

IN THE
SUPREME COURT
STATE OF LOUISIANA

CASE NO. 2024-CD-0359

THERESA FISHER,
Plaintiff-Applicant

VERSUS

STEVEN HARTER, JR., STEVEN HARTER, SR., AND THE HANOVER INSURANCE
GROUP,
Defendants-Respondents

CIVIL PROCEEDING

BRIEFING ON APPLICATION FOR WRIT OF SUPERVISORY REVIEW
FROM THE COURT OF APPEAL FOR THE SECOND CIRCUIT, NO. 55,853-CW,
CONCERNING THE FEBRUARY 20, 2024 JUDGMENT OF THE HONORABLE CHRIS
VICTORY, JUDGE PRESIDING IN DOCKET NO. 615,908, FIRST JUDICIAL DISTRICT
COURT, PARISH OF CADDO

REPLY BRIEF OF PLAINTIFF-APPLICANT, THERESA FISHER

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INTRODUCTION

In the present matter, this Court granted Plaintiff Theresa Fisher’s writ application challenging the constitutionality of La. R.S. 13:4163 that provides a mechanism for a legislator or legislative employee to, at his or her own discretion, obtain a mandatory, peremptory continuance of any court hearing or an extension of any deadline essentially any time such a person is “engaged in activities” in any way “in connection with ... the legislature.” La. R.S. 13:4163(C)(1)(c). While Plaintiff’s original brief fully fleshes out her arguments pertaining to the unconstitutionality of La. R.S. 13:4163, Plaintiff respectfully submits this brief in response to issues raised in both the Attorney General’s (“AG”) and the Members of the Legislature’s (“Legislature”) amici curiae briefs regarding (1) justiciability and (2) the so-called “temporary, time-limited legislative continuance”¹ which infringes on the resources and authority of the judiciary and which has delayed the progress of this action for years.

CASE STATUS UPDATE

At the outset and in the interest of full candor with this Court, Plaintiff must bring to the Court’s attention two recent developments in the underlying litigation. On the afternoon of August 6, 2024—three days before their opposition brief was due to be filed in this Court—Alan J. Seabaugh, Michael C. Melerine, and Seabaugh & Sepulvado, LLC, as counsel of record for Steven Harter, Jr., Steven Harter, Sr., and The Hanover Insurance Group (collectively, the “Seabaugh Firm”) filed, *ex parte*, a Motion to Withdraw as Counsel in the district court. Since then, the parties—Plaintiff Theresa Fisher and Defendants Steven Harter, Jr., Steven Harter, Sr., and The Hanover Insurance Group—after years of continuances and deadline extensions wrought by the Seabaugh Firm’s repeated invocation of the La. R.S. 13:4163 legislative continuance—reached a pre-settlement agreement. As of the filing of this reply brief, the Seabaugh Firm is still enrolled as counsel of record, and this matter is still pending before the district court. The trial date presently scheduled for October 21, 2024, will likely be continued in light of this pre-settlement agreement. Nevertheless, Plaintiff submits that neither of these occurrences have any effect whatsoever on this Court’s jurisdiction or on the ripeness of the constitutional challenge to La. R.S. 13:4163 as discussed below.

¹ See *Amicus Curiae Brief of the “Members” of the Legislature in Opposition to the Plaintiff’s-Applicant’s Application for Writ of Certiorari*, pp. 1, 3-5; *Amicus Curiae Brief on Behalf of the Attorney General for the State of Louisiana*, pp. 10-11, 15, 17.

LAW AND ARGUMENT

I. Plaintiff's constitutional challenge is justiciable, ripe for decision, and timely brought before this Court.

In Louisiana, courts will not decide abstract, hypothetical, or moot controversies, or render advisory opinions with respect to such controversies. *See Ulrich v. Robinson*, 18-0534 (La. 3/26/19), 282 So.3d 180, 186; *Cat's Meow, Inc. v. City of New Orleans Through Dept. of Finance*, 98-0601 (La. 10/20/98), 720 So.2d 1186, 1193. To avoid deciding abstract, hypothetical or moot questions, our courts require cases submitted for adjudication to be justiciable, ripe for decision, and not brought prematurely. *Ulrich*, 282 So.3d at 186; *Cat's Meow, Inc.*, 720 So.2d at 1193. In relation to declaratory relief,

A 'justiciable controversy' connotes, in the present sense, an existing actual and substantial dispute, as distinguished from one that is merely hypothetical or abstract, and a dispute which involves the legal relations of the parties who have real adverse interests, and upon which the judgment of the court may effectively operate through a decree of a conclusive character. Further, the party seeking the declaratory judgment should have a legally protectable [sic] and tangible interest at stake, and the dispute presented should be of sufficient immediacy and reality to warrant the issuance of the declaratory judgment.

