

**A PERFECT STORM: A CALL TO REVISE
LOUISIANA’S COURT DISASTER
MANAGEMENT SCHEME REGARDING
SUSPENSION OF LEGAL DEADLINES**

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I. INTRODUCTION

Boldly and unequivocally, the Louisiana State Constitution provides: “All courts shall be open, and every person shall have an adequate remedy by due process of law and justice . . . for injury to him in his person, property, reputation, or other rights.”¹ Despite the state’s conferral of this fundamental right, Louisiana’s proclivity to natural disasters, in tandem with the statutory schemes set in place to address them, has historically shut its citizens out of the legal system during times of crisis. Notably, the same schemes that previously failed Louisianans remain in effect today, leaving the state’s citizens vulnerable to yet another deprivation of their right to court access.²

There is no better example of the Louisiana court system’s underlying vulnerabilities than the series of legal crises faced in the aftermath of Hurricane Katrina. On August 29, 2005, Hurricane Katrina made landfall in southeastern Louisiana and brought with it an unprecedented degree of force and devastation.³ At its peak, Hurricane Katrina created winds estimated at a high of 160 miles per hour, contributing to storm surge levels that topped and breached local levees, thus inundating New Orleans and surrounding areas with floodwater.⁴ Catastrophic loss of life coupled with extreme financial loss placed Southeastern Louisiana in a de facto state of emergency.⁵ The American Society of Civil Engineers noted that even if the levees had not been

1. LA. CONST. ANN. art. I, § 22.

2. The recent 2020 hurricane season saw a record total of sixty-one storms, including thirty named storms and thirty-one tropical or subtropical depressions, with twelve storms making landfall. Of these twelve storms, five made landfall in Louisiana. These numbers surpass the previous record for the highest number of depressions and storms in the year 2005, which included Hurricanes Katrina and Rita. Steven Cochran, *The 2020 hurricane season broke all the records. Is it a sign of what’s to come?* ENVIRONMENTAL DEFENSE FUND (Dec. 3, 2020), <https://www.edf.org/blog/2020/12/03/2020-hurricane-season-broke-all-records-it-sign-whats-come>. In addition to the continued risk of natural disasters, the state of Louisiana, like the rest of the nation and much of the world, faced court interruptions due to the rise of the novel Coronavirus (COVID-19) pandemic in 2020 and 2021. *See generally Coronavirus (COVID-19) Information and Resources*, LA. SUP. CT., <https://www.lasc.org/COVID19/> (setting forth a series of Louisiana Supreme Court orders and Information relating to Changes in Court Operations due to COVID-19).

3. THE AMERICAN SOC’Y OF CIV. ENG’RS HURRICANE KATRINA EXTERNAL REV. PANEL, *THE NEW ORLEANS HURRICANE PROTECTION SYSTEM: WHAT WENT WRONG AND WHY 1* (2007), <https://biotech.law.lsu.edu/katrina/reports/ERPreport.pdf>.

4. *Id.* at 13-14.

5. *Id.* at 1.

breached, the sheer amount of rainfall and overtopping of local levees inevitably would have caused the “worst property loss ever experienced by New Orleanians.”⁶

Although experts have carefully analyzed the devastation caused by Hurricane Katrina in terms of loss of life and property, the storm’s impact on the legal system received significantly less attention. Hurricane Katrina deprived Louisianans of the right to access the court system both through physical and personal barriers. Following Hurricane Katrina’s landfall, twenty Louisiana courthouses suffered some degree of damage or were deemed completely inoperable.⁷ The storm damaged court documents, physical evidence, court-related agencies, and more,⁸ thus providing outwardly apparent documentation of impediments to court access.

Perhaps even more catastrophic to court operations, however, was the complete displacement of court officials and individuals with ongoing legal actions.⁹ The resulting “Katrina Diaspora,” which involved the forceful displacement of over a million individuals from their homes, sent the legal system into disarray.¹⁰ Notably, this Hurricane “diaspora” affected many individuals charged with emergency management duties, including judges and other officials, who found themselves displaced indefinitely.¹¹ As court and government officials struggled to maintain continuity of operations, they faced the additional burden of the loss of

6. *Id.* at 39.

