not yet reached the age of twenty-one from performing as erotic dancers in establishments that are licensed pursuant to Title 26 of Louisiana's Revised Statutes.

11. According to Louisiana Senator Ronnie Johns, who is the author of Act No. 395, the law "is strictly an anti-human trafficking bill."¹

¹ The proceedings of the Louisiana State Senate and Louisiana House of Representatives are videotaped and made available online. *See generally* <http://www.legis.la.gov/legis/Broadcast.aspx>. The quoted statements in this Complaint have been obtained from these online videos. For the Court's convenience, Plaintiffs have downloaded four video clips containing the legislative debate and discussion regarding Act

12. Representative Robby Carter, a supporter of Act No. 395, commented during a legislative session: “We need to do something to get these people [to] recognize that there’s another way of living, you know. I wish there was something we could do to make them [erotic dancers] go to church or something.”

13. Representative Beryl Amedee, another supporter of Act No. 395, made the following statement to the Louisiana House of Representatives: “Now I know a lot of people in the room are thinking of their daughters, their younger sisters, perhaps, and they’re thinking, ‘well I don’t want my daughter doing that.’ But think about the girls who do these jobs, who don’t have a dad, who don’t have a big brother, who would say ‘I really don’t want you doing that for a living, I don’t want you in that environment.’ . . . [Act No. 395 is] about trying to protect people from being in environments where they’re going to be taken advantage of.”

14. In a legislative session of the Louisiana House of Representatives, Representative Walt Leger stated that the bill was brought in an effort to protect “young women.” Representative Leger also stated: “[t]here are so many great organizations out there that help women to get out of really negative circumstances, through no fault of their own, often times they end up in a situation where trafficking can occur. All of the things that surround that just tend to cause great harm for these young women. And to lead them to try to strive to get out a difficult situation, I’ve met some of these women The more that we can do to protect women from this type of exposure and being taken advantage of, we need to do it. . . . I think [Act No. 395] can have impact and it can continue to create opportunities to improve these women’s lives.”

15. On or around May 18, 2016, during a legislative session of the Louisiana House

No. 395 and have compiled those clips onto a DVD, which will be manually attached to Plaintiffs’ forthcoming motion for preliminary injunction.

of Representatives, Representative Kenny Havard introduced a proposed amendment to Act No. 395, which would have required erotic dancers to be no older than twenty-eight years of age, and weigh no more than 160 lbs.

16. Representative Havard's amendment caused Representative Julie Stokes to state: "Looking out over this body [the House of Representatives], I've never been more repulsed to be part of it. I can't even believe the behavior in here. I think we need to call an end to this. I hear derogatory comments about women in this place regularly, I hear and I see women get treated differently than men. . . . That was utterly disrespectful and disgusting." Representative Havard's proposed amendment also drew rebuke from Representative Nancy Landry and Senator Karen Carter Peterson. Representative Havard withdrew his proposed amendment.

17. Act No. 395 became effective on August 1, 2016.

18. The Louisiana Office of Alcohol and Tobacco Control ("ATC") began enforcing Act No. 395 throughout Louisiana, with the exception of the City of New Orleans, on the law's effective date, August 1, 2016. ATC has indicated that it intends to begin enforcing Act No. 395 in New Orleans beginning on October 1, 2016.

Plaintiff Jane Doe I

19. Plaintiff Jane Doe I ("Ms. Doe I") is a resident of New Orleans, Louisiana and is twenty years of age. Ms. Doe I works as an erotic dancer in New Orleans, Louisiana.

20. Ms. Doe I began dancing at age eighteen. Prior to her work as an erotic dancer, Ms. Doe I helped care for her disabled mother. Ms. Doe I also worked multiple retail jobs that required her to work between 90-120 hours per week to meet her financial obligations.

21. As an erotic dancer in New Orleans, Ms. Doe I sets her own work schedule. Ms. Doe I highly values the scheduling control her vocation allows her, and she enjoys expressing

herself through dancing.