Cat's Meow, Inc., 720 So.2d at 1193 (quoting *Abbott v. Parker*, 259 La. 279, 249 So.2d 908 (La. 1971)).

This Court has acknowledged that the doctrine of justiciability is "rooted in our Constitution's tripartite distribution of powers into the executive, legislative, and judicial branches of government." *Id.* (citing La. Const. art. 2, § 1). "A 'moot' case is one in which a judgment can serve no useful purpose and give no practical relief; and when 'there is no reasonable expectation that the alleged violation will recur and when interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.'" *Louisiana Associated Gen. Contractors, Inc. v. State Through Div. of Admin., Off. of State Purchasing*, 95-2105 (La. 3/8/96), 669 So.2d 1185, 1193 (internal citations omitted).

In the interest of full disclosure, Plaintiff has brought to this Court's attention the Seabaugh Firm's Motion to Withdraw as Counsel filed *ex parte* in the district court. Recall, this Court granted Plaintiff's writ on June 25, 2024, and oral arguments are set forth for September 5, 2024. *See* Exhibit 1, Motion to Withdraw. Three days before the August 9, 2024 deadline for filing their brief with this Court, the Seabaugh Firm—in what can only be seen as a blatant attempt to sidestep this Court's review of this statute and of the Seabaugh Firm's repeated invocation of the legislative continuance throughout this litigation—sought to withdraw from its representation of Defendants in this case. Significantly, the Seabaugh Firm was so anxious to exit the maelstrom that it has created through its repeated use and abuse of this statute that it filed its *ex parte* motion to withdraw on the afternoon of August 6, 2024, before

obtaining written consent of its clients and before additional counsel, Alexander Mijalis, could even file his motion to enroll.

This is the gamesmanship that the Seabaugh Firm has continually displayed throughout this litigation. Not only did the motion fail to comply with La. R. Dist. Ct. 9.13, but its timing also speaks volumes to the Seabaugh Firm's obvious intent to create "a technical mootness as a sham to deprive the court of jurisdiction." *See Cat's Meow, Inc.*, 720 So.2d at 1194 ("We are well aware of the various exceptions to the mootness doctrine created to prevent either party from creating a technical mootness as a sham to deprive the court of jurisdiction."). Our jurisprudence is clear, however, that such tactics do not defeat this Court's jurisdiction. *Id.* Rather, "under the voluntary cessation exception, if a defendant voluntarily stops allegedly wrongful conduct, then that change alone does not make the case moot, for the defendant would then be free to return to his old ways. Therefore, the defendant must show with assurance that there is no reasonable expectation that the alleged violation will recur." *Id.*, at. 1194. Here, the motion has not been granted, and counsel for Steven Harter, Sr. has even filed a letter in opposition. *See* Exhibit 2, Letter from Vernon Richie Opposing Motion to Withdraw. Regardless, even if the Seabaugh Firm succeeds in its withdrawal, there is absolutely no assurance that it will not re-enroll. Indeed, the actions taken by the Seabaugh Firm throughout this litigation actually militate against crediting any such pledge or commitment if one was even offered by the Seabaugh Firm. *See* Defendants' Motion and Memorandum for Continuance of Trial filed March 21, 2023, R. 568-69 (seeking continuance of May 8, 2023 trial date on grounds that "[t]he date for the trial in the above-referenced matter falls within the time period contemplated by Louisiana Revised Statute 13:4163"); Motion to Continue filed on January 4, 2024, R. 1137; *compare*, August 2, 2022 E-Mail from Alan T. Seabaugh to J. Cole Sartin, R. 835 (Alan Seabaugh committing that he would not seek a continuance of the May 8, 2023 trial setting for legislative reasons). Despite the Seabaugh Firm's transparent attempts to defeat this Court's jurisdiction, the constitutionality of La. R.S. 13:4163 both on its face and as applied is justiciable, ripe for decision, and timely before this Court. Because this case remains pending, there still exists an actual and substantial dispute which involves the legal relations of the parties who have real adverse interests. *Cat's Meow, Inc.*, 720 So.2d at 1193. This is all that is required for an issue to be justiciable.