7. Greg C. Guidry, *The Louisiana Judiciary: In the Wake of Destruction*, 70 LA. L. REV. 1145, 1153 (2010).

8. *Id.* at 1153-54.

9. *Id.* at 1154.

10. Sandi McCarty-Brown & Susan L. Waysdorf, *Katrina Disaster Family Law: The Impact of Hurricane Katrina on Families and Family Law*, 42 IND. L.J. 721, 721 n.a2 (2009) (“[T]he Diaspora comprises the cities and regions across the nation to which several hundred thousand residents of New Orleans were evacuated, and where tens of thousands still remain in temporary or perhaps permanent displacement.”); *see also id.* at 722, 728; The term Diaspora originates from the Biblical book of Deuteronomy to describe “the expulsion of the Jews from the land of Israel, voluntary migrations, and, to a lesser extent, religious conversions to Judaism in lands other than Israel.” *Diaspora*, NEW WORLD ENCYCLOPEDIA, <https://www.newworldencyclopedia.org/entry/Diaspora>. Over time, displaced cultural groups have applied the term “diaspora” to describe their forced removal from their homelands. *Id.*

11. Greg C. Guidry, *The Louisiana Judiciary: In the Wake of Destruction*, 70 LA. L. REV. 1145, 1154 (2010).

their homes and belongings.¹² Amidst court closures and the upheaval of court officials, the judiciary further found itself without authority to suspend prescription for both new and pre-existing cases.¹³ Ultimately, the Louisiana court system's inability to handle meritorious claims following the storm can be attributed to this particularly troubling statutory and regulatory void. Most notably, pre-existing legal schemes allocated power to manage the court system to elected legislative and executive officials, leaving the Louisiana Supreme Court without the authority to act to protect legal claims.¹⁴ Furthermore, the resulting legislation, which mainly served merely to ratify the Governor's orders, proved to be startlingly inefficient in handling the post-Katrina needs of Louisiana's courts and citizens.¹⁵

Unfortunately, nearly two decades after Hurricane Katrina, Louisiana still has not taken adequate steps to mitigate the inefficiency of its court emergency management scheme. In this era of unprecedented climate disruption, the need for legislative clarity to alleviate these concerns is more apparent than ever. In the state of Louisiana, a hurricane is expected to hit every 2.8 years.¹⁶ Significantly, the close of the 2020 hurricane season revealed startling information—this season alone established the record for the most named storms, the most storms to make land-fall in Louisiana, the strongest storm to hit Louisiana in 150 years, and the most storms to form in a single month.¹⁷ Engineers determined that significant portions of Orleans, St. Bernard, and Jefferson Parishes are already below sea level and continue to sink in present day.¹⁸ Particularly, sinking land is most apparent in Orleans Parish; whereas levees in 1718 were only three feet tall, they average seventeen feet tall today.¹⁹ Moreover, southeast

12. *Id.* at 1155.

13. *Id.* at 1161-62.

14. *See infra* Parts II-III.

15. *See infra* Part III.

16. DAVID ROTH, NAT'L WEATHER SERV., LA. HURRICANE HISTORY 7, <https://www.wpc.ncep.noaa.gov/research/lahur.pdf> (Apr. 8, 2010).

17. Tegan Wendland, *Much of the 2020 Hurricane Season Can Be Chalked Up To Climate Change—And There's No Quick Fix*, NEW ORLEANS PUBLIC RADIO (Dec. 7, 2020), <https://www.wno.org/post/much-2020-hurricane-season-can-be-chalked-climate-change-and-there-s-no-quick-fix>.

18. *See* THE AMERICAN SOC'Y OF CIV. ENG'RS HURRICANE KATRINA EXTERNAL REV. PANEL, THE NEW ORLEANS HURRICANE PROTECTION SYSTEM: WHAT WENT WRONG AND WHY 8 (2007), <https://biotech.law.lsu.edu/katrina/reports/ERPReport.pdf>.

19. DAVID ROTH, NAT'L WEATHER SERV., LA. HURRICANE HISTORY 3, <https://www.wpc.ncep.noaa.gov/research/lahur.pdf> (Apr. 8, 2010).

