2019 RECENT DEVELOPMENTS IN LEGISLATIVE
LAW & PROCEDURE

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**2020 Organizational Session** - Convenes at 10:00 A.M. on Inauguration Day (Monday, January 13, 2020) and lasts for no longer than three legislative days.

**2020 Regular Session** - Convenes at noon on Monday, March 9, 2020. Final adjournment no later than 6:00 p.m. on Monday June 1, 2020. Subject matter is General in nature; however, no measure levying or authorizing a new state tax, increasing an existing state tax, or legislating with regard to state tax exemptions, exclusions, deductions, or credits shall be introduced or enacted.

I. ORGANIZATIONAL SESSIONS:

La. Const. Art. III, §2(D) -

"(D) Organizational Session. The legislature shall meet in an organizational session in the state capitol to be convened at ten o'clock in the morning on the day the members are required to take office. No such session shall exceed three legislative days. The session shall be for the primary purpose of judging the qualifications and elections of the members, taking the oath of office, organizing the two houses, and selecting officers. No matter intended to have the effect of law shall be introduced at an organizational session."

Senate Rules:

"Rule 3.1.1. Nomination of officers; selection procedure

A. Immediately after the members take the oath of office on the second Monday in January, after their election every four years, the members of the Senate shall be eligible for selection, by secret ballot, and in the order named, for President and President Pro Tempore. The members of the Senate shall nominate for selection a Secretary and a Sergeant at Arms. A nominee for each office shall be selected and nominated by a majority vote of the members elected. The Secretary shall conduct the nomination and selection process for the nominees for each office. Any Senator may observe the nomination and selection process.

B. In the event there are more than two candidates nominated for selection for an office and if after balloting no candidate receives a majority vote for nomination to an office, a second ballot shall be cast between the two candidates receiving the highest number of votes for selection and nomination for an office."
C. Upon the selection of one nominee for each office, the nominee shall be elected as provided in Rules 3.2, 3.4, 3.6, and 3.8.
(Added by SR 215 of 2015 RS.)

Rule 3.2. President; election; removal; vacancy
A. The President shall be elected by the affirmative vote of at least twenty members. The vote shall be viva voce.
B. The President may be removed from that office during any session of the Legislature by the affirmative vote of at least twenty members. Removal of a President shall be accomplished by Senate Resolution introduced for the purpose of calling an election to elect a new President. The resolution shall state the day and time at which the election shall be held.
C. (1) The death, resignation, or removal from office of the President creates a vacancy in the office of President. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original election. A vacancy which occurs while the Legislature is in session shall be filled immediately; otherwise, the vacancy shall be filled at the next regular or extraordinary session.
   (2) In case of the disability or temporary absence of the President which prevents him from carrying out the powers, duties, and responsibilities of his office, he shall certify the facts thereof to the President Pro Tempore. If he is unable or fails to so certify, the Senate may do so by roll call vote or mail ballot. The President, in like manner, shall certify to the termination of the disability or temporary absence. If a majority of the members elected to the Senate disagree with a certification of termination of disability or absence made by the President, the findings of the Senate, evidenced by roll call vote or mail ballot, shall prevail.
(Amended by SR 215 of 2015 RS.)

House Rules:

"Rule 2.2. Organization meeting of the House
A. The members of the House shall meet in the House Chamber every four years at 10:00 a.m. on the second Monday in January after their election. The senior of those members-elect with most years of service as a member of the House who served in the House in the preceding term shall preside, or in his absence or inability or due to his candidacy to be elected as an officer of the House, the next most senior member shall preside.
B. The first order of business for the House shall be the calling of the roll of the members-elect of the House. The second order of business shall be offering of a prayer. The third order of business shall be the recitation of the pledge of allegiance. The fourth order of business shall be the judging of the qualifications and elections of the members. The fifth order of business shall be the taking of the oath or affirmation of office by the members. The sixth order of business shall be the election of the Clerk of the House and the Clerk's taking of the oath or affirmation of office. The seventh order of business shall
be the election of the Speaker of the House and the Speaker's taking of the oath or affirmation of office. The eighth order of business shall be the election of the Speaker Pro Tempore of the House and the Speaker Pro Tempore's taking of the oath or affirmation of office.

Rule 2.3. Speaker; election

The Speaker of the House shall be elected by the members of the House from among the members thereof. Such election shall be viva voce and the favorable vote of fifty-three members shall be required to elect the Speaker. The Speaker shall be elected every four years at the organizational session of the legislature provided for in Article III, Section 2(D) of the Constitution of Louisiana at which the newly elected members take the oath of office. The election of the Speaker shall be the next order of business following the election of the Clerk. Vacancies in the office of Speaker shall be filled in the manner of the original selection.

La. Const. Art. 11, Sec. 2:

§2. Secret Ballot; Absentee Voting; Preservation of Ballot

Section 2. In all elections by the people, voting shall be by secret ballot. The legislature shall provide a method for absentee voting. Proxy voting is prohibited. Ballots shall be counted publicly and preserved inviolate as provided by law until any election contests have been settled. In all elections by persons in a representative capacity, voting shall be viva-voce.
II. **EVEN-YEAR REGULAR SESSIONS**:

[See Bulletin at [www.legis.la.gov](http://www.legis.la.gov) for Specific Deadline Dates for Advertising, Bill Request and Prefiling of Legislation]

A. **2020 Regular Session** - Convenes Noon, Monday, March 9, 2020; adjourns not later than 6:00 PM on Monday, June 1, 2020. Subject matter is General in nature; however, no measure levying or authorizing a new state tax, increasing an existing state tax, or legislating with regard to state tax exemptions, exclusions, deductions, or credits shall be introduced or enacted. See legislative website, [www.legis.la.gov](http://www.legis.la.gov), for additional information, including session bulletin, deadlines, bills, legislative history, and archived broadcasts of committee and floor action.

B. **La. Const. Art. III, §2:**

"§2. Sessions

Section 2. (A) Annual Session. (1) The legislature shall meet annually in regular session for a limited number of legislative days in the state capital. A legislative day is a calendar day on which either house is in session.

(2)(a) No member of the legislature may introduce more than five bills that were not prefiled, except as provided in the joint rules of the legislature.

(b) Except as provided in Subsubparagraph (c) of this Subparagraph, any bill that is to be prefiled for introduction in either house shall be prefiled no later than five o'clock in the evening of the tenth calendar day prior to the first day of a regular session.

(c) Any bill to effect any change in laws relating to any retirement system for public employees that is to be prefiled for introduction in either house shall be prefiled no later than five o'clock in the evening of the forty-fifth calendar day prior to the first day of a regular session.

(d) The legislature is authorized to provide by joint rule for the procedures for passage of duplicate or companion instruments.

(3)(a) All regular sessions convening in even-numbered years shall be general in nature and shall convene at noon on the second Monday in March. The legislature shall meet in such a session for not more than sixty legislative days during a period of eighty-five calendar days. No such session shall continue beyond six o'clock in the evening of the eighty-fifth calendar day after convening. No new matter intended to have the effect of law shall be introduced or received by either house after six o'clock in the evening of the twenty-third calendar day. No matter intended to have the effect of law, except a measure proposing a suspension of law, shall be considered on third reading and final passage in either house after six o'clock in the evening of the fifty-seventh legislative day or the eighty-second calendar day, whichever occurs first, except by a favorable record vote of two-thirds of the elected members of each house.

(b) No measure levying or authorizing a new tax by the state or by any statewide political subdivision whose boundaries are coterminous with the state; increasing an
existing tax by the state or by any statewide political subdivision whose boundaries are
coterminous with the state; or legislating with regard to tax exemptions, exclusions,
deductions or credits shall be introduced or enacted during a regular session held in an
even-numbered year.

(4)(a) All regular sessions convening in odd-numbered years shall convene at noon
on the second Monday in April. The legislature shall meet in such a session for not more
than forty-five legislative days in a period of sixty calendar days. No such session shall
continue beyond six o'clock in the evening of the sixtieth calendar day after convening. No
new matter intended to have the effect of law shall be introduced or received by either
house after six o'clock in the evening of the tenth calendar day. No matter intended to have
the effect of law, except a measure proposing a suspension of law, shall be considered on
third reading and final passage in either house after six o'clock in the evening of the
forty-second legislative day or fifty-seventh calendar day, whichever occurs first, except
by a favorable record vote of two-thirds of the elected members of each house.

(b) During any session convening in an odd-numbered year, no matter intended to
have the effect of law, including any suspension of law, shall be introduced or considered
unless its object is to enact the General Appropriation Bill; enact the comprehensive
capital budget; make an appropriation; levy or authorize a new tax; increase an existing
tax; levy, authorize, increase, decrease, or repeal a fee; dedicate revenue; legislate with
regard to tax exemptions, exclusions, deductions, reductions, repeals, or credits; or
legislate with regard to the issuance of bonds. In addition, a matter intended to have the
effect of law, including a measure proposing a suspension of law, which is not within the
subject matter restrictions provided in this Subparagraph may be considered at any such
session if:

(i) It is prefied no later than the deadline provided in Subparagraph (2) of this
Paragraph, provided that the member shall not prefie more than five such matters pursuant
to this Subsubparagraph; or

(ii) Its object is to enact a local or special law which is required to be and has been
advertised in accordance with Section 13 of this Article and which is not prohibited by the
provisions of Section 12 of this Article.

(B) Extraordinary Session. The legislature may be convened at other times by the
governor and shall be convened by the presiding officers of both houses upon written
petition of a majority of the elected members of each house. The form of the petition shall
be provided by law. At least seven calendar days prior to convening the legislature in
extraordinary session, the governor or the presiding officers, as the case may be, shall
issue a proclamation stating the objects of the extraordinary session, the date on which it
shall convene, and the number of days for which it is convened. The power to legislate
shall be limited, under penalty of nullity, to the objects specifically enumerated in the
proclamation. The session shall be limited to the number of days stated therein, which
shall not exceed thirty calendar days.

(C) Emergency Session. The governor may convene the legislature in extraordinary
session without prior notice or proclamation in the event of public emergency caused by
epidemic, enemy attack, or public catastrophe.
(D) Organizational Session. The legislature shall meet in an organizational session in the state capitol to be convened at ten o'clock in the morning on the day the members are required to take office. No such session shall exceed three legislative days. The session shall be for the primary purpose of judging the qualifications and elections of the members, taking the oath of office, organizing the two houses, and selecting officers. No matter intended to have the effect of law shall be introduced at an organizational session."

(emphasis added).

C. Vetoes:

La. Const. Art. 3, §17 - "§17. Signing of Bills; Delivery to Governor

Section 17.(A) Signing; Delivery. A bill passed by both houses shall be signed by the presiding officers and delivered to the governor within three days after passage.

(B) Resolutions. No joint, concurrent, or other resolution shall require the signature or other action of the governor to become effective."

La. Const. Art. 3, §18 - "§18. Gubernatorial Action on Bills; Sign, Failure to Sign, Veto; Veto Session

Section 18.(A) Gubernatorial Action. If the governor does not approve a bill, he may veto it. A bill, except a joint resolution, shall become law if the governor signs it or if he fails to sign or veto it within ten days after delivery to him if the legislature is in session on the tenth day after such delivery, or within twenty days after delivery if the tenth day after delivery occurs after the legislature is adjourned.

(B) Veto Message. If the governor vetoes a bill, he shall return it to the legislature, with his veto message within twelve days after delivery to him if the legislature is in session. If the governor returns a vetoed bill after the legislature adjourns, he shall return it, with his veto message, as provided by law.

(C) Veto Session. (1) A bill vetoed and returned and subsequently approved by two-thirds of the elected members of each house shall become law. The legislature shall meet in veto session in the state capital at noon on the fortieth day following final adjournment of the most recent session, to consider all bills vetoed by the governor. If the fortieth day falls on Sunday, the session shall convene at noon on the succeeding Monday. No veto session shall exceed five calendar days, and any veto session may be finally adjourned prior to the end of the fifth day upon a vote of two-thirds of the elected members of each house.

(2) No veto session shall be held if a majority of the elected members of either house declare in writing that a veto session is unnecessary. The declaration must be received by the presiding officer of the respective houses at least five days prior to the day on which the veto session is to convene."
La. R.S. 24:10 - "§10. Vetoed bills; return by the governor; veto session

A. A bill, except a joint resolution, shall become law if the governor signs it or if he fails to sign or veto it within ten days after delivery to him if the legislature is in session, or within twenty days if the legislature is adjourned.

B. If the governor does not approve a bill, he may veto it. When he vetoes a bill, he shall return it to the legislature, with his veto message stating his reasons for the veto, within twelve days after delivery to him if the legislature is in session.

C. Not later than twelve o'clock midnight of the twenty-third calendar day after the sine die adjournment of each session of the legislature, the governor shall transmit to the secretary of the Senate and the clerk of the House a statement of all vetoed bills, which have not previously been returned to the legislature in session and shall at the same time return each such vetoed bill to the chief clerical officer of the house of origin. Such statement shall contain the bill number and title of each such vetoed bill and the veto message for each stating the reasons for the veto of the particular bill. No later than midnight of the second day after receipt of such statement the secretary of the Senate and the clerk of the House shall transmit by certified or registered mail, or by any other receipted written means, to each member of their respective houses a copy of the governor's statement and a form for declaration by the member that a veto session for reconsideration of the listed vetoed bills is not necessary. The form for such declaration shall contain a statement that the undersigned member finds that a veto session to reconsider the bills listed in the governor's statement is not necessary and shall also provide a designated place for the signature of the member responding.

D. Upon receipt of the copy of the governor's statement and the declaration form, each legislator who finds that a veto session to reconsider the bills listed in the governor's statement is not necessary shall sign the form for such declaration and shall immediately return such signed form to the presiding officer of the house of which he is a member. Each presiding officer shall note the date and hour of receipt of each signed form he receives and shall tabulate the number of members who have by return of such signed form declared that a veto session is not necessary. Any other written declaration by a member that such a session is not necessary which is received by one of the presiding officers, shall be treated in the same manner as those received on the form provided and shall be included in such tabulation. No declaration received after twelve o'clock midnight of the thirty-fifth calendar day after sine die adjournment of the legislature shall be counted and declarations received after that time shall be null and void.

E. The presiding officers shall jointly transmit to each member of the legislature the results of the tabulation of the declarations returned by the members of the respective houses together with an announcement that the veto session is or is not to be held and the date and time such session shall convene if it is to be held. No veto session shall be held if a majority of the elected members of either house have declared in writing that a veto session is unnecessary.

F. Unless a majority of the elected members of either house has declared in writing that a veto session is unnecessary, the legislature shall meet in veto session in the state capital at noon on the fortieth day following final adjournment of the most recent session,
to consider all bills vetoed by the governor. If the fortieth day falls on Sunday, the session shall convene at noon on the succeeding Monday. No veto session shall exceed five calendar days, and any veto session may be finally adjourned prior to the end of the fifth day upon the vote of two-thirds of the elected members of each house.

G. A law enacted with the approval of a vetoed bill by two-thirds of the elected members of each house during a veto session shall take effect on the sixtieth day after final adjournment of the session in which it was originally finally passed by both houses, unless such Act contains a different effective date. If the Act contains a different effective date, it shall become effective on said date, unless the date is prior to the time of approval by both houses during a veto session by the required vote, in which case it shall become effective upon such approval."
III. SELECTED NEW LEGISLATION:

A. Proposed Constitutional Amendments:

La. Const. Art. 13, Sec. 1 - "If a majority of the electors voting on the proposed amendment approve it, the governor shall proclaim its adoption, and it shall become part of this constitution, effective twenty days after the proclamation, unless the amendment provides otherwise."

October 12, 2019 - Primary Elections

FAILED - Proposed Amendment No. 1
Act 444 (HB 234) of the 2019 Regular Session
Do you support an amendment to exempt raw materials, goods, commodities, personal property, and other articles stored in public and private warehouses and destined for the Outer Continental Shelf from ad valorem taxes? (Amends Article VII, Section 21(D)(2) and (3).)

FAILED - Proposed Amendment No. 4
Act 448 (SB 79) of the 2019 Regular Session
Do you support an amendment to allow the city of New Orleans to exempt property within Orleans Parish from all or part of ad valorem taxes that would otherwise be due for the purpose of promoting affordable housing? (Adds Article VII, 21(O).)

PASSED - Proposed Amendment No. 2
Act 445 (HB 62) of the 2019 Regular Session
Do you support an amendment to provide for appropriations from the Education Excellence Fund for the Louisiana Educational Television Authority, Thrive Academy, and laboratory schools operated by public post secondary education institutions? (Amends Art. VII, Sec. 10.8(C)(3)(b), (c), and (g) and repeal Art. VII, Sec. 10.8(C)(3)(d).)
PASSED - Proposed Amendment No. 3
Act 446 (HB 428) of the 2019 Regular Session
Do you support an amendment to protect taxpayers by requiring a complete remedy in law for the prompt recovery of any unconstitutional tax paid and to allow the jurisdiction of the Board of Tax Appeals to extend to matters related to the constitutionality of taxes?
(Adds Article V, Section 35, which states:)

"The remedies required by Article VII, Section 3(A) of this Constitution shall extend to any unconstitutional tax paid by a taxpayer. The Board of Tax Appeals is continued, subject to change by law enacted by two-thirds of the elected members of each house of the legislature. It shall have jurisdiction over all matters related to state and local taxes or fees or other claims against the state as provided by Chapter 17 of Title 47 of the Louisiana Revised Statues of 1950, as amended, subject to change by law. The legislature may extend the jurisdiction of the Board of Tax Appeals, by a law enacted by a two-thirds vote of the elected members of each house of the legislature, to matters concerning the constitutionality of taxes, fees, or other matters related to its jurisdiction which jurisdiction may be concurrent with the district courts concerning such matters." (emphasis added).