Contrary to both the AG's and the Legislature's assertions to this Court, the simple facts that there is currently no continuance sought by either party, that there is no continuance currently pending based on La. R.S. 13:4163, and that there is no legislative session scheduled or anticipated during either the 30

days prior to or following the trial date set for October 21, 2024, do not render the constitutional issue presently before this Court moot. Indeed, in her application to this Court, Plaintiff explained that she raised the issue of constitutionality through a motion for declaratory judgment in response to which

both the AG and Defendants contended that there was no justiciable controversy as there was no pending motion to continue. On its face, Defendants' January 2024 motion to continue belied their contention in that Defendants explicitly sought a Legislator's Continuance of the October 21, 2024 trial date. And even though Defendants withdrew their motion to continue the October 21, 2024 trial date during the February 15, 2024 motion hearing, opposing counsels' ability to use this peremptory non-discretionary continuance to continue any deadline whatsoever—as they have done already here to move the hearing testing the constitutionality of this very statute, to extend their expert deadlines, to extend all deadlines between February 14, 2022 and July 18, 2022, to continue a hearing on motions in limine, to continue a video trial deposition, and to move the trial date—more than satisfies the justiciable controversy requirement.^[2]

At the time Plaintiff filed her motion for declaratory judgment on October 19, 2023, there was no pending motion to continue.³ Rather, as explained in her motion, it was the fact that “on October 14, 2023, Defendants' attorneys, Alan Seabaugh and Michael Melerine, were elected and will both be members of the State Legislature for the years 2024-2028” coupled with Defendants' counsel's repeated invocation of the legislative continuance that prompted the filing of the motion in the first place.⁴ This Court was, therefore, well aware of the procedural posture of this case when it granted Plaintiff's application.

Regardless, Plaintiff challenges the constitutionality of the mandatory, peremptory, and non-discretionary language of La. R.S. 13:4163 that, on its face, explicitly deprives the district courts of this state of any authority whatsoever to decide whether to grant or to deny a legislative continuance of any court hearing or an extension of any deadline within 30 days prior to any legislative session or constitutional convention, within 30 days after the adjournment sine die of any legislative session or constitutional convention, or at any time any legislator or legislative employee “is engaged in activities, including travel in connection with or ordered by: (i) the legislature; (ii) any legislative committee or subcommittee appointed by the president of the Senate or the speaker of the House of Representatives; (iii) any committee or commission appointed by the governor or other person authorized to make such appointments; or (iv) any constitutional convention or commission.” La. R.S. 13:4163(C). Given that the mandatory, non-discretionary language grants legislators/legislative employees the right to unilaterally decide to continue “any type of proceeding” or to extend “any type of deadline” anytime such a person is “engaged in activities, including travel, in connection with ... the legislature ... or any legislative

² See Writ Application, p. 15, 16 n.42.

³ See Motion for Declaratory Judgment with Incorporated Memorandum in Support, R. 1027.

⁴ See Motion for Declaratory Judgment with Incorporated Memorandum in Support, R. 1027.

committee,” there literally always exists a reasonable possibility that a legislator or legislative employee who serves as opposing counsel could invoke, and in this case has invoked, his legislative privilege to continue a pending matter. *See* Greg Larose, *Who’s to Blame for Louisiana’s High Insurance rates? Opinions Are Split*, Louisiana Illuminator, published Aug. 7, 2024 (reporting that the House Committee on Civil Law and Procedure upon which Rep. Michael Melerine sits “was one of five that convened Wednesday morning and will meet again monthly through December with the goal of crafting legislation to lower insurance costs.”).⁵

This is particularly true here where Defendants’ counsel Alan Seabaugh and Michael Melerine—both members of the State Legislature for 2024-2028—have already invoked their legislative privilege in this proceeding to move the hearing testing the constitutionality of this very statute,⁶ to extend their expert deadlines,⁷ to extend all deadlines between February 14, 2022 and July 18, 2022,⁸ to continue a hearing on motions in limine,⁹ to continue a video trial deposition,¹⁰ and to move multiple trial dates¹¹ (despite committing not to invoke this legislative privilege when the trial date was originally chosen).¹² It is comical that the Legislature and the AG now cite the approaching October 21, 2024 trial date as grounds for finding non-justiciability when legislative committees meet throughout the year and when Defendants’ counsel has time and time again never hesitated to continue deadline after deadline by invoking the legislative continuance either just before and even right after the deadlines had already passed.¹³ Indeed, there always exists a reasonable expectation that the invocation of the legislative continuance will recur based on the over broad language of La. R.S. 13:4163 on its face. For that simple fact alone, the constitutional issue before this Court is not moot. *See Louisiana Associated Gen. Contractors, Inc. v. State Through Div. of Admin., Off. of State Purchasing*, 95-2105 (La. 3/8/96), 669 So.2d 1185, 1193 (“A ‘moot’ case is one in which a judgment can serve no useful purpose and give no practical relief; and when ‘there is no reasonable expectation that the alleged violation will recur and when interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.’” (internal citations omitted)).

⁵ This article is available at <https://lailluminator.com/2024/08/07/louisiana-insurance/>.

⁶ *See* Motion to Continue filed on January 4, 2024, R. 1137-46.

