SUPREME COURT

STATE OF LOUISIANA

No. 2022-CA-1826

T.S.,
Plaintiff/Appellant,

versus

CONGREGATION OF HOLY CROSS MOREAU PROVINCE, INC.
AND HOLY CROSS COLLEGE, INC.,
Defendants/Appellees.

On Appeal from the Civil District Court for the Parish of Orleans, Division C, No. 2021-7247,
the Honorable Sidney H. Cates, IV, Presiding

AMICI CURIAE BRIEF ON BEHALF OF AMERICAN TORT REFORM ASSOCIATION, AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION, AND LOUISIANA ASSOCIATION OF SELF-INSURED EMPLOYERS IN SUPPORT OF APPELLEES

Submitted By:

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INDEX

TABLE OF AUTHORITIES

Page(s)

Codal and Statutory Authority

Cases

INTEREST OF AMICI CURIAE

American Tort Reform Association ("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 curiae* briefs in cases involving important liability issues.

American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent more than 60 percent of the U.S. property-casualty insurance market and write more than $7 billion in premiums in the State of Louisiana, including more than 70 percent of the liability insurance market. On issues of importance to the property and casualty insurance industry and marketplace, APCIA advocates sound public policies on behalf of its members in legislative and regulatory forums at the state and federal levels and files *amicus curiae* briefs in significant cases before federal and state courts. This allows APCIA to share its broad national perspective with the judiciary on matters that shape and develop the law.

Louisiana Association of Self-Insured Employers ("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.

SUMMARY OF THE ARGUMENT

In 2021, the Louisiana Legislature amended La. R.S. 9:2800.9 to include a revival provision that attempts to revive prescribed claims of sexual abuse of a minor. In 2022, the Legislature amended La. R.S. § 9:2800.9 again to broaden the language of the revival window. *Amici* strongly condemn the sexual abuse of minors and do not condone, in any way, the acts of any persons who have caused the sexual abuse of minors. *Amici* also maintain great sympathy for any persons who have been abused as minors.

Nonetheless, the full import of the revival provision, if allowed to stand, would dramatically and adversely affect the foundations of Louisiana law related to all causes of action, not just cases of sexual abuse. The district court's decision properly interpreted Louisiana's longstanding jurisprudence that Louisiana's Constitution does not permit the revival of prescribed claims or the elimination of vested rights. Eroding the doctrine of vested rights and empowering the Legislature to revive any claims it wishes would have far-reaching consequences for all types of claims and litigation and for the broader Louisiana insurance industry as well. This Court should affirm the district court's decision holding that the revival provision is unconstitutional and a violation of the long-established vested right to a prescription defense.

ARGUMENT

I. This Court has consistently interpreted the Louisiana Constitution as prohibiting the legislative revival of prescribed claims.

This Court has consistently ruled that the Due Process Clause of the Louisiana Constitution prohibits the retroactive revival of prescribed claims: "[S]tatutes 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 that may not be retroactively disturbed. *Elevating Boats, Inc. v. St. Bernard Par.*, 00-3518, p. 14 (La. 2001), 795 So. 2d 1153, 1164, *overruled in part on other grounds by Anthony Crane Rental, L.P. v. Fruge*, 03-0115 (La. 2003), 859 So. 2d 631 ("[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 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.") (citation omitted) (emphasis original).

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.*, 01-1528, p. 7 (La. 2001), 783 So. 2d 1251, 1257 ("[E]ven 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.").[1] Notably, neither T.S.'s brief nor any of the *amicus* briefs supporting T.S. address this Court's clear statement in *Bourgeois*, i.e., that the Legislature cannot retroactively disturb vested rights *even if legislative intent on retroactivity is clear*. This Court's prior jurisprudence is consistent that under Louisiana's Constitution, the Legislature has no power to remove a defendant's vested right to plead prescription by reviving prescribed claims.