Enabling Legislation - Acts 2019 No. 365, enacted by two-thirds vote of House and Senate members. From Resume Digest:

"Existing law authorizes state courts to provide a legal remedy in cases where taxes are claimed to be an unlawful burden upon interstate commerce or when the collection of taxes violates any Act of Congress, the U.S. Constitution, or the Constitution of La. New law retains existing law and extends this jurisdiction to the Board of Tax Appeals (the board) to handle such cases. New law also authorizes state courts and the board to provide a legal remedy for cases where taxes are claimed to be unconstitutional.

Existing law authorizes a court of competent jurisdiction to determine in an action for declaratory judgment the validity or applicability of a rule. New law retains existing law and additionally authorizes the board to make such determination.

Existing law provides for the jurisdiction of the board over matters of appeals, waiver of penalties, rules, petitions, claims against the state, and incidental demands. New law retains existing law and additionally extends the jurisdiction to include petitions for declaratory judgment related to the constitutionality of laws or ordinances, or the validity of a regulation concerning any matter relating to any state or local tax or fee not within the jurisdiction of the La. Tax Commission. New law extends jurisdiction of all matters related to state or local taxes or fees.
Existing law includes in the definition of "local collector", an individual, entity, or other collector responsible for collecting local taxes where an action is appealable to the board. New law amends the definition to include an individual, entity, or other collector responsible for collecting local fees and excludes tax matters within the jurisdiction of the La. Tax Commission.

Existing law authorizes an aggrieved taxpayer to appeal to the board for matters related to assessments or determinations of alleged overpayment. New law retains existing law and additionally authorizes an aggrieved party to petition the board over petitions for declaratory judgment related to the constitutionality of laws or ordinances, or the validity of a regulation. New law states that no aggrieved party shall petition the board to declare a law unconstitutional on the basis of its failure to meet the constitutional requirements for the passage of laws by the legislature.

Existing law grants the courts of appeal the exclusive jurisdiction over the decisions and judgments made by the board. New law retains existing law and additionally grants this appellate jurisdiction to the supreme court.

Prior law provided that the Board of Tax Appeals had no jurisdiction to declare a statute or ordinance unconstitutional. The board was required to order the case transferred to the proper district court venue to determine the constitutionality. The court was authorized to remand the case back to the board. New law repeals prior law.

Existing law authorizes a collector to enforce the collection of taxes through an ordinary suit under provisions of law regulating actions for the enforcement of obligations. New law retains existing law and provides that such suits shall be before the board or any court of competent jurisdiction.

Effective Jan. 1, 2020, if the proposed addition of Article V, §35 of the Constitution of La. contained in Act 446 of the 2019 R.S. is adopted at a statewide election and becomes effective.

(Amends R.S. 47:337.45(A)(3), 337.63(C), 337.97, 1407(3), 1418(4)(b), 1435(A), (C), and (D), 1561(A)(3), and 1576(D); Adds R.S. 47:1407(6) and 1431(D); Repeals R.S. 47:1432(B))" (emphasis added)
La. R.S. 47:1401 provides that the Board of Tax Appeals "is created as an independent agency in the Department of State Civil Service" in order to provide a board "that will act as an appeal board to hear and decide, at a minimum of expense to the taxpayer, questions of law and fact arising from disputes or controversies between a taxpayer and any collector of the State of Louisiana in the enforcement of any tax, excise, license, permit or any other tax, fee, penalty, receipt or other law administered by a collector, and to exercise other jurisdiction as provided by law".

The Louisiana Supreme Court has previously stated that the Board of Tax Appeals in performing its statutory duties "acts as a trial court in finding facts and applying the law" and that "the jurisdiction of the Board, its factfinding authority, and its administrative procedures, clearly fall within the power of taxation vested in the legislature by La. Const. art. VII, § 1 and the mandate to the legislature in La. Const. art. VII, § 3 to provide an adequate remedy for the prompt refund of an illegal tax payment." St. Martin v. State, 25 So.3d 736 (La. 2009) and cases cited. See, also, Louisiana Dept. of Revenue, State v. KCS Holdings I, Inc., Not Reported in So.3d, 2013-1479 (La.App. 1 Cir. 2014). However, courts have also repeatedly concluded that the determination of whether a statute is unconstitutional is a purely judicial function, that the "judicial power" of the state is constitutionally vested in the courts, and that entities such as the board of tax appeals are not courts but administrative agencies in the executive branch of state government. See, for example, ANR Pipeline Co. v. Louisiana Tax Com'n, 851 So.2d 1145 (2003) and cases cited.
The language of the new constitutional amendment and enabling legislation would appear to give rise to potential legal questions, including such basic and fundamental issues as:

(Q1) What does the new constitutional provision really do? The language is placed within the constitutional article dealing with the judicial branch. Despite being continued as an executive branch agency, is the Board of Tax Appeals now purportedly also a "court" within the judicial branch? If not, does its language actually provide an exception to the provisions of La. Const. Art. 5, Sec. 1 and Art. 2, Sec. 2:

"Art. 2, Sec. 2 - §2. Limitations on Each Branch
   Section 2. Except as otherwise provided by this constitution, no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others.

Art. 5, Sec. 1 - §1. Judicial Power
   Section 1. The judicial power is vested in a supreme court, courts of appeal, district courts, and other courts authorized by this Article."

Can the legislature validly delegate inherent judicial power to an executive branch agency? If the board is now a "court" within the judicial branch, is it subject to the other requirements of courts and judges as set forth in Article V, including supervisory powers of the Judiciary Commission and adherence to the Code of Judicial Conduct? Are federal and state due process concerns implicated in conferring judicial power upon an executive branch agency? Does the judicial power to determine constitutionality of legislative acts also extend to express or inherent judicial power over corollary matters such as injunctive relief, res judicata, etc?
(Q2) As enacted by the enabling legislation, R.S. 47:1576(D) now provides that:

"D. This Section shall be construed to provide a legal remedy in the Board of Tax Appeals or the state courts in case such taxes are claimed to be unconstitutional under any provision of the United States Constitution or Constitution of Louisiana, including an unlawful burden upon interstate commerce, or the collection thereof, in violation of any Act of Congress or the United States Constitution, or the Constitution of Louisiana."

Is this really what "concurrent jurisdiction" with the district court means in the new constitutional language? If the board can exercise judicial power to determine the constitutionality of legislative acts, is it subject by law to judicial procedures, requirements and presumptions in such determinations, or can it vary from them by rule?

(Q3) The new constitutional language authorizes (but not requires) the legislature to extend certain jurisdiction of the board, but does not directly address the composition nor qualifications of board members who will exercise powers under such jurisdiction (apparently leaving such matters to legislative discretion).

The enabling legislation does not amend present law regarding the membership of the board. Presently, R.S. 47:1402 provides in part that:

"§1402. Membership of board; qualifications; appointment; term; vacancy; salary

A.(1) The Board of Tax Appeals shall be composed of three members who shall be attorneys with tax law experience and who shall be qualified electors of the state. At least two of these board members shall be certified as a Tax Law Specialist by the Louisiana Board of Legal Specialization or possess a Masters of Law in Taxation or Tax Law. Each member shall be appointed by the governor. Vacancies shall be filled in the manner of the original appointment."

(2) For the purposes of this Subsection, tax law experience shall mean an attorney admitted to the practice of law in Louisiana who possesses a Masters of Law in Taxation or Tax Law, is board certified as a Tax Law Specialist in this state, is licensed as a certified public accountant in this state, or who has served pursuant to Article V, Section 22 of the Louisiana Constitution as a judge of a district or appellate court.

B. Each appointment to the board by the governor shall be submitted to the Senate for confirmation." (emphasis added)
If the board can now exercise "judicial power" concurrent with the district court to declare laws unconstitutional, are board members in exercising such power acting as district court "judges", and potentially subject to the provisions of La. Const. Art. 5, Section 22, providing:

"§22. Judges; Election; Vacancy
   Section 22.(A) Election. Except as otherwise provided in this Section, all judges shall be elected. Election shall be at the regular congressional election.
   (B) Vacancy. A newly-created judgeship or a vacancy in the office of a judge shall be filled by special election called by the governor and held within twelve months after the day on which the vacancy occurs or the judgeship is established, except when the vacancy occurs in the last twelve months of an existing term. Until the vacancy is filled, the supreme court shall appoint a person meeting the qualifications for the office, other than domicile, to serve at its pleasure. The appointee shall be ineligible as a candidate at the election to fill the vacancy or the newly-created judicial office. No person serving as an appointed judge, other than a retired judge, shall be eligible for retirement benefits provided for the elected judiciary.
   (C) End of Term. A judge serving on the effective date of this constitution shall serve through December thirty-first of the last year of his term or, if the last year of his term is not in the year of a regular congressional election, then through December thirty-first of the following year. The election for the next term shall be held in the year in which the term expires, as provided above."

Cases have pointed out that "In Louisiana the constitution requires that all judges shall be elected. LSA-Const. Art. 5 § 22. This provision confers on a litigant the corresponding right to have his case decided by an elected judge, and not by a commissioner appointed by the judges." Quarles Drilling Corp. v. Gen'l Acc. Ins. Co., 520 So.2d 475, 476 (La.App. 4th Cir.1988). The new constitutional language is placed in the article concerning the judicial branch and does not specifically address or except the provisions of Art. 5, Sec. 22 regarding elections of judges.
Concerning other entities such as justice of the peace and mayors' courts also placed in Article V, cases have also pointed out that:

(a) Justice of the peace courts are constitutional offices exercising the judicial power of the State of Louisiana, and presiding justices are judges within the contemplation of the law. LSA–Const. Art. 5, § 20; In Re Wilkes, 403 So.2d 35, 44 (La.1981); Quarles v. Jackson Parish Police Jury, 482 So.2d 833, 836 (La.App. 2nd Cir.), writ denied, 486 So.2d 750 (La.1986). As such, they are included under the provisions of La. Const. Art. 5, § 21, which provides that “[t]he term of office, retirement benefits, and compensation of a judge shall not be decreased during the term for which he is elected.” See also In Re Landry, 789 So.2d 1271 (La. 2002); Office of the Attorney General Louisiana Justice Court Training Manual, https://www.ag.state.la.us/Article/177/In re Sachse, 240 So.3d 170 (La. 2018) - "Article V, § 25(C) of the 1974 Louisiana Constitution provides the substantive grounds for disciplinary action against a judge. The Code of Judicial Conduct adopted by this court under its supervisory authority supplements the constitution's substantive grounds for disciplinary action against a judge. In re Justice of the Peace Franklin, 07-1425, p. 14 (La. 11/27/07), 969 So.2d 591, 600. The Code is binding on all judges, including justices of the peace. In re Justice of the Peace Myrty Alfonso, 07-0120, p. 7 (La. 5/22/07), 957 So.2d 121, 122, citing In re: Wilkes, 403 So.2d 35, 40 (La.1981). “Violations of the Canons contained in the Code of Judicial Conduct can serve as a basis for the disciplinary action provided for by Article V, § 25(C) of the Constitution.” Id., citing In re: McInnis, 00-1026, p. 1 (La. 10/17/00), 769 So.2d 1186, 1188 n. 2. This Court has stated:

The Code of Judicial Conduct was enacted by this court pursuant to its constitutionally-granted supervisory authority over all lower courts. This constitutional grant of supervisory authority is plenary, unfettered by jurisdictional requirements, and exercisable at the complete discretion of the court. La. Const. art. V, § 5(A); Unwired Telecom v. Parish of Calcasieu, 03-0732, p. 8 (La. 1/19/05), 903 So.2d 392, 400 (on reh'g ). As explained above, the Code requires all judges, including justices of the peace, to comply with its requirements. Additionally, in La. R.S. 42:1167, the legislature has recognized that all judges, as defined by the Code of Judicial Conduct, shall be governed exclusively by that Code. This statute, which became effective April 1, 1980, acknowledges this court's authority to provide the exclusive means by which judges' conduct is governed. See In re: Ellender, 04-2123, p. 6 (La. 12/13/04), 889 So.2d 225, 230 (“The legislative statement in La. R.S. 42:1167 codifies our jurisprudence which provides that judges are governed exclusively by the Code, and the Code is
not contrary to the Constitution's exclusive grant of authority to this Court in the realm of judicial misconduct."). In re Justice of the Peace Larry Charles Freeman, 08-1820, p. 13-14 (La. 12/2/08), 995 So.2d 1197, 1206 (internal cites omitted).

Furthermore, “a justice of the peace is governed by the same constitutions and laws that govern all courts and judges of this state, and is bound to apply the law as written by the legislature and construed by the various courts.” Alfonso, supra, citing Wilkes, 403 So.2d at 44."

(b) Mayor's courts are courts which have jurisdiction to conduct trials, determine guilt, and impose sentences including fines and imprisonment for breach of municipal ordinances. Sledge v. McGlathery, 324 So.2d 354 (La.1975); State v. Foy, 401 So.2d 948 (La.1981). These courts still exist today pursuant to La. Const. Art. 5, § 20, which allows that “[m]ayors' courts ... existing on the effective date of this [1974] constitution are continued, subject to change by law.” See also, State v. Fontenot, 535 So.2d 433 (La.App. 3d Cir.1988); La. Op. Atty. Gen. 14–0202, April 9, 2015.

Concerning judicial power generally, cases have stated that the: "judicial power of the state is constitutionally vested in the courts. La. Const. Art. 5, § 1. Statutory interpretation and the construction to be given to legislative acts is a matter of law and rests with the judicial branch of the government. Cole Miers Post 3619 V.F.W. of DeRidder v. State, Dept. of Revenue & Taxation, 99–2215, p. 3 (La.1/19/2000), 765 So.2d 312, 314; In re: Louisiana Health Serv. & Indem. Co., 98–3034, p. 11 (La.10/19/99), 749 So.2d 610, 616; State ex rel. A.M., 98–2752, p. 2 (La.7/2/99), 739 So.2d 188, 190; Touchard v. Williams, 617 So.2d 885, 888 (La.1993); State Licensing Bd. for Contractors v. State Civil Serv. Comm'n, 240 La. 331, 123 So.2d 76, 78 (La.1960). It has long been established that “[i]t is emphatically the province and duty of the judicial department to say what the law is.” Marbury v. Madison, 1 Cranch 137, 177, 5 U.S. 137, 2 L.Ed. 60, 73 (1803). While it is undeniably true that “[t]he decisions of our state courts do not create or eliminate substantive rights as this is the proper function of the legislature,” Tullier v. Tullier, 464 So.2d 278, 282 (La.1985), when this court interprets legislative acts, it is giving meaning in particular cases to what the legislature has enacted as law; it is saying what the law is."

Bourgeois v. A.P. Green Industries, Inc., 783 So.2d 1251 (La. 2001)."

(Q4) Could the statutory provisions of R.S. 47:1402 be changed in the future to eliminate the requirements that board members be tax attorneys, or to add additional members who are not attorneys?
(Q5) Under the enabling statutory legislation, no aggrieved party shall petition the board to declare a law unconstitutional on the basis of its failure to meet the constitutional requirements for the passage of laws by the legislature. Since this is not prohibited in the new constitutional language, could this statutory prohibition be changed in the future to authorize the board to make such determinations?

(Q6) As amended by the enabling legislation, R.S. 47:1707 now provides that the jurisdiction of the board extends to:

"A petition for declaratory judgment or other action related to the constitutionality of a law or ordinance or validity of a regulation concerning any matter relating to any state or local tax or fee excluding those tax matters within the jurisdiction of the Louisiana Tax Commission."

(a) Does the board now have jurisdiction to rule upon the constitutionality of any fee enacted by the Louisiana Legislature? (See also, page 25 and Note regarding "fee" and "tax". Does it matter that the power to impose fees does not arise from the taxing power but instead from the police power?)

(b) Does the board now have jurisdiction to determine the constitutionality of its own procedures, rules, and applicable statutes as matters "relating" to taxes or fees?

