

2025 RECENT DEVELOPMENTS IN LEGISLATIVE LAW & PROCEDURE

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- ★ 2026 Regular Session - Convenes Noon, Monday, March 9, 2026; adjourns not later than 6:00 PM on Monday, June 1, 2026; convenes for up to 60 legislative days during an 85 calendar day period (Const. Art. III, 2(A)(3)(a)), unless extended to pass a bill appropriating money pursuant to Const. Art. III, 2(A)(5), which authorizes the legislature to extend a regular session for up to 6 days if necessary to finally pass a bill appropriating money.

General in nature, except that “No measure levying or authorizing a new tax by the state or by any statewide political subdivision whose boundaries are coterminous with the state; increasing an existing tax by the state or by any statewide political subdivision whose boundaries are coterminous with the state; or legislating with regard to tax exemptions, exclusions, deductions or credits shall be introduced or enacted during a regular session held in an even-numbered year.” (La. Const. Art. III, §2(A)(3)(b))

- ★ *Session information, House and Senate bulletins, and records*, including archived video broadcasts of committee and floor proceedings - www.legis.la.gov

I. EVEN-YEAR REGULAR SESSIONS:

- A. La. Const. Art. III, §2(A) and (B):

“§2. Sessions

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

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

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

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

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

(3)(a) All regular sessions convening in even-numbered years shall be general in nature and shall convene at noon on the second Monday in March. The legislature shall meet in such a session for not more than sixty legislative days. No such session shall continue beyond six o'clock in the evening of the eighty-fifth calendar day after convening except as provided in Subparagraph (5) of this Paragraph. No new matter intended to have the effect of law shall be introduced or received by either house after six o'clock in the evening of the twenty-third calendar day. No matter intended to have the effect of law, except a measure proposing a suspension of law, shall be considered on third reading and final passage in either house after six o'clock in the evening of the fifty-seventh legislative day or the eighty-second calendar day, whichever occurs first, except by a favorable record vote of two-thirds of the elected members of each house.

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

(4)(a) All regular sessions convening in odd-numbered years shall convene at noon on the second Monday in April. The legislature shall meet in such a session for not more than forty-five legislative days. No such session shall continue beyond six o'clock in the evening of the sixtieth calendar day after convening except as provided in Subparagraph (5) of this Paragraph. 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.

(5) Notwithstanding any contrary provision of Subsubparagraphs (3)(a) and (4)(a) of this Paragraph and only if necessary to finally pass a bill appropriating money, the legislature, by a favorable record vote of two-thirds of the elected members of each house, may extend a regular session in increments of two legislative or calendar days. During the time that a regular session has been extended, the legislature shall not consider any matter having the effect of law other than those contained in a bill appropriating money. No regular session shall be extended more than six calendar days beyond the original time and day for the session to adjourn sine die. [NEW - Acts 2024, No. 407, §1, eff. Jan. 12, 2025.]

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

(New language of Art.3, Sec. 16 -Acts 2024, No. 406, §1, eff. Jan. 12, 2025)

§16. Appropriations

(F) Coordination of Resources and Expenditures. No conference committee report or amendment from the Senate on a bill appropriating money shall be considered for concurrence until at least forty-eight hours after the bill, a summary detailing the proposed changes to the bill, and any additional information required by the joint rules of the legislature and the rules of the house of the legislature considering concurrence have been distributed to each member of that house of the legislature.

II. SPECIAL SESSIONS:

A. La. Const. Art. III, §2(B) -

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

(La.R.S. 24:11 - petition and procedure for legislature to call itself into special session.)

B. General Object - State ex rel. Porterie v. Smith, 184 La. 263, 166 So. 72 (1935)

1921 Constitution - Art. 5, Sec. 14 - "The power to legislate, under penalty of nullity, shall be limited to the objects specially enumerated in the proclamation of the Governor, or petition and notice, convening such extraordinary session, and the session shall be limited to the time named therein, which shall never exceed thirty days."

Where proclamation included "appointment and election of public officers" as an object, this was a general object deemed sufficient to include an act providing for appointment and election of additional police jurors. The Louisiana Supreme Court stated:

- a. "The rule that the Legislature cannot legislate on a matter not designated in the Governor's proclamation does not require as comprehensive and as clear an expression of the subject of the legislation as is required in the title of an act. 59 C.J. 528. Besides, 'Where a general object is described, the Legislature is free to determine in what manner such object shall be carried into effect. 59 C.J. 527" (pp. 76-77).
- b. "Section 14 of article 5 of the Constitution does not require that the object of the act, as if stated in its title, or that the subject-matter of the act, as if enacted, shall be stated in detail in the call, but merely requires that 'the objects' or subjects to be legislated upon shall be designated therein, and such 'objects' or subjects may be general.

The rule is thus stated in 59 C.J. at page 527: 'The Governor's call or message need not state the details of the legislation to be considered, as such matters are within the discretion of the Legislature and beyond the control of the Governor except for his power of veto. Where a general object is described, the Legislature is free to determine in what manner such object shall be carried into effect.' (Italics ours.)" (p. 76)

C. In the Matter of Angus Chemical Company, 679 So.2d 454 (La. App. 1 Cir. 1996)

(from West Summary) - Act of extraordinary session, which had effect of transferring appellate jurisdiction to review final permit actions, final enforcement actions and declaratory actions of Department of Environmental Quality (DEQ) in first instance from Court of Appeal to Nineteenth Judicial District Court, was germane to general object set forth in governor's proclamation convening extraordinary session and, thus, act did not violate specific enumeration requirement of State Constitution; proclamation listed object of session to include legislating "relative to administrative procedures, to provide for the effect of a decision by an administrative law judge, the agencies affected by said law, and jurisdiction for appeals thereafter."

(Court) - "while the Supreme Court's decision in *Porterie* dealt with the language of the 1921 Constitution, inasmuch as article III, § 2(B) of the 1974 Constitution was adopted from article V, § 14 of the 1921 Constitution without any substantive change, we conclude the Supreme Court's pronouncements in *Porterie* are applicable to the present case."

(Court) - "In *Porterie*, the Supreme Court specifically addressed the requirements of a proclamation for an extraordinary session, stating as follows:

Section 14 of article 5 of the Constitution [of 1921] does not require that the object of the act, as if stated in its title, or that the subject-matter of the act, as if enacted, shall be stated in detail in the call, but merely requires that "the objects" or subjects to be legislated upon shall be designated therein, and such "objects" or subjects may be general. (Emphasis added).

State ex rel. Porterie, 166 So. at 76. The Court further pointed out that the details of the legislation at issue were beyond the control of the governor and were within the discretion of the legislature. *State ex rel. Porterie*, 166 So. at 76. This holding, that the object listed in the governor's proclamation may be stated in general terms, is consistent with subsequent pronouncements by the Supreme Court. In *Airey v. Tugwell*, 197 La. 982, 3 So.2d 99, 102 (1941), the Supreme Court defined the "object of a law" in the context of the "one object" and "indicative title" requirements of article III, § 16 of the 1921 Constitution as "the aim or purpose of the enactment" and "its general purpose." Thus, we conclude, in accordance with the pronouncements of the Supreme Court, that

although the proclamation convening the extraordinary session must specifically enumerate each object that is to be considered by the legislature, the individual objects listed may be stated in general terms. La. Const. art. III, § 2(B); *State ex rel. Porterie*, 166 So. at 76." (emphasis added).

- D. Jazz Casino Company, L.L.C. v. Bridges, 309 So.3d 741 (La. App. 1 Cir. 2020), rehearing denied

Within "call" - Court at Footnote 16 - "Harrah's also asserts that Subsection (e) is unconstitutional under La. Const. art. III, § 2(B), which sets forth, relative to extraordinary sessions, that the governor "shall issue a proclamation stating the objects of the extraordinary session" and that "[t]he power to legislate shall be limited, under penalty of nullity, to the objects specifically enumerated in the proclamation." Here, Item No. 1 of the proclamation stated, in relevant part, "to revise or repeal the prohibition and limitations on owning or renting hotel rooms by the casino gaming operator." Harrah's contends this was an insufficient articulation to allow the Louisiana Legislature to vote on legislation relative to Subsection (e). The long-standing jurisprudential rule of law is that a statute must first be questioned in the trial court, not the appellate courts, and the unconstitutionality of a statute must be specially pleaded with the grounds for the claim particularized. *Vallo v. Gayle Oil Co., Inc.*, 94-1238 (La. 11/30/94), 646 So.2d 859, 864-65. Harrah's failed to plead an Article III, § 2 impediment. Although Harrah's asserted in its motion for partial summary judgment that Subsection (e) as interpreted by the Department resulted in a violation of Article III, § 2, the trial court did not address the issue. **Nevertheless, we find the assertion is without merit. See *State ex rel. Porterie v. Smith*, 184 La. 263, 275, 166 So. 72, 76 (1935) (*The Governor's call need not state the details of the legislation to be considered, as such matters are within the discretion of the Legislature and beyond the control of the Governor except for his power of veto. Where a general object is described, the legislature is free to determine in what manner such object shall be carried into effect*).** The methodology of valuation of no-longer-prohibited services set forth in Subsection (e) is merely an expression of the manner in which the object, i.e., the removal of the prohibition on owning or operating hotel rooms by the casino gaming operator, is to be carried into effect for taxation purposes."

[Note: In Jazz Casino Company, L.L.C. v. Bridges, 309 So.3d 729 (La. 2021), the Supreme Court by per curiam granted in part and reversed in part, stating, "[f]or the reasons assigned by Judge Theriot, we grant this writ in part and reverse the lower courts' grant of summary judgment in favor of the Louisiana Department of Revenue only as it relates to room taxes on third-party-hotel rooms which the Jazz Casino Company, LLC, neither owns nor operates; otherwise, this writ is denied.]

E. Singer, 1 Statutes and Statutory Construction 5 (6th ed. 2002)- "Powers of Special Sessions" - Excerpts

- a. Interpretation of call - 5.3 - "The governor's call should be given a liberal interpretation in favor of broad legislative power. The language of the call must be given its common and ordinary meaning as associated with and understood in the field of legislation to which it refers....The usual principles of interpretation are employed in order to arrive at a reasonable construction of the call. The call should be viewed as a whole and in context. A call to 'amend' the legislation upon a particular topic was held to include the repeal of the same legislation." (footnotes omitted).
- b. Requirement that the call specify the subject of legislation with particularity - 5.4 - "Since the governor can either restrict the scope of legislative action, or can extend it to many subjects, it should make no difference whether the language he uses describes the subjects by general or specific language. The constitutional restrictions were inserted for the purpose of giving notice to the public that certain subjects would be placed before the legislature, so that the interested public could be present to discourage or support the contemplated legislation. It is extremely doubtful whether a call including numerous specified items will come to the attention of the public as quickly as a general statement of the legislation needed." (footnotes omitted).
- c. Finality of governor's control - 5.5 - "The governor is not a part of the law-making body, and therefore he will not be permitted to control the discretion of the legislature in acting upon a particular subject. Thus, the legislative branch may decide either favorably or unfavorably towards the demands of the proclamation. Likewise the governor cannot limit the amount of an appropriation. His call may validly refer to a particular bill, but the legislature is limited only by the subject intended to be covered and so the legislature may validly make amendments to it. While the governor is unable to force the legislature to act in a particular way he may qualify a general subject, and thus control the scope of legislative action." (footnotes omitted).
- d. Presumption of constitutionality - 5.7 - "Probably the most litigated problem arising under the constitutional restrictions upon legislation by extraordinary session is that concerned with the requirement that the legislation "relate" to the "subject" designated in the call, or that the "business" of the legislature shall be limited to that specified in the proclamation. In determining whether the legislative action conforms to the governor's call, the constitutional provisions should be strictly construed in favor of the legislative power, and a statute enacted during an extraordinary session should be presumed to be constitutional." (footnotes omitted).

