

**2024 RECENT DEVELOPMENTS IN LEGISLATIVE
LAW & PROCEDURE**

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A. ODD-YEAR REGULAR SESSIONS: SUBJECT MATTER RESTRICTIONS AND PROCEDURES

2025 Regular Session: The 2025 Regular Legislative Session will convene at noon on Monday, April 14, 2025. Lasts for 45 legislative days during a 60 calendar day period. Final adjournment no later than 6:00 pm on Thursday, June 12, 2024. See House and Senate Bulletins for details and important deadlines at www.legis.la.gov

I. La. Const. Art. 3, §2(A)(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 prefiled no later than the deadline provided in Subparagraph (2) of this Paragraph, provided that the member shall not prefile 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.” (emphasis added)

2. **Prefiling:** Art. 3, §2(A)(1) and (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 © 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. **Local or Special laws:**

La. Const. Art. 3, §12 -

“(A) Prohibitions. Except as otherwise provided in this constitution, the legislature shall not pass a local or special law:

(1) For the holding and conducting of elections, or fixing or changing the place of voting.

(2) Changing the names of persons; authorizing the adoption or legitimation of children or the emancipation of minors; affecting the estates of minors or persons under disabilities; granting divorces; changing the law of descent or succession; giving effect to informal or invalid wills or deeds or to any illegal disposition of property.

(3) Concerning any civil or criminal actions, including changing the venue in civil or criminal cases, or regulating the practice or jurisdiction of any court, or changing the rules of evidence in any judicial proceeding or inquiry before courts, or providing or changing methods for the collection of debts or the enforcement of judgments, or prescribing the effects of judicial sales.

(4) Authorizing the laying out, opening, closing, altering, or maintaining of roads, highways, streets, or alleys; relating to ferries and bridges, or incorporating bridge or ferry companies, except for the erection of bridges crossing streams which form boundaries between this and any other state; authorizing the constructing of street passenger railroads in any incorporated town or city.

(5) Exempting property from taxation; extending the time for the assessment or collection of taxes; relieving an assessor or collector of taxes from the performance of his official duties or of his sureties from liability; remitting fines, penalties, and forfeitures; refunding moneys legally paid into the treasury.

(6) Regulating labor, trade, manufacturing, or agriculture; fixing the rate of interest.

(7) Creating private corporations, or amending, renewing, extending, or explaining the charters thereof; granting to any private corporation, association, or individual any special or exclusive right, privilege, or immunity.

(8) Regulating the management of parish or city public schools, the building or repairing of parish or city schoolhouses, and the raising of money for such purposes.

(9) Legalizing the unauthorized or invalid acts of any officer, employee, or agent of the state, its agencies, or political subdivisions.

(10) Defining any crime.

(B) Additional Prohibition. The legislature shall not indirectly enact special or local laws by the partial repeal or suspension of a general law.”

§13. Local or Special Laws; Notice of Intent; Publication

"Section 13. (A) Except as otherwise provided in this Section, no local or special law shall be enacted unless notice of the intent to introduce a bill to enact such a law has been published on two separate days, without cost to the state, in the official journal of the locality where the matter to be affected is situated. The last day of publication shall be at least thirty days prior to introduction of the bill. The notice shall state the substance of the contemplated law, and every such bill shall recite that notice has been given.

(B) No local or special law relative to the creation of a special district, the primary purpose of which includes aiding in crime prevention and adding to the security of district residents by providing for an increased presence of law enforcement personnel in the district or otherwise promoting and encouraging security in the district, shall be enacted unless notice of the intent to introduce such bill has been published on three separate days, without cost to the state, in the official journal of the locality where the special district is to be situated. The last day of publication shall be at least thirty days prior to introduction of the

bill. The notice shall state the substance of the contemplated law, and shall specifically disclose whether the governing authority of the special district would be authorized by the contemplated law to impose and collect a parcel fee within the district, whether the parcel fee will be imposed or may be increased without an election, and the maximum amount of the parcel fee if a maximum amount is set forth in the contemplated law. Every such bill shall recite that the required notice has been given."

La. Const. Art. 12, § 6(C)(4) - "Notwithstanding Article III, Section 12, or any other provision of this constitution, the legislature by local or special law may provide for elections on propositions relating to allowing or prohibiting one or more forms of gaming, gambling, or wagering authorized by legislative act."

[Other Requirements in Louisiana Constitution. Other sections of the constitution also speak as to whether legislative action on certain matters is by "general" law or may be performed by local or special law. *See* La. Const. Art. VI, §2 (creation of municipalities and modification of municipal charter); La. Const. Art. VI, §23 (restrictions upon acquisition of property by political subdivisions); La. Const. Art. VII, §3(B)(1) (certain collection of sales and uses taxes levied by political subdivisions); La. Const. Art. VII, §18© (defining certain lands for ad valorem tax use value purposes); La. Const. Art. X, §§25 and 25.1 (removal by suit of certain public officials and employees); La. Const. Art. X, §26 (recall by election of certain public officials); La. Const. Art. XII, §12 (corporate dissolution or forfeiture of charter or franchise).]

4. **Retirement Notice** - Art. 10, §29(C). Retirement and Survivor's Benefits

"(C) Retirement Systems; Change; Notice. No proposal to effect any change in existing laws or constitutional provisions relating to any retirement system for public employees shall be introduced in the legislature unless notice of intention to introduce the proposal has been published, without cost to the state, in the official state journal on two separate days. The last day of publication shall be at least **sixty days** before introduction of the bill. The notice shall state the substance of the contemplated law or proposal, and the bill shall contain a recital that the notice has been given."

5. **Presented as exceptions in the constitution (but may still be interpreted by presiding officers of legislature as subject to Art. 3, §2 limitations on odd-year sessions):**

a. Constitutional Amendments and Enabling Legislation - La. Const. Art. 13, §§ 1 and 3

"§1. Amendments

Section 1.(A)(1) Procedure. An amendment to this constitution may be proposed by joint resolution *at any regular session of the legislature*, but the resolution shall be prefiled, at least ten days before the beginning of the session or

as provided in Subparagraph (2) of this Paragraph, in accordance with the rules of the house in which introduced." (emphasis added).

"§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."

b. Gambling - La. Const. Art. 12, § 6(C)(3) -

"§6. Lotteries; Gaming, Gambling, or Wagering

* * *

(C) Gaming, Gambling, or Wagering Referendum Elections.

* * *

(3) The legislature may **at any time** repeal statutes authorizing gaming, gambling, or wagering."

c. Expenditure of State Funds/Projected Deficit - La. Const. Art. 7, §10(F) -

"(F) Projected Deficit. (1) The legislature by law shall establish a procedure to determine if appropriations will exceed the official forecast and an adequate method for adjusting appropriations in order to eliminate a projected deficit. Any law establishing a procedure to determine if appropriations will exceed the official forecast and methods for adjusting appropriations, including any constitutionally protected or mandated allocations or appropriations, once enacted, shall not be changed except by specific legislative instrument which receives a favorable vote of two-thirds of the elected members of each house of the legislature. **Notwithstanding the provisions of Article III, Section 2 of this constitution, such law may be introduced and considered in any regular session of the legislature.**"

6. **La. Const. Art. 3, §16(B)** - **Origination** - "(B) Origin in House of Representatives. All bills for raising revenue or appropriating money shall originate in the House of Representatives, but the Senate may propose or concur in amendments, as in other bills."

7. **La. Const. Art. 7, §§2 and 2.1** - **Taxes and Fees/Votes** - "Section 2. The levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption shall require the enactment of a law by two-thirds of the elected members of each house of the legislature."....."Section 2.1. (A) Any new fee or civil fine or increase in an existing fee or civil fine imposed or assessed by the state or any board, department, or agency of the state shall require the enactment of a law by a two-thirds vote of the elected members of each house of the legislature. (B) The provisions of this Section shall not apply to any department which

is constitutionally created and headed by an officer who is elected by majority vote of the electorate of the state."

8. **La. Const. Art. 3, §20 - Suspension** - "§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."
9. **La. Const. Art. 3, §17 - Resolutions** - "§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."
10. **La. Const. Art. 3, §15(A) and (C) - Bills** - "(A) Introduction; Title; Single Object; Public Meetings. The legislature shall enact no law except by a bill introduced during that session, and propose no constitutional amendment except by a joint resolution introduced during that session, which shall be processed as a bill. Every bill, except the general appropriation bill and bills for the enactment, rearrangement, codification, or revision of a system of laws, shall be confined to one object. Every bill shall contain a brief title indicative of its object. Action on any matter intended to have the effect of law shall be taken only in open, public meeting."....."(C) Germane Amendments. No bill shall be amended in either house to make a change not germane to the bill as introduced."
11. **Joint Rule 20 - Limitations:**

"Joint Rule No. 20. Odd-numbered year session bill limitations; amendment limitations

In order to place the restrictions and limitations of Article III, Section 2(A)(4)(b) of the Constitution of Louisiana into the rules, procedures, and practices of the Senate and the House of Representatives and to provide guidance to the members of the legislature through the application of Louisiana case law as well as the logical extrapolations which arise from such case law, the legislature does adopt this Joint Rule, as follows:

A. During any regular session convening in an odd-numbered year, no matter intended to have the effect of law, including any suspension of law, shall be introduced, considered, or adopted unless it meets one of the following criteria:

(1)(a) 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.

(b) Bills or resolutions which may be considered pursuant to this Subparagraph shall include but not be limited to:

(i) Bills to enact court costs or judicial fees levied and collected in support of the judicial system of the state or of any parish or municipality.

(ii) Bills relative to filing or recordation fees collected by clerks of the various courts of record.

(iii) Repealed by HCR 14 of 2013 RS, eff. June 7, 2013.

(iv) Resolutions suspending law whose object is listed in Article III, Section 2(A)(4)(b)(introductory paragraph) of the Constitution of Louisiana.

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

(b) Bills or resolutions which may be considered pursuant to this Subparagraph shall include but not be limited to:

(i) Bills to enact a statute to create or provide relative to one or more particular school boards.

(ii) Bills which are enabling legislation relative to the subdivision of a school system.

(iii) Bills to call elections pursuant to Article XII, Section 6(C)(1)(a) of the Constitution of Louisiana.

(iv) Bills to allocate revenue dedicated to a local governmental subdivision.

(v) Bills relative to particular levee districts.

(vi) Bills relative to particular airport authorities.

(vii) Bills relative to ports which are not deep water ports under Article VI, Section 43 of the Constitution of Louisiana.

(viii) Bills relative to local retirement systems.

(ix) Bills to establish or to amend provisions relative to one or more special districts.

(x) Resolutions suspending law whose object is a local or special law which is subject to Article III, Section 2(A)(4)(b)(ii) of the Constitution of Louisiana.

(3)(a) Its object is not within the subject matter restrictions provided in Article III, Section 2(A)(4)(b)(introductory paragraph) of the Constitution of Louisiana or within the exception provided by Article III, Section 2(A)(4)(b)(ii) of the Constitution of Louisiana, but it is prefiled no later than the deadline provided in Article III, Section 2(A) of the Constitution of Louisiana, provided that a member shall not prefile more than five such matters.

(b) Bills or resolutions which may be considered pursuant to this Subparagraph, including those which have applicability in a particular locale but which are not required to be advertised as provided by Article III, Section 13 of the Constitution of Louisiana which shall be considered only pursuant to this Subparagraph, shall include but shall not be limited to:

(i) Bills relative to institutions and officers for which provision is made in Article V of the Constitution of Louisiana.

(ii) Bills relative to deep water ports, as defined in Article VI, Section 43 of the Constitution of Louisiana.

(iii) Bills relative to gaming, pursuant to Article XII, Section 6© of the Constitution of Louisiana, except a bill pursuant to Article XII, Section 6(C)(1)(a) of the Constitution of Louisiana providing with respect to elections.

(iv) Bills relative to state agencies, institutions, entities, facilities, property, roads, or bridges.

(v) Bills which provide relative to local or city school systems pursuant to Article VIII, Section 13(D)(2) of the Constitution of Louisiana.

(vi) Bills, the effects of which are limited to a local classification established by a population range description, which is based upon the latest decennial census.

(vii) Bills relative to protecting the state's natural resources or environment.

(viii) Joint resolutions whose object is not listed in Article III, Section 2(A)(4)(b)(introductory paragraph) of the Constitution of Louisiana.

(ix) Resolutions suspending law whose object is not listed in Article III, Section 2(A)(4)(b)(introductory paragraph) of the Constitution of Louisiana nor subject to Article III, Section 2(A)(4)(b)(ii) of the Constitution of Louisiana.

(x) The resolution to approve the formula to fund the Minimum Foundation Program.

B. During any regular session convening in an odd-numbered year, no substitute bill nor amendment, including an amendment proposed pursuant to a conference committee report, shall be considered or adopted that:

(1) Would cause a matter intended to have the effect of law introduced in accordance with Article III, Section 2(A)(4)(b)(introductory paragraph) of the Constitution of Louisiana to be changed so that such matter should have been prefiled in accordance with provisions of Article III, Section 2(A)(4)(b)(i), thereby circumventing the limitations of such provisions.

(2) Would cause a matter intended to have the effect of law introduced in accordance with Article III, Section 2(A)(4)(b)(ii) of the Constitution of Louisiana to be changed so that such matter should have been prefiled in accordance with provisions of Article III, Section 2(A)(4)(b)(i), thereby circumventing the limitations of such provisions.

(3) Would introduce a new matter intended to have the effect of law into another matter, which new matter was not prefiled in accordance with the provisions of Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana, thereby circumventing the limitations of such provisions.

(4) Would introduce a new local or special matter intended to have the effect of law which is subject to Article III, Section 2(A)(4)(b)(ii) of the Constitution of Louisiana into another matter, which new matter was not introduced pursuant to Article III, Section 2(A)(4)(b)(ii) of the Constitution of Louisiana.

(5) Would change the lead author of a matter prefiled in accordance with the provisions of Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana, thereby circumventing the limitations of such provisions."

(SCR 121 of 2006 RS; HCR 14 of 2013 RS, eff. June 7, 2013)

B. ODD-YEAR REGULAR SESSIONS: WHAT CAN BE INTRODUCED?

Prefiled: unlimited "fiscal" and "local or special" legislation; five other "general" measures. All proposed constitutional amendments must be prefiled.

After prefiling ends: **five** "fiscal" or "local or special" bills, subject to La. Const. Art. 3, Sec. 2(A)(2) and Joint Rule 18. No "general" measures.

1. **“Fiscal” legislation** - “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.”

a. Joint Rule 18 - the 5-bill limit after prefiling does **not** count against general appropriation bill, judicial branch appropriation bill, legislative branch appropriation bill, capital outlay bill, omnibus bond authorization bill, appropriation bills supplementing the general appropriation act, bill appropriating funds from the Revenue Sharing Fund pursuant to Art. VII, Sec. 26, and bill establishing and reestablishing agency ancillary funds.

b. Louisiana Chemical Association v. State through Louisiana Department of Revenue, 217 So.3d 455 (La. App. 1 Cir. 2017), writ denied (La. 2017) - affirmed the constitutionality of a suspensive resolution adopted by the legislature suspending certain state sales tax exemptions. The adoption by the legislature of the suspensive resolution did not constitute the imposition of a tax or a repeal of law and so was not subject to a two-thirds vote requirement. The suspensive resolution was not a revenue raising measure nor was it unconstitutionally vague and ambiguous. The Court stated in part:

"The plaintiffs' argument that HCR 8 must comply with the requirements applicable to levying of a tax or repeal of a tax exemption, that is, two thirds vote under La. Const. art. VII, §2, stems from a conclusion that a suspension of a tax exemption is the same as a repeal of a tax exemption. Suspension is the act of temporarily delaying, interrupting, or terminating something. Black's Law Dictionary (10th ed. 2014). Repeal is the abrogation of an existing law by express legislative act. Black's Law Dictionary (10th ed. 2014). Also, we note that tax exemptions themselves are not listed in La. Const. art. VII, § 2, and it is a tax exemption that is being suspended.

The repeal of a law may be accomplished only by the Legislature passing a bill and the bill becoming law, after presentment to the Governor. This effects a permanent change in our law. La. Const. arts. III, " 15(A) and 17. The suspensive resolution found in HCR 8 does not resolve to enact, amend, or repeal any law. HCR 8 does not contain an enacting clause as otherwise required by our constitution for the enactment of law. La. Const. art. III, §14. The resolution is not a bill, which is the required vehicle for enactment of a law. La. Const. art. III, § 15.4.

In *BP Oil Co. v. Plaquemines Parish Gov't*, 93 1109 (La. 9/6/94), 651 So.2d 1322, the trial court recognized that the Legislature provided at various times for suspensions of some of the exemptions provided for in La. R.S. 47:305D of certain personal property from sale and use taxes, and provided that the exemptions were applicable to both state and local taxes. The trial court in that case, reasoning that the suspension of an exemption has the same effect as repealing the exemption during the relevant period, concluded that suspensions of exemptions must also be equally applied to local governments, school boards, and the state. However, the Louisiana Supreme Court found "that we need not decide in this case the meaning or the scope of any uniformity requirement for exemptions or exclusions in [La. Const. art. VI, §29(D), because the present case involves only the suspension of a law enacted by the Legislature." *BP Oil Co.*, 651 So.2d at 1337 (per curiam) (on rehearing).

The language of La. Const. Art. VII, §2 does not provide that the suspension of an exemption of an existing tax shall require the enactment of a law by two thirds of the elected members of each house of the legislature. A repeal of an existing tax would be a permanent change. A suspension (which is time limited) of an exemption is not the same thing as a permanent repeal.

Suspensive resolutions are special concurrent resolutions authorized by La. Const. Article III, §20 of the constitution to be given the force and effect of law. Suspensive resolutions suspend the operation of all or part of an existing law for a specified period of time. The suspension is temporary and does not result in a repeal or amendment of the law. A suspensive resolution cannot be used to suspend provisions of the constitution. 20 La. Civ. L. Treatise, Legis. Law & Proc. §2:2 Legislative instruments (2016 ed.)

The plaintiffs also assert that HCR 8 is revenue raising legislation and that pursuant to La. Const. art. III, §16, all bills for revenue raising must originate in the house. However, as we have previously stated, HCR 8 is not a bill. Plaintiffs cite Louisiana Federation of Teachers v. State, 2013 0120 (La. 5/7/13), 118 So.3d 1033, in support of their argument. In that case, the Louisiana Supreme Court considered a constitutional challenge to a Senate Concurrent Resolution that allegedly failed to comply with constitutional procedural limitations upon the Legislature, and found that it was necessary to examine both the form and the substance of the legislative measures at issue. In that case, the Senate Concurrent Resolution was found to be unconstitutional, as it was a new matter, intended to have the effect of law. The plaintiffs maintain that, like the Senate Concurrent Resolution in Louisiana Federation of Teachers, HCR 8 is also in substance a bill to raise revenue.