(Q7) Is the board in its determination subject to the usual presumptions accorded by courts to claims of unconstitutionality? Does it have the power by rule to vary from such presumptions or eliminate them completely from consideration? Regarding such presumptions, see, for example, Beer Industry League v. New Orleans, 251 So.3d 380 (La. 2018), with the Louisiana Supreme Court reiterating that:

"The presumption of a statute's constitutionality is especially forceful in the case of statutes enacted to promote a public purpose, such as statutes relating to taxation and public finance. Caddo-Shreveport Sales and Use Tax Comm'n v. Office of Motor Vehicles through Dep't of Public Safety and Corrections, 97-2233, p. 5 (La. 4/14/98), 710 So.2d 776, 779. Unlike the federal constitution, Louisiana's constitutional provisions are not grants of power, but instead are limitations on the otherwise plenary power of the people. State v. All Prop. and Cas. Ins. Carriers Authorized and Licensed to do Business in the State, 06-2030, p. 6 (La. 8/25/06), 937 So.2d 313, 319; Louisiana Dep't of Agric. and Forestry v. Sumrall, 98-1587, p. 5-6 (La. 3/2/99), 728 So.2d 1254, 1259. Statutes are presumed constitutional; therefore, the party challenging the statute bears the burden
of clearly proving its unconstitutionality. Louisiana Federation of Teachers v. State, 13-2010 (La. 5/7/13), 118 So.3d 1033, 1048; Wooley v. State Farm Fire and Cas. Ins. Co., 04-0882, p. 19 (La. 1/19/05), 893 So.2d 746, 762. A party seeking a declaration of unconstitutionality must show clearly and convincingly that it was the constitutional aim to deny the legislature the power to enact the statute in question. Caddo-Shreveport Sales and Use Tax Comm'n, 97-2233 at 5-6, 710 So.2d at 779; Polk v. Edwards, 626 So.2d 1128, 1132 (La. 1993). However, a constitutional limitation on legislative power may either be express or implied. Caddo-Shreveport Sales and Use Tax Comm'n, 97-2233 at 6, 710 So.2d at 779-80. When a constitutional challenge is made, the court must determine whether the constitution limits the legislature, either expressly or impliedly, from enacting the statute at issue. Board of Dir. of the Indus. Dev. Bd. of the City of Gonzales v. All Taxpayers, Property Owners, 05-2298, p. 14 (La. 9/6/06), 938 So.2d 11, 20. The constitution is the supreme law to which all legislative acts must yield. Caddo-Shreveport Sales and Use Tax Comm'n, 97-2233 at 6, 710 So.2d at 780. When a statute conflicts with a constitutional provision, the statute must fall. Id., 97-2233 at 6, 710 So.2d at 780. If a statute is susceptible of two constructions, one of which would render it unconstitutional, or raise grave constitutional questions, the court will adopt the interpretation of the statute that, without doing violence to its language, will maintain its constitutionality. City of New Orleans v. La. Assessors' Retirement Fund, 05-2548, p. 12 (La. 10/1/07), 986 So.2d 1, 12-13.”

(Q8) Are the Board and claimant also subject to requirements under Code of Civil Procedure Art. 1880 regarding service upon the office of attorney general and opportunity to participate when unconstitutionality of a law is claimed?

Vallo v. Gayle Oil Co., 646 So.2d 859 (La. 1994) - “[t]he attorney general is not an indispensable party; but, he must be served in declaratory judgment actions which seek a declaration of unconstitutionality of a statute.” The purpose of the service requirement in La.Code Civ. P. art. 1880 is to ensure that the attorney general is “afforded the necessary opportunity to be heard as the codal article requires.” Burmaster v. Plaquemines Parish Govt, 07–2432, p. 5, fn. 6 (La.5/21/08), 982 So.2d 795, 801.”

(Q9) Could the constitution be amended to give the governor the judicial power to determine the constitutionality of acts of the legislative branch? Could the constitution be amended to give the legislature the judicial power to determine the constitutionality of its own acts?
Finally, regarding older articles touching upon some of these fundamental questions, see Hargrave, The Judiciary Article of the Louisiana Constitution of 1974, 37 La. L. Rev. 766 (1977); Moreno, Louisiana's Constitutional Agencies: Plenary Powers or "Constitutional Illusions of Being a Fourth Branch of Government"?, 51 La. L. Rev. 875 (1991)

B. **Act 623 of the 2018 Regular Session, effective Jan. 1, 2019:**

Enacted La. R.S. 37:41, et seq, the Occupational Board Compliance Act. Beginning January 1, 2019, an occupational licensing board must submit certain occupational proposed rules for approval by the Occupational Licensing Review Commission. Approval is required prior to promulgation of the proposed regulation and submission of the rule notice to legislative oversight committees. Emergency rules adopted by an occupational licensing board are not subject to active supervision of the commission, but still must be submitted to the commission on the same day the rule is submitted to the office of the state register.

C. **Act 155 - Added R.S. 39:1602.1, effective June 6, 2019:**

"§1602.1. Prohibition of discriminatory boycotts of Israel in state procurement
A. The legislature finds all of the following:
(1) Israel is a faithful friend of the United States and the state of Louisiana.
(2) The state of Louisiana does not support boycott-related tactics that are used to threaten the sovereignty and security of allies and trade partners of the United States.
(3) In 2005, a Boycott, Divestment, and Sanctions (BDS) campaign was initiated against Israel that pressured companies to sever commercial ties with Israel for the purpose of economically isolating the country.
(4) Israel and the state of Louisiana enjoy a robust trading relationship that is in the best interests of the people of Louisiana.
(5) The refusal by a company operating in Louisiana to do business with Israel with the goal of advancing the BDS campaign harms the Israel-Louisiana relationship and the Louisiana economy.
(6) The state of Louisiana unequivocally rejects the BDS campaign and stands firmly with Israel.
B.(1) Consistent with existing Louisiana non-discrimination provisions and regulations governing purchases, executive branch agencies may not execute a procurement contract with a vendor if that vendor is engaging in a boycott of Israel.
(2) Executive branch agencies shall reserve the right to terminate any procurement contract with a vendor that engages in a boycott of Israel during the term of the contract.
C.(1) A vendor shall certify in writing, when a bid is submitted or when a procurement contract is awarded, that:
(a) It is not engaging in a boycott of Israel.
(b) It will, for the duration of its contractual obligations, refrain from a boycott of
(2) All competitive sealed bids and proposals issued for procurement contracts with executive branch agencies shall include the text of the following certification: "By submitting a response to this solicitation, the bidder or proposer certifies and agrees that the following information is correct: In preparing its response, the bidder or proposer has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not, in the solicitation, selection, or commercial treatment of any subcontractor or supplier, refused to transact or terminated business activities, or taken other actions intended to limit commercial relations, with a person or entity that is engaging in commercial transactions in Israel or Israeli-controlled territories, with the specific intent to accomplish a boycott or divestment of Israel. The bidder also has not retaliated against any person or other entity for reporting such refusal, termination, or commercially limiting actions. The state reserves the right to reject the response of the bidder or proposer if this certification is subsequently determined to be false, and to terminate any contract awarded based on such a false response."

D. (1) The commissioner of the division of administration or his designee shall oversee this Section to ensure implementation as quickly and efficiently as practicable.

(2) The commissioner or his designee may promulgate regulations to implement the provisions of this Section so long as they are consistent with this Section and do not create any exceptions to it.

E. This Section shall not operate to modify any obligations of executive branch agencies under state or federal law.

F. This Section does not apply to procurement contracts with a value of less than one hundred thousand dollars and for vendors with fewer than five employees.

G. The commissioner of the division of administration or his designee may waive application of this Section on a procurement contract if he determines that compliance is not practicable or in the best interests of the state." (emphasis added).

D. **Act 204** - amended several provisions of the Administrative Procedure Act to add a requirement that the notice include a statement concerning the economic impact on small businesses, and a small business regulatory flexibility analysis. The Act further specified the contents of a "potpourri notice" sent by an agency to the state register, and included certain website publication requirements by the commercial division of the Department of State.
E. Act 256 - provides relative to public records law, including adding following exemptions in R.S. 44:4:

"§4. Applicability
This Chapter shall not apply:
          *
          *
(57)(a) To the social security number, driver's license number, financial institution account number, credit or debit card number, or armed forces identification number of a private person who has submitted the information to a public body or official.
(b) The provisions of Subparagraph (a) of this Paragraph shall not apply to such information in records recorded in the mortgage or conveyance records, in records of a court, or in marriage records.
(c) The provisions of Subparagraph (a) of this Paragraph shall not prohibit the disclosure of the driver's license number of a person to an insurer or insurance support organization, or a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting.
(d) The provisions of Subparagraph (a) of this Paragraph shall not prohibit the disclosure of the driver's license number of a person to a person or entity eligible to receive driver's license or vehicle information contained in the records of the office of motor vehicles when such person or entity is eligible to receive the information pursuant to the Federal Driver Privacy Protection Act.

(58) To any patient healthcare data required by operation of law or regulation to be reported by a healthcare provider to the state without the express written consent of the patient or the patient's parent or legal guardian."

F. Act 340 - Revises penalties for open meetings law violations in R.S. 42:26 and 28 to read as follows:

"§26. Remedies; jurisdiction; authority; attorney fees
A. In any enforcement proceeding the plaintiff may seek and the court may grant any or all of the following forms of relief:
(1) A writ of mandamus.
(2) Injunctive relief.
(3) Declaratory judgment.
(4) Judgment rendering the action void as provided in R.S. 42:24.
(5) Judgment awarding civil penalties as provided in R.S. 42:28.
B. In any enforcement proceeding the court has jurisdiction and authority to issue all necessary orders to require compliance with, or to prevent noncompliance with, or to declare the rights of parties under the provisions of this Chapter. Any noncompliance with the orders of the court may be punished as contempt of court.
C. If a party who brings an enforcement proceeding pursuant to R.S. 42:25 prevails, the party shall be awarded reasonable attorney fees and other costs of litigation. If such party prevails in part, the court may award the party reasonable attorney fees or an
appropriate portion thereof.

D. If the court finds that the proceeding was of a frivolous nature and was brought with no substantial justification, it may award reasonable attorney fees to the prevailing party."

"§28. Civil penalties

Any member of a public body who knowingly and wilfully participates in a meeting conducted in violation of this Chapter, shall be subject to a civil penalty not to exceed five hundred dollars per violation. The member shall be personally liable for the payment of such penalty. A suit to collect such penalty must be instituted within sixty days of the violation."

G. Act 404 - Provides relative to re-naming of certain funds in the state treasury, and certain duties of Dedicated Fund Review Subcommittee of the Joint Legislative Committee on Budget. Amends Sections 1 and 24 of Acts 2018 No. 612. Provides for certain funds that "Monies deposited into this account shall be categorized as fees and self-generated revenue for the sole purpose of reporting related to the executive budget, supporting documents, and general appropriations bills and shall be available for annual appropriations by the legislature.

Also provides in part:

"The conversion of certain dedicated funds to special statutorily dedicated fund accounts containing fees and self-generated revenues, hereinafter referred to as agency accounts or accounts, in the state treasury contained herein, shall cause the special agency accounts to be categorized as fees and self-generated revenue for the sole purpose of reporting related to the executive budget, supporting documents, and general appropriations bills. The conversion of certain dedicated funds to special agency accounts shall not change the purpose for which the monies were dedicated unless the use of the monies is specifically amended herein. Unless specifically provided for in the statute establishing the agency accounts, all funds transferred to agency accounts shall not revert to the state general fund at the end of the fiscal year. Unless specifically provided otherwise in the statute establishing the agency account, the monies in the accounts shall be invested by the treasurer in the same manner as the state general fund, and interest earnings shall be deposited into the account following compliance with the requirements of Article VII, Section 9(B) of the Louisiana Constitution relative to the Bond Security and Redemption Fund, and shall not revert to the state general fund. The revenues in the accounts shall remain in the accounts. All monies in the account shall require an appropriation to be withdrawn from the account. No funds shall be transferred in or out of an account without an annual appropriation or favorable action of the Joint Legislative Committee on the Budget through a budget adjustment for the statutory purpose of those revenues."
NOTE: "Fees" and "taxes" are not defined in the state constitution, although there are certain procedural requirements and limitations placed upon their enactment by the legislature. See, e.g., La. Const. Art. 3, Secs. 2 and 16(B), and Art. 7, Sec. 2.1. The legislative power to impose fees does not derive from the constitutional taxing power, but is instead an exercise of the police power. See, Audubon Insurance Company v. Bernard, 434 So.2d 1072 (La. 1983), and cases cited; ACORN v. City of New Orleans, 407 So.2d 1225 (La. 1981). For the purposes of constitutional requirements, the designation in statutory language of a charge as a "fee" or "tax" is not conclusive. Regardless of how styled, a "fee" will be deemed a "tax" by the courts if the primary purpose of the legislation is determined to be the raising of revenue, or if the imposition of the charge is unrelated to or materially exceeds the cost of regulation or of conferring special benefits upon those assessed. See Audubon, and ACORN, supra; Safety Net for Abused Persons v. Segura, 692 So.2d 1038 (La. 1997); State v. Lanclos, 980 So.2d 643 (La. 2008).

H. Act 434 - Repeals provisions establishing and providing for the Witness Protection Services Board and the Witness Protection Services Act, the Workforce and Innovation for a Stronger Economy Strategic Planning Council and Workforce and Innovation for a Stronger Economy Fund, the Advisory Committee on Equal Opportunity within the Dept. of Insurance, the La. State Transportation Infrastructure Bank and La. State Transportation Infrastructure Fund (revenues formerly dedicated to Fund are dedicated to Transportation Trust Fund to be used exclusively for final design and construction rather than studies), and the La. Aquatic Invasive Species Council and the La. Aquatic Invasive Species Advisory Task Force. Also adds a representative of a burn center that is verified by the American Burn Assoc. to the governing board of La. Emergency Response Network.

I. Senate Resolution No. 45 - adds new Rule 5.7:

"Rule 5.7. Designation of or referral to certain former senators
A. A former senator may be designated or referred to as "Senator Retired, District No." followed by the number of the Senatorial District represented.
B. "Former senator" as used in this Rule, means a former senator who served three terms in the Senate and, because of this service, was prohibited by Article III, Section 4(E) of the Constitution of Louisiana from being elected to the Senate for the succeeding term."
J. **House Resolution No 208** - revises Rule 11.4:

"Rule 11.4. Floor amendments; public information; copies

A. A proposed floor amendment shall be public information upon filing with the Clerk of the House.

B. A copy of a proposed floor amendment, except an amendment proposed by the chairman of the Legislative Bureau on behalf of the Legislative Bureau, shall be placed on the desk of each member of the House who has notified the Clerk that the member wants to receive printed copies of all proposed floor amendments, and no vote shall be taken on the proposed floor amendment until this requirement has been met."
IV. SELECTED RECENT CASES:

A. **Mandamus.** *Town of Sterlington v. Greater Ouachita Water Company*, 268 So. 3d 1257 (La. App. 2 Cir. 2019), writs denied - trial court lacked authority to issue a writ of mandamus to compel the city to pay an award of attorney fees and costs to a water utility, since constitutional provisions and applicable laws only allowed courts to compel payments of judgments against political subdivisions from funds specifically appropriated.

B. **Local/Special Law.** *Simmons v. Edwards*, Not Reported in So.3d, 2018-1436 (La. App. 1 Cir. 8/7/19) - Acts 2017 No. 171, concerning membership of certain hospital service district boards as limited by parish population, is not a local or special law nor unconstitutional on other grounds. Trial court's dismissal of claims on exception of no cause of action affirmed.

1. **Act is not local law** - Quoting *Deer Enterprises, LLC v. Parish Council of Washington Parish*, 56 So.3d 936 (La. 2011), "a law is not local if its coverage can extend to other localities or areas. Generally, a law that applies to localities within a certain population is not a local law because other localities potentially can meet the population trigger and become subject to the particular law."

2. "The operation of Act 171 is presently limited to the parish of Jackson by virtue of its population. It is therefore immediately suspect as a local law. However, as noted by the trial court, the provisions of Act 171 may extend its application to other parishes if the requisite criterion comes to exist there, i.e., if those parishes fall within the population range. It is also possible that Jackson Parish may expand or contract beyond the reach of Act 171. Because the triggering criterion is the range of 16,000 residents, which is tied to the latest decennial census, and the 2020 census is nearing, a shift in the act's coverage in the future appears possible. Indeed, according to plaintiffs, recent statistics show a decline in the population of Jackson Parish since the 2010 census. The elastic application of Act 171 and the fluid nature of population dynamics militate against finding it is prohibited as a local law."

3. **Act is not special law** - "The objects and purposes of hospital service districts and the governing bodies include ownership and operation of hospitals for the care of persons suffering from illnesses or disabilities which require that patients receive hospital care; the administration of other activities related to rendering care to the sick and injured or in the promotion of health which may be justified by the facilities, personnel, funds and other requirements available; the promotion and conducting of scientific research and training related to the care of the sick and injured insofar as such research and training can be conducted in connection with the hospital; participation so far as circumstances may warrant in any activity designed and conducted to promote the general health of the community; and the..."
cooperation with other public and private institutions and agencies engaged in providing hospital and other health services to residents of the district. See La. R.S. 46:1052 (relative to hospital service districts created by police juries of parishes).

In light of the objects and purposes of hospital service districts, Act 171 does not appear to affect "the exercise of a common right," and does not bear the significant distinction of securing private advantages for private persons. Thus, the trial court correctly implicitly determined that Act 171 is not aimed at special interests.