- e. Germane subject - 5.8 - "The statute must be reasonably germane to the subject described in the governor's call, but unless the statute covers a matter entirely foreign to the purpose of the call it will be sustained. The exact determination of what legislation is germane to a particular call will depend upon the application of reasonable judgment in each separate instance where the issue is raised, keeping in mind that the purpose of placing constitutional limitations upon the enactments of a special session is to provide notice to the public of the nature of the legislation to be considered. The test is whether the public was reasonably put on notice that legislation of the sort enacted would be considered.

A further incidental consequence of these provisions is also to limit the freedom of legislative activity so that the legislature's efforts will be concentrated upon those matters which the governor declares to be in need of immediate attention. However, the courts are not justified in applying the constitutional restrictions so narrowly as to limit the legislature's choice of ways to deal with a subject. To do so would enable the governor to dominate policy to such a degree that the spirit of the principle of separation of powers would be violated." (footnotes omitted).

F. 73 Am Jur 2d §17 - "Statutes"- "Scope of legislation enacted at special sessions"

- a. "In the absence of a constitutional provision limiting the power of the legislature to pass laws at a special session, its legislative power, when convened in special session, is as broad as a regular session.¹ However, constitutional provisions have been adopted in some jurisdictions which impose limitations upon the power of the legislature to enact laws when convened in special session.² For example, some constitutional provisions provide that business other than that set forth in the governor's call for the special legislative session cannot be transacted³ or that there may be no legislation upon subjects other than those designated in the proclamation of the governor calling such session.⁴ One state constitution authorizes its general assembly to convene in a special session only if called by proclamation of the governor or by written request by two-thirds of the members of each house.⁵ A state legislature, while in special session, may enact legislation relating to, germane to, and having a natural connection with the purpose for which it was convened.⁶ A call for a special session to supplant the work left unaccomplished in a disrupted regular session would likely near, if not surpass, the impermissible breadth of the call and thus risk running afoul of constitutional provisions authorizing special sessions. Moreover, allowing a special session essentially to replace a regular session gives rise to separation of powers concerns.⁷ " (footnotes omitted).

G. 82 C.J.S. Statutes §15 -§17 - Special Sessions - Excerpts (footnotes omitted)

- a. “Constitutional provisions for special or extra legislative sessions may restrict or limit the enactment of statutes to matters or subjects specifically stated in the call, proclamation, or message of the governor. A special session of the legislature generally may be convened by the state governor as a matter of the governor's constitutional authority,¹ subject in its scope to legislative action within constitutional limitations applicable to special or extra sessions.² The legislature itself may also have constitutional authority to convene in special session on a request to the state governor.³

A state constitution may empower the legislature to convene in special session only to address specific subjects for which the session is convened,⁴ and not for general purposes⁵ or purposes beyond the scope of the special session.⁶ However, the state constitution may empower the legislature to convene in special session to enact any laws and statutes for the benefit of the state,⁷ or, absent a constitutional restriction, the legislature may enact any law that it might at a regular session.⁸ The restriction in some cases may be rendered inapplicable by a vote of the legislative body in the special or extra session.⁹

While laws enacted by a legislature in an extraordinary session generally are, by definition, legislative actions,¹⁰ under a restrictive constitutional limitation, a law enacted at a special or extra session on a subject not designated by the governor is void¹¹ even when approved by the governor.¹²

A constitutional provision limiting the power of the legislative body must be strictly construed¹³ and there may be a presumption in favor of the constitutionality of legislation enacted in a special session in relation to the proclamation of the special session if the constitutionality of legislation can be sustained by any reasonable construction.¹⁴ By one standard, the inquiry is reduced to the ascertaining the subject or subjects embraced in the call, proclamation, or message determined by analysis and construction.¹⁵ Review may be limited to the record approval of an act passed at a special session to ascertain that the subject matter was in response to the subject designated or presented by the governor.¹⁶”

- b. “The call or proclamation for a special or extra legislative session may go only to specific or identified subjects, but may contain many or few subjects, and while the legislature generally must confine itself to the matters submitted, the legislature is free to determine in what manner it proceeds or acts, and need not act at all.

Under constitutional provisions limiting legislation at special or extra sessions,¹ the call or proclamation may go only to specific subjects identified,² stated,³ or specified,⁴ whether stated broadly or in general terms,⁵ and may contain many or few subjects according to the governor's conception of the public need.⁶

The matter of a special or extra session is one in the governor's discretion,⁷ generally not subject to judicial review.⁸ However, the governor cannot restrict the details springing from such a subject,⁹ or state the details of the legislation,¹⁰ and may not dictate the manner in which the legislature proceeds,¹¹ prescribe the manner in which the legislature acts,¹² nor alter the constitutional requirements attending the enactment of laws, whether a special law, private law, or local law.¹³ The legislature's response to the governor's recommendation for legislative action is exclusively within the province of the legislature.¹⁴ The legislature convened in an extra session on the call of the governor is not required to act on the bill to which the governor refers.¹⁵ Thus, the governor's authority over the legislature is limited to merely advisory suggestions, as may suggest the means of accomplishing business.¹⁶ The description of a general object leaves the legislature free to determine in what manner the object will be carried into effect.¹⁷"

- c. "Legislation adopted at a special session must be germane to or within the scope of governor's call or proclamation .Legislation enacted by a special or extra session must be germane to or within the apparent scope of the objects or subjects which were designated as proper fields for legislation.¹ bearing a "rational nexus" to the item specified in the governor's call.² The enactment must be fairly within the subject of the call,³ or within the ambit of the general subject matter of the call,⁴ requiring a connection or relation to the subjects in the call, and encompassing laws that necessarily or incidentally arise out of the subjects in the call.⁵ A speculative, indirect, and tangential relationship between legislation and the call item on which it is based is insufficient.⁶

General rules applicable to the construction of statutes or the rules governing the construction of other written instruments apply.⁷ The proclamation should be construed or considered as a whole,⁸ reasonably⁹ or liberally,¹⁰ and the legislature is not limited to a narrow, technical interpretation of the subject matter comprised in the governor's call.¹¹

The legislature may make legislation within a subject effective by enacting other legislation that may necessarily or incidentally arise out of that call,¹² and the lack of a specific request for the particular legislation enacted does not render the legislation unconstitutional, when within the parameters of the governor's call.¹³"

H. Mason's Manual of Legislative Procedure (2020 ed.) -

"Sec. 780. Calls for Special Sessions

1. A constitutional provision forbidding the enactment of laws at a special session, other than those specified in the proclamation by the governor, is mandatory.
2. In issuing a call for a special session of the legislature, the governor may confine legislation to the subjects specified in the governor's proclamation.
3. The governor may limit the consideration of a special session to a special phase of a general subject, but the governor cannot restrict the details springing from that subject.
4. While a legislature cannot go beyond the business specified in a call for an extra session, yet within such limits, it can act freely, in whole or in part or not at all.
- ...
6. In determining whether a given act is germane to the subject stated in the proclamation, the entire proclamation should be considered and should be reasonably construed to bring the act within its meaning, if possible.
-
11. A statute passed at a special or extraordinary session of the legislature will be held by the courts to be within the scope of the governor's call if it can be done so under any reasonable construction." (pp. 589-591, footnotes omitted).

I. Constitutional Amendments

- a. La. Const. Art. XIII, §1(A) provides that a constitutional amendment may be proposed any extraordinary session of the legislature *if it is within the objects of the call of the session and is introduced in the first five calendar days* thereof.
- b. Enabling legislation - Art. XIII, §3, provides that "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."

J. Resolutions

- a. A concurrent resolution suspending a law must be included in the governor's "call" for that special session. Op. Atty. Gen. No. 94-394, Aug. 3, 1994.
- b. A concurrent resolution creating a joint legislative investigative committee and instructing the committee in course of its duties and actions was self-directing, for internal concern of Legislature, and was not "legislation" which needed to be included in special session call to be effective. Joint Legislative Committee v. Fuselier, 174 So.2d 817 (La. App. 1 Cir. 1965).

K. Pre-session Advertising and Other Requirements

- a. Preintroduction notice otherwise necessary for retirement, local or special laws does not appear to be required for special session call items. Fruge v. Board of Trustees of Louisiana State Employees' Retirement System, 6 So.3d 124 (La. 2008); State v. Cusimano, 187 La. 269, 174 So. 352 (1937); Williams v. Guerre, 182 La. 745, 162 So. 609 (1935); State ex. rel. Sewerage & Water Board of New Orleans v. Michel, 127 La. 685, 53 So. 926 (1910). The call itself serves as the "notice".
- b. Other constitutional requirements for legislation, including origination, elements of a bill, germane amendments and necessary vote, are still applicable.

L. Other provisions

- a. La. Const. Art. III, §16(E) - "(E) Extraordinary Session. Except for expenses of the legislature, a bill appropriating money in an extraordinary session convened after final adjournment of the regular session in the last year of the term of office of a governor shall require the favorable vote of three-fourths of the elected members of each house."
- b. La. Const. Art. III, §19 - "§19. Effective Date of Laws
Section 19. All laws enacted during a regular session of the legislature shall take effect on August first of the calendar year in which the regular session is held and all laws enacted during an extraordinary session of the legislature shall take effect on the sixtieth day after final adjournment of the extraordinary session in which they were enacted. All laws shall be published prior thereto in the official journal of the state as provided by law. However, any bill may specify an earlier or later effective date."
- c. La. R.S. 24:11 - petition and procedure for legislature to call itself into special session.

- d. La. R.S. 39:56 - "C. Not later than sixty days after the final adjournment of any special session the governor shall cause to be prepared an update of the state budget required by this Section, which shall incorporate any revisions necessary as to expenditures or means of financing of the state budget which resulted from actions taken during such special session. The governor shall distribute copies of these revisions in accordance with the provisions of Subsection B of this Section."
 - e. La. Const. Art. VII, §10 and La. R.S. 39:75 - special sessions for avoidance of projected deficits.
- M.** Brinkhaus , et al v. Senate of the State of Louisiana, et al., 655 So.2d 394 (La. App. 1 Cir. 1995)
- a. Due to separation of powers and adoption by Legislature of procedural rules, legislators cannot seek declaratory judgments from courts to overturn procedural rulings of legislative officers. Courts lack subject matter jurisdiction, as Art. III, Sec. 7(A) of the La. Const. provides that each house of the legislature "shall determine its rules of procedure, not inconsistent with the provisions of this constitution."
 - b. Adopted rules, and Mason's Manual of Legislative Procedure, provide internal means of appealing adverse rulings, including situation where a presiding officer is reluctant or refuses to allow the introduction of legislation or referral thereof to committee.