However, we find that the plaintiffs are essentially just repeating their same argument that additional procedures and formalities should be required for the adoption of regulations suspending tax exemptions. In Harrah's Bossier City Investment Co., LLC v. Bridges, 2009 1916 (La. 5/11/10), 41 So.3d 438, 446, the Louisiana Supreme Court noted that:

[A] "tax exemption is a provision that exempts from tax a transaction that would, in the absence of the exemption, otherwise be subject to tax. That is, there has been a statutory decision not to tax a certain transaction that is clearly within the ambit and authority of the taxing statute." Bruce J. Oreck, Louisiana Sales & Use Taxation, (2d ed.1996), ' 3.1. An exclusion, on the other hand, "relates to a transaction that is not taxable because it falls outside the scope of the statute giving rise to the tax, ab initio."... Id.

The levy of the initial tax, preceding the decision to grant an exemption, is the manner in which the Legislature raises revenue. Since the tax levy raises the revenues and since the granting of the exemption does not change the underlying tax levy, we find that suspending an exemption is not a revenue raising measure." (pages 460-463, footnotes omitted).

2. **Local/special legislation properly advertised and not otherwise prohibited by constitution** - “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.”

- a. State v. Sturgus, 437 So.2d 249 (La. 1983) - failure to advertise for 30 days prior to introduction invalidated local legislation.
- b. Polk v. Edwards, 626 So.2d 1128 (La. 1993) - compliance with advertising requirement does not, of itself, make law local or special, as such advertising may be made out of “an abundance of caution” by proponents of the legislation.
- c. Civil Service Commission of City of New Orleans v. Foti, 349 So.2d 305, 309 (La. 1977) - advertising not required if constitution specifically grants the legislature power to adopt such legislation on a particular subject, even though otherwise local or special in character (placement of offices and positions into city classified civil service authorized by constitution and no preintroduction notice required). But the constitutional grant of power must be sufficiently specific to avoid the requirement of preintroduction notice. City of New Orleans v. Treen, 431 So.2d 390 (La. 1983) (Art. 9, Sec. 1 was not sufficiently specific to authorize act replacing Audubon Park city commission with Audubon Park state agency and act was void for failure to publish preintroduction notice); City of Bogalusa v. Washington Parish Sales/Use Tax Centralization Commission, 658 So.2d 1336 (La. App. 1 Cir. 1995) (failure to publish notice of local bill invalidated bill; constitutional provision requiring implementation of central taxing scheme in all parishes by legislature was not sufficiently specific grant of power to avoid notice requirement of local law providing for weighted voting in one parish’s central collection commission.)

3. **Five general non-fiscal measures which must be prefiled** - Art. 3, Sec. 2(A)(2) -

"(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 © 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.

© 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."

4. Other considerations:

- a. Unlimited number of “fiscal” and local/special legislation may be prefiled, but thereafter 5-bill limitation total applies (La. Const. Art. III, Sec. 2(A)(2)), subject to Joint Rule 18. The five general non-fiscal measures must be prefiled.
- b. **Proposed constitutional amendments** - regardless of subject matter, joint resolution proposing constitutional amendment **must** be prefiled at least 10 days before the beginning of the session, or 45 days if relates to any retirement system for public employees (La. Const. Art. XIII, Sec. 1). [**But note** that the House and Senate calculate the 10 day time period differently. The House calculates in hours and the Senate calculates in calendar days. See House and Senate Bulletins.]
- c. Suspensive resolutions - Sec. 2(A)(4) application to suspensive resolutions. (see also, La. Const. Art. III, Sec. 20, authorizing suspensive resolutions, and La. Const. Art. III, Sec. 12(B), providing that “The legislature shall not indirectly enact special or local laws by the partial repeal or suspension of a general law.”)
- d. Besides local or special laws, certain other specific legislation also subject to other advertising/notice requirements, including retirement systems (La. Const. Art. X, Sec. 29) and compensation of sheriffs (R.S. 33:1421(E)); school board members (R.S. 17:56(D)); registrars of voters (R.S. 18:55(B)); and assessors’ expense allowance, salary, or other emoluments (R.S. 47:1907.1 and 1908(D).)
- e. Prefiling and time periods. The House of Representatives will accept for prefiling local or special bills upon proof that notice has been published and that the required thirty day period after the last publication date will lapse prior to the last day for introduction of bills. Such prefiled bills may then be introduced through the last day of introduction. The Senate does not extend the time period for introduction of local or special prefiled bills beyond the first day of the session, and requires the thirty day period to lapse prior to the first day for introduction of bills.
- f. "Special laws" and advertising requirements. Given that a “special law” may not involve geographic restrictions, a potentially problematic issue for its proper advertising is determining “the locality where the matter to be affected is situated”. The issue is more than academic, as failure to properly advertise may subject the legislation to a claim of invalidity.

g. Bill request deadlines:

(1) 72 and 48 hours prior to prefiling deadline:

House Rule 7.6(A)(3) - "A request for legislation which is to be prefiled must be received by House Legislative Services staff not later than **seventy-two hours** prior to the prefiling deadline applicable to the instrument being requested."

Senate Rule 9.1(C) - "A request for legislation that is to be prefiled must be received by Senate Legislative Services staff not later than **forty-eight hours** prior to the prefiling deadline applicable to the instrument being requested."

(2) Last day for introduction:

House Rule 7.6(A)(3) - "During a regular session, a request for legislation which is to be introduced on the last day for introduction of matters having the effect of law shall be received by House Legislative Services staff not later than **seventy-two hours** prior to the deadline for introduction

Senate Rule 7.6 (K) - During a regular session, a request for legislation that is to be introduced on the last day for introduction of matters having the effect of law shall be received by Senate Legislative Services staff not later than 6:00 p.m. on the day prior to the last day for introduction."

(3) Prefiling of retirement legislation - see supra - see also present rules:

House Rule 7.2. Prefiling - "A. At any time between regular sessions of the legislature, but not later than five in the evening of the forty-fifth calendar day prior to the first day of a regular session for bills and joint resolutions relative to retirement, members of the House may prefile with the Clerk legislative instruments, including bills, joint resolutions, and simple and concurrent resolutions, which are proposed for introduction at either of the next two regular sessions."; and

Senate Rule 9.1(A) - "At any time between regular sessions, but no later than ten days before the beginning of a regular session for joint resolutions proposing a constitutional amendment, or no later than five o'clock in the evening of the forty-fifth calendar day prior to the first day of a regular session for bills relative to retirement, or no later than five o'clock in the evening of the tenth calendar day prior to the first day of a regular session for all other bills, senators may prefile with the Secretary legislative instruments that are proposed for introduction at the next session."

C. ODD-YEAR REGULAR SESSIONS: POTENTIAL PROCEDURAL QUESTIONS

1. La. Const. Art. III, §7(A) - “Each house.....shall determine its rules of procedure, not inconsistent with the provisions of this constitution”.
 - a. Brinkhaus, et al. v. Senate of the State of Louisiana, et al, 655 So.2d 394 (La. App. 1 Cir. 1995) - under separation of powers, procedural ruling of the President of the Senate on introduction of legislation not justiciable. See also, Op. Atty. Gen. No. 95-163, May 12, 1995 - Attorney General must decline to issue an opinion on whether a particular bill may be introduced during legislative session, as such a determination would violate separation of powers.

2. Rulings by Presiding Officers. Potential rulings by presiding officers for purposes of introduction in odd-year sessions include:
 - a. Is measure a “fiscal” measure, a non-fiscal “general” measure, or a “local or special” measure?
 - b. If a non-fiscal “general” measure, was it prefiled as one of 5?
 - c. If a “local or special” bill or other bill requiring advertisement, was it properly advertised, or is advertising not required?
 - d. If a “local or special” measure, is it otherwise prohibited by Art. III, Sec. 12?
 - e. Is a bill a “revenue raising” bill for purposes of compliance with the origination clause?
 - f. Whether proposed amendments are "germane" to the bill as introduced.

3. Withdrawal of prefiled non-fiscal "general" measures. (The writer believes that, during the pre-filing period, withdrawal of a prefiled "general" bill for the purpose of substituting another "general" prefiled measure is acceptable, provided the legislator has no more than 5 "general" prefiled measures at any one time, and that at the end of the pre-filing period the legislator has no more than 5 "general" measures awaiting introduction.)

a. Rules of the Legislature:

HOUSE RULE 7.2 - Rule 7.2. Prefiling

" C. The Clerk shall retain the original and such number of copies of the prefiled instrument as are necessary for introduction when the session convenes, but shall transmit exact copies thereof to the committee of reference. A prefiled instrument may be withdrawn by its author at any time prior to introduction upon written request by the author to the Clerk, who shall reclaim such instrument from the committee of reference. Such withdrawal shall be entered in the Interim Calendar."

F. A request for legislation which is to be prefiled must be received by House Legislative Services staff not later than forty-eight hours prior to the prefiling deadline applicable to the instrument being requested."

SENATE RULE 9.5 - "Rule 9.5. Authority of author to withdraw

"A. The Secretary shall retain the original and requisite number of copies of the prefiled instrument necessary for introduction when the session convenes. He shall transmit copies thereof to the committee of reference.

B. The author of a prefiled instrument may withdraw it at any time prior to introduction by written request to the Secretary. In such case, the Secretary shall reclaim the instrument from the committee and enter its withdrawal on the Joint Legislative Website.

b. MASON'S MANUAL OF LEGISLATIVE PROCEDURE (2010 ed.), pp. 501:

"Sec. 726. Withdrawal of Bills

1. A bill may be withdrawn prior to introduction, which consists of giving it a number and reading it by title. A bill may not be withdrawn, after introduction, in the absence of a special rule, without the consent of the body. Many legislative bodies have provided by rule that a bill may be withdrawn without consent before decision or amendment. Under such a rule a bill may be withdrawn after a motion is made concerning it, or after an amendment is proposed, but before the adoption of either. As long as no rule is violated, a bill may be withdrawn, with the consent of the body, at any time prior to passage.
2. When a bill is withdrawn, the situation is as though the bill had never been before the house, and the same bill or a similar bill may be again introduced."

4. Prefiling of local or special measures. Since prefiling is distinct from introduction, can a local/special measure be prefiled although the required 30-day advertising period has not yet run, as long as such time period has run prior to introduction? Art. III, Sec. 13 states that “The last day of publication shall be at least thirty days prior to *introduction* of the bill.” (emphasis added).

5. Conversion from local to general measure. Can a measure validly introduced as a “local or special” measure thereafter be converted into a general measure and enacted? (The writer believes the answer is “no”, as the constitution states that consideration of a non-fiscal local or special measure is authorized if its “object is to *enact* a local or special law”, and such language should be read together with the language limiting consideration of non-fiscal general matters in an odd-year session. Joint Rule 20 further appears to prohibit such action.)

D. OVERVIEW - “GENERAL”, “LOCAL”, AND “SPECIAL” LAWS

1. General, local and special not defined. Sections 12 and 13 in Article 3 of the constitution (See pages 3-5, supra) do not define what constitutes a "local" or "special" law. La. Const. Art. 6, concerning Local Governments, does define "general law" in Section 44(5) but this definition is only illustrative for purposes of Art. 3, Sections 12 and 13. *Polk v. Edwards*, 626 So.2d 1128,1134 (La. 1993), at footnote 5. See also, La. Const. Art. 6, Section 3 -

"§3. Classification

Section 3. The legislature may classify parishes or municipalities according to population or on any other reasonable basis related to the purpose of the classification. Legislation may be limited in its effect to any of such class or classes."

2. Commentary on analysis. "The result of these provisions [Article 3, Sections 12 and 13] is a complex analysis under which any statutory classification must first meet the requirements of the equal protection clause. If those are met, the inquiry must then focus on whether the statute is a local or special law. If it is either, it is prohibited if it is the type of law mentioned in section 12. If it is not, the procedural requirements of section 13 must be met."

.....

Courts have been less than clear in defining local and special laws. Often the terms are used as though they were one concept. However, the constitution does make a distinction between the two. Local laws do not apply uniformly throughout the state, with the exceptions based on geography or location. Special laws do not apply uniformly, with the exceptions based on some other basis." Lee Hargrave, The Louisiana State Constitution: A Reference Guide (Greenwood Press, 1991) (pages 52-53).

3. Prohibitions not intended to restrict police power. The Art. 3, Sec. 12 prohibitions are “not intended to restrict the legislature’s ability to adopt legislation under its police power for the promotion of the health, safety, welfare and morals of the citizens of the state.” Instead, such prohibitions are intended “to reflect a policy decision that legislative resources and attention should be concentrated upon matters of general interest, and that purely local matters should be left to local governing authorities.” *Morial, et. al v. Smith &Wesson Corp.*, 785 So.2d 1 (La. 2001), rehearing denied, cert. denied, 122 S.Ct. 346, 534 U.S. 951, 151 L.Ed.2d 262.

4. Kimball v. Allstate Insurance Company, 712 So.2d 46 (La. 1998) - Act 598 of 1995, adding R.S. 13:5105©) concerning jury trials involving the city of Baton Rouge and Parish of East Baton Rouge, is an unconstitutional special law.
- a. Is the law, in fact, local or special? Citing commentators and jurisprudence, the court states that opinions have tended to blur the lines between a local law and a special law, yet the terms are actually quite distinctive. A statute is considered to be local "if it operates only in a particular locality or localities without the possibility of extending its coverage to other areas should the requisite criteria exist or come to exist there. Thus, a law which operates over the whole territory of the state instead of just a particular locality is clearly general, and not local."
 - b. "When the operation of a law is limited to certain parishes, it is immediately suspect as a local law...However, a law is not local, even though its enforcement may be restricted to a particular locality or localities, where the conditions under which it operates simply do not prevail in other localities." . The court cited *State v. Labauve*, 359 So.2d 181, 182 (La. 1978) for the statement that a "law may be a general law even though limited to one locality if it is general in its terms and its coverage can extend to other areas should the requisite criteria exist there as well or if its operation is limited to a locality through the effect of a reasonable classification such as population, size or physical characteristics and not solely through the specific designation of a certain parish or parishes."
 - c. A "law whose application and immediate effect is restricted to a particular locality is not considered local where persons throughout the state are affected by it or it operates on a subject in which the people at large are interested."
 - d. Special laws. "Generally speaking, a special law is one which operates upon and affects only a fraction of the persons or a portion of the property encompassed by a classification, granting privileges to some persons while denying them to others."
 - e. "In sum, a law will be considered local or special, and therefore subject to the requirements of La. Const. Art. III §§12 and 13, where its restrictions can affect only a portion of the citizens (special) or a fraction of the property (local) embraced within the created classification...and where there is no reasonable basis for the creation of the classification or substantial difference between the class created and the subjects justifying the exclusion."
 - f. General laws. "In contradistinction to a local or special law, a general law is one which operates equally and uniformly upon all persons brought within the relations and circumstances for which it provides or operates equally upon all of a designated class which has been founded upon a reasonable classification."

- g. R.S. 13:5105(C) is not a local law as its geographic application is not limited to any particular locality in the state. It applies in every parish in which a plaintiff files suit against either the city of Baton Rouge or the parish of East Baton Rouge. Not restricted to suits filed in that location only. Although the subsection sets the city-parish apart from other political subdivisions for unique treatment, this designation of a locality in its role as a party to a lawsuit does not render the law applicable only in a particular locality, the essence of a local law.
- h. But, R.S. 13:5105(C) IS a prohibited special law. It singles out the city-parish, to the exclusion of all other political subdivisions, for special treatment "without any suggested or apparent justification for the disparate treatment, despite the fact that all political subdivisions possess the requisite characteristics of the class. It is not a general law because its privileges, and concomitant implicit restrictions, affect only a portion of the persons, here political subdivisions, which fall within the created classification."
- i. As a special law, it is prohibited under the provisions of La. Const. Art. III, §12(A)(3), prohibiting special laws concerning any civil actions, as it concerns and affects not only an individual lawsuit, "but, more egregiously, any and all lawsuits in which the City of Baton Rouge of the Parish of East Baton Rouge is made a defendant."
- j. R.S. 13:5105(D), enacted by Act No. 63 of 1996, authorizes a political subdivision, by general ordinance or resolution, to waive the prohibition against jury trial. The provision does not violate La. Const. Art. XII, §10©, concerning suits against the state. Reviewing jurisprudence and legislative history concerning constitutional provisions regarding suits against the state, the court concluded that the "procedure" required to be set forth in legislative authorizations of suits was limited to issues of venue, citation, service of process and prescription. There was no intent under prior constitutional language to require that trials against political subdivisions be conducted in the same manner, be it by jury or by judge. The article does not prohibit the legislature from allowing political subdivisions to make the decision in suits against it as to whether or not to have a jury trial. The article does not require a single procedure applicable to suits against political subdivisions. "We see no intent in the entire history of Art. XII, §10© which would support any inference that the legislature is required to provide for the same mode of trial, be it by judge or by jury, in all suits against political subdivisions."
- k. R.S. 13:5105(D) also does not violate La. Const. Art. III, §1(A) as an improper delegation of legislative power, and Art. III, §12(B) which provides that the legislature shall not indirectly enact special or local laws by the partial repeal or suspension of a general law. Subsection (D) is not a local or general law and excludes no political subdivision from the opportunity to waive the prohibition against jury trial.

5. Louisiana Paddlewheels v. Riverboat Gaming Commission, 646 So.2d 885 (La. 1994) – Two 1993 acts providing for riverboat gaming local option elections in Calcasieu and Ouachita parishes were local or special laws and violated Sec. 12(A)(1) prohibition on enactment of local or special laws concerning the holding and conducting of elections.
- a. Initial question is whether operation limited solely by designation of certain parishes. The court reviewed the challenged laws and determined they were limited in their application to Calcasieu and Ouachita Parishes. "The initial question in determining whether a law is 'local or special' is whether its operation is limited solely by its designation of certain parishes." (page 889, citing *State v. LaBauve*, 359 So.2d 181, 183 (La. 1978)).
 - b. Directed at specific localities is not conclusive of status. But noting that a law is "not necessarily local or special simply because it is directed at specific localities," (page 889), the court then determined that, as opposed to general laws concerning gaming adopted for the benefit of the entire state, the challenged laws afforded special treatment to and advanced only Calcasieu and Ouachita interests by providing greater rights to voters in those parishes to control riverboat gaming through referendum elections (in the absence of which riverboat gaming was prohibited) than that provided to voters in the rest of the state by other laws.
 - c. Local or special if no reasonable basis for creation of classifications. Since riverboat gaming affects a number of parishes and municipalities throughout the state, there is no reasonable basis for distinguishing between voters in those parishes and voters in the rest of the state. The laws were therefore local or special, as they "create a classification with a significant difference between the class created and the class excluded, and there is no reasonable basis for designation of the favored class for separate treatment." (page 890).
 - d. But only certain local or special laws prohibited by constitution. This was not the end of the analysis, as the court noted that "the determination that a law is local or special does not end the inquiry because the constitution does not prohibit all local or special laws, but only those that concern certain enumerated topics." (page 890).
 - e. Look to Section 12 prohibitions. Since the laws authorized and provided procedures for referendum elections, they fell within the Section 12 prohibition on local laws addressing the holding and conducting of elections and were thus void.
 - f. See also, *Caddo Parish School Board, et al v. Board of Elections, et al*, 384 So.2d 448 (La. 1980)(state statute imposing requirements on Caddo Parish School Board was local law and violated prohibition on local laws regulating management of schools and holding and conducting of elections); *Nomey v. State*, 315 So.2d 709 (La.