⁷ *See* Defendants’ Motion and Memorandum for Continuance of Trial filed on March 21, 2023, R. 568-69; *see also* Motion for Scheduling Conference and Motion to Strike Defendants’ Expert Witnesses filed June 13, 2023, R. 925.

⁸ *See* Motion for Extension of Deadlines filed June 28, 2022, R. 385.

⁹ *See* Motion for Continuance filed April 14, 2023, R. 628.

¹⁰ *See* Motion for Continuance filed April 14, 2023, R. 628.

¹¹ *See* Defendants’ Motion and Memorandum for Continuance of Trial filed March 21, 2023, R. 568-69; Motion to Continue filed on January 4, 2024, R. 1137.

¹² *See* August 2, 2022 E-Mail from Alan T. Seabaugh to J. Cole Sartin, R. 835.

¹³ *See* Memorandum in Support of Motion for Scheduling Conference and Motion to Strike Defendants’ Expert Witnesses filed June 13, 2023, R. 929.

Moreover, by its own terms, La. R.S. 13:4163 completely undermines the AG's and the Legislature's arguments that justiciability hinges upon a pending motion to continue. This is because La. R.S. 13:4163(E)(2) makes it practically impossible to resolve the constitutionality of its provisions in response to a motion to continue for two very distinct reasons.

Firstly, La. R.S. 13:4163 on its face does not contemplate a contradictory hearing of any sort whatsoever when a legislator/legislative employee invokes his legislative privilege. Rather, La. R.S. 13:4163(E)(2) mandates the "court shall grant the continuance or extension *ex parte*." (Emphasis added). The district court, in granting the continuance of the May 8, 2023 trial date over Plaintiff's staunch objection, even recognized this Court's directive to our trial courts in handling such continuances:

I certainly appreciate your frustration, I do, but these legislative continuances are mandatory. This has been the topic of several of our judicial conferences, and the supreme court has made it very clear to us that we are to grant these. These are mandatory continuances. And, frankly, they've made it pretty clear we don't even have hearings on them.

The only reason I have even set this for a phone conference as I have is because of the question of whether it was waived or not. Representative Seabaugh has stated he hasn't waived it, and so it's his choice to waive it, and his choice only. He is stating here today on this conference that he isn't waiving it. And if he did waive it, I don't see anything that a waiver is irrevocable, and so he's clearly not waiving it.

The Court has no discretion in this matter, and that's been made clear to any judge who has been at the conferences lately straight from supreme court justices that we are to grant these things because there is really not discretion on these. There is a question as to whether it was waived or not. Representative Seabaugh stating today he is not waiving it, and that's his discretion to waive or not to waive it.

So having said that, Mr. Sartin, I certainly appreciate your frustrations and your client's frustrations, but there is really no discretion for the Court on these legislative continuances. This trial is scheduled for right in the middle of the session, and it's just a mandatory continuance. So the Court will grant the continuance based on the legislative continuance article contained in 13:4163 finding that based on Representative Seabaugh's assertion here that he is not waiving it, then the Court is going to grant the continuance.^[14]

It seems rather disingenuous for both the AG and the Legislature to now ignore the *ex parte* nature of these continuances in an effort to preclude any examination of this statute's constitutionality by this Court.

Secondly, La. R.S. 13:4163 permits a legislator/legislative employee to file a legislative continuance "no later than five calendar days prior to the hearing or proceeding to be continued" and explicitly mandates that "[w]ithin seventy-two hours of the filing of a motion for a legislative continuance or extension the court shall grant the continuance or extension *ex parte*." La. R.S. 13:4163(E). To require that a constitutional challenge to La. R.S. 13:4163 is only ripe when raised in opposition to a motion to continue when that motion can be filed as late as five days before the proceeding to be continued and has

¹⁴ See Transcript of March 29, 2023 Motion for Continuance Telephone Conference, R. 1102-03.

to be granted within 72 hours of the filing of the motion would render the provisions of this statute effectively unreviewable. Rather, in such circumstances, even when seemingly no continuing controversy exists, this Court recognizes an exception to the mootness doctrine for challenged practices that are “capable of repetition, yet evading review.” *State v. Rochon*, 11-09 (La. 10/25/11), 75 So.3d 876, 884. Under this exception, this Court may consider the merits of a case that would otherwise be deemed moot when it concerns an issue (1) with a duration “too short to enable full litigation on the merits” or “too short to be fully appealed prior to its cessation or expiration” and (2) that “is capable of repetition generally” because it is “likely to recur for attorneys and their clients.” *Id.* at 884-85, 887; *see also*, *Durel v. Acadian Ear, Nose, Throat & Facial Plastic Surgery, APMC*, 21-433 (La. App. 3 Cir. 11/16/22), 352 So.3d 1082, 1086 (“Courts will find that an issue is ‘capable of repetition, yet evading review’ if the problem is capable of repetition generally and likely to recur for others”) (citations omitted)). The classic example of this exception is the landmark abortion case, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) (holding that a constitutional challenge remained justiciable despite the end of the pregnancy). *Rochon*, 75 So.3d at 884.