III. SELECTED NEW LEGISLATION:

- A. By constitutional amendment to Article 3, Section 2, effective January of 2025, the legislature may vote by two-thirds of the elected members of each house to extend the session for a period not to exceed six calendar days, "only if necessary to finally pass a bill appropriating money". During such extension, "the legislature shall not consider any matter having the effect of law other than those contained in a bill appropriating money."
- B. By constitutional amendment effective January of 2025, Article III, Section 16 concerning appropriations now includes that, "[no] conference committee report or amendment from the Senate on a bill appropriating money shall be considered for concurrence until at least forty-eight hours after the bill, a summary detailing the proposed changes to the bill, and any additional information required by the joint rules of the legislature and the rules of the house of the legislature considering concurrence have been distributed to each member of that house of the legislature." See also, Joint Rule 22 adopted by the legislature in 2025.
- C. Act 374 of the 2025 Regular Session, to be effective July of 2027, revises R.S. 43:81 and amends and repeals numerous related statutes to provide that the Official Journal of the State shall be a website maintained by the commissioner of administration instead of a newspaper and adds requirements concerning the website operation and content.
- D. Act 237 of the 2025 Regular Session revised R.S. 42:265 and R.S. 49:21, relative to the legal representation by the attorney general of the sovereign interests of the state in disputes involving the federal government.
- E. Act 98 of the 2025 Regular Session amended R.S. 49:961 relative to APA to add that, unless determined acceptable by the oversight committees, a proposed action shall not take effect if the legislative fiscal office determines that the action will result in either "the expenditure of state funds or an economic impact involving costs to regulated entities estimated at two hundred thousand dollars per year or more or six hundred thousand dollars or more over three years." However, this prohibition shall not apply if the legislative fiscal office determines that the fiscal or economic impact "is less than or equal to the amount accounted for in the fiscal note for legislation that required the action." A proposed action otherwise prohibited may take effect without determinations by the oversight committees if at least one oversight committee fails to conduct a hearing within 30 days of receipt of the report and the "governor deems the action acceptable in writing."
- F. In October of 2024 the Louisiana Supreme Court in *Fisher v. Harter*, 395 So.3d 806 (La. 2024), declared the then-existing language of La. R.S. 13:4163 invalid as an encroachment upon judicial branch constitutional powers. In response, the language of La. R.S. 13:4163 was revised by the legislature in 2024 and 2025. See Act 101 of the 2025 Regular Session, providing a detailed procedure for invoking the right to a legislative continuance under certain circumstances and the nature of judicial review.

- G. In 2025, Act 301 of the Regular Session revised the language of R.S. 42:1102(22) and other sections in the Code of Ethics. Included are: revised definitions for legislative purposes in R.S. 42:1102 (24) and (25) of "public speech" and "reasonable transportation". Such transportation includes "transportation organized primarily for educational or for informational purposes, including on-site inspections, to any state, territory, or commonwealth of the United States, to the territorial waters of Louisiana, and to any offshore structure located on the outer continental shelf seaward of such territorial waters and offshore of Louisiana.". "Public speech" is defined in 1102(24) as "a speech, or other oral presentation, including a panel discussion, or radio or television appearance before the public at large, or before any civic, political, religious, or educational group or organization or an organization qualified for an exemption from federal income tax under Section 501 of the Internal Revenue Code by a member of the legislature in his capacity as a legislator."

A public servant may also accept a gift of up to \$200 in value consisting of flowers or a donation to a 501 organization in sympathy of the death of a member of his immediate family. A public servant may also accept seasonal or holiday foods or non-alcoholic beverages that commemorate a religious or state holiday, if the value of such does not exceed certain statutory amounts. R.S. 42:1123(26).

- H. Act 394 of the 2025 Regular Session, effective December 1, 2025, provided additional registration and other requirements for state and local lobbying on behalf of "foreign adversaries".

- I. In 2025, Act 183 of the Regular Session amended R.S. 39:126 to provide that prior approval of the Joint Legislative Committee on the Budget is required for one or more change orders that cause an excess in the aggregate of \$250,000 per month for a project undertaken pursuant to capital outlay act appropriation. A change order exceeding \$50,000 but less than \$250,000 shall be submitted to the committee for review but does not require committee approval.

- J. House Rule Changes:

Rule 8.8.1. Calendar; passing over certain instruments; "Berthelot Rule"

A. Notwithstanding House Rule 8.8, on any legislative day at the discretion of the Speaker and upon the motion of any member, the House may consider legislative instruments on third reading and final consideration or final passage that are noncontroversial in preferential order, which shall be referred to as the "Berthelot Rule".

B. If a member raises an objection to proceeding under the Berthelot Rule, then proceeding under the Berthelot Rule shall require a motion adopted by a favorable vote of a majority of the members present and voting, and such motion shall not be debatable.

C.(1) Any legislative instrument which is not considered in the order of its maturing in the manner provided by House Rule 8.8 due to the House proceeding under this rule shall remain on the calendar in the same numerical order for consideration. (2) For the purposes of this Paragraph, if a member objects to a legislative instrument being considered in

preferential order pursuant to this Rule, the legislative instrument shall remain on the calendar in the same numerical order for consideration.
(HR 86 of 2025 Regular Session).

[new] Rule 8.24. Information required for consideration of appropriations bills; concurrences and conference committee reports
Notwithstanding any other rule to the contrary, the additional information required pursuant to Article III, Section 16(F) of the Constitution of Louisiana for purposes of adopting a conference committee report for or concurring in Senate amendments to an appropriations bill shall be as provided in Joint Rule 22. (HR 342 of 2025 Regular Session)

K. Senate Rule Changes:

Rule 13.15. Standing committees; subpoena power, punishment for contempt

Each standing committee established by Rule 13.1 and each joint committee established pursuant to the authority granted in Rule 13.12, and any subcommittee of either, is hereby specifically and expressly granted the power and authority, with the written approval of the President, to hold hearings, subpoena witnesses, administer oaths, require the production of books and records, and to do all other things necessary to accomplish the purposes of the study, hearing, or investigation assigned to it by the Senate or by the legislature or by a majority of the members of the committee. However, a subpoena or a subpoena duces tecum shall issue only upon the approval of a majority of all the members of the standing committee and of the President, authorizing the committee to issue the subpoena or subpoena duces tecum. In the event a subpoena or subpoena duces tecum is not honored, the standing committee or joint committee also shall have the power to punish for contempt and to provide for the prosecution of any individual for refusal to testify, false swearing, or perjury before the committee or subcommittee in accordance with law. (SR 4 of 2025 Regular Session - removes requirement for judicial order necessity to issue subpoena in interim)

[Note: La. Const. Art. 3, Sec. 7 (B) - “(B) Subpoena Power; Contempt. Each house may compel the attendance and testimony of witnesses and the production of books and papers before it, before any committee thereof, or before joint committees of the houses and may punish those in willful disobedience of its orders for contempt.”]

L. New Joint Rule 22:

Joint Rule No. 22. Information required for consideration of appropriations bills; concurrences and conference committee reports

A. The information required by Article III, Section 16(F) of the Constitution of Louisiana includes only the following:

(1) For purposes of concurring in Senate amendments to all appropriations bills, including the General Appropriation Bill, a summary of the proposed changes to the bill.

(2)(a) For purposes of adopting a conference committee report on the General Appropriation Bill, an unofficial enrollment and summary of the proposed changes to the bill.

(b) For purposes of adopting a conference committee report on any appropriation bill other than the General Appropriation Bill, a summary of the proposed changes to the bill.

B. The information required in Paragraph A of this Joint Rule shall be made available at least forty-eight hours prior to a vote. (HCR 80 of 2025 Regular Session)

M. Acts of the First Extraordinary Session of 2025:

Act 1 - “To enact Part I-B of Chapter 5 of Title 18 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 18:419.1 and 419.2, relative to the conduct of elections in 2026; to provide for dates for spring elections in 2026; to provide for qualifying spring elections in 2026; to provide for nominating petitions for spring elections in 2026; to provide for election campaign finance disclosure filing deadlines for 2026; to provide certain authorizations to the secretary of state; to provide for effectiveness; and to provide for related matters.”

Section 2 - “Section 2. The change of election dates as provided in this Act shall not be construed to invalidate any action undertaken by the governing authority of a political subdivision in an effort to place a bond, debt, tax, or proposition election or other question to be presented to the voters on either the April 18, 2026, or May 30, 2026, ballot. Any notice, resolution, proclamation, or certification that states either the April 18, 2026, or May 30, 2026, election date shall not be invalidated for failure to state the May 16, 2026, or June 27, 2026, election date as provided for in this Act.”

[Questions: Does the above Section 2 language have superseding legal force and effect if in conflict with the text language of Section 1 or another provision of law? Is it saying that no cause or right of action exists if notices or other documents by governing authorities now have incorrect election dates and, if so, is this potential retroactive application of the act? The effective date of the Act was October 30, 2025. Are the phrases “shall not be construed to invalidate” and “shall not be invalidated” attempted exercises of judicial power?]

(Con't.)

Act 2 - “To amend and reenact Section 2 of Act No. 218 of the 2025 Regular Session of the Legislature, Section 2 of Act No. 219 of the 2025 Regular Session of the Legislature, Section 3 of Act No. 221 of the 2025 Regular Session of the Legislature, Section 8 of Act No. 222 of the 2025 Regular Session of the Legislature, and Section 2 of Act No. 223 of the 2025 Regular Session of the Legislature and to repeal Act No. 212 of the 2025 Regular Session of the Legislature, relative to designating the statewide election for submitting proposed constitutional amendments contained in joint resolutions concurred in during the 2025 Regular Session of the Legislature to the electors of the state; to provide for a special statewide election to be held on May 16, 2026, for the purpose of submitting proposed constitutional amendments to the electors of the state; to provide for the conduct of such election; to change the date on which the proposed constitutional amendments shall be submitted to the electors; to provide for effectiveness; and to provide for related matters.”

IV. SELECTED RECENT CASES

A. Proposed constitutional amendments and ballot language.

La. Const. Art. XIII, 1(B) - “(B) Form of Proposal. A proposed amendment shall have a title containing a brief summary of the changes proposed; shall be confined to one object; and shall set forth the entire article, or the sections or other subdivisions thereof, as proposed to be revised or only the article, sections, or other subdivisions proposed to be added. However, the legislature may propose, as one amendment, a revision of an entire article of this constitution which may contain multiple objects or changes. A section or other subdivision may be repealed by reference. When more than one amendment is submitted at the same election, each shall be submitted so as to enable the electors to vote on them separately.”

La. Const. Art. IV, 7 - “§7. Secretary of State; Powers and Duties

Section 7. There shall be a Department of State. The secretary of state shall head the department and shall be the chief election officer of the state. *He shall prepare and certify the ballots for all elections*, promulgate all election returns, and administer the election laws, except those relating to voter registration and custody of voting machines. He shall administer the state corporation and trademark laws; serve as keeper of the Great Seal of the State of Louisiana and attest therewith all official laws, documents, proclamations, and commissions; administer and preserve the official archives of the state; promulgate and publish all laws enacted by the legislature and retain the originals thereof; and countersign and keep an official registry of all commissions. He may administer oaths, and shall have other powers and perform other duties authorized by this constitution or provided by law.”

2024 - “In November of 2024 the Louisiana Legislature by Joint Resolution, with overwhelming majorities in both houses, proposed an amendment to revise Article VII of the Louisiana Constitution. A Joint Resolution of the Legislature is not law; the law will change only if the voters approve the proposed amendment. The measure is scheduled to appear on the March 29th ballot as proposed Amendment No. 2.