1975)(statute authorizing local option elections limited to 12 enumerated parishes violated equal protection, due process and prohibition on local or special laws regulating elections, trade and defining crimes).

6. Polk v. Edwards, 626 So.2d 1128 (La. 1993) – The Casino Act, the Riverboat Gaming Act and the Cruiseship Gaming Act, authorizing the licensing of gaming operations in Louisiana and the conducting of a casino in Orleans Parish, were GENERAL and not local or special laws.
 - a. Advertisement not conclusive of status. Citing prior jurisprudence, the fact that preintroduction notice had been published advertising the Casino Act was not conclusive of its status as a local law, the court noting that an "abundance of caution is what ordinarily prompts the proponents of legislation to take such action." Compliance with the Sec. 13 requirement of notice for the enactment of local or special laws, does not, of itself, make the enacted statutes local or special laws. (page 1133, citing Knapp v. Jefferson-Plaquemines Drainage District, 224 La. 105, 68 so.2d 774 (1953)).
 - b. Limitation to particular localities or parties not conclusive of status. The limitation to particular localities or parties of the immediate application of the gaming acts was also not conclusive of their status. "Nevertheless, a statute is not a local or special law within the meaning of the constitutional provision if persons throughout the state are affected, or it operates on a subject in which the people at large are interested, even though its application and immediate effect is restricted to a particular locality." (page 1134).
 - c. Distinction between general and local or special laws. "The real distinction between public or general laws and local or special laws is that the former affect the community as a whole, whether throughout the State or one of its subdivisions; and the latter affect private persons, private property, private or local interests." (page 1135, quoting State v. Dalon, 35 La. Ann. 1141 (1883)).
 - d. Look to the underlying question. One must look beyond the immediate objective of the challenged law to the underlying question of whether the law pertains "to matters of significant interest to the entire state and affect people throughout the state, even if some only indirectly." (pages 1135-1136).
 - e. Adoption for benefit of entire state and address matters of state-wide concern; regulation pursuant to state's police power. The gaming laws were general laws because "First, the acts were adopted to benefit the entire state rather than in the interest alone of the Parish of Orleans or particular private individuals. Second, gambling constitutes a matter of legitimate state-wide concern and is rightfully

amenable to regulation by the legislature pursuant to the state's police power. Unlike "local" or "special" laws, whose effects are designed to create an advantage for or advancement of private individuals, private property, private or local interests, or a single subdivision of the state, the gaming laws constitute laws of a state-wide concern and were adopted for the benefit of the entire state. (pages 1136-1137) Laws adopted pursuant to the state's police power, generally described as "the inherent power of the state to govern persons and things for the promotion of general security, health, morals, and welfare" are general, not local or special. *Polk*, at pages 1136 and 1142.

- f. "Local" does not mean geographical application. "Local" does not "pertain to geographical application but rather concerns whether the interests of private persons or private property has been advanced rather than the general interest of the state" *Polk* at 1136, citing *Kotch v. Board of River Port Pilot Commissioners for Port of New Orleans*, 25 So.2d 527 (La. 1946).
 - g. The single facility exception? As to the limitation of the casino to only one location in Orleans Parish, the court stated:
"While this Court has noted that a statute is local if it operates in a particular locality without the possibility of extending its coverage to other areas should the requisite criteria of its statutory classification exist in other areas, this principle is not operative in the situation where the legislature determines at the outset that a single facility of a certain sort within the state is in the state's best interest." (pages 1134-1135).
7. *Jurisich v. Hopson Marine Service*, 619 So.2d 1111 (La. App. 4th Cir. 1993) – act exempting oyster lessees from requirements of the public bid law was not a "special" law.
- a. Reasonable classification. There was a failure "to demonstrate how the Legislature's classification of oyster lessees was unreasonable or improper." (page 1114).
 - b. Special law affects only certain number to secure private advantage or advancement. As opposed to a general law, which operates equally and uniformly upon all persons or those of a designated class founded upon a reasonable and proper classification, a "special law", said the Fourth Circuit, "affects only a certain number of persons within a class and not all persons possessing the characteristics of the class; and it is directed to secure some private advantage or advancement for the benefit of private persons." (page 1114).

8. Bogalusa v. Washington Parish Sales /Use Tax Centralization Commission, 658 So.2d 1336 (La. App. 1 Cir. 1995) – subsection of statute mandating that the votes of a central tax collection commission for Washington parish only be counted by a weighted method based on the individual members’ proportional tax collections was a "local law" and void for failure to publish preintroduction notice required by Section 13.
 - a. Constitutional provision not applicable. La. Const. Art. 7, Section 3, mandating the legislature to implement by general or local law a central taxing scheme in all parishes not establishing one by July 1, 1992, is not applicable. Even if it were, it would not authorize the adoption of a local law without notice allowing the legislature to determine the weight of the votes to be given to the individual members of Washington Parish’s central collection commission.
 - b. No reasonable basis. "The weighted voting provision is aimed solely at Washington Parish’s tax collecting authority and is not based on any characteristic peculiar to Washington Parish. It affects only the people of Washington Parish and does not embrace a subject upon which the people at large are interested. We find no reasonable basis for the legislature’s decision to determine by legislation the weight to be accorded the votes of the members of the central tax collection commission of Washington Parish. Because the operation of La. R.S. 33:2844.1D is limited solely by its designation of Washington Parish and not because of a reasonable classification, it is a local law." (page 1341). The unconstitutional subsection was severable from the remainder of the statute.

9. Livingston Downs Racing Association, Inc. v. State of Louisiana, et al, 705 So.2d 149 (La. 1997), rehearing denied - language in R.S. 42:211(5), concerning offtrack betting and defining "pari-mutual facility" as "any pari-mutuel race track conducting race meetings during the 1986-87 racing season and licensed prior to the effective date of this Part" is not a local or special law, does not violate equal protection and is not selectively enforced.
 - a. Enacted in furtherance of a general and public purpose. Evidence, including committee testimony of bill author, shows that in addition to benefits to surrounding localities, the state as a whole benefits due to the additional revenues and employment opportunities. Cites Polk, Paddlewheels, and Lakeside Imports, Inc. v. State, 639 So.2d 253 (La. 1994).

10. Horseshoe Entertainment v. Bossier Parish Police Jury, 714 So.2d 920 (La. App. 2 Cir. 1998) - involved boarding fees charged by local governing authorities for each passenger boarding a riverboat. A 1995 amendment to R.S. 4:552 (now R.S. 27:93), authorizing a \$.50 increase of the boarding fee in Caddo and Bossier parishes, with the monies dedicated to the road funds of the parishes, was not a prohibited local or special law.
 - a. R.S. 4:552 is of statewide concern. Citing Polk v. Edwards that local or special laws affect private persons, private property, private or local interests, the court rejected the local or special argument, stating "Gambling is a statewide concern, as is the condition of our roads and our schools, regardless of its specific locale. Further, we cannot look upon a single amendment to a statute and determine whether that amendment is local or special. Such a piecemeal approach would undermine our legislative process. The meaning and intent of a statutory provision is to be determined by a consideration of the statute in its entirety and all other laws on the same subject matter and a construction should be placed on the provision in question which is consistent with the express terms of the statute and the obvious intent of the legislature enacting it." (pages 922-923). Read in its entirety, R.S. 4:552 directs the distribution of the boarding fee in parishes where riverboats are licensed and this "is a statewide concern as there are several boats authorized throughout the state." (page 923).
11. State v. Brazley, 773 So.2d 718 (La. 2000) - phrase "In any parish with a population in excess of four hundred ninety thousand, as established by the 1990 U.S. Decennial Census" in legislation amending Code of Criminal Procedure made legislation local, and subject to Art. III, Sec. 12(A)(3) prohibition on the passage of a local law regulating the practice or jurisdiction of any court. Reference to a specific census fixed population figures and no possibility of extending coverage to other localities or areas.

(See also, R.S. 1:11 - "Except as otherwise provided, the number of inhabitants of a political subdivision is that shown by the latest regular or special federal census."; La. Const. Art. 6, Sec. 3 - "The legislature may classify parishes or municipalities according to population or on any other reasonable basis related to the purpose of the classification. Legislation may be limited in its effect to any of such class or classes. ")
12. City of Donaldsonville v. State, et al., 764 So.2d 339 (La. App. 1 Cir. 2000), writ denied. - statute authorizing each parish to conduct elections to prohibit or allow video draw poker devices not a local or special law. Statute affected the state as a whole, operated on a subject of statewide concern, and was adopted pursuant to the state's police power to regulate gaming.
13. State v. Dilosa, 848 So.2d 546 (La. 2003) - local grand jury procedures expressly limited to Orleans Parish did not concern a subject in which the people at large were interested, and violated La. Const. Art. 3, Sec. 12(A)(3).

14. In Re Trestman, 795 So.2d 398 (La. App. 4th Cir. 2001), writ denied, 803 So.2d 34 (La. 2001) - act authorizing family members of murder victims after the passage of 10 years to discover certain governmental agency records relevant to the murder investigation was not a special law since its effects extended to every family statewide.
15. World Trade Center Taxing District v. All Taxpayers, et al, 894 So.2d 1195 (La. App. 4th Cir. 2005), affirmed but criticized, 908 So.2d 623 (La. 2005) - Fourth Circuit concluded that statute exempting one facility to be operated as a hotel from paying existing sales taxes, and authorizing developer to use taxes imposed by WTC TIF law for private purposes, was unconstitutional as (1) a "special law" that violated the La. Const. Art. 3, Sec. 12(A)(7) prohibition against granting to a private entity any special or exclusive right, privilege, or immunity, and also (2) creating a prohibited exemption from the hotel occupancy taxes where certain proceeds of the tax secure outstanding bonds. The Louisiana Supreme Court affirmed, finding that the law was a constitutionally prohibited exemption (not suspension) from taxes securing bonds, and pretermitted discussion of remaining constitutional issues.
16. Carter v. Jones, 967 So.2d 615 (La. App. 3 Cir. 2007), writ denied, 973 So.2d 756 (La. 2008) - Third Circuit Court of Appeal concluded that a statute allowing a particular judicial district to assign all juvenile and family matters to specific divisions in the district was not an invalid local or special law. La. R.S. 13:587, allowing specific judicial district to assign all juvenile and family matters to specific divisions in the district, did not unlawfully delegate exclusive lawmaking authority to establish courts of limited jurisdiction, nor was it unconstitutional as a special law.

La. R.S. 13:587:

"§587. Juvenile and Domestic Relations Division

A. The judges of the Fourteenth Judicial District Court may, by rule adopted by a majority vote of the judges sitting en banc, designate and assign to one or more divisions of the court any or all types of juvenile matters of which the court has jurisdiction and any or all types of domestic relations matters of which the court has jurisdiction.

B. The authority conferred by this Section shall not prohibit the assignment by a majority vote of the court en banc of other matters to a designated division to which it assigns juvenile or domestic relations matters, nor the assignment of any juvenile or domestic relation matters to any other division of the court."

from opinion:

"Here, as in both Piper and Guste, the determinative question is whether the allocation of certain types of civil cases to less than all of the divisions within a district court is sufficient to create a court of "limited" or "specialized" jurisdiction. The lower court saw fit to answer this question in the negative,

and in light of relevant case law, this court agrees. In enacting Local Rule 23 pursuant to La.R.S. 13:587, the District Court did not create a court of limited jurisdiction, in that no court was created at all. The District Court was already in place, and it remains in place. Further, as in *Guste*, neither does the instant case involve the deprivation of any sitting judge's authority to hear all civil matters, including family and juvenile cases, under art. 5, § 16 of the Louisiana Constitution. Local Rule 23 merely authorizes the allotment of cases to particular divisions within the District Court, which does not violate any provision of the Louisiana Constitution. Accordingly, we reject the validity of this assignment of error."[skip]

"Finally, Judge Carter asserts that the lower court committed legal error in finding that La.R.S. 13:587 does not violate the art. 3, § 12(A) prohibition against local and special laws. In particular, Judge Carter argues that La.R.S. 13:587 is a special law. We find this assertion without merit.

Louisiana Constitution Article 3, § 12(A) provides: "Except as otherwise provided in this constitution, the legislature shall not pass a local or special law: ... [c]oncerning any civil or criminal actions, including ... regulating the practice or jurisdiction of any court." "[A] statute is special if it affects only a certain number of persons within a class and not all persons possessing the characteristics of the class. In essence, a special law is one directed to secure some private advantage or advancement for the benefit of private persons." *Teachers' Ret. Sys. of Louisiana v. Vial*, 317 So.2d 179, 183 (La.1975). The supreme court delved further into the rationale behind the constitutional prohibition in *Polk v. Edwards*, 626 So.2d 1128, 1135 (La.1993) (citations omitted):

This Court has long recognized that the constitutional prohibition on designated types of local or special laws was not intended to restrict the use of legislative power to further the state's interest. Rather, the prohibition was intended to prevent abuse of legislative power on behalf of special interests and to prohibit the exemption of an individual or private corporation from the operation of a general law.

Viewing the facts of the case at bar through the lens of constitutional and jurisprudential authority, this court finds no justification for invalidating La.R.S. 13:587 as a special law. Judge Carter contends that the "class" affected unequally by the statute is that comprised of the judicial districts of the state, yet La.R.S. 13:587 does not speak to the judicial districts of the state as a whole, but instead constrains its scope to the Fourteenth Judicial District Court. As such, the circumstances of the instant case reflect those of *State v. Dalon*, 35 La. Ann. 1141 (La.1883), the relevance of which has not been diminished in its more than a century of existence. There, in upholding the

validity of a statute organizing the criminal district court for Orleans Parish, the supreme court held: "The argument that a law which relates solely to the machinery of a court of justice having jurisdiction over the territory of one parish only, is a local or special law, because it does not operate throughout the State and all the parishes thereof, is perfectly preposterous...."Id. at 1142. The only classification implicated by La.R.S. 13:587 is that of the judges of the District Court, and the statute affects the members of that class equally: "The judges of the Fourteenth Judicial District Court may...." Further, in attempting to square our application of La. Const. art. 3, § 12(A) with the intent of that provision, this court finds the instant case devoid of any "private corporation" or "special interest" that stands to gain an advantage from the enactment of La. R.S. 13:587. On the contrary, the Fourteenth Judicial District Court, as a subdivision of the state's judicial branch, is a public entity, and its efficient administration of juvenile and family matters stands as an interest of decidedly general applicability. Thus, this court finds this assignment of error to be without merit.

Notably, although Judge Carter does not press the issue now, in constraining the scope of La.R.S. 13:587 to a single judicial district, neither has the legislature enacted a constitutionally impermissible local law: "[A] law whose application and immediate effect is restricted to a particular locality is not considered local where persons throughout the state are affected by it or it operates on a subject in which the people at large are interested." *Kimball v. Allstate Ins. Co.*, 97-2885, 97-2956, p. 4 (La.4/14/98), 712 So.2d 46, 51. As Judge Carter concedes in his original brief, La.R.S. 13:587 is not local law, in that it applies equally to all persons who are litigants or parties to a proceeding before the Fourteenth Judicial District Court. Thus, there is no basis under La. Const. art. 3, § 12(A) to invalidate La.R.S. 13:587 as unconstitutional."

(La. Const. Art. III, §12(A)(3) prohibits the legislature from passing a local or special law "Concerning any civil or criminal actions, including changing the venue in civil or criminal cases, or regulating the practice or jurisdiction of any court.")

17. Deer Enterprises, LLC v. Parish Council of Washington Parish, 56 So.3d 936 (La. 2011) - Classification by population not local or special law. Louisiana Supreme Court upheld an amendment to La. R.S. 26:583 exempting from certain of its provisions "any parish with a population between forty thousand and forty-five thousand, based upon the latest federal decennial census." The plaintiff had claimed the amendment created a prohibited local or special law in regulation of trade, and the trial court agreed. Discussing *Kimball*, *Brazley*, and other cases, the Supreme Court reversed the trial court and concluded the amendment created neither a "local" nor "special" law.

The amendment was not a "local" law because its coverage, consistent with earlier decisions, could extend to other localities or areas. The Court stated:

"Initially, we note the operation of the challenged amendment presently is limited to five parishes by virtue of their populations. It is therefore immediately suspect as a local law. However, § 583(C)(2) 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 the five localities presently affected, including defendant Washington Parish, may expand or contract beyond the amendment's reach. Because the triggering criterion is a relatively small range of 5,000 residents that is tied to the latest decennial census, and the 2010 census is nearing completion, a shift in the amendment's coverage in the near future appears probable. Statistics from the 2000 census show 35 parishes in Louisiana had fewer than 40,000 residents. If Washington Parish has added 1,074 residents over the past 10 years, it has grown past the amendment's purview; if Natchitoches Parish has gained 910 residents, it will fall within the amendment's ambit. We refer to these possibilities, regardless of their likelihood, only to illustrate the potentially broad sweep of § 583(C)(2). The elastic application of the amendment, and the fluid nature of population dynamics, militate against a finding that § 583(C)(2) is prohibited as a local law.

Flexible application may not automatically render a statute general, but local laws typically contain a fixed classification. This principle is supported by legal commentators and demonstrated by our jurisprudence. Population classification statutes "are usually upheld as general laws because the courts consider the population differential as a reasonable basis for the creation of a separate class." *Huntington Odom, General and Special Laws in Louisiana*, 16 La. L.Rev. 768, 773 (1956). "As long as the criteria for the population class do not prohibit subsequent entrance of other cities [or parishes] that reach the specified population, the legislation does not lose its character as a 'general' statute." *Johnson*, 36 La. L.Rev. at 551-552. The principle is illustrated by our decision in *Brazley*, in which we affirmed a trial court's judgment that Articles 340(E) and 342 of the Louisiana Code of Criminal Procedure were unconstitutional. Those provisions were based on population, but the figures used were fixed, not flexible.

We recognize, of course, that a population classification may be used to mask an intent to target one locality. However, we do not concern ourselves with this legislative subterfuge when the purportedly local statute's effects are general. The trial court in this matter found from the legislative history of § 583(C)(2) that it was "intentionally meant to be a local law for ... west Webster Parish," and therefore determined it was a local law despite the fact that it also applies to Washington Parish. In so finding, the trial court apparently

dismissed the law's effects on other localities as incidental or unintended. However, a law that has general effects is not necessarily made local because it was drafted with one locality in mind. The fact that Washington Parish is the defendant in this matter, seeking to avail itself of the amendment's exemption and preserve the wishes of Ward 3 to remain "dry," obviously implicates interests beyond the locality that was the statute's purported beneficiary. As we have explained, the amendment applies to five parishes presently but may extend its coverage in the future. Because the statute's operation has general effects, we need not inquire into its legislative history to ascertain any underlying intent.

Ultimately, the population classification contained in § 583(C)(2) persuades us that it is not prohibited as a local law. The five parishes presently affected do not otherwise share characteristics such as geographical location; they are in separate regions of the State, with no apparent commonality relevant to the law's effects other than their population and rural character. Because the statute connects population to the latest decennial census, it ensures the possibility that its coverage may change." (pages 942-943).