II. This Court's plurality decision in *Chance* does not support revival of prescribed claims.

T.S. incorrectly relies on *Chance v. American Honda Motor Co.*, 93-2582 (La. 1994), 635 So. 2d 177, for the notion that "a clear and unequivocal expression of intent by the legislature" is necessary to retroactively revive prescribed claims. *See* T.S.'s Brief, at p. 8 (Mar. 2, 2023). This reliance is misplaced. The vast majority[2] of this Court's cases prohibiting retroactive impairment of a vested right come after the *Chance* decision, including this Court's decision in *Sudwischer v. Estate of Hoffpauir*, 97-0785 (La. 1997), 705 So. 2d 724, which specifically interpreted *Chance* in direct opposition to T.S.'s position:

> This case is logically consistent with our holding in *Chance v. American Honda Motor Co., Inc.*, 93–2582 (La.4/11/94), 635 So.2d 177, 178, wherein we held that once an action has prescribed, the right to plead prescription is a substantive right which cannot be stripped away by the retroactive application of a new prescriptive period which would result in the revival of the prescribed cause of action.

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[1] *See also Unwired Telecom Corp. v. Par. of Calcasieu*, 03-0732 (La. 2005), 903 So. 2d 392, 404; *Church Mut. Ins. Co. v. Dardar*, 13-2351 (La. 2014), 145 So. 3d 271, 279 n.10, 281; *Morial v. Smith & Wesson Corp.*, 00-1132 (La. 2001), 785 So. 2d 1, 10; *La. Health Serv. & Indem. Co. v. McNamara*, 561 So.2d 712, 718 (La. 1990); *Keith v. U.S. Fid. & Guar. Co.*, 96-2075 (La. 1997), 694 So. 2d 180, 183.

[2] *Manuel v. La. Sheriff's Risk Mgmt. Fund*, 95-0406, p. 5 (La. 1995), 664 So.2d 81, 84 (La. 1995) ("The principle that laws are to have a prospective and not retroactive effect is a basic principle of most legal systems."); *Keith*, 694 So. 2d at 183 ("[E]ven where the Legislature has expressed its intent to give a substantive law retroactive effect, the law may not be applied retroactively if it would impair contractual obligations or disturb vested rights."); *Falgout v. Dealers Truck Equip. Co.*, 98-3150, p. 12 (La. 1999), 748 So. 2d 399, 407 ("When a party acquires a right, either to sue for a cause of action or to defend himself against one, that right becomes a vested property right and is protected by the due process guarantees."); *Bourgeois v. A.P. Green Indus., Inc.*, 00-1528 (La. 2001), 783 So. 2d 1251, 1257; *Morial*, 785 So. 2d at 10 ("[E]ven 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."); *Elevating Boats, Inc. v. St. Bernard Par.*, 00-3518 (La. 2001), 795 So. 2d 1153, 1164 (La. 2001), *overruled in part on other grounds by Anthony Crane Rental, L.P. v. Fruge*, 03-0115 (La. 2003), 859 So. 2d 631; *Unwired*, 903 So. 2d at 404 ("[E]ven when the Legislature has expressed its intent to give a substantive law retroactive effect, the law many not be applied retroactively if it would impair contractual obligations or disturb vested rights."); *Burmaster v. Plaquemines Par. Gov't*, 07-2432, p. 15 (La. 2008), 982 So. 2d 795, 807 ("[R]etroactive application of new legislation is constitutionally permissible only if it does not result in . . . divestiture of vested rights."); *M.J. Farms, Ltd. v. Exxon Mobil Corp.*, 07-2371, p. 18 (La. 2008), 998 So. 2d 16, 30, *amended on reh'g* (2008) ("Retroactive application of new legislation is constitutionally permissible only if it does not result in impairment of the obligations of contracts or in divestiture of vested rights.") (original emphasis, modifications, and quotation omitted); *Church Mut. Ins. Co. v. Dardar*, 13-2351, p. 13 (La. 2014), 145 So. 3d 271, 279 n.10, 281 (La. 2014) ("Statutes enacted after the acquisition of [] a vested property right cannot be applied so as to divest a party of his or her vested right . . . because such a retroactive application would contravene due process guarantees."); *Faulk v. Union Pac. R.R. Co.*, 14-1598, p. 17 (La. 2015), 172 So. 3d 1034, 1049 ("To the extent these changes in Louisiana's property law would disturb vested rights of the landowners, the revision of the law would not be applicable."); *Born v. City of Slidell*, 15-0136, p. 14 (La. 2015), 180 So. 3d 1227, 1235 ("[E]ven where the legislature has expressed its intent to give a substantive law retroactive effect, the law may not be applied retroactively if it would impair contractual obligations or disturb vested rights.") (quotation marks omitted).