The wisdom of the proposed changes is not before the court. That will be decided after investigation, debate, and a vote of the people. The issue is whether the question has been legally presented to the voters.” (Calhoun - see below).

The proposed amendment, Act 1 of the 2024 Third Extraordinary Session, was 115 pages long. The ballot language in its entirety stated:

“Do you support an amendment to revise Article VII of the Constitution of Louisiana including revisions to lower the maximum rate of income tax, increase income tax deductions for citizens over sixty-five, provide for a government growth limit, modify operation of certain constitutional funds, provide for property tax exemptions retaining the homestead exemption and exemption for religious organizations, provide a permanent teacher salary increase by requiring a surplus payment to teacher retirement debt, and make other modifications? (Amends Article VII, Sections 1 through 28; Adds 20 Article VII, Sections 29 through 42)”

On March 18, 2025, in *Calhoun v. Landry*, 403 So.3d 521 (La. 2025), rehearing denied, the Louisiana Supreme Court, with three dissents, exercised its plenary supervisory authority by per curiam opinion and upheld the proposed constitutional amendment as having a valid title, one object, and ballot language that complied with law. See discussion below.

On March 29th, the proposed amendment failed by a vote of 35% for and 65% against.

In *Calhoun*, discussing the ballot language, the majority opinion concluded:

"The full text of the amendment is available to the public on the Louisiana Legislature's website: <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1390004>. We find the ballot language for the proposition at issue is framed in "simple, unbiased, concise, and easily understood language." There is no requirement that every detail of the proposition be stated on the ballot. The state's voters have access to the entire legislative bill giving all the details of the proposed constitutional amendments on the state legislature's website. The effect of the proposed changes is a subject for debate beyond the purview of this court.

This court has long recognized that: The publication gives voters information as to the contents or provisions of a proposed constitutional amendment. All that is required to be printed on the ballot is sufficient information to identify which proposed amendment the voters are voting for or against. *Hotard v. City of New Orleans*, 213 La. 843, 35 So.2d 752, 756 (1948). Amendment 2 has been published on the legislature's website for over three months. The public is able to make itself aware of all contents of Amendment 2. (page 524).

The court further upheld the legislation as having a valid title and one object, stating:

: "Plaintiffs argue that the title to the amendment is inadequate. Article XIII, Section 1(B) provides that a "proposed amendment shall have a title containing a brief summary of the changes proposed". This constitutional requirement differs from the statutory requirements for the language on the ballot. The title to the proposed amendment is "To provide with respect to the power of taxation including limitations thereon". The title to Article VII is simply, "Revenue and Finance". It is well-settled that the title of a legislative act is not dispositive, rather the substance controls. "[T]he provisions in the body of a law, which are germane to the object of the legislation need not be expressed in the title and the title is not required to be a complete index to every section of the statute. It is sufficient if the title in general terms directs attention to the purpose of the enactment. ... The title of an act is not to be strictly or technically construed. ... All that is required is that the title of a statute should be indicative of its object. The constitutional provision must be construed broadly with the view of effectuating not frustrating the legislative purpose." State v. Sliger, 261 La. 999, 1006-07, 261 So. 2d 643, 646 (1972). We believe the same principle applies here. We find the title is adequate and therefore find no merit in this argument.

Plaintiffs also raise a "one object" argument. Article XIII, 1(B) of the constitution provides that a proposed amendment, "shall be confined to one object". It further provides, however, that "the legislature may propose, as one amendment, a revision of an entire article of this constitution which may contain multiple objects or changes". That is clearly the case here. The proposed amendment provides a robust overhaul of Article VII. The fact that Sections 12, 13, and 17 and some parts of other sections remain as they were is of no moment in the larger legislative objective. This argument also has no merit." (page 523)."

Justice Weimer dissented, arguing that the writ should not have been granted and lower courts should have had the opportunity to fully consider the matter. Justice Guidry dissented, disagreeing with the majority's conclusions of validity. Justice Griffin dissented for the reasons assigned by Justices Weimer and Guidry. Justice Cole additionally concurred, agreeing with the majority's conclusions and further concluding that the plaintiffs' use of an injunction proceeding to challenge the constitutional validity of the act in question was procedurally deficient under Article 855.1 of the Louisiana Code of Civil Procedure, requiring such challenge to be brought by ordinary proceeding.

[Note:], Prior to amendment in 2025, La. R.S. 18:1299.1 stated "A. The preparation of a question or proposition to be submitted to the voters at an election shall be the responsibility of the governing authority or other entity calling the election or submitting the question or proposition. The proposition shall be comprised of simple, unbiased, concise, and easily understood language and be in the form of a question. The proposition shall not exceed two hundred words in length and shall not include words that are struck

through, underscored, or in boldface type. B. The secretary of state shall be responsible for ensuring that the proposition complies with the requirements of this Section."

As amended by *Act 386 of the 2025 Regular Session*, effective August 1, 2025, La. R.S. 18:1299.1 now states, "A. The preparation of a question or proposition to be submitted to the voters at an election shall be the responsibility of the governing authority or other entity calling the election or submitting the question or proposition. The proposition shall be comprised of simple, unbiased, concise, and easily understood language and be in the form of a question. The proposition shall not exceed two hundred words in length and shall not include words that are struck through, underscored, or in boldface type. The governing authority or other entity shall be responsible for ensuring that the proposition is comprised of simple, unbiased, concise, and easily understood language. B. The secretary of state shall be responsible for ensuring that the proposition does not exceed two hundred words in length, does not include words that are struck through, underscored, or in boldface type, and is in the form of a question."]

- B. **Special laws.** In *Welch v. United Medical Healthwest-New Orleans L.L.C.*, 403 So.3d 554 (La. 2025), rehearing denied, the Louisiana Supreme Court concluded that La. R.S. 29:771(B)(2)(c)(i), providing a gross negligence standard for civil liability of health care providers during a declared public health emergency, was rationally related to a legitimate government interest and constitutional.

Among other challenges, the plaintiff had claimed that statute was a prohibited special law granting immunity to a private corporation, association, or individual. Rejecting this claim, the Court stated:

"A special law confers special privileges or imposes peculiar disabilities or burdensome conditions on the exercise of a right common to 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, 52 (emphasis added); *Deer Enterprises, LLC v. Parish Council of Washington Parish*, 10-0671 (La. 1/19/11), 56 So.3d 936, 943-44. A general law operates equally and uniformly upon all of a designated class that has been founded upon a reasonable classification. *Kimball*, 712 So.2d at 52. In other words, a law is special if it affects only a certain number of persons within a legitimate class of persons. *Deer Enterprises*, 56 So.3d at 944; *Teachers' Retirement System of Louisiana v. Vial*, 317 So.2d 179, 183 (La. 1975). The prohibition on special laws prevents abuse of legislative power exercised for a special interest and prohibits exempting specific individuals or private corporations from the operation of a general law. *Polk*, 626 So.2d at 1135. The prohibition safeguards against the abuse of legislative power for special interests. *Deer Enterprises*, 56 So.3d at 944; *Teachers' Retirement System of Louisiana*, 317 So.2d at 183.

HEPA is not a special interest law. It is public welfare legislation enacted to protect the health and safety of all Louisiana citizens during an emergency, and

La. R.S. 29:771(B)(2)(c)(i) ensures the availability of healthcare by limiting healthcare workers' liability. The challenged provision applies to all healthcare providers, not just a special few. "Healthcare providers" is a legitimate class of persons. A law is special if it affects only specific persons within that class, not all persons in the class. *Deer Enterprises*, 56 So.3d at 944; *Teachers' Retirement System of Louisiana*, 317 So.2d at 183. The subject law applies to all persons who are healthcare providers. It does not violate the prohibition of special laws." (pp. 564-565).

Justice McCallum concurred. Justices Hughes, Griffin, and Knoll dissented, concluding that, *since the alleged malpractice in the matter at issue was not related to the state public health emergency*, the language of the statute was not applicable and to interpret otherwise created an absurd result.

[Note: Civil Code Art.9 - "When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature."

Regarding "absurd consequences", see discussion and cases cited in the dissenting opinion of Judge Dennis in *Seguin v. Remington Arms Company, L.L.C.*, 22 F.4th 492 (5th Cir. 2022), stating in part:

"As the district court correctly explained, pursuant to Louisiana Civil Code article 9, "[w]hen a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." La. Civ. Code art. 9 (emphasis added). However, "where a literal interpretation would produce absurd consequences, the letter must give way to the spirit of the law and the statute construed so as to produce a reasonable result." *Sultana Corp. v. Jewelers Mut. Ins. Co.*, 860 So. 2d 1112, 1116 (La. 2003) (citations removed); see also P. Raymond Lamonica & Jerry G. Jones, 20 Louisiana Civil Law Treatise: Legislative Law and Procedure § 7.4 (2011 ed.) ("In situations where the application of statutory or constitutional text is judicially determined to create an 'absurd consequence,' the literal language of the law need not be followed."). In order for a court to find that a literal application results in absurd consequences, "there must be a determination by the court that the specific application at issue arising from the literal wording would, if judicially enforced, produce a factual result so inappropriate as to be deemed outside the 'purpose' of the law." See, e.g., *McLane S., Inc. v. Bridges*, 84 So. 3d 479, 485 (La. 2012) (quoting Lamonica & Jones, § 7.4)." (Page 499)"]

- C. **Interpretative law?** In *Webber v. Continental Casualty Company*, Not Reported in So. Rptr.2025 WL 463510 (La. App. 5 Cir. 2025), the court declined to consider as interpretative an act with a Section 2 stating the act was to "legislative overrule" a Louisiana Supreme Court opinion, concluding in part:

"Silva and Continental contend that because the legislature stated that it was overruling the Supreme Court's decision in *Ewing*, this necessarily means that the law is interpretative. We do not agree and will proceed to make our own Article 6 determination whether the statute is substantive or interpretative."

[CC Art. 6 - "In the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary."]

- D. **Class Action and Direct Action legislation and retroactivity.** See *Parria v. Louisiana Citizens Property Insurance Corporation*, 405 So.3d 1012 (La. App. 1 Cir. 2024), writ denied, 401 So.3d 661 (La. 2025), with the First Circuit Court of Appeal concluding that a statute eliminating class actions against the Louisiana Citizens Property Insurance Corporation was procedural and could be given retroactive application to dismiss class action claims filed prior to the statute's effective date. Judge Miller dissented, arguing that Louisiana law does not favor the retroactive application of laws that would interfere with the ability of insureds to defend rights under their insurance policies.

Regarding Direct Action legislation, See *Rico v. Arch Insurance Company*, Slip Copy 2025 WL 1415895 (M.D. La. 2025), concluding that Act 275 of the 2024 Regular Session, limiting a plaintiff's right to bring a Direct Action against an insurer, could not be given retroactive application as to do so would impermissibly divest plaintiffs of their statutorily-defined cause of action against insurers that had accrued on the date of the accident. Recognizing that courts are divided on this question, the opinion stated its decision was controlled by *Tridico v. Allianz Underwriters Ins. Co.*, 2025 WL 1244855 (M.D. La. 2025). Likewise concluding that such retroactive application was impermissible, see *Rogers v. Griffin*, ___ So.3d ___ (La. App. 5 Cir. 2024). But see cases permitting retroactive application, such as *Castellon v. Duru*, Slip Copy 2025 WL 1423683 (E.D. La. 2025).