(4) Act is not a prohibited local or special law granting to any private corporation, association, or individual any special or exclusive right, privilege, or immunity -

"Moreover, to the extent that plaintiffs are asserting that Act 171 subjects those parishes that meet the population criterion to a different set of rules simply because of demographic distribution which, they maintain, shows a patent grant of privileges to some while denying them to others, we find no merit in this contention. As noted by the Deer Enterprises court, a privilege is a special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty. A privilege grants someone the legal freedom to do or not to do a given act. Deer Enterprises, 56 So.3d at 944. Because Act 171 includes defined qualifications for commissioners, none of which Dr. Simmons and ostensibly all other African American residents of Jackson Parish possess, a privilege has been bestowed on those that meet the criteria. But the fallacy of plaintiffs’ assertion is that no citizen has an inherent right to an appointment on a hospital service district board. It is the members of the Jackson Parish Police Jury who determine those it will appoint to the Jackson Hospital Service District. Therefore, Act 171 does not deny or grant the privilege of appointing members to the hospital service district board. That right remains with the parish police jury. (emphasis added).

Lastly, based on the allegations of plaintiffs' petition and their assertions before the trial court and now on appeal, they have simply failed to identify any "special interests" that are served by Act 171. Accordingly, Act 171 is not an unconstitutional abuse of legislative power.

(5) Use of 2010 census is not prohibited retroactive application - "Plaintiffs assert that Act 171 is a substantive law that is retroactive in its application because it relies on the 2010 census. However, a clear reading of Act 171 shows that the population criterion is based on "the latest federal decennial census," rather than merely the 2010 census."
(6) Application of law did not disturb vested right, as there is no vested right in the appointment to a public office - "Plaintiffs maintain that because Dr. Simmons was an appointed commissioner of the Jackson Parish Hospital Service District Board who had not completed his term, the application of Act 171, requiring the specified criteria for commissioners appointed to the hospital service district board, operated to retroactively impair contractual obligations or disturb him of his vested rights. The appointment to a public office is not a contract. Boyer v. St. Amant, 364 So.2d 1338, 1340 (La. App. 4th Cir.), writ denied, 365 So.2d 1108 (La. 1978). Additionally, it is well settled that a person elected to a public office has no vested prospective right that prevents a legislative branch, or other proper authority, from abolishing the office. See Hoag v. State ex rel. Kennedy, 2001-1076 (La. App. 1st Cir. 11/20/02), 836 So.2d 207, 220 (en banc), writ denied, 2002-3199 (La. 3/28/03), 840 So.2d 570. Accordingly, as a matter of law, Act 171 did not impair any contractual obligations affecting Dr. Simmons - or any other potential African American appointee - in either maintaining the appointment as a commissioner to Jackson Parish Hospital Service District Board or as to any emoluments of that appointment. And for the same reasons, neither Dr. Simmons nor any other African American resident of Jackson Parish was deprived of a vested right."

(7) Current application of Act only to Jackson Parish hospital service district did not violate equal protection - "Plaintiffs claim that Act 171 violated their equal protection rights. See La. Const. Art. I, § 3; U.S. Const. Amendment 14. They urge that because Act 171 applies only to Jackson Parish, it treats the parish differently from all other parishes with hospital service districts.

Generally, the state constitutional guarantee of equal protection mandates that state laws affect alike all persons and interests similarly situated. The equal protection clause, however, does not require absolute equality or precisely equal advantages. It is possible for parties to be treated differently without violation of equal protection rights. Equal treatment of all claimants in all circumstances is not required. The law merely requires equal application in similar circumstances. Where the challenged classification is based on grounds other than discrimination because of birth, race, age, sex, social origin, physical condition, or political or religious ideas, the law creating the classification is presumed to be constitutional. Thus, the party challenging the constitutionality of the law has the burden of proving it unconstitutional by showing the act fails to serve a legitimate government purpose. Dale v. Louisiana Sec'y of State, 2007-2020 (La. App. 1st Cir. 10/11/07), 971 So.2d 1136, 1143 (per curiam).
Initially, we question whether the population criterion set forth in Act 171 is alike and similarly situated to persons and interests in other hospital service districts so as to require the state constitutional guarantee of equal protection. But even assuming arguendo that is does, because Act 171 is not based on any suspect classification, it requires only that the legislature's enactment serve a legitimate governmental purpose. The powers and duties of commissioners to hospital service district boards include representing the public interest in providing hospital and medical care in the district; providing advice to the police jury and the hospital director on problems concerning the operation of the hospital and other facilities; making, altering, amending, and promulgating rules and regulations governing the conduct of the hospital; conducting hearings and passing upon complaints by or against any officer or employee of the district; reviewing and modifying, or setting aside any action of the officers or employees of the district which the commission may determine to be desirable or necessary in the public interest; appointing, with the approval of the medical staff, a director of the hospital and performing such other duties as may now or hereafter be required by law; appointing the necessary standing and special committees that may be necessary to carry out the purposes of the hospital service district; establishing rates of pay for the use of facilities provided by the district; and entering into lease agreements with recognized and duly constituted nonprofit associations that are primarily engaged in the operation of hospitals. See La. R.S. 46:1055 (relative to the powers and duties of commissioners of hospital service districts created by police juries of parishes). Given the objects and purposes of hospital service districts, see La. R.S. 46:1052, as well as the duties required of a hospital service district commissioner, we can readily discern that the particularized qualifications of commissioners to the hospital service district board of parishes with populations of 16,000 is legitimately served by the appointments of persons with specialized areas of expertise. Therefore, plaintiffs have failed to allege an equal protection violation. (emphasis added).

[Comment: Lee Hargrave, The Louisiana State Constitution A Reference Guide (Greenwood Press, 1991), pages 53-54: "It is more difficult to reconcile the special law prohibition with the equal protection guarantee. Both rules use the same concepts of prohibiting statutes that except some groups based on a classification other than geographic location. Both involve an inquiry into the reasonableness of the classification..........................In any event, recent cases have not been as willing to characterize a law as special when it does not violate the equal protection clause. The court held that a statute treating some medical malpractice victims differently from other victims of other torts was not a special law (Everett v. Goldman, 1978)."

Reviewing other claims, the Court concluded that the Act also did not constitute a violation of due process or the Voting Rights Act of 1965.
Dissent based upon legislative testimony - Judge Welch dissented. Reviewing the archived video broadcasts of the Act's legislative history, he pointed out that the bill author repeatedly referred in committee testimony as to the bill being local in nature. The dissent stated that it "is clearly evident that the legislature intended Act 171 to apply to Jackson Parish, and more specifically, to the hospital service board for the Jackson Parish Hospital" and stated in footnote 3 that the "House of Representatives and Senate Archived Videos prove conclusively that Act 171 was intended to be a local law."

[Comment: Regarding the dissent, it is a fundamental truth—often overlooked by courts and others—that "legislative history" and "legislative intent" are not the same thing. "Legislative intent" is the intent of all of the voting members of both houses of the legislature and further, if a constitutional provision is involved, the intent of the voting public in adopting that language. Such intent may or may not be reflected in the contemporaneous historical materials produced during the legislative process in which the legislation was enacted or adopted.

In light of this fundamental truth, precautions are required for courts seeking "evidence" of "intent" in legislative history. On this question, accurate records are not the same thing as meaningful records. Not all components of "legislative history" are equal in value. See, La. R.S. 24:177. The existence of a statement in the legislative record does not automatically make such statement conclusive—or even authoritative—on the question of "legislative intent". As with other forms of "proof", courts cannot ignore considerations of relevancy, weight, and reliability.

A working knowledge of the internal legislative process is necessary for meaningful review and understanding of legislative history materials. For example, part of the legislative history materials available on the legislature's website is a "resume digest", summarizing the text of the enrolled (final) version of an act. Some courts have cited the contents of those digests as indicia of legislative intent, forgetting or unaware of both the admonition in R.S. 24:177 that digests do not constitute proof or indicia of legislative intent, and also the simple fact that resume digests are not contemporaneous materials. Resume digests are prepared by staff after the bill has passed and usually after the session has ended. Is a "resume digest" part of the legislative history? It is included in the website materials as such. But does it provide proof or indicia of "legislative intent"? No, regardless of its contents.

Finally, as "evidence" of "legislative intent", statements in the legislative record (whether verbal or written) seeking to characterize legislation must always be superseded by the actual text of the legislation itself. A longstanding judicial maxim, codified in R.S. 24:177(B)(1), is that the "text of a law is the best evidence of legislative intent." In short, "law" is not what is said, but what is written. It is legislation, not legislative history, that is a solemn expression of the legislative will and becomes law. C.C. Art. 2. The understanding of one member of the legislature is not determinative of legislative intent, even if that member is the bill author.]
C. Retroactive/Prospective Application.

(1) *State v. Johnson*, 266 So.3d 969, 985 (La. App. 4 Cir. 2019), writ denied - Citing *State v. Cousan*, 4th Circuit stated that Louisiana "follows the general rule that a constitutional provision or amendment has prospective effect only, unless a contrary intention is clearly expressed."

(2) *State v. Lyles*, ___So.3d____, 2019 WL 54352912019-00203 (La. 10/22/19) - Concerning how Habitual Offender Law would be applied as amended, Louisiana Supreme Court concluded that defendant whose conviction became final on or after amended habitual offender statute's effective date was entitled to application of amendment, stating:

"As noted above, the relevant portion of Act 282 provides: “This Act shall become effective November 1, 2017, and shall have prospective application only to offenders whose convictions became final on or after November 1, 2017.” 2017 La. Acts 282, § 2. By contrast, Act 542 added new Subsection (K) to R.S. 15:529.1:

K. (1) Except as provided in Paragraph (2) of this Subsection, notwithstanding any provision of law to the contrary, the court shall apply the provisions of this Section that were in effect on the date that the defendant's instant offense was committed.

(2) The provisions of Subsection C of this Section as amended by Act Nos. 257 and 282 of the 2017 Regular Session of the Legislature, which provides for the amount of time that must elapse between the current and prior offense for the provisions of this Section to apply, shall apply to any bill of information filed pursuant to the provisions of this Section on or after November 1, 2017, accusing the person of a previous conviction.


We note at the outset, from the plain language of these provisions in conjunction with the effective dates of the acts, the legislature appears to have created three categories of persons potentially affected by these provisions:

1. There are persons—like the present defendant—whose convictions became final on or after November 1, 2017, and whose habitual offender bills were filed before that date. Those defendants would be eligible to receive the benefits of all ameliorative changes made by Act 282.

2. There are persons whose convictions became final on or after November 1, 2017, and whose habitual offender bills were filed between that date and August 1, 2018 (the effective date of Act 542). Those persons would be eligible to receive the benefit of the
reduced cleansing period, and they may also have colorable claims to the other ameliorative changes provided in Act 282, although we need not decide that question today.

3. Finally, there are persons whose convictions became final on or after November 1, 2017, and whose habitual offender bills were filed on or after August 1, 2018. They would receive the reduced cleansing period by operation of Subsection K(2) added by Act 542 but their sentences would be calculated with references to the penalties in effect of the date of commission in accordance with Subsection K(2) added by Act 542.

The State urges, and the court of appeal found, essentially, that the legislature intended what it wrote in Act 542 but did not intend what it wrote in Act 282, and therefore Act 542 should be applied because it “clarifies” Act 282. However, the language indicating that Act 282 “shall become effective November 1, 2017, and shall have prospective application only to offenders whose convictions became final on or after November 1, 2017” is quite clear. Therefore, we must presume the legislature meant what it said, and the judicial inquiry ends there.

The State, however, attempts to breathe ambiguity into this language by questioning when a conviction becomes final. That question is readily answered by Code of Criminal Procedures articles 914 and 922, and the State’s desire that finality be determined differently for purposes of the Habitual Offender Law than in other contexts does not suffice to introduce ambiguity into the clear language the legislature chose.

We find that 2017 La. Acts 282, § 2, which provides that Act 282 “shall become effective November 1, 2017, and shall have prospective application only to offenders whose convictions became final on or after November 1, 2017” is unequivocal, and therefore not subject to further judicial construction. For persons like defendant, whose convictions became final on or after November 1, 2017, and whose habitual offender bills were filed before that date, the full provisions of Act 282 apply. Accordingly, we find defendant was adjudicated and sentenced pursuant to the wrong version of the Habitual Offender Law. We reverse the court of appeal, vacate the habitual offender adjudication and sentence, and remand for further proceedings. On remand, the district court is directed to apply the version of the Habitual Offender Law, La.R.S. 15:529.1, as it was amended by 2017 La. Acts. 282, and before its amendment by 2018 La. Acts 542."

{see also, discussion in this outline on effective dates}
In his first assignment of error, the defendant argues that the trial court erred in accepting as legal the non-unanimous jury verdict rendered on the attempted manslaughter charge. He contends the non-unanimous jury verdict violates due process of law. This argument was recently considered and rejected by this Court in State v. Jenkins, 2018-0253 (La. App. 4 Cir. 4/3/19), 267 So.3d 1178.

In Jenkins, the defendant was charged with second degree murder, which carried a sentence of life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, for a shooting that occurred in 2014. The defendant was convicted of the lesser crime of manslaughter by a ten-to-two jury verdict. He appealed, arguing that the non-unanimous jury verdict violated the Sixth and Fourteenth Amendment to the United States Constitution and the Louisiana Constitution.

In rejecting the defendant's argument in Jenkins, this Court concluded:

This Court acknowledges that ... La. Const. Art. 1 § 17 has been amended to prohibit non-unanimous verdicts for crimes committed on or after January 1, 2019; however, the Louisiana Supreme Court has not ruled that non-unanimous jury verdicts for crimes committed prior to January 1, 2019 unconstitutional. Generally, Louisiana follows the rule that “a constitutional provision or amendment has prospective effect only, unless a contrary intention is clearly expressed therein.” State v. Cousan, 1994-2503, pp. 17-18 (La. 11/25/96), 684 So.2d 382, 392-393. The crime in this instant matter occurred in June 2014, which was before January 1, 2019.

Jenkins, 2018-0253, p. 20, 267 So.3d at 1189-90.

In State v. Warner, 2018-0739, p. 24 (La. App. 4 Cir. 5/29/19), —— So.3d ———, ———, 2019 WL 2293736, this Court recently held:

Louisiana follows the general rule that ‘a constitutional provision or amendment has prospective effect only, unless a contrary intention is clearly expressed therein.’ State v. Cousan, 1994-2503, pp. 17-18 (La. 11/25/96), 684 So.2d 382, 392-393. Further, La. C.Cr. P. art. 782 [also amended in 2018] provides that the amendment to La. Const. Art. I § 17 requiring unanimous juries does not have retroactive effect.

The crime in this instant case occurred in 2016, and the defendant was convicted in 2018. Thus, the recent constitutional amendment requiring unanimous verdicts has no effect on the current case. Before the amendments to La. Const. Art. I § 17 and La. C.Cr.P. art. 782, and at the time of the instant offense, the constitutionality of non-unanimous jury verdicts was upheld in both State v. Bertrand, 2008-2215, 2008-2311 (La. 3/17/09), 6 So.3d 738, and Apodaca v. Oregon, 406 U.S. 404, 92 S.Ct. 1628, 32 L.Ed.2d 184 (1972). See also State v. Johnson, 2018-0409, p. 25 (La. App. 4 Cir. 3/13/19), 266 So.3d 969, 984, (reiterating that the 2018 amendments are prospective). Moreover, it is important to note that the Louisiana Supreme Court has not ruled that non-unanimous jury verdicts for crimes committed prior to January 1, 2019, are unconstitutional.
In State v. Ramos, 2016-1199 (La. App. 4 Cir. 11/2/17), 231 So.3d 44, writ denied, 2017-2133 (La. 6/15/18), 257 So.3d 679, and writ denied sub nom, State ex rel. Evangelisto Ramos v. State, 2017-1177 (La. 10/15/18), 253 So.3d 1300, the defendant argued that the trial court erred in denying his motion to require a unanimous jury verdict. This Court held that under current jurisprudence from the U.S. Supreme Court, non-unanimous 12-person jury verdicts are constitutional. We recognize that on March 18, 2019, the United States Supreme Court granted certiorari in Ramos to consider whether the Fourteenth Amendment fully incorporates the Sixth Amendment guarantee of a unanimous verdict. Ramos v. Louisiana, No. 18-5924, — U.S. ——, 139 S.Ct. 1318, 203 L.Ed.2d 563, 2019 WL 1231752 (U.S. Mar. 18, 2019).

Considering the above referenced jurisprudence as applied to the facts of this case, we find no merit in the defendant's first assignment of error."

D. Constitutional Issues and Objections:

(1) McMahon, et al v. City of New Orleans, No. 2018-CA-0842 (La. App. 4 Cir. 9/4/2019) - consolidated with other matters. In January of 2008, the City contracted with private contractor for the installation of traffic cameras at various locations throughout the City to capture images of vehicles that were speeding or violating intersectional red lights, or both. In connection with contract, city enacted and began enforcing Code of Ordinances of the City of New Orleans Chapter 154, Article XVII, Sections 154-1704, known as the Automated Traffic Enforcement System (ATES) ordinance. In this matter, City of New Orleans appealed the trial court’s granting of a partial summary judgment ordering that the City immediately refund to the Class Plaintiffs Subclass 1 all ATES fines and fees paid by the Class Plaintiffs Subclass 1 for ATES tickets issued for the period January 1, 2008, through November 3, 2010, in the amount of $25,612,690.32, together with judicial interest. Affirmed.