Louisiana's location as a coastal "corner" makes it particularly susceptible to flooding caused by storm surges.²⁰ The combination of rising sea levels, sinking land, and proximity to the Gulf of Mexico, compound the great risks that Louisianans face every hurricane season.²¹

Given this predisposition towards hurricanes and tropical storms, which are likely to increase in severity and frequency in upcoming years, Louisiana urgently needs a new legal framework that will equitably protect citizens' constitutional right to court access. In Part II, this Comment retraces Louisiana legislators' missteps following Hurricane Katrina to manage the court system and legal deadlines. Part III analyzes the direct impact of Louisiana's post-Katrina legislation on the court system and legal claimants, particularly in the practice of family law and contract law. Part IV discusses recent changes to Louisiana law because of the COVID-19 pandemic and compares Louisiana's emergency management of its courts to other states' streamlined disaster plans. Finally, Part V proposes that the Louisiana judiciary and legislature immediately implement both statutory and procedural safeguards, which will fully address the concerns illuminated by Hurricane Katrina and the COVID-19 pandemic.

II. COME HELL OR HIGH WATER—SOMEONE HAS TO CALL THE SHOTS ON COURT CLOSURE

By the time that Mayor Ray Nagin declared a mandatory evacuation for the city of New Orleans, the gravity of the impending threat had already become abundantly clear.²² Upon issuance of the order, Nagin famously stated: "We're facing the storm most of us have feared. This is going to be an unprecedented event."²³

20. *Id.* at 4 ("[T]he approximate angle made by the Mississippi Delta with the Gulf Coast to the east is ninety degrees, which would amplify the piling up of water.").

21. See THE AMERICAN SOC'Y OF CIV. ENG'RS HURRICANE KATRINA EXTERNAL REV. PANEL, THE NEW ORLEANS HURRICANE PROTECTION SYSTEM: WHAT WENT WRONG AND WHY 8 (2007), <https://biotech.law.lsu.edu/katrina/reports/ERPReport.pdf>; DAVID ROTH, NAT'L WEATHER SERV., LA. HURRICANE HISTORY 3-4, <https://www.wpc.ncep.noaa.gov/research/lahur.pdf> (Apr. 8, 2010).

22. Christina Hauserand & Thomas J. Lueck, *Mandatory Evacuation Ordered for New Orleans as Storms Near*, N.Y. TIMES (Aug. 28, 2005), <https://www.nytimes.com/2005/08/28/national/mandatory-evacuation-ordered-for-new-orleans-as-storm-nears.html>.

23. Willie Drye, *Hurricane Katrina: The Essential Timeline*, NAT'L GEOGRAPHIC (Sept. 13, 2005), <https://www.nationalgeographic.com/science/article/weather-hurricane-katrina-timeline>.

Although both Governor Kathleen Blanco and President Bush declared states of emergency in the days before the storm, in the absence of a formal evacuation order, many New Orleans residents waited until formal action was taken by Mayor Nagin. Mayor Nagin would eventually issue a mandatory evacuation thirty-one hours before Hurricane Katrina made landfall in New Orleans, resulting in an estimated 100,000 residents choosing not to evacuate from the city at all.²⁴ Some of these residents would have nothing to return to and some would not make it out at all, with an estimated 1,000 individuals perishing in the greater New Orleans region.²⁵ Hurricane Katrina made landfall in Southeast Louisiana just one day after the issuance of the mandatory evacuation order on August 29, 2005.²⁶ Judiciary officials soon realized that further action would be required to address court closures due to mass devastation throughout the region.²⁷ Although the Louisiana Supreme Court possessed the ability to order court closures, such closures did not effectively suspend the accrual of prescription.²⁸ Importantly, courts treat such a closures, for all intents and purposes, as a legal holiday, meaning that these days are not included in the count of days leading to the running of prescription.²⁹ Thus, if an individual's claim would have lapsed during the court closure, that claim would prescribe the day the court resumes operation. In contrast, a suspension of prescription

24. Christina Hauserand & Thomas J. Lueck, *Mandatory Evacuation Ordered for New Orleans as Storms Near*, N.Y. TIMES (Aug. 28, 2005), <https://www.nytimes.com/2005/08/28/national/mandatory-evacuation-ordered-for-new-orleans-as-storm-nears.html>; Ezra Boyd et. al., *Risk Communication and Public Response During Evacuations: The New Orleans Experience of Hurricane Katrina*, 32 PUBLIC PERFORMANCE & MANAGEMENT REVIEW 437, 448-9 (2009).