22. Moreover, as an erotic dancer, Ms. Doe I is able to earn enough money to meet her financial obligations, and put a portion of her income into a Simplified Employee Pension (“SEP”) Individual Retirement Account (“IRA”). Ms. Doe I was unable to save for her retirement prior to working as an erotic dancer.

23. Ms. Doe I feels very comfortable with the staff, servers, and entertainers with whom she works as an erotic dancer in New Orleans. Ms. Doe I, along with customers, entertainers, and other employees, are subject to security monitoring via camera and security personnel.

24. As a result of Act No. 395, Ms. Doe I will no longer be permitted to engage in erotic dancing in New Orleans as of October 1, 2016. At that time, she will not be allowed to express herself through dance, nor will she have the flexible schedule she once had as an erotic dancer. As a result of Act No. 395, Ms. Doe I will have more difficulty financially supporting herself. Without her job as an erotic dancer, Ms. Doe I will not be able to meet her financial obligations, nor will she be able to save for retirement. Ms. Doe I will be forced to move to a State where she is not prohibited from expressing herself through her desired professional employment.

25. As a result of Act No. 395, Ms. Doe I and other similarly-situated entertainers will be at an increased risk from pimps, prostitutes, and traffickers. On the streets of New Orleans, Ms. Doe I has witnessed pimps and prostitutes attempt to use Act No. 395’s age restrictions to recruit entertainers who are now lawfully employed, but who will lose their jobs as a result of the Act.

Plaintiff Jane Doe II

26. Plaintiff Jane Doe II (“Ms. Doe II”) is an eighteen-year-old resident of Baton Rouge, Louisiana, and a student at Louisiana State University (“LSU”).

27. Both of Ms. Doe II’s parents died of cancer, so she is entirely independent. For a period of time after her parents’ deaths, Ms. Doe II received social security benefits, but those benefits ceased when she graduated from high school.

28. In June 2016, Ms. Doe II began working as an erotic dancer in order to finance her college education and living expenses. She planned to save enough money over the summer through her work as a dancer so that at the start of the school semester, she could concentrate fully on her studies.

29. On July 30, 2016, the club at which Ms. Doe II danced informed her that due to Act No. 395, she could not return to work as an erotic dancer. Ms. Doe II stopped dancing as of the Act’s effective date, and instead began working as a “shot girl,” that is, as a server who circulates throughout the club and offers patrons shots of alcohol for purchase. Since Act No. 395 went into effect on August 1, 2016, Ms. Doe II’s income has decreased by more than 50%. She believes she will soon have to take a second job to try to meet her financial obligations.

30. In addition to the lost income and inability to express herself through erotic dance, Ms. Doe II has suffered further expenses as a result of Act No. 395. Specifically, because the language of Act No. 395 regarding what attire is prohibited for eighteen-, nineteen-, and twenty-year-old adults working in establishments that are licensed pursuant to Title 26 of Louisiana’s Revised Statutes is so vague, Ms. Doe II is unsure precisely what attire violates the law. Ms. Doe II is responsible for providing her own attire while at work and has had to update her wardrobe several times at her own expense to attempt to comply with the law.

31. Ms. Doe II does not believe she is susceptible to becoming a victim of human trafficking through her work as an erotic dancer and, in fact, she reports that she feels safer at the club than at home due to the club's strict safety protocols.

32. Ms. Doe II has discussed the effects of Act No. 395 with other women under the age of twenty-one who formerly performed as erotic dancers, and some of those women report that they will seek income through prostitution now that they have lost their legal jobs as erotic dancers. Like Ms. Doe I, Ms. Doe II believes that Act No. 395 makes adults aged eighteen, nineteen, and twenty *more* susceptible to harm from traffickers, pimps, and prostitutes, because it eliminates a legal job with high pay and flexible hours.