See also, *Hurel v. National Fire & Marine Insurance Company*, 414 So.3d 778 (La. App.4 Cir. 2025), concluding that although the accident in question occurred prior to amendment of the Direct Action statute, suit by direct action filed after the effective date of the amendment was invalid as the plaintiff by then had no vested procedural "right or interest" in a direct action against the insurer. Accord, *Taylor v. Elsesser*, Slip Copy 2025 WL 471807 (E.D. La. 2025), and cases discussed, with the Court noting in footnote 63:

"The fact that the alleged accident occurred in 2023 is irrelevant to any procedural right of action against Country Preferred: Plaintiffs only were vested with the substantive negligence cause of action against the insured on the date of the alleged accident, not any cause of action against the insurer. Any purported procedural rights of Plaintiffs against Country Preferred only could have been

"vested" by the Direct Action Statute upon the date plaintiffs filed suit against the insurer, "regardless of the time of the events giving rise to the cause of action." Plaintiffs did not file suit until November 9, 2024, and Act 275 was already effective on that date."

See also, *Farque v. Louisiana Medical Mutual Insurance Company*, 416 So.3d 796 (La. App. 3 Cir. 2025), writ denied, discussing the *Hurel* case and stating in part:

"While the amendment to the Direct Action Statute may apply retroactively to a cause of action that arose before the amended statute's August 1, 2024 effective date, this retroactivity stands only in reference to causes of action for which suit had not yet been filed, and thus the plaintiff's right had not yet vested. But here, as in *Maise*, *Baker*, and *Smith*, plaintiffs invoked their right to name insurer LAMMICO as a co-defendant by filing suit before the amendments to the Direct Action Statute became effective. Where plaintiffs exercised their procedural right to sue the tortfeasor's insurer before the effective date of the statutory amendment, the Legislature cannot revoke that vested right. For these reasons, we find the trial court properly overruled LAMMICO's peremptory exception of no cause of action and dilatory exception of prematurity.

We agree with the rationale of our colleagues on the fifth circuit that once a plaintiff has exercised his or her right by law to pursue the insurer directly by naming it as a party to the litigation, the right has been exercised and vested, and the law as amended cannot be applied retroactively. However, in the instant case, Plaintiffs did not file suit naming LAMMICO as a defendant until after the amendments to La.R.S. 22:1269 had become effective. The effective date of the statute was August 1, 2024, while suit was filed on September 11, 2024. However, Plaintiff did file a complaint to institute a medical review panel prior to the effective date.

In *Hurel v. National Fire & Marine Insurance Co.*, 25-49 (La.App. 4 Cir. 3/11/25), 414 So.3d 778, a panel of the fourth circuit decided this very issue, holding that a plaintiff has no vested right of action against an insurer of a third-party tortfeasor if that right was not exercised by filing suit before the effective date of the amendments to La.R.S.

22:1269.....While we agree with the rationale of *Hurel*, we reach a different conclusion given the particular facts and procedural setting of the case at hand, holding that the 2024 amendments to La.R.S. 22:1269 do not apply retroactively to medical malpractice actions properly instituted by the filing of a malpractice complaint against a qualified health care provider before August 1, 2024. While we agree with LAMMICO that Plaintiff did not file his lawsuit until September 11, 2024, after the August 1, 2024 effective date of the statute, Plaintiff did institute this malpractice action by filing a claim with the Division of Administration in January 2023, as he was legally required to do.....Having properly instituted this medical malpractice action by the

filing of a complaint with the Division of Administration prior to August 1, 2024, when the amended version of the Direct Action Statute was effective, Plaintiffs had a vested right or interest in a direct action against LAMMICO. They exercised that right in the only way they could, by requesting a medical review panel via the filing of a complaint with the Division of Administration. That right once exercised cannot be retroactively taken away. In so holding, we note that this conclusion only applies to medical malpractice actions instituted by the proper filing of a complaint against a qualified health care provider as necessitated by the Louisiana Medical Malpractice Act, and thus any argument that the effects of our decision will be widespread is without merit, as it only effects those complaints for malpractice already filed. Accordingly, the trial court did not err denying the peremptory exception filed by LAMMICO.” (See discussion, pages 803-807)

See also *Whitlock v. Montgomery* (W.D. Louisiana Oct. 2025), Slip Copy 2025 WL 2922111, stating in part:

“As stated earlier, Plaintiffs contend that the 2024 amendment may not be applied retroactively to deprive them of their right to sue Canal, which vested at the time of the accident. The pertinent Louisiana Civil Code article provides that, “[i]n the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary.” LA. CIV. CODE ART. 6.2

In this case, Act 275 did not include an expression of the legislature's intent concerning its retroactive or prospective application. *Baker*, 751 F.Supp.3d at 671. Therefore, intent must be discerned by classifying the laws as either substantive, procedural, or interpretive. LA. CIV. CODE ART. 6; *Church Mut. Ins. Co. v. Dardar*, 145 So.3d 271, 279-280 (La. 2014). Before embarking on this inquiry, however, the courts ordinarily must determine whether application of the statute to the facts of this case qualifies as a retroactive application at all. *Id.* (citing, *inter alia*, *Walls v. American Optical Corp.*, 740 So.2d 1262, 1272–73 (La. 1999)). This is because “a law may permissibly change the future consequences of an act and even the consequences of acts committed prior to the law's enactment without operating retroactively.” *Walls*, 740 So.2d at 1266 (citing 1 M. PLANIOL, *Treatise on the Civil Law*, Sec. 243 (LA. ST. L. INST. TRANS. 1959)).

To determine whether a statute operates retroactively, the Louisiana Supreme Court adopted the definition crafted by Planiol: “a law is retroactive when it goes back to the past either [1] to evaluate the conditions of the legality of an act, or [2] to modify or suppress the effects of a right already acquired. Outside of those conditions, there is no retroactivity.” *Church Mut. Ins. Co.*, 145 So.3d at 280 (citing PLANIOL, *Treatise on the Civil Law* § 243 at 174).

Here, there is no indication that Act 275 evaluates the conditions of the legality of an act. Therefore, the Court proceeds to consider Planiol's second

situation, which he described as pertaining to the accrual of causes of action and vested rights. Walls, 740 So.2d at 1268-1269. “If a party acquires a right to assert a cause of action prior to a change in the law, that right is a vested property right, protected by the due process guarantees.” Church Mut. Ins. Co., 145 So.3d at 280-281 (quoting Walls, 740 So.2d at 1268). “Statutes enacted after the acquisition of such a vested property right cannot be applied so as to divest a party of his or her vested right in the cause of action because such a retroactive application would contravene due process guarantees.” Id. (citations omitted). Once a cause of action accrues, it becomes a vested property right that may not be divested constitutionally. Cole v. Celotex Corp., 599 So.2d 1058, 1063–64 (La. 1992) (citations omitted).³

Upon consideration, it is apparent that the issue of Act 275's retroactivity is commingled with the issue of whether the Direct Action Statute is characterized as substantive or procedural, which has varied over the years. For example, before 1950, federal courts construed the Direct Action Statute as procedural. See Hudson v. Georgia Cas. Co., 57 F.2d 757, 759 (W.D. La. 1932); Wells v. Am. Employers' Ins. Co., 132 F.2d 316, 317 (5th Cir. 1942); and Bouis v. Aetna Cas. & Sur. Co., 91 F. Supp. 954, 959–60 (W.D. La. 1950). Beginning in 1950, however, the Louisiana Supreme Court recognized that the Direct Action Statute “confer[s] substantive rights on third parties to contracts of public liability insurance, which become vested at the moment of the accident in which they are injured ...” West v. Monroe Bakery, 217 La. 189, 191; 46 So.2d 122, 123 (La. 1950). In the decades that followed, the Fifth Circuit followed this lead. See McDermott v. Crown Zellerbach Corp., 418 F.2d 598, 601 (5th Cir. 1969) (the Direct Action Statute “gives the injured party an immediate right of direct action against the insurer of the party responsible for the injuries.”); Auster Oil & Gas, Inc. v. Stream, 891 F.2d 570, 577–78 (5th Cir. 1990) (third-party rights under the Direct Action Statute vest at the time of injury); McAvey v. Lee, 260 F.3d 359, 369 (5th Cir. 2001).

More recently, however, the Louisiana Supreme Court has characterized the Direct Action Statute as providing a procedural right of action against the insurer. Soileau v. Smith True Value & Rental, 144 So.3d 771, 780 (La. 2013); Cacamo v. Liberty Mut. Fire Ins. Co., 764 So.2d 41, 43 (La. 2000) (the Direct Action Statute is designed to grant a procedural right of action against an insurer); Descant v. Administrators of Tulane Educ. Fund, 639 So.2d 246, 249 (La. 1994) (direct action statute does not create an independent cause of action against the insurer); Dumas v. U. S. Fid. & Guar. Co., 241 La. 1096, 1117–18; 134 So.2d 45 (1961) (the injured party's procedural right of direct action against the insurer is purely remedial and ancillary to their substantive cause of action against the tortfeasor).

Relying on this latest interpretation of the statute, most every court to have considered the issue has held that the Direct Action Statute provides the injured third party with a procedural right of action against the insurer that does not vest or accrue until the third party actually invokes the remedy.⁴ In the wake

of this nigh-unanimous weight of authority, the undersigned is compelled to find that Plaintiffs' cause of action against Canal did not vest or accrue until they commenced the instant suit. Therefore, Act 275 does not retroactively deprive Plaintiffs of a vested right or a constitutionally protected property interest.⁵ Furthermore, as a procedural statute, Act 275 may be applied retroactively. LA. CIV. CODE ART. 6.

In any event, even if, pursuant to West and its progeny, Plaintiffs' cause of action against Canal accrued and vested at the time of injury (rather than when suit was filed), that does not change the outcome here. While under this interpretation of the Direct Action Statute, Act 275 potentially applies retroactively to modify the effects of a right already acquired, it represents a permissible procedural change in the law.

As contemplated by Article 6 of the Civil Code, “[s]ubstantive laws establish new rules, rights and duties or change existing ones.” *Segura v. Frank*, 630 So.2d 714, 723–24 (La. 1994) (citations omitted). Procedural laws, however, “prescribe a method for enforcing a substantive right and relate to the form of the proceeding or the operation of the laws.” *Id.*

It is manifest that the Direct Action Statute is multi-faceted legislation that establishes a “substantive right, a remedial action, and a joinder procedure.” *McAvey*, 260 F.3d at 370–71. In other words, it contains both substantive and procedural elements.⁶ As relevant here, Act 275 modifies the circumstances when a third party may bring a direct action against the insurer. Prior to the amendment, Plaintiffs could have sued Canal directly at the same time that they initiated suit against the insured. After the effective date of Act 275, however, Plaintiffs could not sue Canal directly unless and until it became necessary for the purpose of entering final judgment or enforcing a settlement. See discussion, *supra*.

In short, Act 275 changes the method and timing of Plaintiffs' direction action against Canal. As applicable here, Act 275 represents a procedural change in the law that may be applied retroactively without divesting Plaintiffs of their cause of action against Canal. See *Segura*, 630 So.2d at 723–24 (application of the amendment did not disturb plaintiff's vested right in cause of action because it only altered the order of recovery without disturbing plaintiff's right to recover); *Keith v. U.S. Fid. & Guar. Co.*, 694 So.2d 180, 183 (La. 1997) (amendment requiring quantification of employer fault reflected a method for enforcing a substantive right, which was procedural and subject to retroactive application).