Id. at 731 n.6.

T.S. also incorrectly states that the "Third Circuit has already allowed for the revival of a previously prescribed claim." T.S.'s Brief, at p. 8 (Mar. 2, 2023). The Third Circuit case cited by T.S., *Barras v. O'Rourke*, 19-412 (La. App. 3 Cir. 12/18/19), 287 So. 3d 817, involved an absolute nullity action, which cannot prescribe. *See id.* at 820 (citing La. Civ. Code art. 2032, *Succession of Robinson*, 94-2229 (La. 1995), 654 So. 2d 682, 684); *see also* La. R.S. 9:406 cmt. (2016) (observing that the prior version of the statute at issue in *Barras* "was illogical" because "absolute nullities are imprescriptible by nature"). Because absolute nullities are imprescriptible by nature, the Legislature's retroactive removal of the prescriptive period in *Barras* was a formality that simply removed a dead-letter prescriptive period from law. Thus, the defendant in *Barras* could not have had any constitutionally cognizable, vested right in prescription; and *Barras*'s reliance on *Chance* is limited to principles of statutory construction. Moreover, the Third Circuit reaffirmed after *Chance* that a statute cannot be used to retroactively revive a claim where the defendant had obtained a vested right.[3]

Finally, just last year, this Court once again addressed the *Chance* decision in *Succession of Lewis*, 22-00079 (La. 2022), 351 So. 3d 336. In *Succession of Lewis*, this Court stated: "In *Chance v. American Honda Motor Co., Inc.*,[] this Court held that when retroactive application of a statute results in revival of an already prescribed claim, a court must determine if retroactive application deprives a defendant of a right to plead prescription to defeat the plaintiff's claim." *Id.* at 342–43 (citation omitted). The Court found Justice Hall's concurrence in *Chance* "instructive" because it noted that "the right to plead the defense of prescription was a vested right." *Id.* Although the Court in *Succession of Lewis* did apply the law at issue retroactively, the Court went to great lengths to explain why the retroactive application did not violate vested rights, because otherwise the law

[3] *Mitchell v. Limoges*, 05-832 (La. App. 3 Cir. 3/1/06), 923 So. 2d 906, 910, *writ denied*, 06-0723 (La. 2006), 929 So. 2d 1285 ("[T]he new prescriptive period supplied by La.Civ.Code art. 3469 cannot revive an action that had already prescribed under La.Civ.Code art. 3536."); *Meaux v. Guidry*, 14-155, p. 3 (La. App. 3 Cir. 6/4/14), 140 So. 3d 871, 873, *writ denied*, 14-1389 (La. 2014), 149 So. 3d 799 (stating that a code article was "peremptive, meaning that once the time period has passed, a cause of action has been extinguished and the party relying on the peremptive defense has a vested right that is substantive in nature"); *Henry v. SBA Shipyard, Inc.*, 09-426, p. 8 (La. App. 3 Cir. 11/10/09), 24 So. 3d 956, 961, *writ denied*, 09-2693 (La. 2010), 27 So. 3d 853 ("[T]he rights associated with abandonment are similar to those associated with prescription. As such, there is merit to [the] argument that there are constitutional problems with retroactively taking away a defendant's right to have a case dismissed for abandonment once he has acquired that right.").

could not be applied retroactively.[4] And the only dissents to the decision argued in favor of a more robust protection of vested rights. This Court's decision in *Succession of Lewis* confirms that a prescription defense is a vested right protected by Louisiana's traditional vested rights analysis.