Plaintiff Jane Doe III

33. Plaintiff Jane Doe III ("Ms. Doe III") is a nineteen-year-old resident of New Orleans, Louisiana.

34. Ms. Doe III has a one-year-old daughter and is financially responsible for both herself and her daughter.

35. Ms. Doe III began working as an erotic dancer in or around September 2015, and specifically worked as an erotic dancer in Baton Rouge, Louisiana from approximately January 2016 until Act No. 395 went into effect on August 1, 2016.

36. Ms. Doe III was forced to stop working as an erotic dancer on August 1, 2016, the date that Act No. 395 went into effect. Ms. Doe III now works as a shot girl at the club where she formerly danced.

37. Like Ms. Doe II, Ms. Doe III has been impacted by the lack of clarity in Act No. 395. Out of an abundance of caution, Ms. Doe III wears cocktail dresses to work, in order to ensure compliance with Act No. 395's vaguely-drafted restrictions on attire for eighteen-,

nineteen- and twenty-year-old adults working in establishments that are licensed pursuant to Title 26 of Louisiana's Revised Statutes.

38. Since Ms. Doe III has been forced to stop working as an erotic dancer, her income has dropped by more than half. She is currently looking for a second job to supplement her income. If Act No. 395 was repealed or otherwise rendered unenforceable, Ms. Doe III would immediately return to erotic dancing as her preferred vocation.

39. During her time working as an erotic dancer and shot girl, Ms. Doe III has never felt unsafe. Ms. Doe III has never witnessed any behavior at her workplace that could be characterized as human trafficking, and has never known any erotic dancer who has been victimized. Ms. Doe III believes that the strict safety protocols of her workplace keep the club, dancers, personnel, and customers safe.

COUNT I – ACT NO. 395 VIOLATES PLAINTIFFS' RIGHTS TO FREE EXPRESSION UNDER THE FIRST AMENDMENT TO THE U.S. CONSTITUTION AND ARTICLE I, § 7 OF THE LOUISIANA CONSTITUTION

40. Plaintiffs hereby incorporate paragraphs 1 through 39 as if copied *in extenso*.

41. Plaintiffs are erotic dancers who have achieved the age of eighteen, but have not yet achieved the age of twenty-one. Colloquially, Plaintiffs are aged 18-to-20-years old.

42. The First Amendment to the United States Constitution, enforceable to the State of Louisiana pursuant to 42 U.S.C. § 1983, states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

43. Article I, § 7 of the Louisiana Constitution of 1974 states: "No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his

sentiments on any subject, but is responsible for abuse of that freedom.”

44. The United States Supreme Court has recognized that the First Amendment protects “erotic” dancing as expressive conduct. *See City of Erie v. Pap’s A.M.*, 529 U.S. 277, 289 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991). Moreover, Article I, § 7 of the Louisiana Constitution also protects “erotic” dancing as expressive conduct because “the Louisiana Constitution guarantees the same liberties granted by the First Amendment, and is designed to serve the same purpose and provide at least coextensive protection.” *McGowan v. Hous. Auth. of New Orleans*, 2012-1418 (La. App. 4 Cir. 3/27/13), 113 So. 3d 1143, 1151 n.8.

45. Act No. 395 impermissibly prohibits Plaintiffs from engaging in the constitutionally protected, expressive conduct of erotic dancing within the State of Louisiana by virtue of their age, and thereby violates both the First Amendment to the U.S. Constitution and Article I, § 7 of the Louisiana Constitution of 1974. Such violations cause and will continue to cause Plaintiffs irreparable harm unless enjoined by this Court.

46. Accordingly, Act No. 395 should be declared unconstitutional and its enforcement should be enjoined.

COUNT II – ACT NO. 395 IS UNCONSTITUTIONALLY OVERBROAD IN VIOLATION OF THE FIRST AMENDMENT TO THE U.S. CONSTITUTION

47. Plaintiffs hereby incorporate paragraphs 1 through 46 as if copied *in extenso*.

48. The United States Supreme Court has recognized that where a law “punishes a substantial amount of protected free speech, judged in relation to the statute’s plainly legitimate sweep,” a court may inhibit “all enforcement of that law, until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression.” *Virginia v. Hicks*, 539 U.S. 113, 118-19 (2003) (internal citations omitted).