The Court further determined that neither was the amendment a prohibited "special" law, since it was not aimed at securing some private advantage or advancement for the benefit of private persons, granted no unconstitutional privileges, and affected parish residents generally and not business owners specifically. The court stated:

"Deer Enterprises argues ' 583(C)(2) contains elements of both local and special laws, apparently contending the special interests involved are the affected localities. But this argument conflates the very different aims of the constitutional prohibition. Local laws are prohibited because they benefit certain localities; special laws are prohibited because they benefit special interests. The two are not equivalent. Although we do not reject the possibility that a sort of hybrid local and special law might exist, § 583(C)(2) is not that legislative anomaly. Although it operates "only in a particular locality or localities," its effects are triggered by population shifts. Although it ostensibly confers a kind of privilege on portions of those localities, it does not benefit special interests. In short, it is not an unconstitutional abuse of legislative power."

The Court further rejected an equal protection argument, pointing out that the amendment classified parishes, not individuals, according to population and the protections under Article I of the Louisiana Constitution therefore did not apply (page 946).

18. Arshad v. City of Kenner, 95 So.3d 477 (La. 2012) - Action of political subdivision not "local or special law" for purposes of Art. III, Sec. 12 prohibitions. -

a. From West summary:

"Surviving spouse and son of arrestee who was allegedly subjected to unnecessary force and battery brought suit against city, police department, chief of police, several police officers, and city's liability insurers. Plaintiffs initially requested a jury trial, but shortly before trial they filed a motion to strike the jury. In response, city enacted a resolution waiving the statutory prohibition against jury trials in instant case, and city defendants and insurers filed a request for a jury trial. The District Court, Parish of Jefferson, granted city defendants' request for a jury trial. Plaintiffs filed application for supervisory writ. The Court of Appeal, Parish of Jefferson, reversed. Defendants filed applications for supervisory writs.

Holdings: The Supreme Court, Knoll, J., held that:

- (1) city resolution waiving prohibition against trial by jury in instant case did not fall under State Constitution's prohibition against certain special laws;
- (2) State Constitution's prohibition against certain local and special laws does not apply to political subdivisions, abrogating *Edwards v. Daugherty*, 729 So.2d 1112;
- (3) city resolution waiving city's right to a nonjury trial only in instant case was invalid, and thus neither city nor its liability insurers were entitled to a jury trial;
- (4) a political subdivision may only waive its statutory right to a nonjury trial through an ordinance or resolution waiving the right in all cases, not in a specific suit;
- (5) a political subdivision's insurer is not entitled to trial by jury where the political subdivision has not waived the prohibition against jury trials, and the insurer's liability is vicarious, not independent; and
- (6) in suits against a political subdivision and its insurer where the political subdivision has not waived the prohibition against jury trials, the insurer's liability is vicarious, not independent, and there are no other nongovernmental defendants, a bifurcated trial is not necessary, overruling *Jones v. City of Kenner*, 338 So.2d 606."

b. Case Quote re "local or special":

"Article III of the Louisiana Constitution prohibits the Legislature from passing a local or special law regarding certain enumerated subjects, including criminal and civil actions. La. Const. art. III, § 12(A)(3). Although the Constitution does not define "local" or "special," our jurisprudence has distinguished "local or special laws" from "general laws," which " 'operate equally and uniformly upon all persons brought within the relations and circumstances for which they provide or that operate equally upon all persons of a designated class founded upon a reasonable and proper classification.' " *Deer Enter., LLC v. Parish Council of Washington Parish*,

10–0671, p. 5 (La.1/19/11); 56 So.3d 936, 942 (quoting *Polk v. Edwards*, 626 So.2d 1128, 1134 (La.1993)). The prohibition on local and special laws “ ‘is intended to reflect a policy decision that legislative resources and attention should be concentrated upon matters of general interest, and that purely local matters should be left to local governing authorities.’ ” *Kimball v. Allstate Ins. Co.*, 97–2885, p. 4 (La.4/14/98); 712 So.2d 46, 50 (quoting H. Alston Johnson III, *Legislative Process*, 36 LA. L.REV. 549, 549 (1976)).

Accordingly, this Court has defined “special law” as “one that confers particular privileges, or imposes peculiar disabilities or burdensome conditions in the exercise of a common right upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law.” *Id.*, 97–2885 at 6; 712 So.2d at 52 (citations omitted). Generally, a special law “operates upon and affects only a fraction of the persons or a portion of the **7 property encompassed by a classification, granting privileges to some persons while denying them to others.” *Id.* (citing *Huntington Odom, General and Special Laws in Louisiana*, 16 LA. L.REV. 768, 770 (1956)). A law, however, will not be deemed special if there is “a substantial difference between the class created and the subjects excluded, and there is a reasonable basis for the distinction.” *Id.*

The Court of Appeal relied on *Edwards v. Daugherty*, 97–1532 (La.App. 3 Cir. 3/10/99); 729 So.2d 1112, writ denied, 99–1393 (La.9/17/99); 747 So.2d 1105, holding waiver of the prohibition against jury trials on a case-by-case basis would violate the prohibition against special laws. In *Edwards*, plaintiffs filed a tort action against numerous parties, including the Sheriff of Calcasieu Parish. The Sheriff filed a motion for a jury trial, attaching a resolution waiving his right to a nonjury trial “in the above-captioned matter.” *Id.*, 97–1532 at 3, 15; 729 So.2d at 1117, 1122. The Third Circuit held a waiver under La.Rev.Stat. § 13:5105(D) is ineffective unless the political subdivision “makes a blanket waiver against a jury trial in all suits, not merely a specific proceeding.” *Id.*, 97–1532 at 13; 729 So.2d at 1121 (emphasis in original). According to the court, to interpret the statute as permitting waiver on a case-by-case basis “would require [the court] to declare it a special law.” *Id.*, 97–1532 at 16; 729 So.2d at 1123.

The law would allow a political subdivision, an extension of the state, to select which civil action it desired to try by jury out of all civil cases filed against it by plaintiffs alleging similar or same causes, without any justification or reason. As such, it would violate Art. III, § 12(A)(3) of the Louisiana Constitution “which prohibits the legislature from passing a special law which affects any particular lawsuit.” *Id.*, 97–1532 at 16–17; 729 So.2d at 1123 (quoting *Kimball*, 97–2885, p. 8; 712 So.2d at 53).

We find this reasoning unpersuasive. Article III of the Louisiana Constitution pertains only to the powers and limitations of the Legislature; Article VI addresses local governments and contains no such prohibition on local or special laws. Further, Article III, § 12(A) explicitly states “the legislature shall not pass a local or special law” (emphasis added). Reading the prohibition on local and special laws to apply to political subdivisions as “extensions of the state,” is not appropriate, as the purpose of the rule is to keep the legislature focused on general matters, with local governments handling local matters. [emphasis added.]

Although our decision in *Kimball v. Allstate Insurance Co.*, 97–2885 (La.4/14/98); 712 So.2d 46, concerned a blanket waiver by a political subdivision rather than a waiver for a specific case, its reasoning concerning the application of Article III, § 12(A) is relevant to the present matter. In *Kimball*, the Court first examined a separate subsection of the statute, La.Rev.Stat. § 13:5105©, which enacted a blanket waiver on the prohibition against jury trials for the City of Baton Rouge and East Baton Rouge Parish. The Court held this portion of the statute constituted a special law because it singled out the City/Parish from all other political subdivisions for special treatment. *Id.*, 97–2885 at 7; 712 So.2d at 52. Further, the Court noted Article III, § 12(A) prohibits “the legislature from passing a local or special law which affects any particular lawsuit,” and La.Rev.Stat. § 13:5105© would affect not just an individual lawsuit, but all lawsuits involving the City/Parish.

The Court, however, held a similar waiver enacted by resolution of the Metropolitan Council of the City of Baton Rouge/Parish of East Baton Rouge was permissible under La.Rev.Stat. § 13:5105(D). We found La.Rev.Stat. § 13:5105(D) was not a local or special law, as “[i]t applies to every possible locality throughout the state as well as to every political subdivision.” *Id.*, 97–2885 at 20; 712 So.2d at 61. Our discussion in *Kimball*, regarding whether La.Rev.Stat. § 13:5105(D) was an unconstitutional delegation of legislative power under La. Const. art. XII, § 10©, is also instructive to the instant case. The Court determined La.Rev.Stat. § 13:5105(D) was not an improper delegation of power because [t]he ability of a private party, in a suit between private litigants, and of a political subdivision, in a suit against it, to elect whether or not to request a jury trial, is not an exercise of legislative power by these parties but rather results from an exercise of legislative power—the legislature's decision to allow these parties to make this type of tactical decision for themselves. *Id.*, 97–2885 at 19; 712 So.2d at 60 (emphasis in original).

There is a critical difference between the two waivers in *Kimball*: one was an act of the Legislature and the other an act by the local government. While the blanket waiver by the Legislature failed as a special law, a similar waiver by the City/Parish was constitutionally permissible. Accordingly, we reject the reasoning of the Edwards court suggesting a political subdivision enacting a waiver by resolution could be acting as an

extension of the Legislature. *Under Kimball*, when the Legislature grants authority broadly to all political subdivisions, and a political subdivision acts on this authority, it is not an act of the Legislature and does not implicate Article III, § 12(A). [emphasis added]

Thus, we conclude the Kenner Resolution, as an act by a political subdivision and not the Legislature, does not fall under the constitutional prohibition of special laws."

19. Louisiana High School Athletics Association, Inc. v. State, 107 So.3d 583 (La. 2013) - LHSAA statutes held unconstitutional -

a. "This matter is before us pursuant to this Court's appellate jurisdiction over cases in which a law has been declared unconstitutional by the district court. LA. CONST. art. V, §5(D). The district court granted in part the Louisiana High School Athletic Association, Inc.'s (LHSAA's) Motion for Summary Judgment, declaring La. R.S. 17:176(F), La. R.S. 17:176(G), and La. R.S. 17:236.3 (Title 17 statutes) are unconstitutional because they are prohibited special laws under La. Const. art. III, §12(A). The district court further denied in part the LHSAA's Motion for Summary Judgment to the extent the LHSAA requested a declaration it is not a "quasi public agency or body" as defined by La. R.S. 24:513(A)(1)(b)(v), and to the extent it requested a declaration La. R.S. 24:513(J)(4)(a) and (b) and La. R.S. 24:513(A)(1)(b)(v) (Title 24 statutes) are unconstitutional. For the reasons that follow, we affirm the district court's ruling insofar as it granted the LHSAA's Motion for Summary Judgment in part and found the Title 17 statutes are unconstitutional pursuant to La. Const. art. III, §12(A)(7). We reverse the district 2 court's ruling to the extent it denied the LHSAA's Motion for Summary Judgment and found the Title 24 statutes applicable and constitutional. We find La. R.S. 24:513(A) does not apply to the LHSAA because it is not a "quasi public body," as defined by the statute. We also find La. R.S. 24:513(J)(4)(a) and (b) are unconstitutional under the Equal Protection Clause." (Victory dissents and Weimer concurs)

b. The Title 17 Statutes Are Prohibited "Special Laws".

"Article III, Section 12 of the Louisiana Constitution prohibits the Legislature from passing a local or special law regarding certain enumerated subjects, including amending, renewing, extending, or explaining the charter of a private corporation. LA. CONST. art. III, § 12(A)(7). While the Constitution does not define "local or special law," in recent years this Court has made it clear that the terms are distinctive. *Arshad v. City of Kenner*, 11–1579, p. 6 (La.1/24/12), 95 So.3d 477, 482; *Deer Enter., LLC v. Parish Council of Washington Parish*, 10–0671, p. 4 (La.1/19/11), 56 So.3d 936, 941; *Kimball v. Allstate Ins. Co.*, 97–2885, p. 4 (La.4/14/98), 712 So.2d 46, 50. The terms "local" and "special" are used in contradistinction to the term "general."

Deer Enter., 10–0671 at 5, 56 So.3d at 942 (citing *Louisiana Paddlewheels v. Louisiana Riverboat Gaming Comn.*, 94–2015, p. 7 (La.11/30/94), 646 So.2d 885, 889). General laws are those that operate “equally and uniformly upon all persons brought within the relations and circumstances for which they provide or that operate equally upon all persons of a designated class founded upon a reasonable and proper classification.” *Arshad*, 11–1579 at 6, 95 So.3d at 482 (citing *Deer Enter.*, 10–0671 at 5, 56 So.3d at 942 (quoting *Polk*, 626 So.2d at 1134)); *Kimball*, 97–2885 at 4, 712 So.2d at 50 (citations omitted). The ultimate distinction between general laws and local or special laws is that the former affect the community as a whole, whether throughout the State or one of its subdivisions; and the latter affect private persons, private property, private or local interests. *Deer Enter.*, 10–0671 at 6, 56 So.3d at 942 (citing *Louisiana Paddlewheels*, 646 So.2d at 889 (citing *Polk*, 626 So.2d at 1135)).

Generally, this Court applies a two-prong approach to determine whether a statute is unconstitutional under La. Const. art. III, § 12. The Court first considers whether the statute is a prohibited local or special law. If it is, the Court must then determine whether the statute concerns a prohibited subject matter listed in Article III, Section 12. As in *Deer Enter.*, it is unclear in this case whether the district court found the Title 17 statutes are unconstitutional as special or local laws. The district court's judgment provides “plaintiff's Motion for Summary Judgment is granted in part declaring that La. R.S. 17:176(G), La. R.S. 17:176(F), and La. R.S. 17:263.3 are unconstitutional, as those statutes violate Article III, section 12 of the Louisiana Constitution.” The district court's written reasons for judgment do not offer any clarity, merely stating, “[t]he State's conduct that modified, amended, extended, and/or explained the provisions of this private entity's bylaws is a violation of Article 3 Section 12 of the Louisiana Constitution, which prohibits the Legislature from passing any law that amends, changes, or explains the charters of any private corporation.” Given the district court's ambiguity as to whether these statutes constitute local or special laws, we must analyze both possibilities.

When the operation of a law is limited to certain parishes, it is immediately suspect as a local law. *Deer Enter.*, 10–0671 at 6, 56 So.3d at 942 (citing *Kimball*, 712 So.2d at 51) (internal citations omitted). A statute is generally considered to be local if it operates only in a particular locality or localities without the possibility of extending its coverage to other areas should the requisite criteria exist or come to exist there. *Id.* (citing *Kimball*, 712 So.2d at 51); *Polk*, 626 So.2d at 1134–35 (citing *State v. Labauve*, 359 So.2d 181, 182 (La.1978)). Thus, a law is not local if its coverage can extend to other localities or areas. *Deer Enter.*, 10–0671 at 6, 56 So.3d at 942 (citing *State v. Brazley*, 00–923 (La.11/28/00), 773 So.2d 718). A law whose application and immediate effect is restricted to a particular locality is also not considered local where persons throughout the state are affected by it or it operates on a subject

in which the people at large are interested. Kimball, 97–2885 at 5, 712 So.2d at 51 (citing Livingston Downs Racing Ass'n Inc. v. State, 96–2890, p. 12 (La.12/2/97), 705 So.2d 149, 156; Louisiana Paddlewheels, 94–2015 at 7, 646 So.2d at 889; Polk, 626 So.2d at 1134).

It is evident from the plain language of the Title 17 statutes that their operation is not limited to a particular locality or localities within the state. Each statute concerns a specific eligibility rule of the LHSAA, thereby making it applicable solely to the LHSAA and its member schools throughout the state. To illustrate, La. R.S. 17:176(F) provides in pertinent part:

Notwithstanding any policy, rule, or regulation of the [LHSAA] to the contrary and effective for the 1997–1998 school year and thereafter, no student otherwise eligible to participate in an extracurricular interscholastic athletic activity shall be determined ineligible for or otherwise prohibited from participating in such activity during the student's first year of high school because the student attends a state-approved nonpublic high school that is located outside the attendance zone recognized for such student by the [LHSAA] provided that both of the following apply:

- (1) The high school that is attended by the student is operated by the same organization or federation of nonpublic schools that operated the state-approved nonpublic school that was attended by the student during the previous school year.
- (2) There is no state-approved nonpublic high school available for the student to attend within the recognized attendance zone that is operated by the same organization or federation of nonpublic schools.

Similarly, La. R.S. 17:176(G) states:

For purposes of regulation of interscholastic athletic activity by the [LHSAA], the word ‘family’ as used in the rules, regulations, or bylaws of the Association shall mean ‘immediate family,’ and shall be defined as consisting of a student's parents, spouse, children, and siblings, excluding step siblings. If the phrase “extended family” is used by the Association, it shall mean the immediate family together with collateral relatives. The provisions of this Subsection shall apply retroactively to August 1, 2009.

Finally, La. R.S. 17:236.3(A) provides in pertinent part:

Beginning with the 2010–2011 school year and continuing thereafter, a student in a home study program approved by [BESE] in accordance with R.S. 17:236.1 shall be eligible as follows to participate in

interscholastic athletic activities at a high school that is a member of the [LHSAA]....

Thus, the statutes apply in every parish in which an LHSAA member school is located. According to the LHSAA's 2010–2011 Official Handbook, the LHSAA is composed of 396 member schools across the State of Louisiana. People throughout the state are affected by these laws because they apply to all student-athletes attending LHSAA member schools. Since membership in the LHSAA is not mandatory, the number and geographic location of member schools can change as schools seek admission to or to withdraw from the LHSAA. It is possible for the Title 17 statutes to extend and apply to other areas of the state due to the ever-changing composition of the LHSAA. This Court has held, “[l]aws that operate over the whole territory of the state instead of just a particular locality [are] clearly general, and not local.” *Kimball*, 97–2885 at 4, 712 So.2d at 51 (internal citations omitted). We therefore conclude these statutes are not prohibited local laws.

A special law confers special privileges or imposes peculiar disabilities or burdensome conditions in the exercise of a common right upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law. *Deer Enter.*, 10–0671 at 9, 56 So.3d at 943–44 (citing *Kimball*, 97–2885 at 6, 712 So.2d at 52). A law is special if it “affects only a certain number of persons within a class and not all persons possessing the characteristics of the class.” *Deer Enter.*, 10–0671 at 9, 56 So.3d at 944 (citing *Teachers' Retirement System of Louisiana v. Vial*, 317 So.2d 179, 183 (La.1975)). Moreover, a special law is “directed to secure some private advantage or advancement for the benefit of private persons.” *Id.* (citing *Teachers' Retirement System*, 317 So.2d at 183). This Court has explained that the prohibition on special laws “represents an important safeguard against the abuse of legislative power on behalf of special interests.” *Deer Enter.*, 10–0671 at 9, 56 So.3d at 944 (citing *Teachers' Retirement System*, 317 So.2d at 183); *Polk*, 626 So.2d at 1135.

Appellants contend the Title 17 statutes are general laws because they pertain to a matter of significant interest to the entire state and affect all persons throughout the state, specifically all student-athletes, even if some only indirectly. We disagree. These statutes do not “operate equally and uniformly upon all persons brought within the relations and circumstances for which they provide” because they do not apply uniformly to all athletic associations or student-athletes in Louisiana. *Arshad*, 11–1579 at 6, 95 So.3d at 482. The statutes do not apply to other athletic associations operating in Louisiana, such as the MAIS, the LHSRA, or the LCSAA. While these other organizations are smaller than the LHSAA, they perform the same function of regulating interscholastic athletic competitions involving Louisiana high schools. By

making these statutes applicable only to the LHSAA, the Legislature has effectively denied the LHSAA, a Louisiana corporation, the privilege of creating its own internal rules and regulations while preserving the rights of other athletic associations to do so. Thus, we conclude these Title 17 statutes are special laws.