"On appeal, the City raises the following assignment of error: the district court erred in granting plaintiffs’ motion for partial summary judgment, finding the entire ATES Ordinance to have been null ab initio, and ordering the return of all fines collected under the City’s ATES Ordinance from January 1, 2008 until November 3, 2010."

"It has long been the law in Louisiana that an unlawful ordinance is in reality no law and in legal contemplation is as inoperative as if it had never been passed. Vieux Carre Property Owners and Associates, Inc. v. City of New Orleans, 167 So.2d 367, 371 (La. 1964); Archer v. City of Shreveport, 77 So.2d 517, 518 (La.1955); City of New Orleans v. Levy, 64 So.2d 798, 802 (La. 1953). Louisiana jurisprudence is replete with decisions striking municipal and parish ordinances as unlawful, and therefore being considered as null and void and/or inoperative. In
Tardo v. Lafourche Parish Council, 476 So.2d 997, 999 (La.App. 1 Cir. 1985), the First Circuit upheld a trial court’s finding that an ordinance (adopted by the Lafourche Parish Council after the budget without the approval of the Parish President) was invalid because it violated the Parish of Lafourche’s home rule charter mandates. In Schmitt v. City of New Orleans, 461 So.2d 574, 577-78 (La.App. 4 Cir. 1984), this Court affirmed the trial court’s determination that several zoning ordinances passed by the City of New Orleans were null and void as they violated the City’s home rule charter. In Lafayette City Gov. v. Lafayette Mun. Bd., 01-1460 (La.App. 3 Cir. 5/8/02), 816 So.2d 977, the Third Circuit affirmed the trial court’s granting of a preliminary injunction after determining that the Lafayette Municipal Fire & Police Civil Service Board’s passage of a civil service rule concerning annual vacation and leave for policemen, which conflicted with its prior agreement with the Lafayette City Government concerning the specifics of said rule, violated the Lafayette City Government’s home rule charter.

The ATES is a traffic regulation. The City’s attempt to have the DPW enforce a traffic regulation like the ATES was patently violative of the City’s home rule charter. Because the DPW had no authority under the City’s home rule charter to administer, adjudicate, and enforce the original ATES regulation, the original ATES ordinance was unlawful, invalid, and null and void ab initio, and was “in reality no law and in legal contemplation is as if had never been passed.” Vieux Carre Property Owners and Associates, Inc., 167 So.2d at 371.

Because the ATES was an invalid ordinance, without effect, until it was placed under the NOPD on November 4, 2010, the trial court correctly ruled for the immediate return of the $25,612,690.32 in ATES fees and fines collected from tickets issued to Subclass1 prior to that date. Because the ordinance was invalid, no one in Subclass 1 ever owed any of those ATES fine payments to the City.

(2) In Re: Cooperative Endeavor Agreement Between 42nd Judicial District District Attorney's Office and 42nd Judicial District Public Defender's Office, 267 So.3d 581, 583 (La. 2019) - Louisiana Supreme Court stated: "Moreover, our well-settled jurisprudence, dating back over a century, makes it clear that a district court lacks standing to invoke constitutional concerns on its own initiative. . . . As we explained in Greater New Orleans Expressway Comm'n v. Olivier, 2004-2147 (La. 1/19/05), 892 So.2d 570, 575-76, "it was better left to criminal defendants actually charged with violating a statute, and not to judges in a criminal cases, to raise the issue of a statute's constitutionality."

(3) Ulrich v. Robinson,____So.3d___(La. 2019) - Supreme Court reversed an appellate court’s finding an act unconstitutional, concluding that a later statutory amendment cured the alleged constitutional defect, rendered the case moot, and the case lacked a justiciable controversy since no exception to the mootness doctrine was found applicable.
Caliste v. Cantrell, 937 F.3d 525 (USCA 5th Cir. 8/29/19) - "Arrestees filed class action under § 1983 against magistrate alleging that parish criminal court's practice of using money generated from commercial surety bond fees to pay judicial expenses created conflict of interest that violated Due Process Clause." Eastern District entered summary judgment in arrestees' favor. On appeal, affirmed, with the Fifth Circuit holding that the practice "created conflict of interest that violated Due Process Clause."


This case does not involve a judge who receives money based on the decisions he makes. But the magistrate in the Orleans Parish Criminal District Court receives something almost as important: funding for various judicial expenses, most notably money to help pay for court reporters, judicial secretaries, and law clerks. What does this court funding depend on? The bail decisions the magistrate makes that determine whether a defendant obtains pretrial release. When a defendant has to buy a commercial surety bond, a portion of the bond's value goes to a fund for judges' expenses. So the more often the magistrate requires a secured money bond as a condition of release, the more money the court has to cover expenses. And the magistrate is a member of the committee that allocates those funds."

(b) Reviewing legal jurisprudence and cases concerning judicial impartiality in matters when judges may benefit financially, the Court stated: "Having decided that the “average man as judge” standard applies and that significant nonmonetary benefits can create a conflict, we turn to the crux of the dispute: Does Judge Cantrell's dual role violate due process?"
The Court concluded: "Because he must manage his chambers to perform the judicial tasks the voters elected him to do, Judge Cantrell has a direct and personal interest in the fiscal health of the public institution that benefits from the fees his court generates and that he also helps allocate. And the bond fees impact the bottom line of the court to a similar degree that the fines did in Ward, where they were 37–51% of the town's budget. Ward, 409 U.S. at 58, 93 S.Ct. 80. The 20–25% of the Expense Fund that comes from bond fees is a bit below that percentage but still sizeable enough that it makes a meaningful difference in the staffing and supplies judges receive. The dual role thus may make the magistrate “partisan to maintain the high level of contribution” from the bond fees. Ward, 409 U.S. at 60, 93 S.Ct. 80. Our holding that this uncommon arrangement violates due process does not imperil more typical court fee systems. Our reasoning depends on the dual role combined with the “direct, personal, [and] substantial” interest the magistrate has in generating bond fees. Tumey, 273 U.S. at 523, 47 S.Ct. 437. To take one example, none of these features are present for fines in federal criminal cases. Judges do not have a say in how those funds are spent. The amount of the fines—which is supposed to take into account the costs of incarceration and thus, if anything, fund the Bureau of Prisons rather than the judiciary, U.S.S.G. § 5E1.2(d)(7)—are not set aside for judicial operations even on a national level, let alone for the handful of federal judges who sit on a local district court. The benefits are so diffuse that a single judge sees no noticeable impact on her chambers from the fines she imposes and thus feels no temptation from them.

The temptation facing the Orleans Parish magistrate is far greater. His dual role—the sole source of essential court funds and an appropriator of them—creates a direct, personal, and substantial interest in the outcome of decisions that would make the average judge vulnerable to the “temptation ... not to hold the balance nice, clear, and true.” Tumey, 273 U.S. at 532, 47 S.Ct. 437. The current arrangement pushes beyond what due process allows. Cf. Cain, 2019 WL 3982560, at *6 (holding that Orleans Parish judges' role in both imposing and administering court fees and fines violated due process). One response to the declaratory judgment would be eliminating Judge Cantrell's dual role, a role that is not mandated by Louisiana law. In contrast, because Louisiana law does require that the bond fees be sent to the Judicial Expense Fund, L.A. R.S. 13:1381.5(B)(2)(a), the declaratory judgment cannot undo that mandate. Challengers did not seek to enjoin that statute, instead arguing only that the dual role violated due process. But given today's ruling and last week's in Cain, it may well turn out that the only way to eliminate the
unconstitutional temptation is to sever the direct link between the money the criminal court generates and the Judicial Expense Fund that supports its operations." (emphasis added).

(d) See also, cited above, *Cain v. White*, ___F.3d____, (USCA 5th Cir. 8/23/2019), summarized in footnote 2 of the above case: "In another case, plaintiffs argued that a separate conflict of interest existed because of the court fees and fines that also help fund the Judicial Expense Fund. That case was brought against all the judges of the Orleans Criminal District Court, contending that their "administrative supervision over [the Fund], while simultaneously overseeing the collection of fines and fees making up a substantial portion of [the Fund], crosses the constitutional line." *Cain v. White*, —— F.3d ——, 2019 WL 3982560 (Aug. 23., 2019). A different panel of this court recently held that this arrangement for fees and fines violated due process."

(e) [Note: Concerning bail bonds, see also, Act 54 of the 2019 Regular Session amending R.S. 22:1443 regarding the premium on criminal bail bonds and providing in Subsection (B)(1): "In any parish having a population of more than three hundred thousand and fewer than four hundred thousand persons according to the latest federal decennial census, to the extent an additional one percent has been collected under color of the provisions of Act 350 of the 2005 Regular Session, no repayment of overcollections as determined by the commissioner shall be required nor shall such actions be considered a violation of R.S. 22:855 or R.S. 22:1443."

Section 2 of the same act further provides: "Section 2. As enacted herein, R.S. 22:1443(B)(1) clarifies the procedure and interpretation of Act 350 of the 2005 Regular Session and shall have retroactive effect."

News media reports state this act language could give rise to litigation regarding its purported retroactive effects. See "Louisiana lawmakers vote to cancel refunds owed by New Orleans bail bond firms", *Advocate*, May 22, 2019.]

(5) *Downtown Development District of City of New Orleans v City of New Orleans*, 272 So.3d 917 (La. App. 4 Cir. 2019), writs denied - "Special taxing district located within city brought claims alleging city illegally withheld money from tax assessed to benefit district. The District Court, Orleans Parish, No. 2018-03901, Piper D. Griffin, J., granted district's request for preliminary injunction and denied district's request for writ of mandamus. City appealed. Holdings: The Court of Appeal, Joy Cossich Lobrano, J., held that: district was political subdivision of State and a separate juridical entity from city; city's obligations to district were not
extinguished under doctrine of confusion; district stated cause of action against city; district was entitled to injunctive relief without the requisite showing of irreparable injury; city could not use proceeds of special tax to fund state retirement systems; preliminary injunction was not vague or overly broad; and district was not entitled to writ of mandamus."

(a) "While custom may not abrogate legislation, a juridical person's charter, governing legislation and custom may govern its capacity. La. C.C. art 3 ("Custom results from practice repeated for a long time and generally accepted as having acquired the force of law."). La. C.C. art. 24, cmt. d. Further supporting such customary treatment of DDD's separate juridical personhood, this Court can take judicial notice of appeals in this Circuit in which the DDD has been named as a party, separate from the City and represented by separate counsel, for purposes of liability. See, e.g., Meyers ex rel. Meyers v. City of New Orleans, 2005-1142 (La. App. 4 Cir. 5/17/06), 932 So.2d 719; 639 Julia St. Partners v. City of New Orleans, 2017-0940 (La. App. 4 Cir. 5/2/18), 246 So.3d 847. See generally La. C.C. art 202. Thus, the City's contention, that the DDD is a branch of City government, lacks merit. In addition, Louisiana law provides no support for the City's argument that its obligations to the DDD are extinguished under the doctrine of confusion."

(b) "Nevertheless, Louisiana courts have set forth an "unlawful conduct" exception to the "irreparable injury" requirement. In Jurisich v. Jenkins, 99-0076, p. 4 (La. 10/19/99), 749 So.2d 597, 599, the Louisiana Supreme Court explained:

A petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, i.e., when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right. South Cent. Bell Tel. Co. v. Louisiana Pub. Serv. Comm'n, 555 So.2d 1370 (La. 1990). Once a plaintiff has made a prima facie showing that the conduct to be enjoined is reprobated by law, the petitioner is entitled to injunctive relief without the necessity of showing that no other adequate legal remedy exists [citation omitted].

Thus, to qualify for the unlawful conduct exception, "[t]he jurisprudential rule requires three findings": (1) "the conduct violates a prohibitory law (ordinance or statute) or the constitution"; (2) "the injunction seeks to restrain conduct, not order it"; and (3) the petitioner "has met the low
burden of making a prima facie showing that he is entitled to the relief sought." Yokum, 2012-0217, pp. 8-9, 99 So.3d at 81.........................Under the particular facts of this case, the unlawful conduct exception applies, and the DDD is not required to prove irreparable injury."

(c) The DDD, however, contends that the DDD tax is a "dedicated tax" or "special tax," which the City is illegally diverting in violation of the Louisiana Constitution, state statutes, and the New Orleans Home Rule Charter. Specifically, the DDD relies on the following.

In City of New Orleans v. Louisiana Assessors' Ret. & Relief Fund ("Assessors"), the Louisiana Supreme Court held:

The diversion of taxes dedicated to a specific purpose is expressly prohibited by La. Const. art. VI, §§ 26(B) and 32, which provide as follows:


(B) Millage Increase Not for General Purposes. When the millage increase is for other than general purposes, the proposition shall state the specific purpose or purposes for which the tax is to be levied and the length of time the tax is to remain in effect. All proceeds of the tax shall be used solely for the purpose or purposes set forth in the proposition. [Emphasis added.]

La. Const. Art. VI, § 32. Special Taxes; Authorization

Section 32. For the purpose of acquiring, constructing, improving, maintaining, or operating any work of public improvement, a political subdivision may levy special taxes when authorized by a majority of the electors in the political subdivision who vote thereon in an election held for that purpose.

This court has consistently interpreted the constitution to prohibit the use of dedicated and special taxes for purposes other than those for which they were levied. 2005-2548, p. 14 (La. 10/1/07), 986 So.2d 1, 13-14, on reh'g (1/7/08)(citing La. Const. art. VI, §§ 26(B) and 32)."
(d) "Here, the DDD tax is a dedicated tax. It is evident from the record and the
enabling statute that the DDD tax was dedicated by the voters specifically
for enhanced services in the DDD. The enabling statute explicitly states that
the "proceeds of said tax shall be used solely and exclusively for the
purposes and benefit of the district." La. R.S. 33:2740.3(I). "A 'dedicated
tax' is, quite simply, a tax that is dedicated for a specific purpose."
Assessors, 2005-2548, p. 18, 986 So.2d at 16. "Under the constitution,
taxes dedicated to a specific purpose cannot be used for another purpose."
Id. As the Louisiana Supreme Court recognized, "when citizens are
presented with a proposition that would impose a special tax for a specific
purpose, and they approve the imposition of that tax, a covenant is created
which must be respected and upheld." Id. (citing Denham Springs Econ.
Dev. Dist., 2004-1674, p. 14 (La. 2/4/05), 894 So.2d 325, 335). "Once
citizens vote for a tax dedicated to one purpose, the tax cannot be used for a
purpose other than that approved by the citizens." Id. "Any alteration of a
prior dedication must be by vote of the people." Id., 2005-2548, pp. 18-19,
986 So.2d at 16. "The constitution, at Article VI, §§ 26(B) and 32, respects
and upholds this most basic proposition." Id., 2005-2548, p. 19, 986 So.2d
at 16.................................The enabling statute prohibits the DDD tax
from being used for purposes other than their dedicated purpose.
Accordingly, La. R.S. 11:82 does not permit the City to withhold DDD tax
proceeds to fund state retirement systems. The DDD has thus shown that it
seeks to enjoin unlawful conduct."

(e) "The DDD argues that a writ of mandamus is warranted because the delay
in obtaining ordinary relief would cause injustice. The DDD acknowledges
in its petition, by combining its request for mandamus with alternative
claims for declaratory judgment and damages, that another remedy is
available through which the DDD can seek the disputed amounts through
ordinary procedure. The DDD contends, however, that its claim is
"time-sensitive" because the DDD's taxing authority expires in 2029, and
the DDD requests that the district court take judicial notice of unpaid
judgments and settlements owed by the City, which have been outstanding
for 20 years. The DDD alleges that the City began withholding the disputed
portion of the tax proceeds in approximately 2007. The DDD argues that,
while it did not file its petition until 2018, it has been trying to reach a
resolution with the City since that time. The district court's oral reasons
reflect that it rejected the DDD's arguments that its claims were
time-sensitive. Considering the facts of record, the district court properly
found that the DDD failed to meet its burden to show that a delay in
obtaining ordinary relief would cause injustice sufficient to warrant the
issuance of a writ of mandamus. The district court did not abuse its
discretion in denying the writ of mandamus. The DDD's answer to the
appeal is denied."

(5) *Lafayette General Medical Center, Inc. v. Robinson.* _____So.3d____(La. App. 3
Cir. 8/14/2019) - "Hospital brought action against Secretary of the Louisiana
Department of Revenue, challenging Department's determination that the Louisiana
Constitution's exemption of “prescription drugs” from sales and use taxes did not
apply to purchases of medical devices. The Board of Tax Appeals......granted
summary judgment in favor of Secretary. Hospital appealed. Holdings: The Court of
Appeal......held that: 1 term “prescription drugs” was subject to more than one
interpretation; 2 Legislature did not intend exemption to apply only to
pharmaceuticals; 3 hospital was not precluded from challenging Department's
determination; and 4 Department's determination constituted an expansion of taxes
on the general public. Reversed and remanded."