Because Plaintiffs did not file suit until after the effective date of the amendment, Act 275 applies to bar assertion of their claim against Canal, at the present time. However, it may be appropriate for Plaintiffs to join Canal later in the case; therefore, the recommended dismissal is without prejudice.⁷ See *Racca*, 2025 WL 2538934, at (recommending insurer be dismissed without prejudice)."

- E. **“Revival” and Bienvenu.** C P v. Society of Roman Catholic Diocese of Lake Charles, Slip Copy 2025 WL 1062086 (W.D. La. 2025), with the Court stating in part:

"Here the Diocese is not being asked to bear a public burden but is instead facing a larger window for previously prescribed claims arising from allegations of sexual assault by members of its clergy against minors. This liability is not disproportionate to its experience; on the contrary, any such cases filed within the window will be fairly adjudicated and the Diocese will only face liability where appropriate under state law. And as emphasized by the court in *Bienvenu II*, the revival provisions serve legitimate public purposes of (1) assisting in the identification of hidden child predators so children will not be abused in the future; (2) shifting the cost of abuse from the victims and society to the perpetrators; and (3) educating the public in order to prevent future sex abuse scandals. 386 So.3d at 291 (citing May 3, 2021 House Bill 492 Hearing, 2021 Reg. Sess., pp. 6-7). To indemnify the Diocese or otherwise shield it from claims brought under the revival provisions would defeat these purposes. Accordingly, the Diocese cannot establish a Takings Clause violation." (page___).

[See also, *Polizzi v. Salesians of Don Bosco*, (M.D. Louisiana), Slip Copy 2025 WL 243219 (2025); discussions and case collections in *Roman Catholic Archbishop of Washington v. Doe*, 330 A.3d 1069 (Supreme Court of Maryland 2025) and *Ball v. Roman Catholic Bishop of Manchester* (unpublished at this time) (Supreme Court of New Hampshire 2025), 2025 N.H. 452025 WL 2921762].

- F. **Certain environmental claims and retroactivity.** See *Laborde v. Hunt Oil Co.* (W.D. Louisiana 2025), Slip Copy 2025 WL 2888372, stating in part:

“After the Court's Judgment, Louisiana enacted Act 458 of the 2025 Regular Session of the Louisiana Legislature (“the 2025 Act”), which, among other things, retooled and rewrote several of Louisiana's environmental regulations. 2025 La. Acts. 458. Soon after, the Landowners filed this Motion asking the Court to reconsider its prior ruling theorizing that the 2025 Act now permits the recovery of fees and costs under the Conservation Laws and provides new evidence that the Remediation Law governs the Landowners' LEQA claims.¹⁷ However, Hunt Oil claims that the new statute cannot revive the Landowners' previously discarded claims.¹⁸.....Hunt Oil and the Landowners previously agreed that the Conservation Laws do not provide for damages, fees, or penalties.²¹ As a result, this Court discarded the Landowners' claims under those statutes.²² Since then, Louisiana's 2025 Act appeared to sweep all claims arising from the Conservation Laws within the remedial ambit of the Remediation Law:...

So the remedies available under the Remediation Law—like attorney fees and costs—now appear available under the Conservation Laws. What this means is that fees that were once out of reach are now on the table. *However, Hunt Oil points out that the 2025 Act has a retroactivity carveout:*

The provisions of [the Remediation Law] as amended by this Act shall not apply to any lawsuit for damages that arises out of activity conducted prior to [June 24,

2025] and which is filed prior to September 1, 2027. 025 La. Acts. 458, § 15.25

Hunt Oil says that the 2025 Act is not retroactive and does not apply to the Landowners' claims because neither Hunt Oil's alleged conduct nor the Landowners' filing of suit occurred within the statute's permissible timeframe. However, the Landowners insist that the statute's carveout does not apply here because they seek injunctive relief and claims to recover attorney fees and costs do not create a "lawsuit for damages."²⁶ Thus, the Court's analysis boils down to one question: whether the 2025 Act reaches retroactively to the Landowners' claims.

Louisiana's statutes generally do not carry retroactive effect. See *Church Mut. Ins. Co. v. Dardar*, 145 So.3d 271, 278–79 (La. 2014) ("[A] fact and an act are governed by the law under whose aegis they took place, and because the solution cannot change on account of the circumstance that when the court rules, the law governing such a fact or such an act is no longer the same."). But that's the general rule. When determining the "permissibility of the retroactive application of any new statute," the Court must first ask whether applying "the statute to the facts of the particular case would in fact qualify as retroactive application." *Id.* at 279. If the statute "actually operates retroactively when applied to a particular case," then the Court must proceed with a "two-fold inquiry." *Id.* (citation modified). First, the Court must check "whether the legislature expressed an intent concerning the retroactive or prospective application of the law." *Id.* And "[i]f the legislative did express such an intent, the inquiry is at an end." *Id.* However, when "no intent is expressed by the legislature," then the Court must discern the legislative intent "by classifying the law as either substantive, procedural or interpretative." *Id.* (citing cases).

The analysis begins with considering whether applying the 2025 Act to the Landowners' claims would qualify as a retroactive application. A "statute does not operate 'retroactively' merely because it is applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law." *Walls v. Am. Optical Corp.*, 740 So.2d 1262, 1266 (La. 1999). Rather, the Court must ask whether the new statute "attaches new legal consequences to events completed before its enactment." *Id.* While many scholars and courts have previously contrived different formulas to determine whether a statute operates retroactively, Louisiana's Supreme Court confined the inquiry to an uncomplicated one: "[a] law is retroactive when it goes back to the past either to evaluate the conditions of the legality of an act, or to modify or suppress the effects of a right already acquired." *Id.* at 1267. "Outside of those conditions, there is no retroactivity." *Id.* (emphasis in original).

Hunt Oil and the Landowners disagree as to whether the statute can be applied retroactively in this case. Regardless, the Court must first determine whether applying the new statute to the Landowners' claims would attach new legal consequences to events that occurred before the 2025 Act's enactment—in other words, whether applying the statute would actually constitute a retroactive application. *Neither Hunt Oil nor the Landowners appear to contest that applying the 2025 Act would qualify as a retroactive application. And for good reason: applying the new statute to this case would impose new legal consequences—namely, the recovery of attorney fees and other costs.* Accordingly, this

Court's inquiry continues.....

The Court must next consider whether Louisiana's Legislature expressed an intent concerning the retroactive or prospective application of the 2025 Act. Since the Legislature is free, within constitutional confines, to give its statutes retroactive effect, “the question of a statute's temporal effect is one of statutory construction.” *St. Paul Fire & Marine Ins. Co. v. Smith*, 609 So.2d 809, 816 (La. 1992) (citation modified). Whether the legislature “expressly provided for retroactive application” can be “resolved by examining the specific language contained” in the statute. *Id.* at 816–17; see also Jones, *Legislative Checklist: Elements of a Bill*, 35 La. Bar. J. 349, 351 (1988) (the legislature has the discretionary authority to include in a bill a prospective or retroactive application clause).

When the statute “is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.” La. C.C. art. 9. However, “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. C.C. art. 10. This means that “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. Also, the “Legislature is presumed to enact each statute with deliberation and with full knowledge of all existing laws on the same subject.” *State v. Campbell*, 877 So.2d 112, 117 (La. 2004). So the statute's language “will be interpreted on the assumption that the Legislature was aware of existing statutes, rules of construction, and judicial decisions interpreting those statutes.” *Id.* And the Court must interpret the statute in way that “harmonizes and reconciles it with other provisions dealing with the same subject matter.” *City of New Orleans v. Louisiana Assessors' Ret. & Relief Fund*, 986 So.2d 1, 15 (La. 2007).

With these principles in mind, absent a “conclusive expression” of the Legislature's intent, the retroactivity analysis requires the Court to proceed to the final step and “classify the [statute] as either substantive, procedural, or interpretative.” *St. Paul Fire*, 609 So.2d at 817.

With these principles in mind, absent a “conclusive expression” of the Legislature's intent, the retroactivity analysis requires the Court to proceed to the final step and “classify the [statute] as either substantive, procedural, or interpretative.” *St. Paul Fire*, 609 So.2d at 817.

In this instance, the Landowners are not suggesting that the 2025 Act's retroactive carveout does not apply based on the timing of the lawsuit's filing or Hunt Oil's gas and oil operations. Instead, they say that the carveout does not apply to their claims because the Legislature's use of the phrase “lawsuit for damages” reflects an intent for the statute's carveout not to apply to injunctive relief claims seeking attorney fees and costs—regardless of the timing of the suit or the underlying incident.

The 2025 Act provides the best source as to the Legislature's intent. It offers three carefully worded provisions concerning its retroactivity:
The provisions of [the Remediation Law] as amended by this Act shall not apply to any lawsuit for damages that arises out of activity conducted prior to [June 24, 2025] and

which is filed prior to September 1, 2027.

The provisions of [the Remediation Law] as amended by this Act shall apply to any lawsuit for damages that arises out of activity conducted prior to [June 24, 2025] and which is filed on or after September 1, 2027.

The provisions of [the Remediation Law] as amended by this Act shall apply to any lawsuit for damages that arises out of activity conducted after out of activity conducted after [June 24, 2025].

2025 La. Acts. 458, § 15 (emphasis added).²⁷

What distinguishes these provisions is the timing of the lawsuit's filing and the underlying incident. Even though each provision uses the phrase “lawsuit for damages,” the statute's language and structure suggest that its retroactive application is governed by the particular dates of certain events—not by the sort of relief sought. Put differently, a plain reading of these provisions reveals that the Legislature paid closer mind to the when rather than the what when determining the statute's retroactive reach.

That said, the Landowners note that the Legislature chose the specific phrase “lawsuit for damages” for a reason, and that choice must be given effect.²⁸ But the Court cannot ignore the statute's broader context: the Legislature drafted three distinct and consecutive provisions that carefully parsed out when the statute applies retroactively. *Notably absent is a fourth provision exempting other classes of claims from the retroactivity carveout. Likewise, there is a dearth of evidence showing that the Legislature intended for the statute to apply retroactively to such claims regardless of the timing of the lawsuit's filing and the underlying conduct.* Had the Legislature intended to use the phrase “lawsuit for damages” as a way to confine the sort of claims that the statute cannot retroactively reach, it could have expressly said so. Yet it did not, and that silence says enough. What's more, a “legislature's selection of a delayed effective date evidences some, albeit inconclusive, intent of prospective application.” St. Paul Fire, 609 So.2d at 817 (citing F. McCaffrey, Statutory Construction § 65 (1953) (“postponement of the effective date of a statute is said to constitute some evidence that the Legislature never intended it to be retroactive.”)). Nor have the Landowners raised any examples in which the 2025 Act permits retroactive application (of any of its provisions) in the way they suggest.

Taken together, there is insufficient evidence of a “conclusive expression” that the Legislature intended to retroactively apply the 2025 Act to the Landowners' claims. St. Paul Fire, 609 So.2d at 817. As a result, the Court must proceed to the final step of the retroactivity inquiry.

