

SUPREME COURT OF LOUISIANA

NO. 2022-CC-00829

SAM DOE,

Plaintiff/Respondent

versus

THE SOCIETY OF THE ROMAN CATHOLIC CHURCH
OF THE DIOCESE OF LAFAYETTE,

Defendant/Applicant

ON APPLICATION FOR SUPERVISORY WRITS FROM THE
THIRD CIRCUIT COURT OF APPEAL, No. CW 22-120 AND FROM THE
FIFTEENTH JUDICIAL DISTRICT COURT, PARISH OF LAFAYETTE,
STATE OF LOUISIANA, No. 2020-4792, JUDGE LAURIE A. HULIN, PRESIDING

CIVIL PROCEEDING

**BRIEF OF *AMICI CURIAE* AMERICAN TORT REFORM ASSOCIATION
AND LOUISIANA ASSOCIATION OF SELF-INSURED EMPLOYERS**

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INDEX

TABLE OF AUTHORITIES iii

STATEMENT OF INTEREST OF AMICI CURIAE..... iv

CONSIDERATIONS SUPPORTING THE GRANT OF THIS WRIT..... 1

STATEMENT OF THE CASE..... 1

INTRODUCTION AND SUMMARY OF ARGUMENT 1

DISCUSSION AND ARGUMENT..... 1

CONCLUSION 4

VERIFICATION..... 5

TABLE OF AUTHORITIES

Cases

<i>Anthony Crane Rental, L.P. v. Fruge</i> , 2003-0115 (La. 10/21/03), 859 So.2d 631	2
<i>Bourgeois v. A.P. Green Indus., Inc.</i> , 001-1528 (La. 4/3/01); 783 So.2d 1251.....	2
<i>Church Mut. Ins. Co. v. Dardar</i> , 2013-2351 (La. 5/7/14), 145 So.3d 271	2
<i>Elevating Boats, Inc. v. St. Bernard Par.</i> , 2000-3518 (La. 9/5/01), 795 So.2d 1153	1
<i>Keith v. U.S. Fid. & Guar. Co.</i> , 96-2075 (La. 5/9/97), 694 So.2d 180.....	2
<i>Lott v. Haley</i> , 370 So.2d 521, 523–24 (La. 1979).....	1
<i>Louisiana Health Serv. & Indem. Co. v. McNamara</i> , 561 So.2d 712.....	2
<i>Morial v. Smith & Wesson Corp.</i> , 2000-1132 (La. 4/3/01), 785 So.2d 1	2
<i>Odessa House v. Goss</i> , 83-548 (La. App. 3 Cir. 6/14/84); 453 So.2d 299, 302	2
<i>Unwired Telecom Corp. v. Par. of Calcasieu</i> , 2003-0732 (La. 1/19/05), 903 So.2d 392	2

Statutes

Section 2 of 2021 Act 322	1
Supreme Ct. Rule VII	iv
Supreme Ct. Rule X	1

STATEMENT OF INTEREST OF AMICI CURIAE

Amici are a diverse collation of employers, associations, and businesses who join Applicant in urging the Court to grant a writ of certiorari and to reverse the Third Circuit decision below.

ATRA is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than three decades, ATRA has filed *amicus* briefs in cases involving important liability issues.

LASIE was formed to protect and promote the right of businesses to self-insure, to represent the self-insurance industry on issues affecting workers' compensation and self-insurance, and to seek balanced treatment of employers and employees. LASIE represents the interests of Louisiana employers who are self-insured, either individually or through several authorized group self-insurance funds. LASIE members employ a significant portion of Louisiana's workforce and the thousands of businesses represented encompass a broad spectrum of trade and diverse business fields.

Amici curiae file their brief because "there are matters of fact or law that might otherwise escape the court's attention" and because it has "substantial legitimate interests that will likely be affected by the outcome of the case." Supreme Ct. Rule VII § 12. *Amici* are a diverse collection of Louisiana businesses, including self-insured employers, and associations with a vested interest in this case because the Third Circuit's decision threatens to dramatically expand the power of the Legislature to revive prescribed causes of action. This ruling could permit the Legislature to revive any prescribed cause of action no matter how long ago it prescribed and no matter whether a defendant has any remaining evidence or witnesses available for its defense. The decision is also problematic because its endorsement of broad legislative revival power could undermine the state and federal constitutional property rights. *Amici* submit that their brief will prove helpful in the Court's analysis.

CONSIDERATIONS SUPPORTING THE GRANT OF THIS WRIT

For purposes of brevity, *amici* adopt the considerations for supporting the grant of this writ which are enumerated in the Society of the Roman Catholic Church of the Diocese of Lafayette's writ application.