III. To permit a violation of vested rights would undermine the purpose of prescription defenses generally, significantly damaging the balance of litigation interests and the stability of insurance markets.

By its very nature, tort law deals with horrible situations—for example, accidents resulting in serious injuries that have a dramatic impact on a person's life, products that allegedly cause a person's death, and diseases that may have been contracted through exposure to toxic substances. Prescriptive periods exist in these situations because such limits are "fundamental to a well-ordered judicial system." *Bd. of Regents v. Tomanio*, 446 U.S. 478, 487 (1980). "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*, 453 So. 2d 299, 302 (La. App. 3 Cir. 1984). 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 for decades, and even centuries, 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. Prescriptive periods allow businesses and other organizations to accurately gauge their liability exposure and make financial, insurance- coverage, and document-retention decisions accordingly. If prior claims of any type—other torts, breach of contract, 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, then

[4] Though the dissenting justices disagreed about when the peremption defense became "vested," the Court unanimously agreed that, once vested, such a peremption defense would be inviolable by retroactive legislation. Moreover, though the case concerned peremption, the reasoning explicitly included the right to plead prescription as a vested right. *See Succession of Lewis*, 22-00079, p. 17 (La. 2022), 351 So. 3d 336, 348 ("[T]he vested right to plead the exception of prescription . . . .") (quoting *Succession of Pelt*, 17-960, pp. 11–13 (La. App. 3 Cir. 4/11/18), 244 So. 3d 476, 485; *see also id.* at 351 ("[T]he revival of an already prescribed claim may present concerns insofar as it may affect the substantive right of a defendant to plead the exception of prescription to defeat the plaintiff's claim.") (Weimer, C.J., concurring).

businesses, government entities, and their insurers will find it difficult to quantify and calculate risks over extended time periods, an uncertainty that will impact not only the availability and affordability of insurance but also the public at large, as affected entities are forced to reduce or discontinue important services.

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. And this measure alone, even if successfully undertaken, would provide a woefully inadequate guarantee of due process, since witnesses may be dead or otherwise unavailable, and any memories of decades-old events are likely unreliable. Nor is the time period of such revived claims limited by the lifespan of particular plaintiffs. Under the theory of the revival provision proposed by T.S., 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 may be revived by the Legislature.

The loss of security and stability is particularly problematic with respect to insurance. By assuming and managing risk, insurers play an indispensable role in modern life. But a necessary precondition to "managing" risk is the ability to identify and quantify it to establish reserves sufficient to cover all potential exposure for all covered types of losses. Although access to historical data and sophisticated statistical models allows insurers to perform this complex task with ever-increasing accuracy and efficiency, the process still depends on a measure of predictability and stability. Insurers must be able to locate a point at which historically distant events no longer pose a current and future risk—where "the past" is definitively and conclusively past.

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. Allowing previously prescribed claims of any sort to be revived, creates 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.

Without a clear line of demarcation, risk assessments and other basic ordering by organizations, insurers, and other entities become uncertain, unreliable, and even speculative. Given the passage of time, the nature of the allegations involved in the present revival of sexual abuse claims, and possible loss of records, witnesses, and institutional memory involved in many of the claims that have been and may be filed under the revival provision, the costs of these claims will be borne mainly by schools, nonprofit organizations, and other entities that provided services to children. These entities can expect to see an impact on the availability and affordability of insurance in the future, in addition to their significant new liability exposure for otherwise-time barred claims. Moreover, self-insured employers would be doubly penalized by both the business and insurance costs of guarding against the future risks of revived claims.