49. Moreover, a statute is facially overbroad where there exists “a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the court.” *City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 800 (1984).

50. In addition to impermissibly prohibiting eighteen-, nineteen-, and twenty-year-olds from engaging in the protected expression of erotic dancing, Act No. 395 also prohibits, for example, an eighteen-, nineteen-, or twenty-year-old from appearing in a theater production requiring nudity in any Louisiana venue that also has a permit to serve alcohol. Indeed, Act No. 395 prohibits eighteen-, nineteen-, and twenty-year-olds from participating in many forms of protected expression, including but not limited to erotic dancing, live theater performances, forms of performance art, and other forms of expression. Act No. 395 is thus unconstitutionally overbroad in violation of the First Amendment to the U.S. Constitution. This constitutional violation causes and will continue to cause Plaintiffs irreparable harm unless enjoined by this Court.

51. Accordingly, Act No. 395 should be declared unconstitutional and its enforcement should be enjoined.

**COUNT III – ACT NO. 395 IS UNCONSTITUTIONALLY VAGUE AND VIOLATES
PLAINTIFFS’ RIGHTS TO DUE PROCESS UNDER THE FOURTEENTH
AMENDMENT TO THE U.S. CONSTITUTION AND ARTICLE I, § 2 OF THE
LOUISIANA CONSTITUTION**

52. Plaintiffs hereby incorporate paragraphs 1 through 51 as if copied *in extenso*.

53. The Fourteenth Amendment to the United States Constitution, enforceable to the State of Louisiana pursuant to 42 U.S.C. § 1983, protects Plaintiffs’ rights to due process of law. Moreover, Article I, § 2 of the Louisiana Constitution of 1974 provides that “No person shall be deprived of life, liberty, or property except by due process of law.”

54. The Louisiana Supreme Court has recognized that the Louisiana Constitution's "guarantee of due process does not vary semantically from the Due Process Clause of the Fourteenth Amendment" to the U.S. Constitution. *Fields v. State*, 98-0611 (La. 7/8/98), 714 So. 2d 1244, 1250.

55. Where laws are so vague as to invite discretionary and arbitrary enforcement, such laws are unconstitutional under the Fourteenth Amendment to the U.S. Constitution and Article I, § 2 of the Louisiana Constitution of 1974. Further, when the First Amendment is involved, "[t]he very existence of a censorial power, regardless of how or whether it is exercised, is unacceptable." *Int'l Soc'y For Krishna Consciousnes v. Eaves*, 601 F.2d 809, 822-23 (5th Cir. 1979).

56. As set forth above, Act No. 395 implicates the First Amendment because it purports to regulate the protected expression of erotic dancing, and it also impermissibly "sweeps up" other forms of constitutionally-protected live performance.

57. Act No. 395 is unconstitutionally vague because it fails to precisely define the phrase "breasts or buttocks are exposed." Because Act No. 395 does not clarify what constitutes impermissible "exposure" of the breasts or buttocks, it provides no clear guidance to Plaintiffs, other similarly-situated adults, adult entertainment industry club owners, law enforcement, or Defendant as to how it should be interpreted and applied in this regard, and it invites discretionary and arbitrary enforcement in violation of the Fourteenth Amendment to the U.S. Constitution, as well as Article I, § 2 of the Louisiana Constitution of 1974. Such violations cause and will continue to cause Plaintiffs irreparable harm unless enjoined by this Court.

58. Accordingly, Act No. 395 should be declared unconstitutional and its enforcement should be enjoined.

COUNT IV – ACT NO. 395 VIOLATES PLAINTIFFS’ RIGHTS TO EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION

59. Plaintiffs hereby incorporate paragraphs 1 through 58 as if copied *in extenso*.

60. The Fourteenth Amendment to the United States Constitution, enforceable to the State of Louisiana pursuant to 42 U.S.C. § 1983, provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.”