STATEMENT OF THE CASE

Again, for brevity, *amici* adopt the statement of the case as explained in the Society of the Roman Catholic Church of the Diocese of Lafayette's writ application.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici curiae submit this brief to call the Court's attention to the broad and sweeping impacts of the decisions below, which held Section 2 of 2021 Act 322 to be constitutional under Louisiana's Constitution. The decisions below conflict with this Court's longstanding precedents on a significant provision of the law that should be definitively resolved by this Court.¹ The decisions below erroneously interpret Louisiana's Constitution to permit the revival of prescribed claims and the elimination of vested rights.² For these reasons, *Amici* urge the Court to grant the writ application and consider the full import of the decisions below on Louisiana law.

Amici strongly condemn the sexual abuse of minors, which is abhorrent. *Amici* do not condone, in any way, the acts of any persons who have caused the sexual abuse of minors. The full scope of the decisions below, however, is far-reaching and affects the foundations of Louisiana prescriptive law related to all causes of action, not just cases of sexual abuse. This issue merits thorough consideration and a full briefing before the Court.

DISCUSSION AND ARGUMENT

This Court has consistently ruled that the Due Process Clause of the Louisiana Constitution prohibits the retroactive revival of prescribed claims: "statutes of limitation, like any other procedural or remedial law, cannot consistently with state and federal constitutions apply retroactively to disturb a person of a pre-existing right." *Lott v. Haley*, 370 So.2d 521, 523–24 (La. 1979). The right to plead prescription which has fully accrued as a defense is the type of vested right which may not be retroactively disturbed. *Elevating Boats, Inc. v. St. Bernard Par.*, 2000-3518 (La. 9/5/01), 795 So.2d 1153, 1164 ("[A]fter the prescriptive period on an obligation has run, an obligor gains the *right* to plead prescription. In such a situation, that *right* to plead prescription

¹ See Supreme Ct. Rule X, § 1(a)(1)-(2).

² See Supreme Ct. Rule X, § 1(a)(4).

has already accrued and application of a lengthened prescriptive period to revive the obligation, and effectively remove the right to plead prescription, would ‘modify or suppress the effects of a right already acquired.’ Thus, we have noted that the Legislature is without the authority to revive a prescribed claim.”) (quotation omitted) (emphasis original); *overruled in part on other grounds by Anthony Crane Rental, L.P. v. Fruge*, 2003-0115 (La. 10/21/03), 859 So.2d 631.

Even when the Legislature makes its intent clear to apply a law retroactively, the law cannot operate retroactively if doing so would violate vested rights. *Bourgeois v. A.P. Green Indus., Inc.*, 001-1528 (La. 4/3/01); 783 So.2d 1251, 1257 (“even where the legislature has expressed its intent to give a law retroactive effect, that law may not be applied retroactively if it would impair contractual obligations or disturb vested rights.”).³ Thus, this Court’s precedent is clear that under Louisiana’s Constitution, the Legislature has no power to remove a defendant’s vested right to plead prescription by reviving prescribed claims.

The importance of this protection to defendants is better understood by examining the purpose of prescription defenses. “Prescription statutes find their justification in the desire to avoid unfair prejudice to the defendant by requiring him to defend a stale claim and to be put to a defense after memories have faded, witnesses are gone, and evidence has been lost; and to avoid prejudice to a defendant who was in ignorance of the asserted obligation.” *Odessa House v. Goss*, 83-548 (La. App. 3 Cir. 6/14/84); 453 So.2d 299, 302. If the courts are forced to cease enforcing the prescriptive periods applicable at the time a cause of action arose because the Legislature decides to revive prescribed causes of action, vested right defenses on which businesses and employers have relied will disappear. The result is that the right to fair civil trials will be drastically undermined.

The defense of prescription is essential to any person seeking a stable landscape for conducting business. Without the legal finality of knowing prescribed claims are barred, there can be no future security for businesses or their insurers. If prior claims of any type – other torts, breach of contract, certain federal claims that rely on state law for state prescriptive periods, and any other type of claim allowed under Louisiana law – from any time in the past can be revived in the future, businesses, government entities, and their insurers will find it difficult to quantify and calculate

³ See also *Unwired Telecom Corp. v. Par. of Calcasieu*, 2003-0732 (La. 1/19/05), 903 So.2d 392, 404; *Church Mut. Ins. Co. v. Dardar*, 2013-2351 (La. 5/7/14), 145 So.3d 271, 279 n.10 & 281; *Morial v. Smith & Wesson Corp.*, 2000-1132 (La. 4/3/01), 785 So.2d 1, 10; *Louisiana Health Serv. & Indem. Co. v. McNamara*, 561 So.2d 712, 718 (La. 1990); *Keith v. U.S. Fid. & Guar. Co.*, 96-2075 (La. 5/9/97), 694 So.2d 180, 183.