25. Ezra Boyd et. al., *Risk Communication and Public Response During Evacuations: The New Orleans Experience of Hurricane Katrina*, 32 PUBLIC PERFORMANCE & MANAGEMENT REVIEW 437, 457 (2009); see Debarshi Chaudhuri, *Government: Response to Katrina*, <http://web.mit.edu/12.000/www/m2010/finalwebsite/katrina/government/government-response.html> (last visited Feb. 18, 2020).

26. Debarshi Chaudhuri, *Government: Response to Katrina*, <http://web.mit.edu/12.000/www/m2010/finalwebsite/katrina/government/government-response.html> (last visited Feb. 18, 2020).

27. See G.M. Filisko, *What did Katrina Teach Us?*, ABA JOURNAL (July 1, 2011), https://www.abajournal.com/magazine/article/what_did_katrina_teach_us/.

28. Greg C. Guidry, *The Louisiana Judiciary: In the Wake of Destruction*, 70 LA. L. REV. 1145, 1161-2 (2010).

29. Walter Metzinger III, *The Longest Legal Holiday: COVID-19 and its Effect on Prescriptive Periods and Legal Deadlines*, STONE PIGMAN WALTHER WITTMANN, <https://www.stonepigman.com/newsroom-resources-The-Longest-Legal-Holiday.html> (last visited Mar. 7, 2021).

pauses the prescriptive period, thus allowing an individual's prescription to resume from where it last left off.³⁰ Almost immediately, many Louisianans found themselves desperately seeking court intervention that was no longer readily available to them.³¹ In contrast, other citizens became virtually unreachable after fleeing the city and thus, abandoned their already ongoing legal claims.³²

The problems this crisis presented were particularly apparent in the family court system after the Hurricane.³³ In the aftermath of Katrina, then District Court Judge Paulette R. Irons discussed concerns of parents who "used the storm to try to beat the legal system," namely, "noncustodial parents who had spirited away their children without notice, custodial parents who had moved without good cause, and parents who had tried to avoid payments of child support."³⁴ Further, the storm stalled divorce proceedings, resulting in uncertain child custody arrangements as estranged couples relocated to various locations.³⁵ Meanwhile, the judicial system could not mitigate these harms because courts were unable to suspend legal filing deadlines without express authority provided by the Governor of Louisiana.³⁶ With the legal community powerless to act of its own accord, legal associations initiated lobbying efforts to persuade the Governor to act. At the behest of the Louisiana State Bar Association, the Louisiana Trial Lawyers Association, and the Louisiana Association of Defense Counsel, Governor Blanco issued Executive Order KBB 05-32 (hereinafter "the first executive order"), the first of multiple executive orders addressing the suspension of legal deadlines, on September 6, 2005.³⁷ In effect, this initial order suspended all legal

30. LA. CIV. CODE ANN. art. 3472 (2021) ("The period of suspension is not counted towards accrual of prescription. Prescription commences to run again upon the termination of the period of suspension.").

31. See Lynette Clemetson, *Torn by Storm, Families Tangle Anew on Custody*, N.Y. TIMES (Apr. 16, 2006), <https://www.nytimes.com/2006/04/16/us/nationalspecial/torn-by-storm-families-tangle-anew-on-custody.html>).

32. See generally *id.*

33. See *id.*

34. See *id.*

35. See *id.*

36. See G.M. Filisko, *What did Katrina Teach Us?*, ABA JOURNAL (July 1, 2011), https://www.abajournal.com/magazine/article/what_did_katrina_teach_us/.