We must next turn our attention to whether the Title 17 statutes are special laws that concern a prohibited subject matter listed in La. Const. art. III, § 12(A). Pursuant to La. Const. art. III, § 12(A)(7), the legislature is prohibited from passing a local or special law “[c]reating private corporations, or amending, renewing, extending, or explaining the charters thereof.” Although the defendants do not appear to contest the fact that the LHSAA is a private corporation, it is abundantly clear that the LHSAA is a private corporation under this Court's ruling in PIAL. The issue before the Court in PIAL was whether the Property Insurance Association of Louisiana is a public or private entity and subject to certain laws applicable only to public entities. In *State v. Smith*, this Court had previously specified four factors which determine an entity's public or private character. 357 So.2d 505, 507–08 (La.1978). These factors are: 1) whether the entity was created by the legislature; 2) whether its powers were specifically defined by the legislature; 3) whether the property of the entity belongs to the public; and 4) whether the entity's functions are exclusively of a public character and performed solely for the public benefit. *Id.* Although *Smith* did not specify whether all four factors must be met in order to find an entity was public, the Court in PIAL specifically held, “[A]ll four must be present in order for a court to determine that an entity is public.” 09–1152 at 3–4, 31 So.3d at 1015.

Applying the *Smith* factors to this case, it is clear the LHSAA is a private entity. The LHSAA was not created by the Legislature, but by a group of high school principals who wanted to better regulate and develop the high school interscholastic athletic program in Louisiana. The association was composed of Louisiana high schools who applied and were approved for membership, thereby agreeing to be bound by the rules and regulations promulgated by the LHSAA. The LHSAA's powers derive exclusively from the constitution and internal rules approved by its initial member schools. In 1988, the LHSAA received a corporate charter from the Secretary of the State of Louisiana, in compliance with general state corporation law. Thus, the powers of the LHSAA are now specified in its articles of incorporation, as filed with the Secretary of the State of Louisiana. The defendants do not contend the Legislature created or defined the powers of the LHSAA. Since all four of the *Smith* factors must be met and the first two factors have not been met in this case, we conclude the LHSAA is a private corporation.

Having determined the LHSAA is a private corporation, we must determine whether the Title 17 statutes “amend, renew, extend, or explain” the

LHSAA's charter. Article XI of the LHSAA's articles of incorporation provides in pertinent part:

Provisions for the regulation of the internal affairs of this corporation, except as provided in these articles, shall be determined and fixed by the Constitution and By-laws as adopted by the members of the corporation at any regular meeting of the members of the corporation.... The By-laws shall be amended by a vote of a majority of those members present and voting at any regular meeting. The Constitution and By-laws, not in conflict with these articles of incorporation, of that unincorporated organization known as the Louisiana High School Athletic Association, shall be the Constitution and By-laws of the Louisiana High School Athletic Association, Inc. until such time as they are amended by the members in accordance with these Articles of Incorporation, the Constitution, and By-laws of this corporation.

Pursuant to Article XI, the LHSAA's charter specifically states its bylaws can only be amended by a majority vote of its members present and voting at a regular meeting. The Official Handbook of the LHSAA, and the rules contained therein, constitute the LHSAA's bylaws.

We find the Title 17 statutes amend the LHSAA's bylaws because they specifically amend certain eligibility rules. More specifically, La. R.S. 17:176(G) amends the “Bona Fide Change of Residence” rule, Rule 1.15 in the 2010–2011 Official Handbook, because it defines the word “family,” as used therein. Subsection F amends the bylaws because it creates an exception to the LHSAA's residence and transfer rules. Pursuant to Subsection F, a student who attends a nonpublic school outside of his school attendance zone, who would normally lose a year of eligibility, remains eligible for athletics if the two conditions provided in the statute are met. By creating an exception to the LHSAA eligibility rules, Subsection F amends the bylaws. Finally, La. R.S. 17:236.3 amends the bylaws because it changes the LHSAA's eligibility rule pertaining to home school students. While the prior rule required home school students to enroll at the LHSAA member school at which they sought to join an athletic team, this requirement was omitted from La. R.S. 17:236.3.

It is evident to this Court that by enacting these statutes, the Legislature has amended the bylaws of the LHSAA. The LHSAA's articles of incorporation, which constitute its charter from the State, specify that the bylaws can only be amended by a majority vote of the member schools. By changing the bylaws, the Legislature has amended the LHSAA's charter such that its bylaws can now be modified by a majority vote of its member schools or by the Legislature. Thus, the Title 17 statutes constitute prohibited special

laws that amend or explain the charter of a private corporation. We therefore affirm the portion of the district court's judgment granting the LHSAA's Motion for Summary Judgment and declaring La. R.S. 17:176(F), La. R.S. 17:176(G), and La. R.S. 17:236.3 unconstitutional.

- c. The Title 24 Statutes Violate Equal Protection. "We agree with the LHSAA that these statutes violate its right to equal protection. Despite our above finding that the LHSAA is not subject to the LLA's authority under La. R.S. 24:513(A), nothing in the statute suggests Subsection J(4) only applies to entities that meet the definition of "quasi public agencies or bodies" under La. R.S. 24:513(A). Beginning with its equal protection claim, we find La. R.S. 24:513(J)(4)(a) singles out one organization based upon a decision by BESE to adopt the organization's scholastic rules as its minimum scholastic requirements. This statute is arbitrary on its face because it allows BESE, a state agency, to decide what organization will be subject to the LLA's authority by picking an organization whose scholastic rules will form the minimum basis for all of the schools governed by BESE. In its current state, La. R.S. 17:176© requires BESE to adopt a policy that requires high schools under its authority to adhere to the minimum scholastic rule adopted by the LHSAA. Thus, La. R.S. 24:513(J)(4)(a) has the effect of treating the LHSAA different from other similar organizations, such as the MAIS, the LHSRA, and the LCSAA, which establish scholastic rules for their members.

Since 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 party challenging the statute must show the statute fails to serve a legitimate government purpose. *Beauclaire v. Greenhouse*, 05–0765, p. 6 (La.2/22/06), 922 So.2d 501, 505–06 (citing *State v. Expunged Record* (No.) 249,044, 03–1940 at 10, 881 So.2d at 111; *State v. Fleury*, 01–0871, p. 7 (La.10/16/01), 799 So.2d 468, 473). We find the LHSAA has shown the statute does not further a legitimate state interest. Appellants contend the statute furthers the important state interest of ensuring state law is followed and funds are properly used. The problem with this argument, as the LHSAA points out, is that the State has no real, legitimate interest in looking at and publishing the LHSAA's financial information because it has no power to control the LHSAA's revenue collection or spending. The LHSAA has the sole power to raise money as it will and spend it as its governing authority, its Executive Committee, deems proper. Although the statute arguably concerns a legitimate state interest regarding how the LHSAA spends its revenue, since a portion of it comes from public high schools, we find this statute does not further that interest. If the LLA discovers discrepancies in the LHSAA's audit, it has no authority to regulate the revenue collection or spending of the LHSAA, a private, nonprofit corporation. In its brief to this Court, the LLA claims the audit statutes "allow the State to judge the performance of 'quasi

public entities' that receive public funds, deter corruption, assist in detecting possible violation of laws, ensure that public funds are handled in accordance with the law, and promote transparency and accountability.” The LLA fails to allege, much less show, that it can take any action to regulate the LHSAA's revenue collection or spending.

Even assuming the statute furthers a legitimate state interest, we find La. R.S. 24:513(J)(4)(a) is not rationally related to the State's alleged interest because it authorizes an audit based upon whether an organization's scholastic rules are adopted by BESE. There is no explanation in the statute as to why the Legislature sought to tie an internal audit to an organization's scholastic rules. We find regulating an organization's revenue collection and spending is not rationally related to the organization's scholastic rules. One involves accounting and finances of an entity, while the other concerns the grade point average student-athletes must maintain to remain eligible for high school athletics. Appellants fail to show, and we fail to see, how this statute is rationally related to a legitimate state end. Thus, we find La. R.S. 24:513(J)(4)(a) is unconstitutional under the Equal Protection Clause.

Since we have found La. R.S. 24:513(J)(4)(a) unconstitutional, we must also find La. R.S. 24:513(J)(4)(b) unconstitutional, as it cannot stand alone.”

- 20. 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.
- a. 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."
 - b. "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."

- c. 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.

- d. 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.

- e. 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.

- f. 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,⁴ 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."

- g. 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 it 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 (*Evertt v. Goldman*, 1978)."

- h. 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.

- i. 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, prudence is 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 material or 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.]

21. Attorney General Opinion #22-0087 - Oct. 20, 2022 - The statute designating the composition of the board of trustees for the Firefighters Retirement System does not violate La. Const. art. III, §12's prohibition on local and special laws.
22. Welch v. United Medical Healthwest-New Orleans, L.L.C., 391 So.2d 123 (La. App. 5 Cir. 2024), **writ granted** by La. Sup. Ct. on Nov. 14th - "Patient filed petition for damages against operators of rehabilitation facility, alleging that medical negligence resulted in patient's pressure wounds. Asserting tort immunity under the Louisiana Health Emergency Powers Act (LHEPA), due to public health emergency declared in response to the COVID-19 pandemic, operators filed a peremptory exception of no cause of action. The District Court, 24th Judicial District, Jefferson Parish, No. 816-616, Donald A. Rowan, Jr., J., granted operators' exception. Patient appealed. The Court of Appeal, 348 So.3d 216, affirmed but remanded to allow patient to properly challenge the constitutionality of the LHEPA's immunity provision. The District Court, Donald A. Rowan, Jr., J., denied patient's motion to declare the LHEPA's immunity provision unconstitutional. Patient sought supervisory review. Holdings: The Court of Appeal, Gravois, J., held that:
1 LHEPA's immunity provision did not violate due process and adequate remedy provisions of the state constitution, and 2 LHEPA's immunity provision was not an unconstitutionally prohibited "special law." Writ denied."

"A special law is one which operates upon and affects only a fraction of the persons or a portion of the property encompassed by a classification, granting privileges to some persons while denying them to others. A special law is one that confers particular privileges, or imposes peculiar disabilities or burdensome conditions in the exercise of a common right upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law. *Kimball v. Allstate Ins. Co.*, 97-2885 (La. 4/14/98), 712 So.2d 46, 53. A special law is "directed to secure some private advantage or advancement for the benefit of private persons." *Deer Enterprises, LLC v. Par. Council of Washington Par.*, 10-0671 (La. 1/19/11), 56 So.3d 936, 944.

In *Lejeune*, this Court held that La. R.S. 29:771 does not provide for a limited set of health care providers, nor does it limit its application to only those medical personnel rendering direct emergency assistance. *Lejeune v. Steck*, 13-1017 (La. App. 5 Cir. 5/21/14), 138 So.3d 1280, writ denied sub nom. *Daigle v. Steck*, 14-1408 (La. 10/3/14), 149 So.3d 800. With La. R.S. 29:771(B)(2)(c)(i) being applicable to all healthcare providers equally, plaintiffs have failed to prove that La. R.S. 29:771(B)(2)(c)(i) is an unconstitutionally prohibited special law."

E. SELECTED NEW LEGISLATION.

1. New Constitutional Amendments - La. Const. Art. 13, §1(C) states in part:

"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."

In 2024, constitutional amendments proposed at both election dates of November 5th and December 7th:

Proposed Constitutional Amendment For November 5th:

No. 1: Do you support an amendment to require that federal revenues received by the state generated from Outer Continental Shelf alternative or renewable energy production be deposited into the Coastal Protection and Restoration Fund? - Act 408 of 24 RS (PASSED 73%-27%)

Proposed Constitutional Amendments for December 7th:

No. 1: Do you support an amendment to allow the supreme court to sanction a judge upon an investigation by the judiciary commission, to provide that the recommended sanction shall be instituted by the judiciary commission or by a majority of the supreme court, and to provide for the appointment of five members of the judiciary commission? - Act 405 of 24RS

No. 2: Do you support an amendment to require that the legislature wait for at least forty-eight hours prior to concurring in a conference committee report or amendments to a bill appropriating money? - Act 406 of 24RS

No. 3: Do you support an amendment to allow the legislature to extend a regular session in increments of two days up to a maximum of six days if necessary to pass a bill appropriating money? - Act 407 of 24RS

No. 4: Do you support an amendment to eliminate mandatory tax sales for nonpayment of property taxes and require the legislature to provide for such procedures by law; to limit the amount of penalty and interest on delinquent property taxes; and to provide for the postponement of property tax payments under certain circumstances? -Act 409 of 24RS

2024 Third Extraordinary Session - Proposed Constitutional Amendments

House Bill 6 - Calls a special statewide election on March 29, 2025, for submitting proposed constitutional amendments to the state's electors.

House Bill 7 - Revises Article VII of the Constitution (140 pages) - “Do you support an amendment to revise Article VII of the Constitution of Louisiana, including revisions to modify the legislature's authority to enact or change certain measures; require the state to pay certain retirement debt of the Teachers' Retirement System of Louisiana; require payment of a permanent salary increase to certain school personnel from savings attributable to payment of retirement debt; require certain substantive provisions be provided for by law rather than in the constitution; preserve taxes imposed and bonds authorized prior to any change in Article VII; repeal minimum rate for certain taxes; provide for ownership of monies collected by the state on behalf of others; modify authority of political subdivisions to levy certain kinds of taxes; modify calculation and remittal of severance taxes; modify provisions regarding calculation of ad valorem tax liability; authorize the legislature to provide for certain aspects of ad valorem taxation by law; repeal provisions authorizing contractual exceptions from ad valorem tax in certain circumstances; authorize payment from the Revenue Stabilization Trust Fund to each parish that exempts business inventory from ad valorem tax; create new classes of funds in the state treasury and provide requirements and restrictions thereon; designate certain existing funds as members of such new classes; repeal certain funds in their entirety; remove certain funds from the constitution; modify operation of certain funds remaining in the constitution; to restrict the legislature's ability to appropriate certain funds in certain circumstances; repeal provisions relative to dedication of certain mineral revenues; modify provisions regarding tax sales for nonpayment of property taxes; and make technical and conforming changes? (Amends Article VII, Sections 1 through 28; Adds Article VII, Sections 29 through 42)

Senate Bill 1 - “Do you support an amendment granting the Louisiana Supreme Court jurisdiction to discipline out-of-state lawyers for unethical legal practices in the state of Louisiana, and to grant the legislature the authority to establish trial courts of limited and specialized jurisdiction?”
(Amends Article V, Sections 5(B), 15(A) and 16(A))

Senate Bill 2 - “Do you support an amendment to provide the legislature the authority to determine which felony crimes, when committed by a person under the age of seventeen, may be transferred for criminal prosecution as an adult?”
(Amends Article V, Section 19)

Senate Bill 5 - “Do you support an amendment to provide for the use of the earliest election date to fill judicial vacancies? (Amends Article V, Section 22(B))

2. Other Selected Legislation (default effective date for Acts passed during regular session is August 1, unless otherwise specified in the Act):

The 2024 Organizational Session convened on Monday, January 8, 2024. Final Adjournment on Monday, January 8, 2024.

The 2024 First Extraordinary Session convened on Monday, January 15, 2024. Final Adjournment on Friday, January 19, 2024.

The 2024 Second Extraordinary Session convened on Monday, February 19, 2024. Final Adjournment on Thursday, February 29, 2024.

The 2024 Regular Legislative Session convened on Monday, March 11, 2024. Final Adjournment on Monday, June 3, 2024.

The 2024 Third Extraordinary Session convened on Wednesday, November 6, 2024. Final Adjournment on Friday, November 22, 2024.

Acts 617 and 539 of the 2024 Regular Session - providing relative to notice of meetings and public broadcasts of meetings by certain public bodies, amending R.S. 42:19 and 23 and adding R.S. 49:1305.1.

Act 12 of the 2024 Second Extraordinary Session - revised procedures for providing notice and for pleadings challenging the constitutionality of laws, amending R.S. 49:257(C) and Code of Civil Procedure Article 1880, and enacting Code of Civil Procedure Articles 855.1 and 1845 and Code of Criminal Procedure Article 62(D).

(Note: Statutes are generally presumed constitutional unless fundamental rights, privileges and immunities are involved. This presumption 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 Commission v. Office of Motor Vehicles*, 710 So.2d 776 (La. 1998). An elementary principle of statutory construction regarding constitutional law holds that all statutory enactments are presumed to be constitutional. Unless the fundamental rights or privileges and immunities of a person are involved, a

strong presumption exists that the legislature in adopting legislation has acted within its constitutional authority. Board of Directors of Louisiana Recovery Dist. v. All Taxpayers, Property Owners, etc., 529 So.2d 384 (La.1988). Polk v. Edwards, 626 So.2d 1128, 1132 (La.1993).

La. Const. art. 1, Section 3, states:

"No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime."

The general presumption of constitutionality does not apply when a statute classifies persons on the basis of birth, age, sex, culture, physical condition, or political ideas or affiliations. Such classifications are deemed a prima facie denial of equal protection and the burden of proof shifts to the proponents of the classification. When statutory classification is based on any of six enumerated grounds in equal protection clause of the Louisiana Constitution, the classification is a prima facie denial of equal protection. Because the ordinary presumption that statutes are constitutional no longer applies, there is a reversal of ordinary placement of burden of proof on the party asserting unconstitutionality. The burden is shifted to proponents of the classification and the standard of review is heightened, requiring the proponents to establish that the classification substantially furthers an important governmental objective. See Moore v. RLCC Technologies, Inc., 668 So.1d 1135 (La. 1996); Pace v. State Through Louisiana State Employees Retirement System, 648 So.2d 1302 (La. 1995).)

Act 192 of the 2024 Regular Session - R.S. 49:964 and 966 - APA procedure amended to provide procedures for establishing online portals for rule comments, and for review and certain determinations by an agency regarding its rules. House Concurrent Resolution No. 35 of the 2024 Regular Session created the joint Special Legislative Committee on Regulatory Reform to examine administrative statutory provisions and rules and make certain recommendations.

Act 591 of the 2024 Regular Session - re Board of Ethics membership , effective January 1, 2025, the board will be composed of 15 members, with 9 appointed by the governor, 3 elected by the House of Representatives, and 3 elected by the Senate. Regarding changes in gubernatorial appointments to other boards and commissions see Act 491 of the 2024 Regular Session.

Act 323 of the 2024 Regular Session - provided for audit by the legislative auditor regarding certain capital outlay procedures, including audit of nonstate entities receiving funding through the capital outlay program. Act 764 of the 2024 Regular Session added certain requirements for nonstate entities relative to the capital outlay process.

Senate Bill 9 of the 2024 Third Extraordinary Session - amends R.S. 13:4163 concerning legislative continuances. See discussion of *Fisher* case, *infra*.

Changes to House Rules:

Delete House Rule 1.3

Revise House Rule 5.1 to read as follows:

“Rule 5.1. Decorum

A. Every person shall confine himself to civil and decorous language and behavior when addressing the House or any committee thereof.