All of the requirements for the “capable of repetition, yet evading review” exception are satisfied here to defeat the AG’s and the Legislature’s arguments linking justiciability to a pending motion to continue in that (1) the 72-hour period within which the motion “shall be granted” is far too short to enable full litigation and appeal prior to its expiration and (2) the invocation of the legislative continuance is highly likely to recur for attorneys and their clients any time opposing counsel is a legislator or legislative employee as evidenced in the amicus curiae brief filed on behalf of Carley Katherine Magette. *See also Ducote v. Magette*, 22-1649 (La. 11/10/22), 349 So.3d 984. The constitutionality of La. R.S. 13:4163 is, therefore, most assuredly still ripe for this Court’s resolution. And make no mistake, resolution of this issue is, at this very moment, a matter of greatest public importance given the legislature’s recent amendment to La. R.S. 13:4163 that, if signed by the Governor, would have imposed mandatory penalties for challenging a legislator/legislative employee’s unfettered invocation of the legislative privilege to continue any trial or to extend any deadline. The passage of Senate Bill 185 with absolutely no objection in either the House or the Senate forewarns that such retaliatory enactments are still very much on the table and highly likely in the immediate future.¹⁵

¹⁵ See Exhibit A to *Plaintiff’s Original Brief*, Legislative Materials for SB 185, Senate Vote on SB 185, p. 6; House Vote on SB 185, p. 7; Senate Concurrence Vote, p. 8.

II. The record proves that Defendants’ counsel invoked the legislative continuance to extend numerous deadlines and hearings in this case that were much more than “temporary, time-limited” infringements on the constitutional authority of the judiciary.

Both the AG and the Legislature attempt to downplay the unconstitutional usurpation of judicial authority codified in La. R.S. 13:4163 as nothing more than a temporary, time-limited continuance or infringement or delay.¹⁶ They even go so far as to assert that this so-called temporary, time-limited continuance is only available during certain times specifically outlined in the statute and cannot be invoked unless the very clear time limits and requirements of legislative service are met.¹⁷ The facts of this case bely their entire assertion as does the language of the statute itself. Here, Plaintiff was injured in a car accident back in June 2018.¹⁸ It is now August of 2024. Although Plaintiff has recited these facts ad nauseum throughout this litigation and to this Court, it still bears repeating that Defendants’ counsel has time and time again invoked his legislative privilege to move the hearing testing the constitutionality of this very statute,¹⁹ to extend their expert deadlines,²⁰ to extend all deadlines between February 14, 2022 and July 18, 2022,²¹ to continue a hearing on motions in limine,²² to continue a video trial deposition,²³ and to move multiple trial dates.²⁴ For the Legislature to assert that the use of the legislative continuance has not been abused in this case because trial has only been continued once is ludicrous. While each individual invocation may not be significant in its own right, the pattern of the repeated invocations in this case alone has delayed this matter from resolution for years. Justice delayed is justice denied.

Moreover, the language of La. R.S. 13:4163 on its face provides a mechanism for any legislator or legislative employee to, at his or her own discretion, obtain a peremptory continuance of any court hearing or an extension of any deadline within 30 days prior to any legislative session or constitutional convention, within 30 days after the adjournment sine die of any legislative session or constitutional convention, or at any time any such person “is engaged in activities, including travel in connection with or ordered by: (i) the legislature; (ii) any legislative committee or subcommittee appointed by the president

¹⁶ See *Amicus Curiae Brief of the “Members” of the Legislature in Opposition to the Plaintiff’s-Applicant’s Application for Writ of Certiorari*, pp. 1, 3-5; *Amicus Curiae Brief on Behalf of the Attorney General for the State of Louisiana*, pp. 10-11, 15, 17.

¹⁷ See *Amicus Curiae Brief of the “Members” of the Legislature in Opposition to the Plaintiff’s-Applicant’s Application for Writ of Certiorari*, pp. 3-4; *Amicus Curiae Brief on Behalf of the Attorney General for the State of Louisiana*, pp. 10-11.

¹⁸ See *Petition for Damages*, R. 4-5.

¹⁹ See *Motion to Continue* filed on January 4, 2024, R. 1137-46.

²⁰ See *Defendants’ Motion and Memorandum for Continuance of Trial* filed on March 21, 2023, R. 568-69; *see also* *Motion for Scheduling Conference and Motion to Strike Defendants’ Expert Witnesses* filed June 13, 2023, R. 925.

²¹ See *Motion for Extension of Deadlines* filed June 28, 2022, R. 385.