risks over extended time periods, an uncertainty that will be passed along in additional costs to insured entities or the public. Businesses and other organizations would be forced to maintain all documents and keep track of all employees who could be potentially relevant over the course of innumerable decades, a herculean if not impossible task. Self-insured employers would be doubly harmed with both the business and insurance costs of guarding against the future risks of revived claims. Nor is the time period of such revived claims limited by the lifespan of particular plaintiffs. Under the theory of Section 2 endorsed by the decisions below, claims from any time in the past could be revived by the Legislature. Representatives of a decedent's estate could continue to bring claims decades after the original injured party's death if such claims are revived by the Legislature.

Amici also call this Court's attention to the very real impact that allowing prescribed claims to be revived would have on the ability to insure. Both individuals and businesses need insurance coverage to live their lives and function without fear of bankruptcy or dissolution. In the insurance world, the one factor that must exist for insurance to be written is some degree of predictability. If the legislature is permitted to revive previously prescribed claims, that predictability disappears. With that loss of predictability, the willingness of insurers to underwrite, assess risk, and calculate necessary premium could be lost. Allowing prescription rules to be changed in the middle of the game (actually after the game is over) creates the clear and present danger of jeopardizing insurance availability. If this Court were to allow previously prescribed claims of any sort to be revived, there would be the potential to seriously upset the insurance market, adversely affect the availability and affordability of insurance, and endanger the ability of Louisiana citizens and businesses to affordably insure or perhaps even expensively insure themselves.

The Court's jurisprudence cited above clearly restricts the power of the Legislature to revive causes of action, contrary to the decisions below. If the decisions of the Third Circuit and trial court related to the constitutionality of Section 2 are either approved or permitted to stand by this Court, nothing would then limit the power of the Legislature to revive any other prescribed claims of any kind.

Moreover, one of the arguments before the Third Circuit was that the Legislature has power to divest a person of a vested property right if the rational basis test is met. While the bases for the district court and Third Circuit decisions are unclear, if the decisions below are interpreted to support such a reading (in contradiction to this Court's precedent), and this Court does not correct

such an interpretation, it would signal a dramatic shift and radically undermine property rights in Louisiana law in violation of the federal and state constitutions.

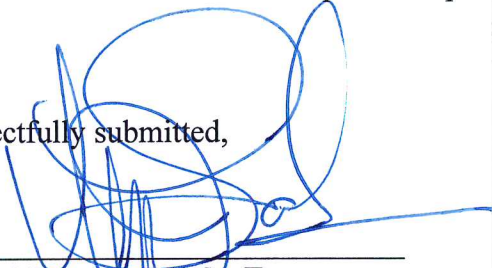
CONCLUSION

The decisions below grant the Legislature vast new powers under Louisiana’s Constitution that this Court has repeatedly held violate the Due Process Clause of the Louisiana Constitution. Such powers endanger the stable legal foundation that the defense of prescription provides to businesses, insurers, and employers: that prescribed claims remain legally barred from future recovery. Moreover, the uncertain reasoning of the decisions below casts serious doubt on whether private property rights are adequately preserved from unconstitutional takings by legislative fiat.

Allowing the decisions below to stand would put virtually all prescriptive statutes in jeopardy. If revival of claims is constitutional in this instance, it would seemingly be constitutional in all other instances. Failing to recognize the unconstitutionality of this attempt at claim revival could eventually strip all defendants of their vested rights of protection from any manner of lawsuits after prescriptive periods have run.

Amici respectfully request that the Court grant the writ application to permit full briefing on the merits to consider the constitutionality of Section 2 of Act 322 and the full scope and impact of the decisions below on Louisiana law.

Respectfully submitted,



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VERIFICATION

I hereby certify that a copy for the foregoing pleading has been delivered by U.S. mail or electronic means to the following persons on June 1, 2022:

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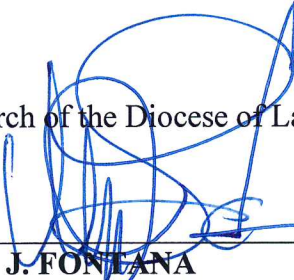
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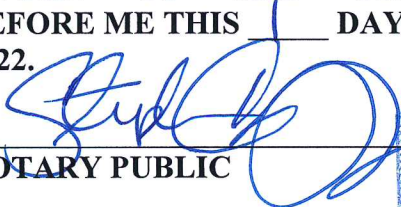
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SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY OF JUNE,
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