B. (1) The use of personal electronic devices within the House Chamber and within a committee room when a legislative body is convened therein shall be limited and not used in a disruptive manner. Any such device shall be muted in the House Chamber or a committee room when a legislative body is convened therein.

(2) The provisions of Subparagraph (1) of this Paragraph shall not apply to the Sergeant at Arms, assistant sergeants at arms, capitol security officers, or first responders when on duty.”

Delete House Rule 7.2(F)

Replace House Rule 7.6(A)(3) with the following

“Rule 7.6 Legislative instruments; preparation by staff; deadline for requests; introduction copies; printing

* * *

(3)(a) A request for legislation which is to be prefiled for consideration during a regular session shall be received by House Legislative Services staff not later than **seventy-two hours prior** to the prefiling deadline applicable to the instrument being requested.

(b) During a regular session, a request for legislation which is to be introduced on the last day for introduction of matters having the effect of law shall be received by House Legislative Services staff not later than **seventy-two hours prior** to the deadline for introduction.”

(Note that Senate still has 48 hours prior in its similar rule.)

F. SELECTED RECENT CASES:

1. “Revival” of Prescribed Claims:

Excerpt fom 2024 draft revision to Legislative Law and Procedure Handbook - “The constitutional validity of “revival” legislation ultimately involves fundamental questions of legislative power and the nature of vested rights in relation to the right to plead liberative prescription.

In 2024, the question of the constitutional validity of “revival” as authorized by statutory enactment was finally addressed by the Louisiana Supreme Court in *Bienvenu v. Defendant 1*, 386 So.3d 280 (La. 2024). The implications of this case are significant and are briefly discussed below.

At issue were the provisions of two acts (2021 Act 322 and 2022 Act 386), the first authorizing revival of previously prescribed civil actions related to sexual abuse of a minor for a limited period, and the second, extending such limited revival period to any previously prescribed cause of action related to sexual abuse of a minor.

In its original opinion in *Bienvenu*, the court, with three dissents and two concurring opinions, concluded that such revival was constitutionally prohibited as disturbing the vested right of a defendant to plead prescription. On rehearing, the Court vacated its original opinion and, with two dissents and two concurrences, concluded as a matter of first impression that the revival provisions could be given effect as not violative of “substantive due process”, since the revival provisions were “rationally related to a legitimate government interest.” The vested right of a defendant to plead prescription could be sublimated to governmental interests as long as they satisfied the newly-announced “substantive due process” standard.

In vacating its original opinion, the majority opinion stated:

“In concluding (1) the legislature clearly expressed its intent that the amended provisions . . . apply retroactively to revive previously prescribed claims, and (2) when a party acquires the right to plead the defense of liberative prescription, that right becomes a vested property right protected by the constitution's due process guarantees, we are thus far in accord with the analysis in the original opinion. Where we depart from the original opinion, and what prompted the grant of rehearing in this matter, is regarding the next step in the constitutional analysis: the determination as to whether the legislature's revival of prescribed causes of action for sexual abuse of minors comports with substantive due process.” (footnotes omitted, at p. 286)

The Court on rehearing rejected the previous analysis and conclusions in *Burmaster v. Plaquemines Parish Government*, 982 So.2d 795 (La. 2008). In *Burmaster* the Supreme Court stated that a 2006 act limiting the liability of public bodies for certain hurricane-related actions and which provisions were to be given retroactive application unconstitutionally divested persons of vested rights that had accrued prior to the law’s effective date. The *Burmaster* court rejected an argument that the court should consider the effect of the adoption of the legislation pursuant to the police powers of the state, stating in part that “consideration of whether a legislative enactment

qualifies as a legitimate exercise of police power is not one of the factors considered by this court in cases involving the retroactive application of newly adopted statutes to divest plaintiffs of vested rights.” (Burmater, pp. 811-812)

In declaring Burmaster’s reasoning as constitutionally incomplete, the Bienvenu majority stated, “The logical consequence of Burmaster’s holding (sic) is far-reaching. In essentially declaring that any interference with vested rights under any circumstances violates due process and is therefore unconstitutional, Burmaster effectively elevates vested property rights (which are purely economic rights) above all other rights, including such fundamental rights as the rights to privacy, to free speech, and to freedom of religion and from racial discrimination. Furthermore, it does so without explaining or examining why such a result is warranted under the very provision of the constitution that is purported to extend such protection—the due process clause.”¹ (p. 287)

The majority opinion also examined Planiol’s writings, often relied upon in retroactivity analysis, concluding:

“Thus, as Planiol explains, the rule of non-retroactivity is not a rule of constitutional dimension. The legislature is free to enact laws which operate retroactively as long as those laws do not violate the limits imposed on the legislature through the constitution. In this case, those limits are the ones imposed through La. Const. Article I, § 2, the due process clause, and the constitutionality of the legislation in question must be evaluated through the lens of that provision. To the extent that Burmaster suggests otherwise, it is overruled.” (footnotes omitted, p. 289)

Discussing the legislature’s plenary power and the due process clause, the Bienvenu majority further stated:

“Because the defendants have failed to identify any provision in the constitution that categorically prohibits an exercise of police power where such would impair vested rights, it is not only appropriate, but necessary, that the validity of the revival provision in [the act] be tested against the due process guarantee. The essence of the due process guarantee is protection from arbitrary and unreasonable action and, where legislation involves social or economic regulation, and does not affect fundamental rights, it need only have a rational relationship to a legitimate governmental interest to survive due process scrutiny. . . . Here, the interest claimed by defendants is the property interest in the right to plead the defense of accrued liberative prescription, an economic interest that does not implicate fundamental rights. The legislation challenged, which attempts to address the societal costs of child sexual abuse, is social welfare legislation. As a result, the applicable due process test is whether the legislation is reasonable in relation to the goal to be attained and is adopted in the interest of the community as a whole. (emphasis added, citations omitted).

Application of that test in this case leads inexorably to the conclusion that the revival provision in the Act is rationally related to a legitimate government interest. As

¹ See also, footnote 7 of the majority opinion further discussing Burmaster.

articulated by the main sponsor of the Act in the House, Representative Jason Hughes, the revival provision serves three public purposes: (1) the provision assists in identifying hidden child predators so children will not be abused in the future; (2) shifts the costs of the abuse from the victims and society to those who actually caused it; and (3) educates the public about the prevalence and harm from child sexual abuse to prevent future abuse. See, May 3, 2021 House Bill 492 Hearing, 2021 Reg. Sess., pp.6-7. These articulated interests are both legitimate and compelling.”

Indeed, as . . . pointed out during the legislative floor debate, child sexual abuse is a unique tort in which the average victim does not come forward until they are 52 years old. Id. For many victims of child sexual abuse, the revival provision represents their first and only opportunity to bring suit. Providing that opportunity to those victims is a legitimate legislative purpose.”(footnotes omitted, emphasis added, at pp. 290-291)

The court concluded:

“[g]iven (1) Louisiana's legitimate interest in protecting its citizens who were sexually abused as minors and in providing them with the ability to seek redress in the courts, and (2) the narrowly tailored nature of the relief provided—the legislation revives, for a short period of time, for a narrow category of tort victims, actions otherwise prescribed—it is clear that defendants have failed to satisfy the “heavy burden” of proving the unconstitutionality of the revival provision. Under the due process clause, no rights—not even fundamental ones—are absolute. The due process clause simply offers protection from arbitrary and unreasonable action by the government.” (p. 292, *parens* and emphasis added)

While the vagaries of the substantive due process and governmental interests rationale may be seen as broad and ill-defined for future application, Chief Justice Weimer for the majority emphasizes “this case is strictly limited to its facts” and that, [i]n future cases, in which the facts differ, the law may well apply differently.” (at p. 292). See below for additional context regarding governmental interest, including police power.

In addition to the facts relating to governmental interests, in developing the new substantive due process standard for revival, the court considered facts relating to the purpose of liberative prescription from the defendant’s viewpoint. As discussed in footnote 11 of the majority opinion, the unique procedures applicable to “revived” claims included: (1) the attorney for plaintiff and mental health expert provider must certify that there is “reasonable and meritorious” cause for filing the petition (civil action); (2) that after an interview of the plaintiff the mental health practitioner is of the opinion that there is a reasonable basis to believe the plaintiff has been subject to criminal sexual activity during childhood; and (3) that the name of the defendant may not appear in the petition until the court has revived the certificates relating to the merits *in camera*. (see majority opinion, footnote 11)

While these procedures are novel, they do functionally address some of the purposes of liberative prescription from a defendant's perspective. Of course, the enhanced procedures are not the equivalent of the effect of liberative prescription, i.e., the defendant's right to not be subject to the civil action in the first place.²

Addressing the concerns expressed by the defendants and dissenting members of the court, the majority countered:

“The defendants' protests notwithstanding, the resolution here will not “open the floodgates” of unrestrained legislative action, as every legislative action must comport with due process. This case is strictly limited to its facts, examining whether a singular legislative act, addressing (1) a particular systemic societal problem, (2) hidden from the public, and (3) impacting children and (4) touching on the public safety, morals and welfare, comports with due process. Each case must be tested on its own unique circumstances. In virtually every case this court is called on to resolve, each party predicts catastrophe and dire consequences should the opposing party prevail. Ultimately, it is this court's role to apply the law to the particular facts presented in the immediate case before us. In future cases, in which the facts differ, the law may well apply differently.” (page 292) (emphasis and parens added)

Justices Hughes and Genovese dissented. Justice Genovese stated that the majority ruling “elevates a legislative act over a constitutional right and obliterates the vested right of accrued prescription, which has been precedent in our law for decades.” (p. 294) He elaborated:

“No legislative act supersedes the constitution. It is undisputed that plaintiffs' claims have prescribed and have been prescribed for over a half century. The issue is retroactivity. Can the legislature go back in time and resurrect a prescribed claim involving a vested right?

No. The definite nature of accrued prescription has been repeatedly recognized in our jurisprudence that under civilian principles, prescriptive periods that have accrued act to extinguish the civil obligation to which they apply.” (p. 294)

The dissent, concerned about the expanded roles of the judicial and legislative branches, contended:

The majority opinion on rehearing claims that defendants have not proven a violation of due process. What more is needed? The defendants herein, by law, were freed of their legal obligation over fifty years ago. Their property rights, by law, were secure. Now, over a half

² In view of the majority's cryptic reference to the novel procedures protective of defendant's interests, future revival legislation may (or may not) be more likely to meet the substantive due process standard if defendant is afforded some protections or defenses related to the purposes of liberative prescription, such as the time-delay adversely affected defendant's ability to produce material evidence in defense, e.g. witnesses dead, documents no longer available due to delay, etc. (roughly similar to spoliation or laches). Such protections may be more difficult to develop and justify for attempted divesture of other vested rights, such as accrued causes of actions or recovery of certain damages.

century later, their property rights are exposed and ripe for seizure of an extinguished legal obligation. In the case at bar, all of the witnesses herein are likely deceased; pertinent exhibits and documents are likely unavailable; and, defendants are defenseless. Is that not tantamount to a violation of due process under our state and federal constitutions? Where does it end? Is accrued prescription, a vested right, now imprescriptible?

I am very concerned about this majority ruling on rehearing granting unbridled authority to the legislature to enact legislation which supersedes and tramples our constitution. I find such action to be a violation of the separation of powers doctrine. That is a slippery slope indeed.

The majority opinion on rehearing claims that its decision is limited to the facts herein and does not “open the floodgates.” Really? I beg to differ. What is to stop the legislature from pursuing other causes it deems appropriate and passing legislation in derogation of our constitutional rights? Where does it end? Where are the limitations within the majority's rehearing opinion that bridle the legislature from pursuing this course of action relative to any other issue it deems appropriate? There are none. There is much more to his case than meets the eye. I fear the fallout.” (footnotes omitted, emphasis added, page 295)

Comment. Notwithstanding the majority opinion’s strong cautionary language limiting *Bienvenu* to its facts, the Court’s new substantive due process analysis will no doubt raise significant issues.

In addressing potentially creative attempts to expand *Bienvenu*’s substantive due process rationale to other areas, it should be kept in focus that the case accepted the validity of prior legislation that established the original liberative prescriptive period applicable to the claims now “revived”. There was no discussion in *Bienvenu* that such prior legislation was violative of due process or did not result in vesting a defendant with the right to plead prescription once the enacted time period had run. The *Bienvenu* new question is whether rights gained by such (valid) prior enactments of the legislature can be taken away by subsequent enactments of a later legislature.

Bienvenu says “yes” and created (and applied) a substantive due process standard. As with substantive due process elsewhere in constitutional law, that standard is vague, often-controversial and controlled by case-by-case developments.

A foundational example of where *Bienvenu*’s substantive due process approach might raise questions is retroactivity itself. The *Bienvenu* court’s rationale on rehearing--“substantive due process” reflecting a legitimate and perhaps compelling³ government interest---is, of course, vague and broad. On its face, vested rights accrued by both plaintiffs and defendants are arguably

³ The majority refers to due process in terms of protecting against “arbitrary and unreasonable action by the government”, but not prohibiting legislation that “involves social or economic regulation, and does not affect fundamental rights”, and has “a rational relationship to a legitimate governmental interest.”; that the applicable due process test for social welfare legislation is “whether the legislation is reasonable in relation to the goal to be attained and is adopted in the interest of the community as a whole”; and that in the instant matter the governmental interests “are both legitimate and compelling.”

potentially impacted by the application of such a rationale to matters of not only “revival,” but also to retroactive application of acts that seek to divest other vested rights.

This is supported by the fact that the Burmaster case essentially overruled by the *Bienvenu* court was not a “revival” case. Other than a statement providing for retroactive application, there was no other express language in the act providing “clear and unequivocal” intent for an extreme exercise of legislative power to divest vested rights. The act at issue instead provided for retroactive application that if authorized would limit vested rights accrued by plaintiffs prior to the law’s enactment. Under the new *Bienvenu* rationale if applicable, such retroactive application and divestiture could now apparently be legislatively authorized if a “legitimate and compelling” government interest exists.

Cases prior to *Bienvenu* refused to consider a “revival” question because of the legislation’s lack of a clear expression of legislative intent for such revival. It is unclear whether such threshold requirement is still needed under the new *Bienvenu* analysis. It is also unclear, even with the limited holding, for retroactivity purposes, whether all legislative acts affecting vested rights are subject to substantive due process analysis.⁴

⁴ Additional potential questions: Is “revival” precluded by traditional *res judicata* and estoppel considerations from being applied to claims previously dismissed by definitive judgment as prescribed? Considering the majority’s discussion of the effects of liberative prescription and the dissent’s comments regarding extinguishment of a claim, is there a conceptual difference between prescription and peremption in regard to “revival”? In terms of establishing governmental interests, are a bill author’s comments regarding their own legislation sufficient “proof” that an act is a legitimate exercise of police power?

2. Retroactivity:
- a. *Parria v. Louisiana Citizens Property Insurance Corporation*, ___ So.3d ___ (La. App. 1 Cir. 2024)(unreleased at this time) - First Circuit Court of Appeal affirmed trial court's conclusion that amendment of R.S. 22:1892(H) by 2023 La. Acts, No. 290, effective August 1, 2023, which eliminated any class action for damages, including penalties, against the Louisiana Citizens Property Insurance Corporation, was a procedural change and could be given retroactive application. Dissent by Judge Miller.
 - b. *Smith v. Fortenberry*, Slip Copy 2024 4462332 (E.D. La. 10/10/24) - declining to retroactively apply Act 275 of 2024 Regular Session Act 275, effective August 1, 2024, which amended and limited plaintiff's right to bring a Direct Action against an insurer, either with the insured or in solido, to seven specific circumstances. Court concluded that to do so would have impermissibly divested the plaintiffs of their statutorily-defined cause of action against insurers that had accrued on the date of the accident.(Accord, *Baker v. Amazon Logistics, Inc.*, No. CV 23-3991, 2024 WL 4345073 (E.D. La. Sept. 30, 2024). But see, *Howard v. J&B Hauling, LLC*, Slip Copy 2024 WL 4647820 (E.D. La. 2024), concluding that Act 275 was procedural and could be given retroactive application. See also, *Maise v. River Ventures, L.L.C.*, Slip Copy 2024 WL 4266698, (E.D. La. 2024).
 - c. See *Bienvenu* case discussed above concerning revival and potential issues. If vested rights are now subject to disturbance by subsequent legislative action, pursuant to constitutional police power and substantive due process considerations, then are the distinctions in Civil Code Art. 6 between "substantive", "procedural", and "interpretative" legislation still of primary importance?

2. Public Funds/Mandamus - in *Mellor v. Jefferson*, 370 So.3d 388 (La. 2023), the Supreme Court, with two dissents, concluded that fines obtained from motorists through an ordinance later declared unconstitutional were "public funds" not subject to seizure by the trial court. In *Watson Memorial Spiritual Temple of Christ v. Korban*, 387 So.3d 499 (La. 2024), the Supreme Court, reviewing pertinent law and *Crooks*, *Mellor*, and other cases, concluded that the payment of just compensation for a judgment arising from inverse condemnation is a ministerial, non-discretionary duty, and could be enforced through mandamus.

3. Judicial Notice - In *Coastal Cargo Company LLC v. Board of Commissioners of Port of New Orleans*, 384 So.3d 968 (La. App. 4 Cir. 2024), the Fourth Circuit Court of Appeal noted in opinion footnote 2, "This Court can take judicial notice of government websites. *State v. Melendez*, 2024-0034, p. 3 (La. App. 4 Cir. 1/23/24), 382 So.3d 418, 422 n.5 (citing *Gniady v. Ochsner Clinic Found.*, 2023-0215, p. 3 (La. App. 4 Cir. 12/28/23), 382 So.3d 378, 382 n.3)."

4. Local/Special Law - *Welch v. United Medical Healthwest-New Orleans, L.L.C.*, 391 So.2d 123 (La. App. 5 Cir. 2024), writ granted by La. Sup. Ct. on Nov. 14th - "Patient filed petition for damages against operators of rehabilitation facility, alleging that medical negligence resulted in patient's pressure wounds. Asserting tort immunity under the Louisiana Health Emergency Powers Act (LHEPA), due to public health emergency declared in response to the COVID-19 pandemic, operators filed a peremptory exception of no cause of action. The District Court, 24th Judicial District, Jefferson Parish, No. 816-616, Donald A. Rowan, Jr., J., granted operators' exception. Patient appealed. The Court of Appeal, 348 So.3d 216, affirmed but remanded to allow patient to properly challenge the constitutionality of the LHEPA's immunity provision. The District Court, Donald A. Rowan, Jr., J., denied patient's motion to declare the LHEPA's immunity provision unconstitutional. Patient sought supervisory review. Holdings: The Court of Appeal, Gravois, J., held that: 1 LHEPA's immunity provision did not violate due process and adequate remedy provisions of the state constitution, and 2 LHEPA's immunity provision was not an unconstitutionally prohibited "special law." Writ denied."