(a) "Ultimately, the key to our resolution of this issue is the fact the Board's and
Department's interpretation of the meaning of “prescription drugs” in this
case results in an expansion of taxes on the general public and in favor of the
taxing authority. The law is well-settled that “[t]axing statutes must be
strictly construed against the taxing authority; where a tax statute is
susceptible of more than one reasonable interpretation, the construction
favorable to the taxpayer is to be adopted. Goudchaux/Maison Blanche, Inc.
Louisiana Tax Commission, 01-2162, p. 6 (La. 4/3/02), 813 So.2d 351, 356.
Moreover, the Louisiana Supreme Court specifically stated, “[u]nless the
words imposing the tax are expressly in the statute, the tax cannot be
imposed. Hibernia Nat. Bank in New Orleans [v. Louisiana Tax
Commission], 195 La. [43,] at 54, 196 So. [15,] at 18.” Cleco Evangeline,
813 So.2d at 355. *The confusion as to whether the term “prescription
drugs” extended to “medical devices” lends itself to more than one
interpretation and requires we give the construction favorable to the
taxpayer. Louisiana law also mandates we are to “give harmonious effect to
all acts on a subject when reasonably possible.” Theriot v. Midland Risk Ins.
Co., 95-2895, p. 4 (La. 5/20/97), 694 So.2d 184, 186, citing State v. Piazza,
596 So.2d 817, 819 (La. 1992). In this case, the only statutory definition of
“prescription drugs” in Louisiana has always included medical devices
within its meaning. Without the Legislature expressly excluding medical
devices from the purview of “prescription drugs,” we find the expansion of
taxes sought by the Department cannot legally be imposed. *Further, the
legislative history cited by LGMC as to the Stelly Plan*" [Note: explanation
given to the house by the author of the Stelly Plan, Representative Victor T. Stelly] "showed a clear legislative intent to create a constitutional prohibition against the institution of temporary taxes on “prescription drugs,” which historically had always included medical devices. Thus, we conclude the constitutional prohibition against taxation on “prescription drugs’ found in Art. VII, § 2.2(B)(3) includes medical devices..............For the reasons expressed above, we find the Tax Board erred in granting the Department's Motion for Summary Judgment. We reverse that judgment and hereby render judgment granting LGMC's Partial Motion for Summary Judgment. All costs of this appeal are assessed against the Department." (emphasis added)

[Question: Does podium explanation in one house by the bill author really constitute "a clear legislative intent" of the entire voting members of both houses of the legislature? Does silence in the reminder of the legislative history record actually support such interpretation?]

(6) Murray v. Windmann, 274 So.3d 787 (La. App. 5 Cir. 2019) - "Bicyclist brought action against motorist and motorist's insurer seeking damages following auto and bike accident. The 24th Judicial District Court.............., entered judgment on jury verdict finding motorist was negligent but not the legal cause of the accident and denied bicyclist's motion for a new trial. Bicyclist appealed. The Court of Appeal...............held that evidence was sufficient to support jury's finding that motorist was negligent but his negligence was not the legal cause of accident. Affirmed."

(a) "In his final assignment of error, Mr. Murray alleges that his counsel and opposing counsel violated his constitutional right to effective counsel throughout his civil case. Specifically, Mr. Murray alleges that his counsel violated his Sixth "or" Eighth Amendment rights, and that both his counsel and opposing counsel violated his Fourteenth Amendment rights. This Court has previously declined to consider such arguments and found that "the inadequacy of an attorney in a civil suit is not enough to evoke constitutional concern". Karagiannopoulos v. State Farm Fire & Cas. Co., 94-1048 (La. App. 5 Cir. 11/10/99), 752 So.2d 202, 209, writ denied, 99-2866 (La. 12/10/99), 752 So.2d 165, and writ denied, 99-3474 (La. 2/11/00), 754 So.2d 940. Moreover, it is established that such constitutional guarantees, including the right to counsel and the protection from cruel and unusual punishment, arise only under certain circumstances, typically involving criminal convictions, and do not govern or apply to civil cases involving the alleged negligence of an individual, private defendant. See Turner v. Rogers, 564 U.S. 431, 441, 131 S.Ct. 2507, 2516, 180 L.Ed. 2d 452 (2011);
Palermo v. Rorex, 806 F.2d 1266, 1271 (5th Cir. 1987). Accordingly, we decline to consider Mr. Murray's constitutional arguments in this appeal."

(7) Pesnell v. Sessions, 274 So.3d 697 (La. App. 2 Cir. 2019) - "Requester brought action against court of clerk, court reporter, trial court, and district court judges under Public Records Law seeking to compel disclosure of audio recording from his murder trial. The District Court........sustained defendants' exceptions of no cause of action. Requester appealed. The Court of Appeal........affirmed in part, reversed in part, and remanded. On remand, the District Court sustained defendants' exceptions of no cause of action. Requester appealed, after which the court clerk filed a motion to dismiss for lack of jurisdiction and an exception of res judicata. Holdings: The Court of Appeal, Pitman, J., held that: judgment dismissing court clerk from the action was final and conclusive for res judicata purposes; audio recording was not a public record subject to disclosure even after the recording was transcribed; Public Records Law exception for court recordings that were to be reported or transcribed was a permissible exception to the state constitutional right to direct participation; and any opinion from the Court on the facial constitutionality of the exception would be an impermissible advisory opinion. Motion granted; affirmed."

(a) "Plaintiffs argue that the trial court erred in dismissing the claims related to the statutory construction of La. R.S. 44:4(47). They contend that the recording is a public record. They state that the Public Records Law and provisions of the Louisiana Constitution that require a review and complete record of any criminal trial are to be construed liberally in favor of public access and that exceptions must be narrowly construed in favor of disclosure. Plaintiffs contend that the portion of La. R.S. 44:4(47)(a) that states that the exclusion applies to any such media used "to report the proceedings or for the purpose of transcribing into typewriting those portions of the proceedings required by law or by the court to be transcribed" means that the recording is excluded from disclosure until it is transcribed or reported. Plaintiffs argue that once the proceeding is transcribed or reported, there is no reason to limit access, as the contents are transcribed and certified. They state that this court should limit the exception to Plaintiffs' reading of the statute and order production of the recording. The Judges argue that La. R.S. 44:4(47) is constitutional and that the recording sought by Plaintiffs is expressly excepted from being a public record. They contend that the legislature had rational reasons for enacting La. R.S. 44:4(47), i.e., to protect the physical medium of recording, to prevent the alteration of the recording and subsequent release to the public and the need to protect
conversations picked up by the recording device, including those between attorney and client."

(b) "A review of La. R.S. 44:4(47) supports Defendants' argument that the recording is not a public record pursuant to the Public Records Law. This exception to the Public Records Law is not limited to the time before the recording is transcribed, as argued by Plaintiffs. To the contrary, the statute provides no time limitation to the exception to the Public Records Law. Although Plaintiffs contend that there is no reason to limit access to the recording once it has been transcribed, the trial court disagreed and noted that the exception in La. R.S. 44:4(47) protects the privacy of all litigants. We find that the trial court did not err in its interpretation of La. R.S. 44:4(47)."

(c) Amendment by Statute. "In their second assignment of error, Plaintiffs argue that the trial court erred in holding that the rights under La. Const. art. XII, §3, may be freely amended by statute. They state that the trial court improperly relied on the notion that the legislature may amend the constitution at will and without regard for the purposes and meaning of that constitutional provision. The Judges argue that the right of public access to public records is not a right classified as fundamental in constitutional law. Therefore, the legislature is empowered, by the constitution itself, to fashion exceptions to the general right of public access to government records. La. Const. art. XII, §3, states: "No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law." (Emphasis added.) The text of La. Const. art. XII, §3, clearly authorizes the legislature to establish laws that provide exceptions to the right to observe the deliberations of public bodies and examine public documents. La. R.S. 44:4(47) provides such an exception."

[Note: See also, Hargrave, "Statutory" and "Hortatory" Provisions of the Louisiana Constitution of 1974, 43 La. L. Rev. 647 (1983), discussing Art. XII, §3 and stating in part at pages 684-685, "Here again, the subject is under legislative control, and the constitutional provision is merely a precatory admonition. If the legislature were to repeal the existing laws that make exceptions to open meetings and records, the definitions of "public bodies" and "public documents" would become an issue. In this regard, the convention records provide little guidance.]
It should be clear, however, that the ambit of section 3 excludes the legislature. While the House and the Senate are without doubt public bodies, they are regulated by the more specific requirements of article III, section 15.

E. APA/Delegation of Legislative Authority:

(1) Mid-City Automotive, L.L.C. v. Department of Public Safety and Corrections, 267 So.3d 165, 177-178 (La. App. 1 Cir. 2018) - First Circuit Court of Appeal invalidated certain administrative code provisions promulgated by the Office of State Police providing for assessment of penalties on tow truck operators for violations of the Towing and Storage Act. Reviewing the Schwegmann test requirements, the Court stated that the "standards which must accompany delegations of authority must not be unlimited, unreasonable, or permit arbitrary action by the administrative body. When delegated authority is unfettered, its exercise becomes legislative, not administrative, in nature, and contravenes the mandates of Article II, § 2 of the Louisiana Constitution that no branch of government shall exercise power belonging to another branch. All Pro Paint, 93-1316 at pp. 6, 13-14, 639 So.2d at 711, 716-17. However, to be sufficient, the standards need not be express if they may be reasonably inferred from the statutory scheme. Opiate Replacement Therapy Centers of America, Inc. v. State ex rel. Department of Health and Hospitals, 03-0643, p. 5 (La.App. 1 Cir. 2/23/04), 868 So.2d 216, 220."

Reviewing the pertinent act, the Court concluded that the act failed the second prong of the Schwegmann test as it contained "no standards to guide the Office of State Police in setting the amount of administrative fines" and "provided no guidance or limits on the amount of fines which could be set". The Court stated that such "unfettered discretion makes the exercise of the delegated authority by the Office of State Police legislative, rather than administrative, in nature; therefore, the Schedule of Fines contained in LAC 55:I.1907(A)(4) is not constitutionally valid." [Act 103 in 2019 enacted certain fine limits for applicable statutory violations.]
(2) Bayou Canard, Inc. v. State through Coastal Protection and Restoration Authority, 250 So.3d 981, 988 (La. App. 1 Cir. 2018), writ denied, 254 So.3d 1209 (La. 2018) - Trial court struck down the harvest efficiency ratio procedure used by Coastal Protection and Restoration Authority (CPRA) for determining the reimbursement for oyster bed acquisition in a coastal restoration project. The trial court had concluded that the procedure was actually a "rule" that had not been properly promulgated nor adopted in accordance with the Administrative Procedure Act.

The First Court Appeal reversed the trial court, finding that terms of the oyster leases barred the leaseholder from bringing the lawsuit. However, it agreed with the trial court that the procedure was a "rule", stating, "CPRA maintains that the harvest efficiency ratio procedure is an appropriate method for applying this rule. The harvest efficiency ratio procedure, it argues, is not part of the formula in the rules and regulations, it is a factor that it applied to the value reached through the rules and regulations…[W]e find that the harvest efficiency ratio procedure is more than an explanation or interpretation of the rule. Rather, the harvest efficiency ratio procedure provides universal instruction to CPRA and it has the substantive effect of establishing the rights and obligations of the parties regarding reimbursement payments for oyster bed acquisition. Thus, the harvest efficiency ratio procedure is a rule that is unenforceable because it was not properly promulgated and adopted" (emphasis added).

F. "Reconfirmation" Challenge Lacked Standing. O'Brock v. White, 276 So.3d 178 (La. App. 1 Cir. 2019) - declaratory judgment action filed by individual citizens alleging that the superintendent of the Department of Education lacked the right to hold office because his appointment had not been "reconfirmed" by the Senate. The defendants' exception of no right of action was sustained by the trial court and affirmed by the First Circuit Court of Appeal. Only the governor, attorney general, and other persons authorized under La. R.S. 42:76 and 77, and La. R.S. 24:14, could bring an action challenging a person's right to hold office, including a declaratory judgment action.
G. Statutory Interpretation:

(1) *Woodrow Wilson Construction, LLC v. Amtek of Louisiana*, 256 So.3d 305, 321 (La. App. 1 Cir. 2018) - First Circuit concludes that the "Prompt Pay Statute is not a part of the LPWA. The statute is found in Title 9 of the Revised Statutes, the 'Civil Code Ancillaries,' to Book III, Title IV, 'Conventional Obligations or Contracts.' While a statute's heading is not the law, it provides some guidance as to what the Legislature intended the statute to cover." The Court cited as authority Anderson v. Ochsner Health System, 172 So.3d 579, 581 (La. 2014). [BUT -In the Anderson case, the "guidance" considered was not a section heading but the title of a subpart, the Health Care Consumer Billing and Disclosure Protection Act, as enacted in the statutory language of La. R.S. 22:1871.]

(2) *Digests - R.S. 24:177E (1)* - "The keyword, one-liner, summary and adjoining information, abstract, *digest*, and other words and phrases contained outside the sections of a bill following the enacting clause are solely to provide the members of the legislature with general indicia of the content of the bill and are not subject to amendment by the legislature or any committee of the legislature and shall not constitute proof or indicia of legislative intent. (emphasis added). Lathan Company, Inc. v. Division of Administration, 272 So.3d 1 (La. App. 1 Cir. 2019), writ denied - "A review of the legislative history from the 2012 House Legislative Services digest states that the "proposed law [La. R.S. 13:5107 presented as SB 308 and enacted as Act. No. 770] retains prior law and adds that service shall be requested upon the attorney general within 90 days of filing suit" and in the summary of house amendments to the senate bill specifies "that service 'shall' not 'must', be requested on the attorney general within 90 days of filing suit" Louisiana Resume Digest, S.B. 308, 2012 Reg. Sess. (La. 2012). (The language of the original bill which stated "must" was changed to "shall" by the house committee on civil law and procedure.)" - [NOTE: in addition to the prohibition in R.S. 24:177, resume digests are typically prepared after the session is over, thus are neither part of, nor relevant to, the contemporaneous legislative history of an act.]
"We cannot approve such a casual disregard of the rules of statutory interpretation. In statutory interpretation disputes, a court’s proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself. Schindler Elevator Corp. v. United States ex rel. Kirk, 563 U.S. 401, 407, 131 S.Ct. 1885, 179 L.Ed.2d 825 (2011). Where, as here, that examination yields a clear answer, judges must stop. Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 438, 119 S.Ct. 755, 142 L.Ed.2d 881 (1999). Even those of us who sometimes consult legislative history will never allow it to be used to “muddy” the meaning of “clear statutory language.” Milner, 562 U.S. at 572, 131 S.Ct. 1259. Indeed, this Court has repeatedly refused to alter FOIA’s plain terms on the strength only of arguments from legislative history. See, e.g., Landano, 508 U.S. at 178, 113 S.Ct. 2014 (refusing to expand the plain meaning of Exemption 7(D) based on legislative history); Weber Aircraft, 465 U.S. at 800–803, 104 S.Ct. 1488 (refusing to restrict Exemption 5 based on legislative history).

National Parks’ contrary approach is a relic from a “bygone era of statutory construction.” Brief for United States as Amicus Curiae 19. Not only did National Parks inappropriately resort to legislative history before consulting the statute’s text and structure, once it did so it went even further astray. The court relied heavily on statements from witnesses in congressional hearings years earlier on a different bill that was never enacted into law. 498 F.2d at 767–769. Yet we can all agree that “excerpts from committee hearings” are “among the least illuminating forms of legislative history.” Advocate Health Care Network v. Stapleton, 581 U.S. ——, ——, 137 S.Ct. 1652, 1661, 198 L.Ed.2d 96 (2017); see also Kelly v. Robinson, 479 U.S. 36, 51, n. 13, 107 S.Ct. 353, 93 L.Ed.2d 216 (1986) (declining to “accord any significance” to “comments in [legislative] hearings”). Perhaps especially so in cases like this one, where the witness statements do not comport with official committee reports that are consistent with the plain and ordinary meaning of the statute’s terms. See S. Rep. No. 813, 89th Cong., 1st Sess., 9 (1965) (Exemption 4 protects information “which would customarily not be released to the public by the person from whom it was obtained” such as “business sales statistics” and “customer lists”); H. R. Rep. No. 1497, 89th Cong., 2d Sess., 10 (1966) (Exemption 4 exempts material “if it would not customarily be made public by the person from whom it was obtained by the Government” and “information which is given to an agency in confidence” such as “business sales statistics”)."

(4) State v. Terrio, --- So.3d ---- (La.App. 5 Cir. 3/20/19), writ denied:

"In this writ application, the State challenges the trial court's ruling that stalking is a specific intent crime. The State argues that while stalking was a specific intent crime under earlier versions of the stalking statute, La. R.S. 14:40.2, changes in the law have now made stalking a general intent crime as reflected in both the plain language of the statute and in the legislative history. It notes that while this Court, in an earlier writ disposition in this case on a different (though related) issue suggested that stalking is a specific intent crime, that issue was not then before this Court. After review, finding merit in the State's argument, we grant this writ application and reverse the trial court's ruling.

On August 2, 2017, the State filed a bill of information charging defendant, Wayne Terrio, with stalking, in violation of La. R.S. 14:40.2. In the prior writ disposition referenced by the State, this Court was asked by defendant to address, in pertinent part: 1) whether the trial court erred when it stated that the crime of stalking is a general intent crime, and 2) whether the trial court erred when it ruled as a matter of law that the defendant could not use evidence of his wife's alcoholism to show his intent and as a defense to his stalking charge. State v. Terrio, 18-K-529 (La. App. 5 Cir. 12/17/18) (unpublished writ disposition).