3. The Statute's Classification

To reach the retroactivity finish line, the Court must place the 2025 Act in one of three categories: substantive, procedural, or interpretative. Church, 145 So.3d at 279. The rationale is that when the legislature's intent is silent, “substantive laws apply prospectively,” whereas “procedural and interpretative laws apply both prospectively and retroactively.” Segura v. Frank, 630 So.2d 714, 720–21 (La. 1994) (citation modified); accord. La. C.C. art. 6. Substantive laws are those that “establish new rules, rights, and duties or change existing ones.” St. Paul Fire, 609 So.2d at 817. On the other hand, procedural laws are those that “prescribe a method for enforcing a substantive right and

relate to the form of the proceeding or the operation of the laws.” Segura, 630 So.2d at 723 (citing cases). In other words, a substantive law creates an obligation, while a procedural law sets out the form and means of enforcing that obligation. *Graham v. Sequoya Corp.*, 478 So.2d 1223, 1226 (La. 1985). Lastly, interpretative laws are those that “merely establish the meaning the interpreted statute had from the time of its enactment.” *Id.*

In this instance, applying the 2025 Act to the Landowners' suit would permit them to recover attorney fees and costs—a right that they did not previously have. Thus, the new statute should be classified as a substantive law since it establishes a new right to the party invoking the statute. *St. Paul Fire*, 609 So.2d at 817. The Landowners theorize that the new statute is not a substantive law since it modifies the Remediation Law, which was previously described as a procedural law. See *Brownell Land Co. v. Oxy USA Inc.*, 538 F. Supp. 2d 954, 957 (E.D. La. 2007). However, the inquiry is not whether the Remediation Law is a procedural law or not but whether the 2025 Act itself is a substantive law. Even if the Remediation Law operates solely as a procedural law, the 2025 Act's revisions would grant the Landowners new rights and claims that it did not have before. In fact, the whole point of the Landowners' Motion—as they acknowledge—is that the 2025 Act “provides a clear statutory basis for the recovery of fees and costs...that was not [previously] available when the Court issued its [prior] ruling.”²⁹

For those reasons, the 2025 Act must be classified as a substantive law that applies only prospectively. Consequently, the 2025 Act cannot save the Landowners' discarded claims for attorney fees and costs under the Conservations Laws.”

- G. **Sewerage and Water Board of New Orleans and retroactivity.** See *Hancock Whitney Bank v. MOF-Willows, LLC* (E.D. Louisiana 2025), Slip Copy 2025 WL 2337129, stating in part:

“Evidently conceding that it does have any recognized, existing security interest, SWBNO argues that it may in the future have a security interest in the Apartments pursuant to LA. REV. STAT. § 33:4887, enacted by Act No. 99 of the 2025 Regular Session of the Louisiana Legislature, and that potential future security interest is placed at risk by a potential foreclosure.⁵⁴ Section 33:4887, which went into effect on August 1, 2025,⁵⁵ provides:

A. The governing authority of a municipality shall have a privilege against a multifamily residential property for the amount of any unpaid service charge or user fee for sewage disposal or water system services the municipality provides. The privilege shall apply only to multifamily residential property that uses a master meter service agreement in which a single water meter or collection of meters measures the total water or sewage services usage for the entire property or multiple units within a development. For purposes of this Section, multifamily residential property shall mean immovable property consisting of more than four dwelling units occupied by persons other than the owner of the immovable property.⁵⁶

This privilege arises when, thirty days after the municipal governing authority makes written demand for past due amounts on the owner of the multifamily residential property,⁵⁷ the municipal governing authority files a sworn statement of privilege in the mortgage records of the parish where the property is located specifying the unpaid services charges and user fees.⁵⁸ The privilege is effective against third parties when recorded, and outranks mortgages, privileges, and other rights that become effective against third parties after the recordation of the statement of privilege.⁵⁹

SWBNO has not demonstrated that it qualifies as the “municipal governing authority” that could obtain that privilege,⁶⁰ and even if it does qualify, that it has taken the necessary steps to obtain it.⁶¹ Thus, it currently has no privilege.

Further, it is not clear that § 33:4887 applies retroactively to create a privilege for unpaid services that became due before the statute's effective date of August 1, 2025. “In the absence of contrary legislative expression, substantive laws apply prospective only. Procedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary.”⁶² *In this case, the Louisiana Legislature did not provide any “clear and unmistakable expression” that the statute applies retroactively.*⁶³ *If anything, the enactment evidences a legislative intent that it only be given prospective effect because it has a delayed effective date.*⁶⁴ *Moreover, the statute establishes a new “right,” making it a substantive rather than procedural enactment.*⁶⁵ Whether the SWBNO could even rely on this statute to create a lien for pre-August 1, 2025, unpaid bills is uncertain.”

- H. **Legislative action and procedural due process.** Succession of Schreiber, 409 So.3d 783 (La. App. 5 Cir. 2024) - “The central meaning of procedural due process is well settled: Persons whose rights may be affected by state action are entitled to be heard, and in order that they may enjoy that right, they must first be notified. In re Adoption of B.G.S., 556 So.2d 545, 549 (La. 1990). It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner. *Id.*

In this case, the enactment of Act 192 of 2005 (Article 197) by the Louisiana State Legislature is properly characterized as a legislative act. When a governmental action is characterized as legislative, procedural due process requirements do not apply. *Messina v. St. Charles Parish Council*, 03-644 (La. App. 5 Cir. 12/30/03), 865 So.2d 158, 161, writ denied, 04-0285 (La. 3/26/04), 871 So.2d 354, cert denied, 544 U.S. 1060, 125 S.Ct. 2512, 161 L.Ed.2d 1109; see also *Boudreaux v. Larpenter*, 11-0410 (La. App. 1 Cir. 6/1/12), 110 So.3d 159, 170.”

- I. **“Ten Commandments”**. See *Roake v. Brumley*, 141 F.4th 614 (5th Cir. 2025), affirming the district court's finding as facially unconstitutional a Louisiana law requiring public schools to permanently display the Ten Commandments in every classroom in the state. Among other considerations, the Court concluded that the lower court did not err in finding the act's statements of legislative findings and intent claiming a secular purpose were not supported by the act's legislative history and were contradicted by expert testimony regarding inaccuracy of statements in the act's historical claims.

But, On October 6, 2025, the Court granted rehearing en banc and vacated this panel opinion without fixing a date for rehearing.

- J. **Redistricting**. In June of 2025, after Louisiana congressional redistricting cases had been argued, the Supreme Court declined to issue an opinion on the merits and instead restored the cases to its calendar for reargument. Justice Thomas dissented indicating, "...these cases highlight the intractable conflict between this Court's interpretation of §2 of the Voting Rights Act of 1965 (VRA), 52 U. S. C. §10301, and the Equal Protection Clause of the Fourteenth Amendment to the Constitution". *Louisiana v. Callais*, 606 U.S._____, 2025 WL 1773632 (Mem); Docket No. 24-109, 6-27-25. See also, "Non-Black Voters' Racial Gerrymandering Challenge to Louisiana's Congressional Redistricting", 06-27-2025 USSCACT 5 United States Supreme Court Actions.

On August 1, 2025, the court issued an order directing the parties to address: "Whether the State's intentional creation of a second majority-minority congressional district violates the Fourteenth or Fifteenth amendments to the U. S. Constitution." (Order in Pending Cases, 24-109; 24-110). Thus, whether Section 2 of the Voting Rights Act is constitutional is at issue. Hearing and arguments on this question was held by the Court on October 15, 2025.

- K. **Immunity**. In *Woodward Harbor L.L.C. v. City of Mandeville*, Slip Copy 2025 WL 932775 (E.D. La. 2025), 42 USC 1983 civil rights claims against a city councilmember arising from his alleged conduct evaluating and voting on a proposed ordinance were dismissed. Without reaching the question of absolute immunity, the court determined that the plaintiffs failed to plead facts sufficient to overcome the defendant's claims of qualified immunity under federal and Louisiana law.

In *Falcon v. Parish of Jefferson*, ___ So.3d ___ (La. App. 5 Cir. 2025), 2025 WL 322441325-159, the court in a resubdivision matter rejected the plaintiffs claims that the governmental defendants lacked immunity under R.S. 9:2798.1, stating in part:

“Under La. R.S. 9:2798.1, public entities and their officers and employees are immune from tort claims based on their policy-making decisions or discretionary acts carried out within the course and scope of their employment.....The Louisiana Supreme Court has held that La. R.S. 9:2798.1 is “clear and unambiguous” and applies to “policymaking or discretionary acts when such acts are within the course and scope of ... lawful powers and duties.” *Mariana v. Magnolia Auto Transp., LLC*, 21-447 (La. App. 5 Cir. 5/26/22), 341 So.3d 1281,

1288, citing *Gregor v. Argenot Great Cent. Ins. Co.*, 02-1138 (La. 5/20/03), 851 So.2d 959, 967. The *Gregor* court concluded that “policymaking” in the public sector means “the planning of a course of action for the social or political well-being of the state,” and that “discretionary” means that the state actor had a “power of free decision or latitude of choice within certain legal bounds.” *Id.* at 965. (Emphasis in original.)

The approval or disapproval of a subdivision plat is a legislative function involving the exercise of legislative discretion by the governing authority of a parish or municipality. *Falcon*, 367 So.3d at 862; See also La. R.S. 33:101.1.....

.....*We conclude that the plaintiffs’ burden of proving that the Council erroneously denied their resubdivision application is different from the burden of proving that a governmental entity is not entitled to discretionary immunity. One does not necessarily follow from the other.* The Council may exercise its discretion to approve or deny applications in light of community concerns, including concerns of traffic and neighborhood safety. That the Council's action in this case was unsupported by any evidence other than opinion testimony given by several neighboring residents does not render the Council's decision outside of the bounds of legitimate, discretionary decision-making. In our previous opinion, this Court recognized that the concerns of neighborhood residents should not be taken lightly. *Falcon*, 367 So.3d at 867.

“Under [the discretionary function] doctrine, *governmental decisionmakers exercising discretionary functions are immune from suit, because the courts should not chill legislative discretion in policy formation by imposing tort liability for discretionary decision.*” *Hanson v. Steven Caruso, Willow Creek, L.L.C.*, 15-449 (La. App. 5 Cir. 12/23/15), 182 So.3d 1187, 1191, writ denied, 16-134 (La. 3/24/16), 190 So.3d 1196. Consideration of residents’ safety concerns when exercising a discretionary function is a legitimate government objective, even when those concerns ultimately are not supported by objective evidence in the record.

Plaintiffs additionally argue that defendants’ actions are exempt from immunity since they constituted willful and reckless misconduct. See La. R.S. 9:2798.1(C)(2). They argue defendants’ failure to provide any support for their decision other than the opinions of a few members of the public shows their “willful indifference.”

This Court has established that the list in paragraph (C)(2) of La. R.S. 9:2798.1—acts or omissions which constitute criminal, fraudulent, malicious, intentional, willful, outrageous, reckless, or flagrant misconduct—connotes conduct more severe than negligent behavior. Recklessness is, in effect, “gross negligence.” *Mariana*, 341 So.3d at 1291.

Only the most egregious conduct by parish agents, employees, or representatives that exhibits an active desire to cause harm, or a callous indifference to the risk of potential harm from flagrantly bad conduct, will rise to the level of “willful misconduct” or “criminal, willful, outrageous, reckless, or

flagrant misconduct” resulting in a forfeiture of all the immunity protections afforded by the discretionary immunity statute. *Mariana*, 341 So.3d at 1291, citing *Haab v. E. Bank Consol. Special Serv. Fire Prot. Dist. of Jefferson Par.*, 13-954 (La. App. 5 Cir. 5/28/14), 139 So.3d 1174, 1182, writ denied, 14-1581 (La. 10/24/14), 151 So.3d 609.