"A special law is one which operates upon and affects only a fraction of the persons or a portion of the property encompassed by a classification, granting privileges to some persons while denying them to others. A special law is one that confers particular privileges, or imposes peculiar disabilities or burdensome conditions in the exercise of a common right upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law. *Kimball v. Allstate Ins. Co.*, 97-2885 (La. 4/14/98), 712 So.2d 46, 53. A special law is "directed to secure some private advantage or advancement for the benefit of private persons." *Deer Enterprises, LLC v. Par. Council of Washington Par.*, 10-0671 (La. 1/19/11), 56 So.3d 936, 944.

In *Lejeune*, this Court held that La. R.S. 29:771 does not provide for a limited set of health care providers, nor does it limit its application to only those medical personnel rendering direct emergency assistance. *Lejeune v. Steck*, 13-1017 (La. App. 5 Cir. 5/21/14), 138 So.3d 1280, writ denied sub nom. *Daigle v. Steck*, 14-1408 (La. 10/3/14), 149 So.3d 800. With La. R.S. 29:771(B)(2)(c)(i) being applicable to all healthcare providers equally, plaintiffs have failed to prove that La. R.S. 29:771(B)(2)(c)(i) is an unconstitutionally prohibited special law.”

5. Chevron deference to administrative agencies overruled - *Loper Bright Enterprises v. Raimond*, 144 S. Ct. 2244 (2024) - The sometimes-different treatment of executive branch delegation and related separation of powers of Louisiana and the United States was diminished in 2024 by the Supreme Court in *Loper* overruling *Chevron, USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The court noted, that “...we have sometimes required courts to defer to ‘permissible’ agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently...” (at 1)

The court, relying upon fundamental notions of separation of powers—much like Louisiana courts usually have--overruled *Chevron* in *Loper Bright Enterprises, et. v. Raimondo*, 144 S. Ct. 2244 No. 22-451 (June 28, 2024). In terms of separation of powers, Chief Justice Roberts summarizes, “. . . the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits. The court fulfills that role by recognizing constitution delegations, “fix[ing] the boundaries of [the] delegated authority . . . and ensuring the agency has engaged in “‘reasoned decisionmaking (sic)’” within those boundaries . . . By doing so, a court upholds the traditional conception of the judicial function that the APA adopts. (citations omitted, at 18). He concludes,” . . . [a]t best, our intricate *Chevron* doctrine has been nothing more than a distraction from the question that matters: Does the statute authorize the challenged agency action? And, at worst, it has required courts to violate the APA by yielding to an agency the express responsibility, vested in “the reviewing court,” to “decide all relevant question of law” and “interpret . . . statutory provisions.” (at 29)

6. Redistricting - In a suit challenging use of the Louisiana Legislature's 2022 redistricting map for electing the six members of the U.S. House of Representatives, the federal district court preliminarily enjoined use of the map. In the first special session of 2024, Act 2 enacted a new map. As of this writing, the new 2024 map is also being challenged, but for the purposes of judicial administration the courts are allowing the 2024 map to be used in the 2024 elections. See for discussion *Robinson v. Callais*, 144 S. Ct. 1171 (Mem) (2024); *Robinson v. Ardoin*, 86 F.4th 574 (U.S.C.A. 5 Cir. 2023), and history; *In re Landry*, 83 F.4th 300, 303 (5th Cir. 2023); *Nairne v. Ardoin*, 2024 WL 492688 (M.D.La. 2024), appeal filed; *Callais v. Landry* (W.D. La. 2024), 2024 WL 1903930, appeal filed..

Callais cases consolidated and placed on granted and noted list of U.S. Supreme Court October Term 2024 cases for argument.

In 2024, the United States Supreme Court in *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. ___, 144 S. Ct. 1221 (2024) discussed the complex interaction between partisan and racial gerrymandering, concluding that South Carolina's congressional redistricting plan was not shown to be predominantly racially motivated and did not support an inference overcoming the presumption of legislative good faith.

7. Legislative Immunity/Privilege - See *Plaquemines Parish Ventures, LLC v. Plaquemines Parish Council*, Slip Copy (E.D. 2024), discussing the parish council's not voting on a zoning application as a protected legislative activity, and *Descendants Project v. St. John the Baptist Parish*, Not Reported in So. Rptr. (2023), 23-478 (La. App. 5 Cir. 11/21/23), discussing voting by councilmembers as a core legislative function protected by legislative privilege and granting motion to quash certain notices and subpoenas.
 - a. *McHugh v. St. Tammany Parish*, Slip Copy 2024 WL 3757134 (E.D. La. 2024), appeal filed (*Parr v. Cougle*), discussing legislative immunity and privilege generally, and concluding under the facts that a parish council resolution and acts relating to it were not shown sufficiently "legislative" in nature to justify application of the privilege.

- b. *Fisher v. Barter*, ____ So.3d ____ (La. 2024) - declared R.S. 13:4163, mandating legislative continuance under certain circumstances, unconstitutional as constituting an encroachment upon judicial branch.

“Motorist brought personal-injury suit against driver, then a minor, of vehicle that allegedly rear-ended her vehicle, driver's father, and their automobile insurer. After two of defendants' attorneys, who were state legislators, obtained various continuances under statute granting peremptory grounds for a continuance to state legislators, motorist moved for a declaratory judgment of the statute's unconstitutionality under various provisions of the Louisiana Constitution and the United States Constitution, and defendants, joined by the Louisiana Attorney General, opposed the motion. The District Court, 1st Judicial District, Caddo Parish, No. 615,908, denied the motion, and the Second Circuit Court of Appeal denied motorist's application for supervisory review. Motorist's application to the Supreme Court for supervisory review was granted. Holdings: The Supreme Court, Hughes, J., held that: (1) statute granting peremptory grounds for a continuance to state legislators is unconstitutional on its face because it violates the Louisiana Constitution's separation-of-powers doctrine, and (2) motorist's constitutional challenge was not moot because requests for continuances under statute were likely to recur. Reversed and remanded with instructions; statute declared unconstitutional on its face. Weimer, C.J., additionally concurred and assigned reasons. McCallum, J., dissented and assigned reasons.”

“After considering the law and arguments, we conclude that the provisions of La. R.S. 13:4163 bypass constitutional and statutory powers vested in the judiciary and, in enacting this statute, the Legislature particularly usurps the discretion residing in the judiciary to grant or deny motions for continuance and extensions of fixed court dates, when legislators or legislative employees are concerned in the matter.”
(page ___, footnote omitted)

(Comment and three questions). Is the actual conflict between “legislative power” and “judicial power” or between “judicial power” and “legislative immunity/privilege”? Article III, Section 8 provides “Section 8. A member of the legislature shall be privileged from arrest, except for felony, during his attendance at sessions and committee meetings of his house and while going to and from them. No member shall be questioned elsewhere for any speech in either house.”

In functional effect, Art. III, Section 8 has been construed as identical with the federal constitutional provision concerning legislative privileges and immunities. *Copsey v. Baer*, 593 So.2d 685 (La. App. 1 Cir. 1991). One purpose of the Speech and Debate Clause is prevent “intimidation of legislators by the Executive and accountability before a possibly hostile judiciary” *Gravel v. U.S.* 408 U.S. 606, 92 S. Ct. 2614 (1972). Legislative immunity includes protection from trial and liability for performing legislative acts. “The purpose of the protection afforded legislators is not to forestall judicial review of legislative action but to insure that legislators are not distracted from or hindered in the performance of their legislative tasks by being called into court to defend their actions.....Freedom of legislative activity and the purposes of the Speech or Debate Clause are fully protected if legislators are relieved of the burden of defending themselves” *Powell v. McCormack*, 395 U.S. 486, 505 (1969).

Question 1 - Does judicial power trump legislative immunity? Could a Louisiana court, under the *Fisher* rationale, validly refuse to grant a legislator a continuance, even if it meant in effect the legislator could not attend meetings, vote on legislation, or otherwise perform legitimate functions within the legislative sphere?

Question 2 - La. R.S. 24:1 states “All civil proceedings pending against members of the legislature shall be stayed during their attendance at the sessions of their respective houses and during the time required in going to and returning from the same.” Is this likewise problematic as a potential intrusion upon judicial branch powers?

Question 3 - Same question for La. R.S. 13:3667.1, which provides:

“A. Members of the legislature, the clerk of the House of Representatives, the secretary of the Senate, and employees of the House of Representatives, the Senate, and the Legislative Bureau, when such persons are serving or employed full time during a session of the legislature, shall not be compelled to attend any court or administrative proceedings as witnesses during any session of the legislature or at any time during which such persons are engaged in activities in connection with or ordered by the legislature or any legislative committee or subcommittee, or any other committee or commission appointed by the governor or other person authorized by law or legislative resolution to make such appointment. The provisions of this Subsection shall not apply in any criminal felony case wherein the member, clerk, secretary, or employee whose attendance is sought is a material, factual witness to the crime or any element of the crime.

B. Legislative employees shall not be exempt from such attendance unless their legislative service or employment is certified to the court by an affidavit executed by the presiding officer or the clerk or secretary of the respective house.

C. Upon notifying the proper court of the issuance of a subpoena contrary to the provisions of this Section, and after presenting the court with the proper identification or certification, the court shall quash the subpoena. The court's decision whether to quash such a subpoena shall be an appealable order.”)

Senate Bill 9 of the 2024 Third Extraordinary Session - Sent to Governor - Revises R.S.13:4163 to read as follows in part:

“A.(1)(a) A member of the legislature or legislative employee shall be entitled to peremptory grounds for a continuance of any court or administrative proceeding or the extension of any legal delay or deadline, excluding civil prescriptive or preemptive periods, criminal statutes of limitations, and criminal cases where the death penalty is sought, if the presence, participation, or involvement of a member of the legislature or legislative employee, who is a party or an attorney for a party, is required in any criminal or civil case or administrative proceeding, including any pretrial or post-trial proceeding, during any legislative session or constitutional convention.”

.....

(c) Peremptory grounds are available any time between twenty-one days before the convening of any session of the legislature or constitutional convention and thirty days after the adjournment sine die of any session of the legislature or constitutional convention.

.....

B.(1) There shall be a presumption that a motion for continuance filed within the period specified in Paragraph (A)(2) of this Section by the member of the legislature or legislative employee is proper and shall be granted within seventy-two hours of the filing of the motion. The motion shall be granted for a period of not less than forty-five days from the date of adjournment sine die of any session of the legislature or constitutional convention.

(2) The presumption may be overcome by clear and convincing evidence under either of the following circumstances:

(a) The motion is being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. A showing that the continuance shall cause a delay or increase the cost of litigation shall not be sufficient grounds to overcome the presumption of granting the continuance.

(b) The objecting party has a substantial existing right or interest that will be defeated or abridged and will suffer substantial and immediate

irreparable harm if the requested continuance is granted. Notwithstanding the provisions of this Paragraph, the court shall also consider any potential substantial and immediate irreparable harm to the party requesting the continuance which may result from requiring the party requesting the continuance to obtain new counsel with insufficient time to prepare.”

8. Legislative History:

- a. *Roake v. Brumley*, November 12, 2024,--- F.Supp.3d ----2024 WL 4746342 (M.D. La. 2024)- appeal filed. Regarding implementation of the Ten Commandments display law, motion for preliminary injunction granted; motions to dismiss granted in part and denied in part; motion to stay pending appeal denied. Court stated in part:

“The parties disagree somewhat on the appropriate standard, but a close reading of Kennedy and Fifth Circuit precedent shows that the standard remains whether the practice at issue “fits within” or is “consistent with a broader tradition.” See *id.* at 535–36, 142 S.Ct. 2407. Historical evidence is critical to this analysis. See *Freedom From Religion Found., Inc. v. Mack*, 49 F.4th 941, 951, 957 (5th Cir. 2022). Additionally, in looking at whether a particular practice is consistent with the tradition at issue, the Court must consider whether the practice is sectarian, discriminatory, or coercive. See *id.* at 958–59.

The Court finds that Plaintiffs have adequately pled an Establishment Clause claim post-Kennedy. The Complaint alleges that there was no broader tradition of using the Ten Commandments in public-school education at the time of the Founding or incorporation of the First Amendment. (Compl. ¶¶ 42, 162, Doc. 1.) Further, even if the practice at issue—posting the Ten Commandments in public-school classrooms—did fit within a broader tradition during those eras, the Act would still be unconstitutional; as pled, H.B. 71 fails to select historical documents generally and versions of the Decalogue specifically “without regard for belief,” *cf.* *Mack*, 49 F.4th at 958 (cleaned up), and so, as a result, the practice is discriminatory.

Most critically though, the Act's mandatory practice is coercive. As Plaintiffs highlight, by law, parents must send their minor children to school and ensure attendance during regular school hours at least 177 days per year. (Compl. ¶¶ 69–70, Doc. 1 (citing La. R.S. §§ 17:221(A)(1)(c), 154.1(A)(1)).) “.....

“Additionally, the legislative history confirms that the Act “proceed[ed] in a manner intolerant of religious beliefs.” *Fulton*, 593 U.S. at 533, 141 S.Ct. 1868. Again, the Act's primary author and sponsor, Rep. Dodie Horton, declared of H.B. 71 in the Louisiana House Chamber, “I'm not concerned with an atheist. I'm not concerned with a Muslim. I'm concerned with our children looking and seeing what God's law is.” La. House Reg. Sess. (Apr. 10, 2024), at 47:42, https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2024/apr/0410_24_24RS_Day16; see also La. State Legislature (Sept. 16, 2024), <https://www.legis.la.gov/legis/BillInfo.aspx?s=24rs&b=HB71> (describing Rep. Horton as “primary” author). Rep. Horton also stated during the House Education Committee debate on the bill: “It is so important that our children learn what God says is right and what He says is wrong and to allow [the Ten Commandments] to be displayed in our classrooms as a visual aid, I believe, especially in this day and time is so important.” La. House Educ. Comm. (Apr. 4, 2024), at 5:08, https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2024/apr/0404_24_ED.3. Representative Sylvia Taylor, another author of H.B. 71, similarly said, “I believe that we are lacking in direction. A lot of people, their children, are not attending churches or whatever.... So what I'm saying is, we need to do something in the schools to bring people back to where they need to be.” *Id.* at 15:15; La. State Legislature (Sept. 16, 2024), <https://www.legis.la.gov/legis/BillInfo.aspx?s=24rs&b=HB71> (describing Rep. Taylor as another author). And all of this must be seen in the context of (1) the fact that AG Defendants offer little from the legislative history to rebut Plaintiffs, and (2) the Governor's statement in response to this challenge to H.B. 71 that supporters should help him “ADVANCE [] the Judeo-Christian values that this nation was built upon.” *Wall*, *supra*, at note 5. Thus, in addition to the Act's plain language and effects, H.B. 71's legislative history confirms that the law's “departures from neutrality on matters of religion” are more than “subtle.” *Masterpiece Cakeshop*, 584 U.S. at 638–39, 138 S.Ct. 1719 (cleaned up); see also *Church of Lukumi Babalu Aye*, 508 U.S. 540–42 (noting in its finding of no neutrality that “[t]he minutes and taped excerpts of the June 9 session ... evidence significant hostility exhibited by residents, members of the city council, and other city officials toward the Santeria religion and its practice of animal sacrifice.”) (page ___)

(Con't.) Regarding claims of secular purpose, the Court stated in part:

“Conversely, here, H.B. 71's primary sponsor expressed a much more overtly religious and coercive purpose, which was echoed by the Governor, and which is evident on the face of H.B. 71. That is, in light of the requirements of H.B. 71 itself and the undisputed statements of its proponents as to its purpose, the Act's alleged secular purposes are “so implausible [and] inadequate that they ought not be credited.” See *id.* (cleaned up).

All of this is not intended to show compliance with the now-defunct Lemon test. Rather, the above legislative history and statements support the conclusions that (1) here, any purported secular purpose was not sincere but rather a sham; (2) that, under Stone, H.B. 71 is “plainly religious in nature[;]” and (3) that, consequently, Stone is directly on point and controlling.” (page ___)

b. *Pickard v. Amazon.com, Inc.*, 387 So.3d 515 (La. 2024):

“We apply well-established rules of statutory construction to interpret Subsection 9:2800.53(2). The words of a law must be given their generally prevailing meaning. La. Civ. Code art. 11. Words and phrases shall be read in context and construed according to the common and approved usage of the language. See La. R.S. 1:3; La. Civ. Code art. 12; *Luv N' Care, Ltd. v. Jackel International Limited*, 19-0749 (La. 1/29/20), 347 So. 3d 572, 577. However, technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning. La. R.S. 1:3; see also La. Civ. Code art. 11. In determining **5 the meaning of a word, phrase, or clause, the entire statute is to be considered. *Luv N' Care, Limited*, 347 So. 3d at 578.

Dictionaries can be a useful source for determining the common and approved usage of words. *Gregor v. Argenot Great Cent. Ins. Co.*, 02-1138 (La. 5/20/03), 851 So. 2d 959, 964. As petitioners point out, Merriam-Webster defines “possession” as “the act of having or taking into control ... without regard to ownership.” See Merriam-Webster Dictionary (2024).

Context and legislative intent are also important. “When the words of a law are ambiguous, their meaning must be sought by examining the context in which they occur and the text of the law as a whole.” La. Civ. Code art. 12. “When the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law.” La. Civ. Code art. 10. Legislative history may be considered in determining legislative intent. La. R.S. 24:177B(2)(a).” (pp. 519-520).

- c. *Richard's Clearview, LLC v. Starr Surplus Lines Insurance Company*, 391 So.3d 739 (La. App. 5 Cir. 2024):

“Interpretation of legislation is primarily the search for the legislative intent; the starting point is the language itself. *Cat's Meow, Inc. v. City of New Orleans*, 98-0601 (La. 10/20/98), 720 So.2d 1186, 1198. See also La. R.S. 24:177(B)(1). When a law is clear and unambiguous, and its application does not lead to absurd consequences, it shall be applied as written, with no further interpretation made in search of the legislative intent. La. C.C. art. 9. When the words of a law are ambiguous, their meaning must be sought by examining the context in which they occur and the text of the law as a whole. La. C.C. art. 12. When analyzing legislative history, it is presumed the Legislature's actions in crafting a law were knowing and intentional, and the Legislature is presumed to have enacted each statute with deliberation and with full knowledge of all existing laws on the same subject. *Louisiana Safety Ass'n of Timbermen Self-Insurers Fund v. Louisiana Ins. Guar. Ass'n*, 09-0023, (La. 6/26/09), 17 So.3d 350, 356; *Theriot v. Midland Risk Ins. Co.*, 95-2895, (La. 5/20/97), 694 So.2d 184, 186.

The assertion that Subsection D of La. R.S. 22:868 “authorizes” surplus line insurers to include forum selection clauses, as Starr claims, is an incorrect and incomplete reading of the statute. We observe first that the statute itself makes no express reference to surplus lines insurers.” (pages 745-746)

- d. *Callais v. Landry*, (W.D. La.), April 30, 2024--- F.Supp.3d ----2024 WL 1903930, stay granted, by *Robinson v. Callais*, 144 S.Ct. 1171, U.S., May 15, 2024, and probable jurisdiction by U.S. Supreme Court later noted.