²² See *Motion for Continuance* filed April 14, 2023, R. 628.

²³ See *Motion for Continuance* filed April 14, 2023, R. 628.

²⁴ See *Defendants’ Motion and Memorandum for Continuance of Trial* filed March 21, 2023, R. 568-69; *Motion to Continue* filed on January 4, 2024, R. 1137.

of the Senate or the speaker of the House of Representatives; (iii) any committee or commission appointed by the governor or other person authorized to make such appointments; or (iv) any constitutional convention or commission.” La. R.S. 13:4163(C). This continuance is broadly available for “the continuance of any type of proceeding and the extension of any type of deadline ... if the presence, participation, or involvement of a member or employee is required in any capacity.” La. R.S. 13:4163(C)(1). Not only does this statute permit a legislator or legislative employee to continue any type of deadline whatsoever, but this statute’s temporal scope is also sweeping. Indeed, a legislator or legislative employee is entitled to a mandatory continuance of any deadline during anytime between thirty days prior to the original call to order of a legislative session or constitutional convention and thirty days following the adjournment sine die of any session of the legislature or constitutional convention. La. R.S. 13:4163(C)(1)(a), (b). Outside of these time periods, a legislator or legislative employee is also entitled to a mandatory continuance any time “such person is engaged in activities, including travel, in connection with or ordered by: (i) the legislature; (ii) any legislative committee or subcommittee appointed by the president of the Senate or the Speaker of the House of Representatives; (iii) any committee or commission appointed by the governor or other person authorized to make such appointments; or (iv) any constitutional convention or commission.” La. R.S. 13:4163(C)(1)(c). The “in connection with” language is so broad that nothing would prohibit a legislator or legislative employee exercising this preemptory privilege from forever insulating this statute from constitutional review by simply moving to continue the hearing due to unspecified legislative business.

By its own language, La. R.S. 13:4163 untethers a legislator/legislative employee’s entitlement to this continuance or extension from any judicial discretion or judicial review. Although the Legislature avers that “[t]he court retains the authority to determine whether the motion was timely filed and properly supported,”²⁵ the Legislature tellingly points to absolutely no provision in La. R.S. 13:4163 that recognizes this “retention” of the judiciary’s constitutional authority. Rather, La. R.S. 13:4163 mandates that the legislator/legislative employee, and the legislator/legislative employee alone, decides whether or not such a continuance is warranted. This statute leaves the courts with ***no discretion*** whatsoever in considering a motion for continuance under its provisions. *See* La. R.S. 13:4163(E)(2). The Legislator’s Continuance is available to a legislator or legislative employee ***regardless of need***, even if there are other attorneys of record available to handle the proceeding/deadline at issue. *See* La. R.S. 13:4163(C)(2).

²⁵ *See Amicus Curiae Brief of the “Members” of the Legislature in Opposition to the Plaintiff’s-Applicant’s Application for Writ of Certiorari*, pp. 3-4.

Significantly, although the statute requires the person seeking the continuance to file a timely and properly supported motion setting forth the statutory grounds for said continuance, the motion “shall be timely if filed no later than five calendar days prior to the hearing or proceeding to be continued.” *See* La. R.S. 13:4163(D), (E). The statute mandates that the continuance “shall be granted” *ex parte* for at least **sixty days** following the adjournment of the legislative session or constitutional convention. *See* La. R.S. 13:4163(E). Further, the statute renders absolutely null any actions, including the imposition of sanctions for failure to appear or comply with an order of the court or any deadline, all of which would otherwise be well within the purview of the trial court’s constitutional authority under its exclusive original jurisdiction. La. R.S. 13:4163(G).

It simply defies common sense to say that the continuance or extension mandated by La. R.S. 13:4163 without any judicial oversight does not infringe upon the judiciary’s constitutionally vested authority to control its docket, manage its cases, determine whether continuances are proper, and impose penalties and sanctions for failure to comply with its orders in violation of our constitutionally protected separation of powers under La. Const. art. 2, §2. The facts of this case as well as the cases detailed in the amicus brief filed by Carley Katherine Magette irrefutably demonstrate the unconstitutionality of La. R.S. 13:4163 on its face and as applied.