Permitting the revival of time-barred claims would also place Louisiana outside the legal mainstream with respect to due-process protections. The "great preponderance" of state appellate courts, like this Court, have long rejected legislation purporting to revive time-barred claims. *Kelly v. Marcantonio*, 678 A.2d 873, 883 (R.I. 1996). These courts often reason that doing so violates due process. *See, e.g.*, *Mitchell v. Roberts*, 469 P.3d 901, 903 (Utah 2020).

As several state high courts have recognized, the majority rule among jurisdictions continues to be that a legislature cannot adopt retroactive laws that revive a time-barred claim without violating defendants' due process rights.[5] These states generally apply a vested-rights analysis consistent with Louisiana law, whether they do so through applying due process safeguards, a remedies

[5] *See Johnson v. Garlock, Inc.*, 682 So. 2d 25, 28 (Ala. 1996) ("The weight of American authority holds that the bar does create a vested right in the defense."); *Johnson v. Lilly*, 823 S.W. 2d 883, 885 (Ark. 1992) ("[W]e have long taken the view, along with a majority of the other states, that the legislature cannot expand a statute of limitation so as to revive a cause of action already barred."); *Frideres v. Schiltz*, 540 N.W. 2d 261, 266–67 (Iowa 1995) ("[I]n the majority of jurisdictions, the right to set up the bar of the statute of limitations, after the statute of limitations had run, as a defense to a cause of action, has been held to be a vested right which cannot be taken away by statute, regardless of the nature of the cause of action."); *Dobson v. Quinn Freight Lines, Inc.*, 415 A.2d 814, 816–17 (Me. 1980) ("The authorities from other jurisdictions are generally in accord with our conclusion" that there is a substantive right in a statute of limitations after the prescribed time has completely run and barred the action); *Doe v. Roman Catholic Diocese*, 862 S.W. 2d 338, 341–42 (Mo. 1993) (recognizing constitutional prohibition of legislative revival of a time-barred claim "appears to be the majority view among jurisdictions with constitutional provisions"); *Kelly v. Marcantonio*, 678 A.2d 873, 883 (R.I. 1996) (recognizing the "great preponderance of state appellate courts" reject claims revival laws under due process analysis) (cleaned up); *State of Minn. ex rel. Hove v. Doese*, 501 N.W. 2d 366, 369–71 (S.D. 1993) ("Most state courts addressing the issue of the retroactivity of statutes have held that legislation which attempts to revive claims which have been previously time-barred impermissibly interferes with vested rights of the defendant, and this violates due process.").

clause, a specific state-constitutional provision prohibiting retroactive legislation, or another state-constitutional provision.[6] Courts have also applied these constitutional principles to reject the legislative revival of time-barred claims in a wide range of cases—negligence claims, product liability actions, asbestos claims, and workers' compensation claims, among others.

T.S. would have this Court believe that it need not "create a sweeping rule that the legislature may, under any circumstance, revive a time-barred claim." *See* T.S.'s Brief, at p. 21 (Mar. 2, 2023). There is no limiting principle, however, and the T.S.'s brief provides no proposal on where to draw the line, suggesting only that such legislation would be subject to a balancing test. *See id.* But this Court's constitutional jurisprudence barring legislative power to revive prescribed claims is absolute in its prohibition. As a result, if this Court were to reverse the district court's holding, there is no limiting principle that would create an exception only for cases involving sexual abuse of minors. The Legislature would have power to revive any prescribed claims it deems to have met T.S.'s nebulous "balancing test."

To the extent this Court allows the Legislature to revive sexual abuse claims, the chance that the Legislature will attempt to revive other tort claims will increase dramatically. In other states, legislative revival attempts continue to expand in regard to other torts. Two recent laws enacted in New York purport to revive various environmental claims and claims for sexual abuse of adults, not just minors. *See* S. 8763A (N.Y. 2022); *see also* S. 66 (N.Y. 2022). In 2021, Vermont enacted a law to revive expired claims related to physical abuse of minors, not just sexual abuse. *See* S. 99 (Vt. 2021). A new California law revives claims against certain physicians for the broad category of "inappropriate contact, communication, or activity of a sexual nature." *See* A.B. 2777 (Cal. 2022). Maine has considered a bill to retroactively revive products-liability claims, while Oregon has considered a bill to revive expired asbestos claims. *See* LD 250 (Maine 2019); S.B. 623 (Or. 2011).