In order for plaintiffs to defeat defendants’ claims of discretionary immunity, it was incumbent upon them to put forth evidence showing that the conduct of defendants rose to the level of misconduct required by La. R.S. 9:2798.1(C)(2). See *Haab*, 139 So.3d at 1179-80.

Upon de novo review, we conclude that plaintiffs have not met their burden of showing defendants’ actions rose to the level of misconduct required by La. R.S. 9:2798.1(C)(2). Having previously recognized that the concerns of neighborhood residents should not be taken lightly, we cannot say that the Council’s reliance on the residents’ concerns exhibits an active desire on their part to cause harm.

Accordingly, we conclude that there is no genuine issue of material fact and that defendants are entitled to judgment as a matter of law concerning the application of the discretionary immunity doctrine as to plaintiffs’ “general damages claim.”

We pretermitted at this time review and consideration of whether plaintiffs’ claim for inverse condemnation and their federal claims are subject to immunity under La. R.S. 9:2798.1. The record does not adequately establish that the trial court’s ruling on discretionary immunity was made applicable to plaintiffs’ claim for inverse condemnation and their federal claims.”

- L. **Censure.** See "Imposing Sanction on State Legislator for Social Media Post Criticizing Participation of Transgender Athletes in Student Sports," 05-30-2025 U.S. Sup. Ct. Actions 4, discussing *Libby v. Fecteau*, 605 U.S. ___, 145 S. Ct. 1378 (Mem) (2025), granting an application by a Maine legislator for injunction halting censure sanctions (denial of debate and voting on matters before the full house) pending appeal. Justice Jackson dissented, raising numerous questions:
 "Whether the House's censure and resulting sanction violate Libby's constitutional rights, or those of her constituents, raises many difficult questions. What are the limits on a state legislature's ability to bind its members to ethics rules? Do federal courts have the authority to determine that those rules are improper? Does it violate a representative's First Amendment rights to be subject to sanction under such rules, and does it make a difference what the sanction is? What rights does the Federal Constitution give constituents to override the enforcement of ethics rules of their state legislature? Does a federal court have the power to enjoin state representatives from enforcing a state legislature's ethics rules? And may the court enjoin legislative employees from carrying out the will of the state legislature with respect to that enforcement?" (page ____).
- See also *Houston Community College System v. Wilson*, 595 U.S. 468 (2022); Young, *Constraining Legislative Expulsion*, 111 Virginia Law Review 21 (2025).
- M. **Lobbying.** Discussing executive branch lobbying statutes and nullity of contracts in violation, see *Advanced Benefit Concepts, Inc. v. Blue Cross and Blue Shield of Alabama*, 406 So.3d 1247 (La. App. 1 Cir. 2025) on remand. Also, Act 394 of the 2025 Regular Session, effective December 1, 2025, provided additional registration and other requirements for state and local lobbying on behalf of "foreign adversaries".
- N. **Local legislative process and separation of powers.** *Rogers v. City of Bossier City*, 403 So.3d 685 (La. App. 2 Cir. 2025) - "We decline to address defendants' remaining arguments. Defendants' alleged concerns regarding an "erroneous date," voter turnout numbers, and disruption of current terms are not valid reasons for the City Council to refuse to place before the electorate proposed amendments to the City Charter which have been properly submitted by petition. *Pursuant to the clear language of the City Charter, the propositions must be placed before voters in an election, and we decline to interfere in the legislative process by deciding, before adoption, that these proposed amendments would be invalid if adopted.*⁹". Footnote 9 states "Should voters decide to reject the amendments, then the questions regarding their validity would be moot. Conversely, should the electorate adopt the amendments, the opponents will have ample opportunity to challenge their validity in the courts before the amendments become effect." [Note: compare the court's decision with the Calhoun case discussed previously.]

V. SELECTED ARTICLES OF INTEREST:

Medows, A BEGINNER'S GUIDE TO LEGISLATIVE DRAFTING, Harvard Journal on Legislation Online Commentary (2016) -

<https://journals.law.harvard.edu/jol/2016/10/24/a-beginners-guide-to-legislative-drafting/>

Fulton, Kammer, Garry, ASSESSING A POTENTIAL DEVIATION IN THE LEGISLATIVE PROCESS: THE USE OF VEHICLE BILLS IN SOUTH DAKOTA, 69 South Dakota Law Review 148 (2024)

Nichol, THE LAWYER'S OBLIGATION AS PUBLIC CITIZEN, 76 Mercer Law Review 1269 (2025)

Lewenstein, READING ABOUT WRITING, 82 June Bench and Bar of Minnesota 22 (2025)

Mazzone, LEGISLATIVE COUNSEL, 39 March/April Chicago Bar Association Record 34 (2025)

VI. CLOSING THOUGHTS AND QUOTES:

A. La. R.S. 24:151:

“§151. Enrolled bills; typewritten with indelible ink

The official enrolled bills of the legislature shall be typewritten with indelible ink.”

(Merriam-Webster Dictionary - “indelible” - “that cannot be removed, washed away, or erased; making marks that cannot easily be removed”)

B. Education:

“Being ignorant is not so much a shame, as being unwilling to learn.”

– Ben Franklin

“Education is the process of turning cocksure ignorance into thoughtful uncertainty.”

- K. G. Johnson

“Education: that which reveals to the wise, and conceals from the stupid, the vast limits of their knowledge.”

- Mark Twain

"An Investment in Knowledge Pays the Best Interest."

- Ben Franklin

“Every time you stop a school, you will have to build a jail. What you gain at one end you lose at the other. It's like feeding a dog on his own tail. It won't fatten the dog.”

- Mark Twain

C. "It may be well to warn [legislative counsel], that in [their] case virtue will, for the most part, be its own reward, and that after all the pains that have been bestowed on the preparation of a Bill, every Lysurgus and Solon sitting on the back benches will denounce it as a crude and undigested measure, a monument of ignorance and stupidity. Moreover, when the Bill has become law, it will have to run the gauntlet of the judicial bench, whose ermined dignitaries delight in pointing out the shortcomings of the legislature in approving such an imperfect performance."

----- Lord Thring, Introduction in Practical Legislation, 2d ed (London: 1902), at 9, cited in Carter, " 'High-quality' Legislation - (How) Can Legislative Counsel Facilitate It?", *The Loophole* - November 2011 (Australian Office of Parliamentary Counsel).

- D. "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 (Winter 2014), at footnote 154 in discussing a dissenting opinion in an Ohio court.

- E. E.A. Driedger, Legislative Drafting, 27 The Canadian Bar Review 291 (1949):

"Language, however, is far from being a perfect medium of expression and it is perhaps too much to expect a draftsman to turn out a perfect piece of work; but it is not too much to expect him to make a determined effort to reduce doubt or ambiguity to a minimum.....Muddled thinking cannot produce clear language, and a draftsman who does not know what he wants to say is defeated before he starts....He does not decide how the law is to be changed nor what new laws are to be enacted. His function is to prepare the legislation desired by someone else, and it follows that there must be a transfer of ideas to the draftsman.....He may draft a perfectly plain amendment but if that amendment is not the desired amendment he has not done his work properly.....The understanding of instructions is vital. Those who give instructions may have difficulty in explaining what they want, and the draftsman, by cross-examination, by illustrations or otherwise, must carefully probe their minds. In the process he may suggest new ideas, but he must bring about a complete meeting of the minds. The draftsman may lack the technical information necessary to a complete understanding of his instructions. If so, he must obtain it. Extensive legal research may be necessary. If so, he must undertake it."

"When the draftsman has a *clear* conception, and the *right* one, his next step is to express it in *appropriate* language. He must convey his meaning to the reader and, at the same must, if possible, exclude every other meaning.....Imperfections in statutes are usually attributable to imperfections in language.....The best and safest rule for the draftsman to follow is that words and sentence should be as short and simple as circumstances will permit....A reader of statutes must have some knowledge of the subject matter.....It is not the function of legislative draftsmen to write treatises for the education of the uninformed. A draftsman should try to write his statute so that it can be understood by those who are supposed to understand it, namely, the persons to whom it is directed, the persons who have to administer it and the courts and judges who have to apply it.....It is not quite enough to write a statue so that it will be understood.....A statute should read well, too, and the draftsman is advised to adhere to generally accepted standards of grammar and vocabulary."

(Con't.)

“The draftsman should hesitate before he copies. It is dangerous to take a section out of one statute and insert it in another.....There is a tendency to copy statutes from other jurisdictions without making any alterations in the text. Faulty provisions are repeated as they stand; archaic or clumsy words or forms are retained. This habit merely perpetuates bad law....Of course, the draftsman may not have a free hand. His instructions may prohibit any alternation in the text, even though the alteration relates only to form and not substance.”

“Different words should not be used to express the same thing; the same words should not be used to express different things.....Care should be taken in the use of a qualifying word or phrase if the word or phrase is capable of application to two or more things.....Long sections should be avoided. A long section is harder to write than a short one; by increasing the length of the section the possibilities of error or ambiguity are also increased; long sections are hard to read.....Definitions should be used sparingly. A definition that merely gives statutory sanction to the use of the dictionary meaning of a word is unnecessary.....A definition section is merely a glossary of terms or a special little dictionary and should not contain substantive matters of law.”

F. Robert Graves and Alan Hodge, *The Reader Over Your Shoulder: A Handbook for Writers of English Prose* (1979):

"From the Minutes of a Borough Council Meeting:

Councillor Trafford took exception to the proposed notice at the entrance of South Park: "No dogs must be brought to this Park except on a lead." He pointed out that this order would not prevent an owner from releasing his pets, or pet, from a lead when once safely inside the Park.

The Chairman (Colonel Vine): What alternative wording would you propose, Councillor?
Councillor Trafford: "Dogs are not allowed in this Park without leads."

Councillor Hogg: Mr. Chairman, I object. The order should be addressed to the owners, not to the dogs.

Councillor Trafford: That is a nice point. Very well then: "Owners of dogs are not allowed in this Park unless they keep them on leads."

Councillor Hogg: Mr. Chairman, I object. Strictly speaking, this would keep me as a dog-owner from leaving my dog in the back-garden at home and walking with Mrs. Hogg across the Park.

Councillor Trafford: Mr. Chairman, I suggest that our legalistic friend be asked to redraft the notice himself.

Councillor Hogg: Mr. Chairman, since Councillor Trafford finds it so difficult to improve on my original wording, I accept. "Nobody without his dog on a lead is allowed in this Park."

Councillor Trafford: Mr. Chairman, I object. Strictly speaking, this notice would prevent me, as a citizen, who owns no dog, from walking in the Park without first acquiring one.

Councillor Hogg (with some warmth): Very simply, then: "Dogs must be led in this Park."

Councillor Trafford: Mr. Chairman, I object: This reads as if it were a general injunction to the Borough to lead their dogs into the Park.

Councillor Hogg interposed a remark for which he was called to order; upon his withdrawing it, it was directed to be expunged from the Minutes.

The Chairman: Councillor Trafford, Councillor Hogg has had three tries; you have had only two ...

Councillor Trafford: "All dogs must be kept on leads in this Park."

The Chairman: I see Councillor Hogg rising quite rightly to raise another objection. May I anticipate him with another amendment: "All dogs in this Park must be kept on the lead."

This draft was put to the vote and carried unanimously, with two abstentions."

G. 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.)

- H.** "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.