“Registered non-Black voters brought action for declaratory and injunctive relief against Louisiana's Secretary of State, challenging, as racial gerrymander in violation of equal protection, state legislature's redistricting plan creating second majority–Black congressional district for state's six congressional districts. State, Black Louisiana voters, and civil rights organizations intervened as defendants. Holdings: After trial, a three-judge panel of the District Court, David C. Joseph and Robert R. Summerhays, JJ., held that: 1 unusual shape of electoral district and expert's heat map based on Black voting age population (BVAP) data constituted circumstantial evidence of predominance of race in legislature's redistricting plan; 2 direct evidence demonstrated predominance of race in legislature's redistricting plan; and 3 assuming that complying with § 2 of Voting Rights Act (VRA) was compelling interest, state did not satisfy narrow tailoring requirement for surviving strict scrutiny for equal protection violation. Permanent injunction granted. Carl E. Stewart, Circuit Judge, filed a dissenting opinion. Stay granted, 144 S.Ct. 1171.

The majority opinion stated in part:

“The Court next looks to the direct evidence of the Legislature's motive in creating District 6 – in other words, what was actually said by the individuals who had a hand in promulgating, drafting, and voting on SB8. The direct evidence buttresses the Court's conclusion that race was the predominant factor the legislators relied upon in drawing District 6.

The record includes audio and video recordings, as well as transcripts, of statements made by key political figures such as the Governor of Louisiana, the Louisiana Attorney General, and Louisiana legislators, all of whom expressed that the primary purpose guiding SB8 was to create a second majority-Black district due to the Robinson litigation. As discussed supra, the Middle District, after the preliminary injunction hearing in Robinson, found a likelihood of success on the merits of the Robinson Plaintiffs' claim that a second majority-minority district was required by Section 2 of the Voting Rights. Although the preliminary injunction was vacated by the Fifth Circuit to allow the Legislature to enact a new map, legislators chose to draw a map with a second majority-Black district in order to avoid a trial on the merits in the Robinson litigation. See, e.g., Tr. Vol. III, 588:11-17 (“Judge Dick has put us in a position and the Fifth Circuit, the panel that reviewed that decision, and the whole court, when I asked them to go en banc, by declining to go on en banc, have put us in a position pus [sic] of where we are today where we need to draw a map.”); JE28, 46:5-101 (same); see also Tr. Vol. III, 589:1-3 (“The courts, never the less, have told us to draw a new map. And they have indicated that we have a deadline to do that or Judge Dick will draw the map for us.”); JE28 at 36:14-17 (same); JE36 at 33 (Senator Price: “Regardless of what you heard, we are on a court order and we need to move forward. We would not be here if we were not under a court order to get this done.”); JE36 at 1 (Senator Fields: “[B]oth the district and the appeals court have said we need to do something before the next congressional elections.”); JE31, 26:12–24 (Chairman Beaulieu: “Senator Womack, why are we here today? What – what brought us all to this special session as it – as it relates to, you know, what we're discussing here today?”; Senator Womack: “The middle courts of the district courts brought us here from the Middle District, and said, ‘Draw a map, or I'll draw a map.’ ”; Chairman Beaulieu: “Okay.”; Senator Womack: “So that's what we've done.”; Chairman Beaulieu: “And – and were you – does – does this map achieve that middle court's orders?”; Senator Womack: “It does.”); PE41, 75:24-76:2 (Representative Lyons, Chairman of the House and Governmental Affairs Committee, stating “[T]he mission we have here is that we have to create two majority-Black districts.”); PE41, 121:19–22 (Senator Womack stating that “... we all know why we're here. We were ordered to – to draw a new Black district, and that's what I've done.”); PE41, 9:3-8 (Representative Amedee: “Is this bill intended to create another

black district?” Representative Beaulieu: “Yes, ma'am, and to comply with the judge's order.”); JE31, 97:17-19, 21-24 (Representative Carlson: “the overarching argument that I've heard from nearly everyone over the last four days has been race first ... race seems to be, at least based on the conversations, the driving force....”). SB 8's sponsor, Senator Womack, also explicitly admitted that creating two majority-Black districts was “the reason why District 2 is drawn around the Orleans Parish and why District 6 includes the Black population of East Baton Rouge Parish and travels up the I-49 corridor to include Black population in Shreveport.” PE41 at 26.

The Court also acknowledges that the record includes evidence that race-neutral considerations factored into the Legislature's decisions, such as the protection of incumbent representatives. See JE29 at 2-3 (Senator Womack discussing that SB8 protects Congresswoman Julia Letlow, U.S. Speaker of the House Mike Johnson, and U.S. House Majority Leader Steve Scalise); Tr. Vol. I, 71:11-18, 79:1-4 (Senator Pressley testifying that “[w]e certainly wanted to protect Speaker Johnson ... We wanted to make sure that we protected Steve Scalise. Julia Letlow is on Appropriations. That was also very important that we try to keep her seat as well.”); Id. at 60:8-61:15 (Senator Seabaugh testifying that the fact that the Speaker and Majority Leader are from Louisiana is “kind of a big deal” and that protecting Speaker Johnson, Majority Leader Scalise, and Representative Letlow was “an important consideration when drawing a congressional map.”).

However, considering the circumstantial and the direct evidence of motive in the creation of District 6, the Court finds that “racially motivated gerrymandering had a qualitatively greater influence on the drawing of the district lines than politically motivated gerrymandering.” *Vera*, 517 U.S. at 953, 116 S.Ct. 1941. As in *Shaw II* and *Vera*, the State first made the decision to create a majority-Black district and, only then, did political considerations factor into the State's creation of District 6. The predominate role of race in the State's decisions is reflected in the statements of legislative decision-makers, the division of cities and parishes along racial lines, the unusual shape of the district, and the evidence that the contours of the district were drawn to absorb sufficient numbers of Black-majority neighborhoods to achieve the goal of a functioning majority-Black district. If the State's primary goal was to protect congressional incumbents, the evidence in the record does not show that District 6 in its current form was the only way to achieve that objective.” (pp. _____, footnotes omitted)

The dissent by Judge Stewart stated in part:

“The history of amendments to the bill do not fit the creative narrative that Mr. Hefner paints in this case to show racial predominance. In the light of all this information publicly available in the legislative record, Mr. Hefner cabined his analysis to just the final enacted version of S.B. 8 and two other maps, without seeking to get the full scope of the legislative environment that created S.B. 8. Notably, the Court said in *Cooper* that where political concerns are raised in defense of a map, evidence of non-compactness “loses much of its value ... because a bizarre shape ... can arise from a ‘political motivation’ as well as a racial one.” 581 U.S. at 308, 137 S.Ct. 1455. Furthermore, “political and racial reasons are capable of yielding similar oddities in a district's boundaries.” *Id.* Here, Senator Glen Womack of Catahoula Parish, the author of S.B. 8, addressed those reasons at numerous points during the legislative session. His intent was clear and consistent. JE 31 at 121–22 (statement of Sen. Womack) (“We were ordered to draw a [second majority-Black] district, and that's what I've done. At the same time, I tried to protect Speaker Johnson, Minority Leader Scalise, and my representative Congresswoman Letlow.”). He stated that he sought to draw “boundaries in th[e] bill” to “ensure that Congresswoman Letlow remains both unimpaired with any other incumbents and in a congressional district that should continue to elect a Republican to Congress for the remainder of this decade.” JE 29 at 2 (Sen. Womack's Remarks Before January 16, 2024 Senate Governmental Affairs Committee Hearing). Based on this strong evidence of legislative will directed at preserving political and personal interests during the redistricting process, I would hold that Plaintiffs’ circumstantial demographic evidence cannot be taken in whole or in part to satisfy its burden of showing that race predominated in the drafting of S.B. 8.” (pp. ____)

- e. *Hat v. Landry* (W.D. La. 2024), 2024 WL 1496889, appeal filed by White Hat v. Murrill, 5th Cir., April 23, 2024:

“The Plaintiffs next argue that La. R.S. 14:61 is content-based because the legislative history of the statute shows that it was promoted by the Louisiana Mid-Continental Oil and Gas Association to squelch protests against pipeline projects.⁵⁶ They allege that the 2018 amendment to the statute adding pipelines to the definition of “critical infrastructure” occurred “at a time when environmental activists’ challenges to the danger of pipeline activity were on the rise.”⁵⁷ The Plaintiffs contend that the 2018 pipeline amendment to the statute “was initiated by leaders of the oil and gas industry who have obviously vested and financial interest in skewing the debate about the dangers of continued pipeline expansion.”⁵⁸ In this regard, they point to evidence that the 2018 amendment to La. R.S. 14:61 was drafted by the general counsel of the Louisiana Mid-Continental Oil and Gas Association.

The Supreme Court has held that a statute is not rendered a content-based restriction on free speech merely because statute’s “enactment was motivated by the conduct of the partisans on one side of a debate.” More importantly, the legislative history cited by the Plaintiffs actually refutes their argument that the 2018 pipeline amendment to La. R.S. 14:61 was intended to squelch pipeline protests and environmental activists’ opposition to pipeline projects like the Bayou Bridge Pipeline. Specifically, the Plaintiffs quote the lead sponsor of the 2018 amendment explaining that the statute “does nothing to impact the ability to peacefully protest ... [but] only comes into play when there is damage to that critical infrastructure, so if you don’t damage anything, this law does not apply.”⁶⁰ Damage caused to critical infrastructure does not fall within the protections of the First Amendment given that courts have repeatedly held that the First Amendment protects only “peaceful” picketing and protest activities.⁶¹ Moreover, the statute’s carve-out for protected First Amendment speech “is a valuable indication of [legislative] concern with the preservation with First Amendment rights in the specific context of the statute in question.”⁶²

In their Rule 56(f) Response, Plaintiffs fault this analysis of the legislative history, arguing that the Court’s analysis improperly adds a requirement to La. R.S. 14:61 that the critical infrastructure be damaged in some way for the statute to apply. They argue that the text of the statute does not require a finding that critical infrastructure was damaged to trigger the statute’s criminal penalties. Plaintiffs are correct that La. R.S. 14:61 does not require this finding. Indeed, another statutory provision, La. R.S. 14:61.1, creates a separate criminal penalty for causing damage to critical infrastructure, including pipelines. This provision appears to have been enacted at the same time as the pipeline amendment to La. R.S. 14:61. In their original Motion for Summary Judgment, Plaintiffs pointed to other statements by sponsors of the pipeline amendment and La. R.S. 14:61.1 to argue that these statutes were backed by the pipeline industry to squelch environmental protests. The statements of the sponsors cited by the Court reflect broader concerns by legislators

about protecting pipelines and other critical infrastructure (including protection from damage), not a concern about squelching otherwise peaceful protest activities. This legislative history undercuts Plaintiffs’ argument that the legislative purpose of the pipeline amendment to La. R.S. 14:61 was to impose content-based restrictions on protected speech.

In sum, La. R.S. 14:61 is content-neutral to the extent that it impacts protected speech. Accordingly, the statute is not subject to strict scrutiny.” (pp. ____, footnotes omitted).

- 9 Administrative Rules - N'Dakpri v. Louisiana State Board of Cosmetology, 392 So.3d 407 (La. App. 1 Cir. 2024), writ denied - “Hair braider, among others, brought action against Board of Cosmetology, among others, challenging constitutionality of Board's rules requiring special permit for “alternative hair design” on basis that rules violated state statute and due process, equal protection, and unenumerated rights clauses of state constitution.” Trial court dismissed, without prejudice, statutory claim pursuant to dilatory exception raising objection of prematurity, then, at conclusion of braiders' case-in-chief in bench trial, dismissed constitutional claim on ground that braider had shown no right to relief. On appeal, First Circuit held that braider was required to exhaust administrative remedies prior to bringing statutory challenge, and that rules did not violate state constitution.

“The due process clause and the equal protection clause establish limits on the government's ability to regulate a person's livelihood or legal occupation. See *Banjavich v. Louisiana Licensing Board for Marine Divers*, 237 La. 467, 485, 111 So.2d 505, 511 (La. 1959) (noting “[t]hat the pursuit of a legal occupation is a property right” and “that the right to engage in a lawful calling is of such a basic nature that the curtailment of the right by oppressive or arbitrary legislation effectuates a deprivation of the complainant's property without due process and denies him equal protection of the law”). However, these constitutional protections “do not operate as limitations upon the police power of the State to enact and enforce laws and regulations to protect the public health and safety and promote the general welfare of the people.” *Board of Barber Examiners of Louisiana v. Parker*, 190 La. 214, 274-275, 182 So. 485, 504 (La. 1938) (on rehearing)

In *Banjavich*, 111 So.2d at 515 n.7, the Louisiana Supreme Court recognized the appropriateness of regulating barbers and the practice of cosmetic therapy (cosmetology) when it observed that with regard to those professions—and others that have been subject to regulation by the government—that “[i]t is fair to presume that these professions and occupations have substantial relation with the public in general and that their regulation is in the public interest is a proper exercise of police power.”

.....Consequently, laws and regulations enacted by the Board for the purpose of preserving the public health, safety, and welfare constitute a valid exercise of the police power of the State (and are thus constitutional) provided that the means selected to preserve the public health, safety,

and welfare have a real and substantial relationship to the purpose sought to be obtained. See Board of Barber Examiners of Louisiana, 182 So. at 505; see also Gilbert, 407 So.2d at 1231 (providing that the test to be applied in determining whether an ordinance or statute is a reasonable exercise of government's police power is "whether there is a real and substantial relationship between the regulation imposed and the prevention of injury to the public or the promotion of the general welfare"); Schwegmann Bros. v. Louisiana Board of Alcoholic Beverage Control, 216 La. 148, 177-179, 43 So.2d 248, 258 (1949) (applying the "real and substantial relation" test).

Thus, at trial Ms. N'Dakpri had the burden of proving that there was no real and substantial relationship between the statutes enacted and regulations imposed by the Board, i.e. the means selected to preserve the public health, safety, and welfare, and the purpose sought to be obtained, i.e. the prevention of injury to the public or the promotion of the general welfare.....Based on our review of this evidence, we find no manifest error in the conclusion that Ms. N'Dakpri failed to meet her burden of proving that there was no real and substantial relationship between the statutes enacted and the regulations imposed by the Board and the prevention of injury to the public or the promotion of the general welfare."

10. Attorney General Opinions - See *Op. Atty. Gen. 23-0114*, concluding that dual office holding prohibitions did not prohibit a Louisiana State Senate Aide from serving as a contract consultant for the Louisiana Airport Managers and Associates; *Op. Atty. Gen. 23-0086*, concluding that dual officeholding and dual employment provisions did not prohibit the Director of the St. Helena Parish Office of Homeland Security and Emergency Preparedness from serving as the State Representative for District 72; *Ops. Atty. Gen. 23-0122 and 23-0067*, discussing that an additional aspect of population classification statutes is the potential for exclusion should population decrease or fail to meet the minimum amount specified in the law.

G. SELECTED ARTICLES OF INTEREST

Kimo Gandalla¹, *Proxies, Quorum, and Legislative Immunity*, 2024 Harv. J.L. & Pub. Pol'y Per Curiam 29 (Summer, 2024)

Martin and Huefner, *State Legislative Vetoes: An Unwelcome Resurgence*, 61 Harv. J. on Legis. 379 (Summer 2024)

Cooper and Weinberg, *Finding Our Way: Teaching Legislative Advocacy Clinics*, 31 Clinical Law Review. 41 (Fall 2024)

H. CLOSING THOUGHTS AND QUOTES

1. "There are two things wrong with almost all legal writing. One is its style. The other is its content." ---- Fred Rodell, *Goodbye to Law Reviews*, 23 Va. L. Rev. 38 (1936-1937).

2. "It would be hard to exaggerate the importance of knowing how to prepare an adequate legal instrument. This is particularly true of statutes. Sound government depends upon legislation that says the right thing in the right way, in language that is as clear, simple and accessible as possible. There must be draftsmen who can provide these things with the least friction and delay. Good draftsmen are badly needed. This is not generally realized because the drafting skill is more subtle and copes with problems more difficult than surface appearances suggest. Legal drafting, like teaching, looks easy. But, as with teaching, the answers are rarely clear cut. The test of success is usually someone's individual judgment.

Legal drafting is not for children, amateurs or dabblers. It is a highly technical discipline, the most rigorous form of writing outside of mathematics. Few lawyers have the special combination of skills, aptitudes and temperament necessary for a competent draftsman. This is due partly to inadequate training. More fundamental is the widespread misunderstanding of what adequate draftsmanship involves.

One of the most baffling aspects of the problem is the difficulty of convincing those in whose hands the solution lies that the problem is hard and, even more basic, that any problem exists. I have discussed the matter with many lawyers, government officials and law professors. I rarely meet one who does not consider himself a well-trained, and even expert, draftsman. That the average lawyer or law professor senses little inadequacy either in himself or among bar members generally may explain the condescension they often show.....And the fact that a particular law is badly drafted does not mean that its author is a bad draftsman. Many of the things that make for bad legislation are beyond the control of the persons who are charged with preparing it." (footnotes omitted) ---- Reed Dickerson, *Legislative Drafting: A Challenge to the Legal Profession*, 40 American Bar Association Journal 635 (1954),. Articles by Maurer Faculty. 1494.
<https://www.repository.law.indiana.edu/facpub/1494>.

3. "Lawyers and judges are not trained to use or understand humor, although all would acknowledge that humor, cringeworthy or otherwise, is by no means unknown in the practice of law" - Trevor, *From Ostriches to Sci-Fi: A Social Science Analysis of the Impact of Humor in Judicial Opinions*, 45 U. Tol. L. Rev. 291 (2014)

4. "Life would also be considerably lacking without side-splitting laughs, chuckles, and giggles. Those joys alone are enough to tell the law to get out of the business of regulating taste, to keep lawyerly precision away from funny stuff, and to urge humor to continue its mission of unveiling the defects in law. As for the humor in law----the weird statutes, the weird case facts, and weird opinions----these may be an unavoidable symptom of the human condition. But we certainly can and certainly should laugh and enjoy them." ---- Professor Laura Little, Guilty Pleasures: Comedy and Law in America (Oxford University Press, 2019), page 184.
5. "It described the statute, in part, as '24 lines of unrelenting abstruseness consisting, remarkably, of the sum total of 307 words and a mere one period, a punctuation mark set out as a lone sentinel facing odds similar to that of the Spartans at the Battle of Thermopylae.' " ---Trevor, *From Ostriches to Sci-Fi: A Social Science Analysis of the Impact of Humor in Judicial Opinions*, 45 U. Tol. L. Rev. 291 (2014) at footnote 154 discussing a dissenting opinion in an Ohio court.
6. "Woe to those who make unjust laws,
to those who issue oppressive decrees,
to deprive the poor of their rights
and withhold justice from the oppressed of my people,
making widows their prey
and robbing the fatherless."
-Isaiah 10:1-2, New International Version
7. Benjamin Franklin:

"Well, Doctor, what have we got---a Republic or a Monarchy?"
"A Republic, if you can keep it."
(according to www.bartleby.com, attributed to Franklin at the close of the Constitutional Convention of 1787, in response to a question asked him as he left Independence Hall on the final day of deliberation.)
8. "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

The comments expressed in this outline are solely those of the author, and do not constitute any formal or official policy or interpretation of the Louisiana Legislature or any house or other component thereof.

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