Contrary to Legislature’s assertions,²⁶ nowhere in the application or in brief to this Court or in any filing in this case has Plaintiff ever questioned the Legislature’s constitutional authority to enact general rules of civil procedure or codify exceptions to those rules. What Plaintiff has challenged and continues to challenge is the Legislature’s usurpation of the authority vested in our judiciary by the Louisiana State Constitution. *See* La. Const. art. 5, §1 (“The judicial power is vested in a supreme court, courts of appeal, district courts, and other courts authorized by this Article.”); La. Const. art. 5, §16(A)(1) (“Except as otherwise authorized by this constitution or except as heretofore or hereafter provided by law for administrative agency determinations in worker’s compensation matters, a district court shall have original jurisdiction of all civil and criminal matters.”). The code articles recited by Plaintiff do nothing more than recognize the inherent power and responsibility delegated by our constitution and our trichotomous branching of authority to the judicial branch of government, particularly the district court. *See* La. C.C.P. art. 1 (“Jurisdiction is the legal power and authority of a court to hear and determine an action or proceeding involving the legal relations of the parties, and to grant the relief to which they are entitled.”);

²⁶ *See Amicus Curiae Brief of the “Members” of the Legislature in Opposition to the Plaintiff’s-Applicant’s Application for Writ of Certiorari*, p. 4.

La. C.C.P. art. 1631(A) (“The court has the power to require that the proceedings shall be conducted with dignity and in an orderly and expeditious manner, and to control the proceedings at the trial, so that justice is done.”); La. C.Cr.P. art. 17 (“A court possesses inherently all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue such writs and orders as may be necessary or proper in aid of its jurisdiction. It has the duty to require that criminal proceedings shall be conducted with dignity and in an orderly and expeditious manner and to so control the proceedings that justice is done. A court has the power to punish for contempt.”). It is an unassailable fact that the legislature’s authority is cabined by the constitution as well as its own legislative pronouncements. Still neither the AG nor the Legislature have pointed (1) to any place in the constitution permitting the legislature to absolutely usurp our judiciary’s inherent power in this manner or (2) to any other article or statutory provision that utterly and completely divests the district court of its inherent power to deny continuances and to move cases expeditiously to trial based solely on a “written motion specifically alleging the[] grounds.” La. R.S. 13:4163(A)(1). Indeed, the only other grounds for peremptory continuances recognized in our Code of Civil Procedure require “the party applying for the continuance *shows* that he has been unable, with the exercise of due diligence, to obtain evidence material to his case; or that a material witness has absented himself without the contrivance of the party applying for the continuance.” La. C.C.P. art. 1602 (emphasis added). Again, all that is required under La. R.S. 13:4163 is a motion in which the legislator recites any of grounds under La. R.S. 13:4163(C). Our legislature is completely within its constitutional authority to enact general rules of procedure and to modify those enacted rules, but what the legislature cannot do is enact a provision like La. R.S. 13:4163 that usurps the authority vested in another branch of government by our constitution. Louisiana Constitution Article 2, § 2 explicitly prohibits such an action: “Except as otherwise provided by this constitution, no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others.”

CONCLUSION AND PRAYER

On its face and as applied to the facts of this case, La. R.S. 13:4163 and the non-discretionary, peremptory Legislator’s Continuance mandated by its provision are unconstitutional. Therefore, Plaintiff prays this Court reverse the judgment of the district court and render judgment, declaring La. R.S. 13:4163 unconstitutional.

Respectfully submitted,

/s/ Joseph Gregorio

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ATTORNEYS FOR PLAINTIFF THERESA FISHER

VERIFICATION AND CERTIFICATE OF SERVICE

I hereby certify that the allegations contained in this brief are true and that a copy of the foregoing brief has been served upon opposing counsel, the trial court judge, and the appellate court as listed below on this the 19th day of August 2024.

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Louisiana Second Circuit
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THERESA FISHER

SUIT NO.: 615,908-C

VERSUS

FIRST JUDICIAL DISTRICT COURT

STEVEN HARTER, JR. AND THE
HANOVER INSURANCE GROUP

CADDO PARISH, LOUISIANA

MOTION TO WITHDRAW AS COUNSEL

NOW INTO COURT, through undersigned counsel, comes and appears ALAN T. SEABAUGH, MICHAEL C. MELERINE, and SEABAUGH & SEPULVADO, LLC, who respectfully represent that:

1.

ALAN T. SEABAUGH, MICHAEL C. MELERINE, and SEABAUGH & SEPULVADO, LLC, are counsel of record for STEVEN HARTER, JR., STEVEN HARTER, SR., and THE HANOVER INSURANCE GROUP in these proceedings.

2.

This matter is currently scheduled for trial beginning October 21, 2024.

3.

In addition to the action pending in this Court, this matter is currently also pending before the Louisiana Supreme Court, by virtue of that Court's granting Plaintiff's Application for Supervisor Writ.

4.

On July 31, 2024, Defendant, STEVEN HARTER, SR. filed a brief with the Louisiana Supreme Court, hereto attached as "Exhibit A."

5.

By virtue of the filing with the Supreme Court, a conflict of interest exists between STEVEN HARTER, SR., STEVEN HARTER, JR., and undersigned counsel.

6.