61. Act No. 395 allows individuals who have achieved the age of twenty-one to participate in the protected expressive conduct of erotic dancing within the State of Louisiana, but prohibits individuals such as Plaintiffs who have achieved the age of majority in Louisiana but who have not yet achieved the age of twenty-one from engaging in the protected expressive conduct of erotic dancing within the State of Louisiana. Thus, Act No. 395 subjects Plaintiffs to adverse treatment solely on the basis of their age and results in disparate treatment of similarly-situated adults who seek to exercise their constitutional right to free expression.

62. Act No. 395 denies Plaintiffs the ability to engage in protected free expression on the basis of age, and serves no compelling, substantial, or otherwise sufficient government interest permitting or justifying these constitutional violations, nor does it serve any such interests in an adequately tailored manner. Moreover, Act No. 395 serves no rational basis for discriminating against Plaintiffs on the basis of their age. Although the so-called purpose of Act No. 395 is to reduce human trafficking, there is no evidence that the Act’s age restrictions will have any impact on human trafficking. As a result, Act No. 395 violates Plaintiffs’ rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Such violations cause and will continue to cause Plaintiffs irreparable harm unless enjoined by this Court.

63. Accordingly, Act No. 395 should be declared unconstitutional and its enforcement should be enjoined.

COUNT V – ACT NO. 395 VIOLATES PLAINTIFFS’ RIGHTS TO EQUAL PROTECTION UNDER ARTICLE I, § 3 OF THE LOUISIANA CONSTITUTION

64. Plaintiffs hereby incorporate paragraphs 1 through 63 as if copied *in extenso*.

65. Article I, § 3 of the Louisiana Constitution of 1974 provides that “[n]o law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations.”

66. Moreover, “[a] law containing a statutory classification based on any of the six enumerated grounds [in Article I, § 3] does not enjoy the usual presumption of constitutionality.” *Manuel v. Louisiana*, 95-2189 (La. 3/8/96), 692 So. 2d 320, 339.

67. “Because age classification is specifically enumerated in Section 3 and because an age classification must have a non-arbitrary basis, the burden of proof is on the proponent of constitutionality to show that the statute establishing such a classification substantially furthers an appropriate governmental purpose.” *Id.* at 340.

68. The Louisiana Supreme Court has recognized that laws creating age-based restrictions are subject to intermediate scrutiny. *Id.* at 339.

69. Act No. 395 allows individuals who have achieved the age of twenty-one to participate in the protected expressive conduct of erotic dancing within the State of Louisiana, but prohibits individuals such as Plaintiffs who have achieved the age of majority in Louisiana but who have not yet achieved the age of twenty-one from engaging in the protected expressive conduct of erotic dancing within the State of Louisiana. Thus, Act No. 395 subjects Plaintiffs to adverse treatment solely on the basis of their age and results in disparate treatment of similarly-situated adults who seek to exercise their constitutional right to free expression.

70. Act No. 395 denies Plaintiffs the ability to engage in protected free expression on the basis of age, and serves no compelling, substantial, or otherwise sufficient government interest to negate constitutional safeguards, nor does it serve any such interests in an adequately tailored manner. Although Act No. 395 was purportedly crafted to reduce human trafficking, there is no evidence that the Act's age restrictions will have any impact on human trafficking. As a result, Act No. 395 violates Plaintiffs' rights under Article I, § 3 of the Louisiana Constitution of 1974. Such violations cause and will continue to cause Plaintiffs irreparable harm unless enjoined by this Court.