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[6] *See, e.g.*, *Garlock*, 682 So. 2d at 27–28; *Lilly*, 823 S.W.2d at 885; *Jefferson Cty. Dep't of Social Servs. v. D.A.G.*, 607 P.2d 1004 (Colo. 1980); *Wiley v. Roof*, 641 So.2d 66, 68–69 (Fla. 1994); *Doe A. v. Diocese of Dallas*, 917 N.E. 2d 475, 484–85 (Ill. 2009); *Connell v. Welty*, 725 N.E. 2d 502, 506 (Ind. 2000); *Johnson v. Gans Furniture Indus., Inc.*, 114 S.W. 3d 850, 854–55 (Ky. 2003); *Dobson*, 415 A.2d at 816–17; *Univ. of Miss. Med. Ctr. v. Robinson*, 876 So. 2d 337, 340 (Miss. 2004); *Doe*, 862 S.W. 2d at 341–42; *Givens v. Anchor Packing, Inc.*, 466 N.W. 2d 771, 773–75 (Neb. 1991); *Gould v. Concord Hosp.*, 493 A.2d 1193, 1195–96 (N.H. 1985); *Williams Cos. v. Dunkelgod*, 295 P.3d 1107, 1112 (Okla. 2012); *Doe v. Crooks*, 613 S.E. 2d 536, 538 (S.C. 2005); *Doese*, 501 N.W. 2d at 369–71; *Ford Motor Co. v. Moulton*, 511 S.W. 2d 690, 696–97 (Tenn. 1974); *In re A.D.*, 73 S.W. 3d 244, 248 (Tex. 2002); *Roark v. Crabtree*, 893 P.2d 1058, 1062–63 (Utah 1995); *Soc'y Ins. v. Labor & Indus. Review Comm'n*, 786 N.W. 2d 385, 399–402 (Wis. 2010).

Statutes of limitations and prescriptive periods are essential to a fair and well-ordered civil justice system because some period is needed to balance an individual's ability to bring a lawsuit with the ability to mount a fair defense and to protect courts from stale claims. Prescriptive periods allow judges and juries to evaluate an individual or business's liability when the best evidence is available. This is especially important when heart-wrenching allegations are involved, as they are here.

It is never easy to tell injured persons that their time to sue has ended. This is why separation of powers and due process prohibits legislatures from acting retrospectively, so that society can appropriately order itself and know the law. Allowing revival of prescribed claims in this case would inevitably lead to future calls to revive claims in other areas of the law, first in those related to physical or economic injuries, but later in myriad other claims that cannot be enumerated here. As a result, individuals and businesses in Louisiana will face the risk of indefinite liability, further exacerbated by the inability of judges and juries to accurately evaluate such liability given the loss of witnesses and records, faded memories, and changes in societal expectations.

CONCLUSION

This Court should recognize that altering Louisiana's constitutional analysis to permit the revival of prescribed claims would significantly undermine due process and the finality of prescriptive periods, not just in the context of this case, but in any type of civil suit. It would make determinations of liability in any type of civil action less accurate, frustrating the ability of individuals and organizations to properly evaluate liability risks and subjecting entities to a risk of indefinite liability. As the district court correctly held, this Court's jurisprudence cited above clearly prohibits the Legislature from reviving causes of action, no matter how express its intent. If the decision of the district court is reversed and the revival provision is permitted to stand, nothing would then limit the power of the Legislature to revive other prescribed claims of any kind. Allowing the revival provision to pass constitutional muster would effectively nullify any constitutional safeguards on the Legislature's ability to reopen the courthouse doors to stale claims in which records and witnesses are no longer available.

* * *

Dated: April 3, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served by U.S. Mail and/or electronic means to the following persons on April 3, 2023:

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