As to his first assignment of error, this Court ruled that there was never any ruling made by the trial court as to whether stalking was or was not a general intent crime, and that defense counsel failed to object to any alleged misstatement made by the trial court or file a notice of intent on the issue; thus, this Court declined to address the assignment. This Court also denied defendant's writ application with respect to his second assignment, finding the trial court did not err in excluding the “reverse 404B” evidence sought to be introduced by defendant at trial. In making its ruling, this Court recited the law as it pertained to stalking, noting, in dicta, that stalking is a specific intent crime, citing State v. Ryan, 07-504 (La. App. 3 Cir. 11/7/07), 969 So.2d 1268. Defendant filed a writ application with the Louisiana Supreme Court, which was subsequently denied. State v. Terrio, 18-2103 (La. 2/11/19), 263 So.3d 432.
On January 8, 2019, the State filed a motion to rule that stalking is a general intent crime and for the first time provided the court with a video of the May 31, 2001 House Criminal Justice Committee hearing on Senate Bill 196 of 2001, which became Act No. 1141 of 2001, in support of its proposition that the intent of the bill was to eliminate the requirement of specific intent and change stalking to a general intent crime. Defendant opposed the State's motion, contending that stalking is a specific intent crime, relying on this Court's prior writ disposition in this case and citing Ryan, supra, and State v. Saucier, 11-246 (La. App. 3 Cir. 11/9/11), 81 So.3d 691, writ denied, 12-0227 (La. 6/22/12), 91 So.3d 966.

Hearings on the State's motion were held on February 4, 2019, and February 20, 2019. At the hearings, the State argued that the committee hearing on the proposed bill to amend the stalking statute in 2001 evidenced the intent of the legislature to eliminate specific intent from the definition of the crime. In response, the defense argued that the trial court was bound by this Court's prior writ disposition issued in this case, arguing that this Court indicated stalking is a specific intent crime. The trial court in turn commented that while bound by this Court's rulings, it could find nowhere in the prior writ disposition where this Court ruled on the issue of whether stalking is or is not a specific intent crime. The trial judge further noted that he believed the State's argument had merit. Nevertheless, at the conclusion of the hearing on February 20, 2019, the trial court ruled that stalking is a specific intent crime, relying on the language of this Court's prior writ disposition. The State seeks review of this ruling.

Prior to 2001, stalking was defined under La. R.S. 14:40.2(A) as the “willful, malicious, and repeated following or harassing of another person with the intent to place that person in fear of death or bodily injury.” It is uncontested by the State that under this version, stalking was considered a specific intent crime. However, effective August 15, 2001, La. R.S. 14:40.2 was amended by Act No. 1141 to delete the language requiring that the offender act “with the intent to place that person in fear of death or bodily injury,” and provide that the willful, malicious, and repeated following or harassing of another person must “cause a reasonable person to feel alarmed or to suffer emotional distress.”

A review of the 2001 House Criminal Justice Committee hearing on Senate Bill 196 of 2001, which became Act No. 1141 of 2001, supports a finding that the intent of the bill was to eliminate the requirement of specific intent and change stalking to a general intent crime. On the video, which was admitted at the hearing in the trial court, discussions were held regarding the intent of the bill during which it was stated that the purpose of the proposed changes was to shift the focus from the offender's intentions to the perceptions of the victim. Specifically, it was argued that it would be immaterial whether the offender intended to place the victim in fear of
death or bodily injury through his following and/or harassing; rather, it would be pertinent whether the victim felt alarmed or suffered emotional distress by the defendant's actions. The proponent of the bill explained that prosecutors have encountered difficulty in prosecuting stalking cases because of the onerous task of establishing the offender's intent, which “can always be shielded.” At the hearing, questions arose concerning the deletion of the “intent” element, to which clarification was made by the proponent of the bill that despite the amendment, the statute would still have “a general intent element,” explaining that the purpose was not to negate intent but rather redefine it to general intent and add in the victim's perceptions.

Later, in 2005, La. R.S. 14:40.2 was again amended by Act No. 161 to remove the requirement that the offender's actions be “willful” and “malicious” and replace that language with “intentional.” The State has suggested in its writ application that in this context, “intentional” does not refer to specific intent but rather only to general intent,1 citing La. R.S. 14:11, which provides that:

The definitions of some crimes require a specific criminal intent, while in others no intent is required. Some crimes consist merely of criminal negligence that produces criminal consequences. However, in the absence of qualifying provisions, the terms “intent” and “intentional” have reference to “general criminal intent.”

Pertinent to the instant offense, La. R.S. 14:40.2 now defines stalking as:

[T]he intentional and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress. Stalking shall include but not be limited to the intentional and repeated uninvited presence of the perpetrator at another person's home, workplace, school, or any place which would **5 cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal, written, or behaviorally implied threats of death, bodily injury, sexual assault, kidnapping or any other statutory criminal act to himself or any member of his family or any person with whom he is acquainted.

The statute defines “harassing” as “the repeated pattern of verbal communications or nonverbal behavior without invitation which includes but is not limited to making telephone calls, transmitting electronic mail, sending messages via a third party, or sending letters or pictures.” La. R.S. 14:40.2(C)(1).
Defendant asserts that after the 2001 amendments to La. R.S. 14:40.2, courts of this state have still found that stalking is a specific intent crime, citing Ryan, supra and Saucier, supra. However, in both Ryan and Saucier, we note that the Third Circuit relied on pre-2001 jurisprudence and did not discuss the 2001 amendments to the statute. Ryan, 969 So.2d at 1270-1273; Saucier, 81 So.3d at 695-697.

Accordingly, through the deletion of the phrase, “with the intent to place that person in fear of death or bodily injury,” in combination with a review of the legislative hearing pertaining to the 2001 amendment, we find that stalking is a general intent crime that requires only that defendant have the general intent to repeatedly follow or harass the victim in a manner that would “cause a reasonable person to feel alarmed or to suffer emotional distress.” Therefore, we grant the State's writ application, find that stalking pursuant to La. R.S. 14:40.2 is a general intent crime, and remand for further proceedings.

H. Eleventh Amendment:


"Plaintiffs' claims against the Louisiana State Board of Embalmers and Funeral Directors and the individual Defendants, in their official capacities, are barred by sovereign immunity.

The Eleventh Amendment provides, "The judicial power of the United States shall not be construed to extend to any suit in law or in equity, commenced or prosecuted against one of the United States by Citizens or Subjects of any Foreign State."25 "The ultimate guarantee of the Eleventh Amendment is that nonconsenting states may not be sued by private individuals in federal court," including by its own citizens.26 The Fifth Circuit has held that, "absent a waiver or consent by the state or an express negation of immunity by act of Congress, the eleventh amendment prohibits a federal court from awarding either legal or equitable relief against the state."27 Although Louisiana has waived its Eleventh Amendment sovereign immunity against tort claims brought in state court,28 it has not waived its sovereign immunity from suits in federal court.29

The Fifth Circuit has laid out six factors to be considered in determining whether a state entity or an official of the entity sued in his or her official capacity, is entitled to Eleventh Amendment sovereign immunity:

1. Whether the state statutes and case law view the agency as an arm of the state;
2. The source of the entity's funding;
3. The entity's degree of local autonomy;
4. Whether the entity is concerned primarily with local as opposed to statewide problems;

5. Whether the entity has the authority to sue and be sued in its own name; and

6. Whether the entity has the right to hold and use property.30

These factors were first enumerated by the Fifth Circuit in Clark v. Tarrant County and are frequently referred to as the Clark factors.31 Not all Clark factors are given the same weight, and a defendant is not required to satisfy each factor to benefit from Eleventh Amendment sovereign immunity.32 The second factor is the most important because "an important goal of the Eleventh Amendment is the protection of state treasuries."33 Courts "typically deal with the last two factors in a fairly brief fashion."34 These factors help the courts "balance the equities and determine as a general matter 'whether the suit is in reality a suit against the state itself.' "35 (footnotes omitted).

[Court reviewed the factors]

"In similar situations, the Fifth Circuit has found licensing boards created within the Louisiana Department of Health to be immune from suit based on Eleventh Amendment sovereign immunity. Specifically, the Fifth Circuit has determined the Louisiana State Board of Medical Examiners, the Louisiana State Board of Dentistry, and the Louisiana State Board of Nursing, are state agencies entitled to Eleventh Amendment sovereign immunity.66. The Court finds the Board to be an arm of the state of Louisiana entitled to sovereign immunity under the Eleventh Amendment.

Section 1983 authorizes suit against a "person who, under color of [law], subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws."67 "[N]either a State nor its officials acting in their official capacities are 'persons' under § 1983."68 Accordingly, Eleventh Amendment sovereign immunity bars Plaintiffs from bringing suit against the Board and the individual Defendants in their official capacities. The Court dismisses without prejudice Plaintiffs’ § 1983 claims against the Board and the individual Defendants in their official capacities.69" (footnotes omitted).........

"The Supreme Court has held that "a claim that state officials violated state law in carrying out their official responsibilities is a claim against the State that is protected by the Eleventh Amendment."70 Moreover, the Fifth Circuit has held that "sovereign immunity [bars] federal courts from hearing state law claims brought in federal court against state entities and state officers sued in their official capacities."71 The Court dismisses without prejudice Plaintiffs' state law claims against the Board and the individual Defendants in their official capacities."

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"Absolute immunity denies a person whose federal rights have been violated by a government official any type of remedy, regardless of the conduct."73 The Fifth Circuit has explained:

Although the Supreme Court has been rather conservative in its grants of absolute immunity, it has recognized that there are some officials whose duties require a full exemption from liability. Such officials include judges performing judicial acts within their jurisdiction, prosecutors in the performance of their official functions, and certain "quasi-judicial" agency officials who, irrespective of their title, perform functions essentially similar to those of judges or prosecutors, in a setting similar to that of a court.74

"In determining whether a government official is absolutely immune from suit, the Fifth Circuit has held that "the proper focus should not be the identity of the party claiming the immunity, but rather his "role in the context of the case."76 In short, "immunity attaches to particular official functions, not to particular offices."77 The Fifth Circuit has found government officials to be entitled to sovereign immunity when they perform quasi-judicial or quasi-prosecutorial roles, regardless of whether they are members or employees of a board or agency.78

In Butz v. Economou, the Supreme Court set forth a "non-exhaustive list of factors to determine whether an agency and its members perform quasi-judicial functions," which the Fifth Circuit has rephrased as follows:79

1. the need to assure that the individual can perform his functions without harassment or intimidation;
2. the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct;
3. insulation from political influence;
4. the importance of precedent;
5. the adversary nature of the process; and
6. the correctability of error on appeal.80" (footnotes omitted)

"Plaintiffs argue Defendants are not entitled to absolute immunity because they performed investigative functions.119 "If a prosecutor engages in activities 'akin to those of an administrative or investigative officer, rather than to those of an advocate,' the prosecutor is no longer entitled to absolute immunity."120 However,
the Complaint contains no allegations regarding investigative functions performed by any of the individual Defendants. *The Court finds the individual Defendants are entitled to absolute immunity with respect to all of the claims based on the factual allegations in the Complaint.* (footnotes omitted).

(2) *Archie Poe v. Bruce Fuller, et al*, 2019 WL 4194292 (W.D. La. 2019) - "Before the Court is a motion for summary judgment on the medical malpractice claim urged by Plaintiff Archie Poe ("Poe") against Drs. Bruce Fuller ("Fuller") and Pamela Hearn ("Hearn") (collectively, "Defendants") regarding the care that they provided him at David Wade Correctional Center ("DWCC").................. Because it lacks subject-matter jurisdiction, this Court is unable to rule on the motion's merits. Poe's medical malpractice claim seeks a money judgment which, under the applicable statute, must be rendered against the State of Louisiana rather than against Defendants. La. Stat. Ann. § 40:1237.1(A)(8); Detiller v. Kenner Reg'l Med. Ctr., 2003-3259, p. 16 (La. 7/6/04); 877 So. 2d 100, 111. This requirement makes the State of Louisiana a necessary party to this proceeding. Joinder of the State on a claim for money damages would violate the Eleventh Amendment, and so this Court cannot join the State. Because Poe has no remedy in the State's absence, the claim against Defendants for their role at DWCC is DISMISSED WITHOUT PREJUDICE."

(3) *Jackson v. Brun*, 2019 WL 4282167 (W.D. La. 2019), appeal filed - NaKisha Jackson ("Plaintiff") who is self-represented, filed this civil action against the State of Louisiana, Judge Roy Brun, and Clerk of Court Mike Spence to seek relief in connection with a state court proceeding that resulted in a protective order being issued against Plaintiff. She asks that the federal court overturn the state court judgment, grant her $4 million in damages, and discipline the individuals responsible. For the reasons that follow, it is recommended that this civil action be dismissed for failure to state a claim on which relief may be granted."

"Plaintiff's complaint names the State of Louisiana as the first defendant. "The Eleventh Amendment bars suits by private citizens against a state in federal court." K. P. v. LeBlanc, 627 F.3d 115, 124 (5th Cir. 2010). Congress has abrogated Eleventh Amendment immunity by the enactment of some federal statutes, but 42 U.S.C. § 1983 is not one of them. Quern v. Jordan, 99 S.Ct. 1139 (1979). State law claims are also barred by the immunity. Richardson v. Southern University, 118 F.3d 450, 453 (5th Cir. 1997). The claims against the State of Louisiana must, therefore, be dismissed."
Plaintiff’s complaint names Judge Roy Brun as the second defendant. Judges enjoy absolute immunity from liability for damages arising out of performance of their judicial duties. Mireles v. Waco, 112 S.Ct. 286, 288 (1991). The "immunity applies even when the judge is accused of acting maliciously and corruptly." Pierson v. Ray, 87 S.Ct. 1213, 1218 (1967). "It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants." Id. "His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption." Id. "Imposing such a burden on judges would contribute not to principled and fearless decisionmaking but to intimidation." Id.

Whether an act by a judge is a judicial one to which immunity applies relates to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in her judicial capacity. Mireles, 112 S.Ct. at 288. The Fifth Circuit has adopted a four-factor test for determining whether a judge's actions were judicial in nature: (1) whether the precise act complained of is a normal judicial function; (2) whether the acts occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers; (3) whether the controversy centered around a case pending before the court; and (4) whether the acts arose directly out of a visit to the judge in his official capacity. Davis v. Tarrant County, 565 F.3rd 214, 222 (5th Cir. 2009). These factors are broadly construed in favor of immunity. Id.

The judicial conduct about which Plaintiff complains was unequivocally undertaken in the ordinary exercise of judicial duties and was squarely within Judge Brun's authority as a judicial officer of the court. Conducting a courtroom hearing on a motion for protective order and issuing a decision on that motion are at the heart of judicial duties. All four of the relevant factors support immunity. Judge Brun is absolutely immune from the claim for damages asserted by Plaintiff in connection with those proceedings."
The final defendant named in the complaint is Mike Spence, the Clerk of Court for the First Judicial District Court. A clerk of court has absolute immunity from actions for damages arising from acts they are specifically required to do under court order or at a judge's direction. They have qualified immunity for routine duties not explicitly commanded by a court decree or by a judge's instructions. Clay v. Allen, 242 F.3d 679, 682 (5th Cir. 2001); Tarter v. Hury, 646 F.2d 1010, 1013 (5th Cir. 1981).

Plaintiff’s complaint alleges that Mr. Spence influenced her to appear in court without proper service and did not engage in proper diligence to ensure proper service. She also complains that he obstructed discovery. The facts alleged in support of these claims regard Plaintiff speaking on the phone with members of Mr. Spence's staff and Plaintiff filing a complaint about Judge Brun with the Clerk of Court. These appear to be the sort of routine duties for which Spence is entitled to qualified immunity, and there are no allegations that would deprive him of that immunity.

Furthermore, a claim under Section 1983 requires an allegation that the named defendant was personally involved in the acts that deprived the plaintiff of her constitutional rights. Plaintiff does not allege that Spence, personally, did or did not do anything in connection with her proceeding. "Under section 1983, supervisory officials are not liable for the actions of subordinates on any theory of vicarious liability." Leal v. Wiles, 734 Fed. Appx. 905, 907 (5th Cir. 2018), quoting Thompson v. Upshur City, 245 F.3d 447, 459 (5th Cir. 2001). To the extent Plaintiff asks this court to order Mr. Spence to perform his job in a certain way, the federal court lacks the general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties. Moye v. Clerk DeKalb County Superior Court, 474 F.2d 1275, 1276 (5th Cir. 1973)."

I. Redistricting:

(1) Rucho, et al. v. Common Cause, et al, 139 S. Ct. 2484, 588 U.S. _____ (2019) - U.S. Supreme Court ruled in a 5-4 decision that partisan gerrymandering claims presented political questions beyond the reach of the federal courts and were not justiciable. Reviewing previous partisan gerrymandering cases, the majority opinion by Chief Justice Roberts concluded that none of the proposed "tests" put forward for evaluating partisan gerrymandering claims met the need for a "limited and precise rationale" that was "clear, manageable, and politically neutral." The majority opinion distinguished claims of partisan gerrymandering from claims of racial gerrymandering and violations of "one person, one vote". Likewise, the Court rejected arguments that partisan gerrymandering violated the "Republican Form of Government" Guarantee Clause of Article IV, Section 4, pointing out that previous cases have held the Guarantee Clause does not provide the basis for justiciable
claims nor is proportional representation required by the Constitution. The redistricting plans at issue involved no First Amendment violations restricting speech, association or any other protected activities. Neither Section 2 nor Section 4 of Article I of the United States Constitution concerning elections and composition of members provided a judicially enforceable limit on political considerations that the states and Congress could take into account when redistricting.