71. Accordingly, Act No. 395 should be declared unconstitutional and its enforcement should be enjoined.

COUNT VI – ACT NO. 395 VIOLATES PLAINTIFFS' RIGHTS TO EQUAL PROTECTION ON THE BASIS OF GENDER UNDER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION AND ARTICLE I, § 3 OF THE LOUISIANA CONSTITUTION

72. Plaintiffs hereby incorporate paragraphs 1 through 71 as if copied *in extenso*.

73. The United States Supreme Court has held that laws that discriminate on the basis of gender are subject to so-called "intermediate scrutiny," and such laws "must serve important governmental objectives and must be substantially related to achievement of those objectives." *Craig v. Boren*, 429 U.S. 190, 197 (1976). Likewise, Louisiana courts have recognized that "La. Const. art. I, § 3 was inspired by federal constitutional equal protection law to prohibit state action from discrimination on the basis of gender," *see Albright v. S. Trace Country Club of Shreveport, Inc.*, 2002-3413 (La. 7/6/04), 879 So. 2d 121, 127, and that Louisiana laws that discriminate on the basis of gender are subject to intermediate scrutiny. *See Progressive Sec. Ins. Co. v. Foster*, 97-2985 (La. 4/23/98), 711 So. 2d 675, 686.

74. Additionally, the U.S. Supreme Court has cautioned that in assessing whether a

law discriminates on the basis of gender, “[c]are must be taken in ascertaining whether the statutory objective itself reflects archaic and stereotypic notions. Thus, if the statutory objective is to exclude or ‘protect’ members of one gender because they are presumed to suffer from an inherent handicap or to be innately inferior, the objective itself is illegitimate.” *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 725 (1982). Similarly, under Louisiana law, “lack of ‘malevolent intent’ does not prevent a policy from being discriminatory when it results in treatment of a person in a matter which, but for that person’s sex, would be different.” *Albright*, 879 So. 2d at 135.

75. Act No. 395 specifically applies to “entertainers whose breasts or buttocks are exposed to view.” Because the provision referring to “breasts” in Act No. 395 is only applicable to female entertainers who perform without clothing covering their breasts, and not to male entertainers who perform without clothing covering their chest, Act No. 395 specifically discriminates on the basis of gender insofar as it prohibits women who have achieved the age of eighteen but have not yet achieved the age of twenty-one to dance “topless,” but it does not prohibit the same conduct by men who have achieved the age of eighteen but have not yet achieved the age of twenty-one. Thus, Act No. 395 disparately impacts women such as Plaintiffs who have achieved the age of eighteen but who have not yet achieved the age of twenty-one.

76. Moreover, as evidenced by the comments made by numerous Louisiana legislators in discussions related to Act No. 395, Act No. 395 was enacted with the intent to discriminate on the basis of gender. The U.S. Supreme Court has recognized that even where a court determines a law to be gender-neutral, where a plaintiff proves “that a discriminatory purpose has been a motivating factor in the decision related to the applicable law or ordinance,” the court must not defer to the legislature’s stated purpose. *Village of Arlington Heights v.*

Metro. Housing Develop. Corp., 429 U.S. 252, 265-66 (1977).

77. Act No. 395 was enacted to regulate and “protect” women aged eighteen, nineteen, and twenty. Such protective, discriminatory legislation is prohibited by the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article I, § 3 of the Louisiana Constitution of 1974.

78. Act No. 395 serves no compelling, substantial, or otherwise sufficient government interest to negate constitutional safeguards, nor does it serve any such interests in an adequately tailored manner. Although the stated purpose of Act No. 395 is to reduce human trafficking, there is no evidence that the Act’s age restrictions will have any impact on human trafficking. As a result, Act No. 395 violates Plaintiffs’ rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article I, § 3 of the Louisiana Constitution of 1974. Such violations cause and will continue to cause Plaintiffs irreparable harm unless enjoined by this Court.

79. Accordingly, Act No. 395 should be declared unconstitutional and its enforcement should be enjoined.

**COUNT VII – ACT NO. 395 VIOLATES PLAINTIFFS’ RIGHTS TO SUBSTANTIVE
DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE U.S.
CONSTITUTION**

80. Plaintiffs hereby incorporate paragraphs 1 through 79 as if copied *in extenso*.

81. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides that no State shall “deprive any person of life, liberty, or property, without due process of law.” The Due Process Clause of the Fourteenth Amendment “includes a substantive component that provides heightened protection against governmental interference with certain fundamental rights and liberty interests.” *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275,

288 (5th Cir. 2001) (internal citations omitted).