Pursuant to the Louisiana Rules of Professional Conduct, Rule 1.7(a), a concurrent conflict of interest exists.

7.

The concurrent conflict of interest is non-waivable, as the exceptions set forth in the Louisiana Rules of Professional Conduct, Rule 1.7(b) are not met.

8.

STEVEN HARTER, SR. and STEVEN HARTER, JR. are represented herein by C. VERNON RICHIE and RICHIE, RICHIE AND OBERLE, L.L.P.

9.

Upon information and belief, a Motion to Enroll as Council of Record on behalf of STEVEN HARTER, SR., STEVEN HARTER, JR. and THE HANOVER INSURANCE GROUP has been filed by ALEXANDER MIJALIS and LUNN IRION LAW FIRM.

10.

ALAN T. SEABAUGH, MICHAEL C. MELERINE, and SEABAUGH & SEPULVADO, LLC, hereby request that they be permitted to withdraw as counsel of record for STEVEN HARTER, JR., STEVEN HARTER, SR., and THE HANOVER INSURANCE GROUP.

WHEREFORE, MOVERS PRAY that ALAN T. SEABAUGH, MICHAEL C. MELERINE, and SEABAUGH & SEPULVADO, LLC be allowed to withdraw as counsel of record for STEVEN HARTER, JR., STEVEN HARTER, SR., and THE HANOVER INSURANCE GROUP, in these proceedings.

Respectfully submitted,

SEABAUGH & SEPULVADO, LLC

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has this day been served upon all counsel of record, via e-mail, facsimile and/or by placing a copy of same in the United States Mail, properly addressed and with sufficient postage affixed thereon.

Shreveport, Caddo Parish, Louisiana, this 6 day of August, 2024.


OF COUNSEL

THERESA FISHER

SUIT NO.: 615,908-C

VERSUS

FIRST JUDICIAL DISTRICT COURT

STEVEN HARTER, JR. AND THE
HANOVER INSURANCE GROUP

CADDO PARISH, LOUISIANA

ORDER

THE ABOVE AND FOREGOING MOTION CONSIDERED:

IT IS HEREBY ORDERED that ALAN T. SEABAUGH, MICHAEL C. MELERINE, and SEABAUGH & SEPULVADO, LLC, are hereby permitted to withdraw as counsel of record for STEVEN HARTER, JR., STEVEN HARTER, SR., and THE HANOVER INSURANCE GROUP, in these proceedings, and that their name be removed as counsel of record herein for STEVEN HARTER, JR., STEVEN HARTER, SR., and THE HANOVER INSURANCE GROUP .

THUS done and signed in Shreveport, Caddo Parish, Louisiana, on this the _____ day of _____, 2024.

DISTRICT JUDGE



RICHIE, RICHIE & OBERLE, L.L.P.

ATTORNEYS AT LAW

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Laurel Fleming Richie, J.D.
C. Vernon Richie, J.D. – Of Counsel
John A. Richie (2002)

August 7, 2024

Hon. Michael A. Pitman
District Judge
501 Texas Street, Suite 404
Shreveport, LA 71101

Re: *Theresa Fisher v. Steven Harter, et al.*, Docket #615,908, 1st JDC, Caddo Parish

Dear Judge Pitman:

This lawsuit arises out of a motor vehicle accident that occurred on June 2, 2018. The defendants are Steven Harter, Sr., Steven Harter, Jr. and their insurer, Hanover Insurance Group. The Hanover Insurance Group hired Alan T. Seabaugh ("Seabaugh") and Michael C. Melerine ("Melerine") to represent all three defendants. After Steven Harter, Sr. was informed by Seabaugh that the damages that may be awarded against him could exceed the limits of his insurance coverage, he hired me, and at his request I enrolled as additional counsel for him.

A jury trial is scheduled for October 21, 2024 and there is a scheduling order setting deadlines. There are several deadlines which are imminent. Additionally, the Louisiana Supreme Court recently granted a supervisory writ with respect to an incidental matter, i.e. the constitutionality of La. R.S. 13:4163. Oral argument thereon is scheduled for September 5, 2024.

Late yesterday, the attorneys representing the plaintiff provided me with a copy of a Motion to Withdraw as Counsel apparently filed by Seabaugh and Melerine seeking an *ex parte* order allowing them to withdraw as counsel for all three defendants. This motion does not comply with the mandatory requirements Rule 9:13 of the Uniform Rules for District Courts. Accordingly, we object to Seabaugh and Melerine being allowed to withdraw *ex parte*, and request that you set their motion for a contradictory hearing and set a briefing schedule.

Yours very truly,
[C. Vernon Richie](#)
C. Vernon Richie - Of Counsel with:
Richie, Richie & Oberle, L.L.P.

Copy sent by email to all counsel