(a) The majority opinion in Rucho characterized what was sought by the appellees and dissent as "an unprecedented expansion of judicial power", stating: "We have never struck down a partisan gerrymander as unconstitutional—despite various requests over the past 45 years. The expansion of judicial authority would not be into just any area of controversy, but into one of the most intensely partisan aspects of American political life. That intervention would be unlimited in scope and duration—it would recur over and over again around the country with each new round of districting, for state as well as federal representatives. Consideration of the impact of today's ruling on democratic principles cannot ignore the effect of the unelected and politically unaccountable branch of the Federal Government assuming such an extraordinary and unprecedented role . . . Our conclusion does not condone excessive partisan gerrymandering. Nor does our conclusion condemn complaints about districting to echo into a void. The States, for example, are actively addressing the issue on a number of fronts........Provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply." (p. 2507). (emphasis added)

(b) Dissent - The dissent by Justice Kagan, joined by Justices Ginsburg, Breyer and Sotomayor, was emphatic in disagreeing with the limited judicial role in legislative apportionment and thus the nature of state legislative bodies: "For the first time ever, this Court refuses to remedy a constitutional violation because it thinks the task beyond judicial capabilities. And not just any constitutional violation. The partisan gerrymanders in these cases deprived citizens of the most fundamental of their constitutional rights: the rights to participate equally in the political process, to join with others to advance political beliefs, and to choose their political representatives. In so doing, the partisan gerrymanders here debased and dishonored our democracy, turning upside-down the core American idea that all governmental power derives from the people. These gerrymanders enabled politicians to entrench themselves in office as against voters' preferences. They promoted partisanship above respect for the popular will. They encouraged a politics of polarization and dysfunction. If left unchecked, gerrymanders like the ones
here may irreparably damage our system of government. And checking them is not beyond the courts. The majority's abdication comes just when courts across the country, including those below, have coalesced around manageable judicial standards to resolve partisan gerrymandering claims. Those standards satisfy the majority's own benchmarks. They do not require—indeed, they do not permit—courts to rely on their own ideas of electoral fairness, whether proportional representation or any other. And they limit courts to correcting only egregious gerrymanders, so judges do not become omnipresent players in the political process. But yes, the standards used here do allow—as well they should—judicial intervention in the worst-of-the-worst cases of democratic subversion, causing blatant constitutional harms. In other words, they allow courts to undo partisan gerrymanders of the kind we face today from North Carolina and Maryland. In giving such gerrymanders a pass from judicial review, the majority goes tragically wrong." (p. 2509).

(c) See also, "Free and Equal Election Clauses in State Constitutions", National Conference of State Legislature Report, July 18, 2019

(available online at: www.ncsl.org/research/redistricting/free-equal-election-clauses-in-state-constitutions.aspx)

(d) See also the North Carolina case of Common Cause v. David Lewis, In the General Court of Justice Superior Court Division, No. 18 CVS 014001, Sept. 3, 2019

(https://www.nccourts.gov/assets/inline-files/18-CVS-14001_Final-Judgment.pdf?Bwsegeo1VV20zhJsp9hoClvmoRp3A6AR), striking down redistricting maps drawn by the NC state legislature and mandating their redrawing, on the basis that partisan gerrymandering violated state constitutional requirements.
Virginia House of Delegates v. Bethune-Hill, 139 S.Ct. 1945, 1953-1956 (2019 - Regarding racial gerrymandering in violation of equal protection, the U.S. Supreme Court concluded that the Virginia House of Delegates lacked standing to represent the state's interests on appeal and, as one house of a bicameral legislature, lacked standing in its own right to pursue an appeal. In addition, the possibility that a redistricting order would result in altered district boundaries did not give the House of Delegates standing to appeal. The Court noted that the state had not designated the House of Delegates to represent its interests nor had the House of Delegates indicated in the district court that it was appearing in such capacity or was intervening as an agent of the state.

The Court further stated, "This Court has never held that a judicial decision invalidating a state law as unconstitutional inflicts a discrete, cognizable injury on each organ of government that participated in the law's passage. The Court's precedent thus lends no support for the notion that one House of a bicameral legislature, resting solely on its role in the legislative process, may appeal on its own behalf a judgment invalidating a state enactment … Just as individual members lack standing to assert the institutional interests of a legislature, see Raines, 521 U.S. at 829, 117 S.Ct. 2312, a single House of a bicameral legislature lacks capacity to assert interests belonging to the legislature as a whole … Unlike Coleman, this case does not concern the results of a legislative chamber's poll or the validity of any counted or uncounted vote. At issue here, instead, is the constitutionality of a concededly enacted redistricting plan. As we have already explained, a single House of a bicameral legislature generally lacks standing to appeal in cases of this order … But even assuming, arguendo, that Beens was, and remains, binding precedent on standing, the order there at issue injured the Minnesota Senate in a way the order challenged here does not injure the Virginia House. Cutting the size of a legislative chamber in half would necessarily alter its day-to-day operations. Among other things, leadership selection, committee structures, and voting rules would likely require alteration. By contrast, although redrawing district lines indeed may affect the membership of the chamber, the House as an institution has no cognizable interest in the identity of its members. Although the House urges that changes to district lines will "profoundly disrupt its day-to-day operations," … it is scarcely obvious how or why that is so … In short, Virginia would rather stop than fight on. One House of its bicameral legislature cannot alone continue the litigation against the will of its partners in the legislative process." (emphasis added).
V. EFFECTIVE DATE OF LAWS - A BRIEF REVIEW OF POTENTIAL ISSUES

A. LAW.

BILLS.

(1) La. Const. Art. III, §19:

"§19. Effective Date of Laws

Section 19. All laws enacted during a regular session of the legislature shall take effect on August first of the calendar year in which the regular session is held and all laws enacted during an extraordinary session of the legislature shall take effect on the sixtieth day after final adjournment of the extraordinary session in which they were enacted. All laws shall be published prior thereto in the official journal of the state as provided by law. However, any bill may specify an earlier or later effective date."

(2) R.S. 24:10(G):

§10. Vetoed bills; return by the governor; veto session

* * * *

G. A law enacted with the approval of a vetoed bill by two-thirds of the elected members of each house during a veto session shall take effect on the sixtieth day after final adjournment of the session in which it was originally finally passed by both houses, unless such Act contains a different effective date. If the Act contains a different effective date, it shall become effective on said date, unless the date is prior to the time of approval by both houses during a veto session by the required vote, in which case it shall become effective upon such approval. "

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La. Const. Art. VI, §14:


Section 14.(A)(1) No law or state executive order, rule, or regulation requiring increased expenditures for any purpose shall become effective within a political subdivision until approved by ordinance enacted, or resolution adopted, by the governing authority of the affected political subdivision or until, and only as long as, the legislature appropriates funds for the purpose to the affected political subdivision and only to the extent and amount that such funds are provided, or until a law provides for a local source of revenue within the political subdivision for the purpose and the affected political subdivision is authorized by ordinance or resolution to levy and collect such revenue and only to the extent and amount of such revenue. This Paragraph shall not apply to a school board.

(2) This Paragraph shall not apply to:

(a) A law requested by the governing authority of the affected political subdivision.

(b) A law defining a new crime or amending an existing crime.

(c) A law enacted and effective prior to the adoption of the amendment of this Section by the electors of the state in 1991.

(d) A law enacted, or state executive order, rule, or regulation promulgated, to comply with a federal mandate.

(e) A law providing for civil service, minimum wages, hours, working conditions, and pension and retirement benefits, or vacation or sick leave benefits for firemen and municipal policemen.

(f) Any instrument adopted or enacted by two-thirds of the elected members of each house of the legislature and any rule or regulation adopted to implement such instrument or adopted pursuant thereto.

(g) A law having insignificant fiscal impact on the affected political subdivision.

(B)(1) No law requiring increased expenditures within a city, parish, or other local public school system for any purpose shall become effective within such school system only as long as the legislature appropriates funds for the purpose to the affected school system and only to the extent and amount that such funds are provided, or until a law provides for a local source of revenue within the school system for the purpose and the affected school board is authorized by ordinance or resolution to levy and collect such revenue and only to the extent and amount of such revenue. This Paragraph shall not apply to any political subdivision to which Paragraph (A) of this Section applies.
(2) **This Paragraph shall not apply to:**
(a) A law requested by the school board of the affected school system.
(b) A law defining a new crime or amending an existing crime.
(c) A law enacted and effective prior to the adoption of the amendment of this Section by the electors of the state in 2006.
(d) A law enacted to comply with a federal mandate.
(e) Any instrument adopted or enacted by two-thirds of the elected members of each house of the legislature.
(f) A law having insignificant fiscal impact on the affected school system.
(g) The formula for the Minimum Foundation Program of education as required by Article VIII, Section 13(B) of this constitution, nor to any instrument adopted or enacted by the legislature approving such formula.
(h) Any law relative to the implementation of the state school and district accountability system."

**JOINT RESOLUTIONS.**

(1) **La. Const. Art. XIII, §§1(C) and 3 :**

"(C) Ratification. If a majority of the electors voting on the proposed amendment approve it, the governor shall proclaim its adoption, and it shall become part of this constitution, **effective twenty days after the proclamation, unless the amendment provides otherwise."**

"§3. Laws Effectuating Amendments

Section 3. Whenever the legislature shall submit amendments to this constitution, it may at the same session enact **laws** to carry them into effect, **to become operative when the proposed amendments have been ratified."**
SUSPENSIVE RESOLUTIONS.

(1) **La. Const. Art. III, §20:**

"§20. Suspension of Laws

Section 20. Only the legislature may suspend a law, and then only by
the same vote and, except for gubernatorial veto and time limitations for
introduction, according to the same procedures and formalities required for
enactment of that law. After the effective date of this constitution, every
resolution suspending a law **shall fix the period of suspension**, which shall
not extend beyond the sixtieth day after final adjournment of the next regular
session."

SIMPLE AND CONCURRENT RESOLUTIONS.

Simple and concurrent resolutions are effective upon adoption, unless a different
date is provided in the resolution.

CIVIL CODE ARTICLE 5.

"Art. 5. Ignorance of law

No one may avail himself of ignorance of the law.

REVISION COMMENTS--1987

(a) This provision is based on Article 7 of the Louisiana Civil Code of 1870.
It does not change the law.

(b) **Ignorance is inexcusable for laws that are in force. It may be excusable
as to laws that have been properly enacted by the legislature but are not yet in force.
For example, the legislature may enact a new title of the Civil Code in the summer
with an effective date of January 1 of the next year.** Reichenphader v. Allstate
Insurance Co., 418 So.2d 648 (La.1982), is legislatively overruled to the extent that it
suggests that ignorance of law is inexcusable even as to laws that have not yet been
in force.

(c) **Ignorance of law is distinguished from error or mistake of law. Cf. C.C.
Art. 3078 (1870); C.C. Art. 1950 (Rev.1984); La.R.S. 14:17; Spanish Civil Code
Art. 6. Error of law may be a ground for relief when the law so provides. Ignorance
of law does not exclude good faith in matters of prescription. Cf. C.C. Arts. 3480,
3481 (Rev.1982)."** (emphasis added).
B. BASICS:

(1). The "effective date" is that point in time when an act of the legislature or a proposed constitutional amendment approved by the public becomes a law having legal force and effect.

(2). After its effective date, persons are charged with knowledge of that law (see C.C. Art. 5 above).

(3). An effective date section is not required in legislation. The constitution provides default effective dates for bills and joint resolutions (see prior section). But it also provides that a different effective date may be specified in the legislation.

(4) A bill may have:

(a) an "emergency effective date" section providing that it shall become effective upon signature of the governor or lapse of time for gubernatorial action. No showing of an actual emergency is necessary in the bill.

(b) a delayed effective date section, such as January 1 of the following year or even later.

(c) a "contingent effective date" section that requires certain action to be taken first before the legislation becomes effective.

(d) a "contingent effective date" for a political subdivision or school board or school system if the law is subject to the provisions of La. Art. VI, §14. (see prior section.)

(e) as enabling legislation, an effective date contingent upon the adoption of a proposed constitution amendment. (La. Const. Art. 13, Sec. 3)

See discussion below.
C. POTENTIAL PROBLEM AREAS.

(1) To avoid problematic and unintended consequences, the addition of an appropriate "effective date" section must first take into consideration the substantive requirements and effects of the legislation. Remember that the legislation is not "law" given force and effect until its effective date. Potential "effective date" problem areas are discussed below.

(2) "Emergency effective date" (effective upon signature of the governor) sections can create problems when the substantive body of the bill mandates immediate implementation (such as entity action or adoption of rules), and a question exists whether there is actually sufficient time for the implementing agency or agencies to properly prepare for such responsibilities. In short, what is the actual necessity for an act becoming effective prior to August 1?

(3) "Contingent effective date" sections involving third party action (such as action by the federal government or funding through appropriation) can create problems when:

(a) It is not specified how communication will be made to the law institute or legislature showing that the required action has been taken and the act now is "law" having force and effect. (In other words, how will we know when the required contingency has actually occurred?)

(b) It is not clear from the language of the section exactly what contingent action must occur before the bill becomes effective (ex., how much money actually constitutes a "sufficient appropriation" to fund a program?)

(c) The "contingent action" is actually an attempted delegation of primary legislative power inconsistent with constitutional separation of powers. In Krielow v. Louisiana Dept. of Agriculture, 125 So.3d 384 (La. 2013), the Louisiana Supreme Court held certain statutes concerning rice production invalid as attempting to delegate to a particular group of rice producers the power through private elections to impose and determine the amount of a rice assessment and to repeal refund provisions. The Court pointed out that while the legislature could make the operation or application of a statute contingent upon the existence of certain facts and conditions, it could not validly condition imposition of the law upon the vote of a private group.
(4) An "effective date" of legislation and an "implementation date" for action required by statutory provisions within that legislation should not be confused. A delayed effective date of an act means that none of its statutory provisions are law until the effective date occurs. An "implementation date" provides in statutory language for substantive action or requirements on and after a certain time. ("Beginning January 1 and thereafter, the agency shall" or similar language). The statutory language itself may have an earlier effective date as law, but the implementation date governs when the new substantive requirements are to be imposed or implemented.

(5) Multi-year delayed effective dates in an act can create confusion and problems with statutory language when other enactments during the intervening years impact the substantive language of the act.

(a) Also, the legislature in the present cannot limit or encroach upon the power of a future legislature through tactics such as the use of a multi-year delayed effective date.

(b) Note too that amending an act that is not yet effective requires legislation structuring an amendment to the act itself, rather than just to statutory sections in the act's contents.

(6) Multiple effective dates of separate sections or statutes within the same act should be used, if at all, with great caution. The necessity and timing of such multiple effective dates must be carefully considered in advance.

(a) Is it more reasonable and easier to understand what is being done if the statutory language is structured with delayed implementation dates, instead of using multiple "effective dates"? (ex., replacing "Section 4 of this Act shall become effective on January 1" with keeping a uniform effective date and instead providing in statutory language that "Beginning January 1 and thereafter," (or similar language) the new implementation requirements will begin.)

(b) Do the multiple effective dates being considered actually mesh together accurately? If one or more of such effective dates is a "contingent effective date", then how will all parts of the legislation be impacted if the contingency does not occur?
(7) In legislation affecting board or agency memberships or terms of office, the effective date of the legislation and its substantive language should take into account and address the impact upon existing memberships or terms.

(8) Finally, remember that:

(a) "Effective date" and "Retroactivity" are two completely different concepts. A bill may contain an expression of legislative intent for retroactive or prospective application, but such bill cannot become effective before its enactment and approval (can people be charged with knowledge of a law before it was enacted?). Preferably, each concept should be addressed in separate sections of an act.

(b) An "effective date" (point in time when act becomes law) is not the same thing as "latest expression of legislative will." (point in time of enactment). In the event of conflicting acts that cannot be harmonized, the latest expression will control.
VI. SELECTED RECENT ARTICLES OF INTEREST:

Bowie, Why the Constitution was Written Down, 71 Stanford Law Review 1397 (2019)


Lagasse, Language, Gender, and Louisiana Law: Removing Gender Bias From the Louisiana Civil Code, 64 Loyola Law Review 187 (2018)

VII. CLOSING THOUGHTS AND QUOTES:

"Think before you speak. Read before you think."
        ---- Fran Lebowitz

"Last, but not least, a thorough knowledge and understanding of the constitutional and statutory limitations on the powers of the legislature, and of the pertinent judicial decisions, will insure the enactment of laws which will be immune to constitutional attack and clearly enforceable."

        ---- Carlos E. Lazarus, "Legislative Bill Drafting", LSA, Vol. 1, page xxxix