82. Rights protected under the First Amendment to the U.S. Constitution are “fundamental.” See *Tinker v. Des Moines Indep. Cnt. Sch. Dist.*, 393 U.S. 503, 511 (1969). The United States Supreme Court has recognized that the First Amendment protects “erotic” dancing as expressive conduct. See *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 289 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991).

83. Act No. 395 inhibits Plaintiffs’ fundamental rights to express themselves through erotic dance and therefore violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. Such violations cause and will continue to cause Plaintiffs irreparable harm unless enjoined by this Court.

84. Accordingly, Act No. 395 should be declared unconstitutional and its enforcement should be enjoined.

COUNT VIII – ACT NO. 395 VIOLATES PLAINTIFFS’ RIGHTS TO CONTRACT UNDER ARTICLE I, § 10(1) OF THE U.S. CONSTITUTION AND ARTICLE I, § 23 OF THE LOUISIANA CONSTITUTION

85. Plaintiffs hereby incorporate paragraphs 1 through 84 as if copied *in extenso*.

86. Article I, § 10(1) of the U.S. Constitution provides that no State shall “pass any Bill of Attainder, *ex post facto* Law, or Law impairing the Obligation of Contracts.”

87. Article I, § 23 of the Louisiana Constitution of 1974 provides, “[n]o bill of attainder, *ex post facto* law, or law impairing the obligation of contracts shall be enacted.”

88. The “rights to contract” under the U.S. and Louisiana Constitutions are co-extensive. See *Bd. of Comm’rs of Orleans Levee Dist. v. Dept. of Natural Res.*, 496 So. 2d 281, 291 (La. 1986).

89. Act No. 395 prohibits individuals such as Plaintiffs who have reached the age of

eighteen, but who have not yet achieved the age of twenty-one, from contracting with businesses providing a venue for the performance of erotic dance for the purpose of participating in the protected expressive conduct of erotic dancing within the State of Louisiana.

90. Thus, Act No. 395 violates Plaintiffs' "rights to contract" under both the U.S. Constitution and the Louisiana Constitution of 1974. Such violations cause and will continue to cause Plaintiffs irreparable harm unless enjoined by this Court.

91. Accordingly, Act No. 395 should be declared unconstitutional and its enforcement should be enjoined.

RELIEF SOUGHT

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- a. Declaring that Act No. 395 violates the Plaintiffs' rights to freedom of expression under the First Amendment to the United States Constitution and Article I, § 7 of the Louisiana Constitution of 1974;
- b. Declaring that Act No. 395 is facially and unconstitutionally overbroad under the First Amendment to the United States Constitution;
- c. Declaring that Act No. 395 is unconstitutionally vague under the Fourteenth Amendment to the United States Constitution, and under Article I, § 2 of the Louisiana Constitution of 1974;
- d. Declaring that Act No. 395 violates the Plaintiffs' rights to be free from unequal treatment based on their age under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
- e. Declaring that Act No. 395 violates the Plaintiffs' rights to be free from unequal treatment based on their age under Article I, § 3 of the Louisiana Constitution of 1974;

- f. Declaring that Act No. 395 violates the Plaintiffs' rights to be free from unequal treatment on the basis of their gender under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article I, § 3 of the Louisiana Constitution of 1974;
- g. Declaring that Act No. 395 violates Plaintiffs' "rights to contract" under Article I, § 10(1) of the United States Constitution, and Article I, § 23 of the Louisiana Constitution of 1974;
- h. Entering a preliminary injunction enjoining Defendant from enforcing or causing any other state actor to enforce Act No. 395 and, thereafter, entering a permanent injunction prohibiting enforcement of Act No. 395;
- i. Awarding Plaintiffs reasonable attorneys' fees and costs under 42 U.S.C. § 1988; and
- j. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

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