37. William Raftery, *Disaster Recovery: Spotlight on State Courts*, NAT'L ASS'N ATT'YS GEN (Jan. 2, 2019), <https://www.naag.org/disaster/attorney-general-journal/state-courts-disaster-recovery/>; Exec. Order No. KBB 05-32, 31 La. Reg. 2169 (Sept. 6, 2005) (which states in pertinent part:

prescriptive and peremptive periods until September 25, 2005, and applied them retroactively from the date of the storm's land-fall on August 29, 2005.³⁸ In issuing the order, Governor Blanco cited concerns that in-state attorneys might be unable to contact their clients and vice versa.³⁹ In addition, the Governor specified that attorneys may be unable to act on behalf of their clients due to the destruction of, or inaccessibility to, offices and courthouses.⁴⁰

Governor Blanco invoked her authority under the Louisiana Homeland Security and Emergency Assistance and Disaster Act (hereinafter "Louisiana Disaster Act") to issue this first executive order.⁴¹ Among other specific powers granted to the acting gover-

WHEREAS, in addition, attorneys from areas affected by Hurricane Katrina have clients and cases in parishes not directly affected by this extreme disaster, but because the attorney's office is either destroyed or not accessible, the attorney is not reasonably able to timely file claims or responses on behalf of their clients;

WHEREAS, La. Constitution Art. I, Section 22 provides that all courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights;

WHEREAS, Hurricane Katrina has also rendered several of the court houses temporarily inoperable and/or not fit for occupancy;

WHEREAS, the destruction and disruption of services and infrastructure to our system of justice caused by Hurricane Katrina will have a profound impact on the basic rights to an untold number of persons unless action is taken to suspend the effects of the tolling of legal delays during the period of this emergency; and

WHEREAS, the Louisiana State Bar Association, the Louisiana Trial Lawyers Association, and the Louisiana Association of Defense Counsel jointly requested the governor to suspend all deadlines applicable to legal proceedings, including prescription and peremption, in all Louisiana state courts, administrative agencies and boards;

NOW THEREFORE I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: All deadlines in legal proceedings, including liberative prescriptive and peremptive periods in all courts, administrative agencies, and boards are hereby suspended until at least September 25, 2005, including, but not limited to, any such deadlines set for in the following:

- A. Louisiana Civil Code;
- B. Louisiana Code of Civil Procedure;
- C. La. R.S. Title 9, Civil Code Ancillaries;
- D. La. R.S. Title 13, Courts and Judicial Procedure;
- E. La. R.S. Title 23, Chapter 10, Worker's Compensation;
- F. La. R.S. Title 40, Chapter 5 Part XXI-A, Malpractice Liability for State Services; and
- G. La. R.S. Title 40, Chapter 5, Part XXIII, Medical Malpractice.

38. Exec. Order No. KBB 05-32, 31 La. Reg. 2169 (Sept. 6, 2005).

39. *Id.*

40. Exec. Order No. KBB 05-32, 31 La. Reg. 2169 (Sept. 6, 2005).

41. *Id.*

nor and parish presidents, the Louisiana Disaster Act confers upon the governor broad authority to handle emergency management matters.⁴² Notwithstanding the authority granted by the Louisiana Disaster Act, questions arose as to whether Governor Blanco possessed the requisite authority to suspend legal deadlines at all.⁴³

Nevertheless, Executive order KBB 05-48 (hereinafter “the second executive order”) soon followed suit in late September effectively extending the first executive order to October 25, 2005. Just as with the first executive order, Governor Blanco issued this second executive order in response to a joint request by a number of legal associations.⁴⁴ This time, however, the second executive order acknowledged the authority of the Louisiana Supreme Court under Article V of the state Constitution to either shorten or lift the suspensive period.⁴⁵ Acting upon this authority, Chief Justice Pascal F. Calogero issued a resolution on October 3, 2005, which adopted a series of procedures for shortening or lifting the suspension period under specific circumstances.⁴⁶ The Chief Justice’s resolution allowed for the judges of Louisiana Courts to shorten the issued suspension period in the event that all parties to a proceeding file a joint motion averring that no party or attorney involved in the proceedings had been impacted by the Hurricanes.⁴⁷ Although the Chief Justice would ultimately have the authority to tailor the Governor’s orders, the judiciary’s inability to take immediate action coupled with the imprecision of the initial orders placed serious burdens on an already strained justice system.

The system described above resulted in a bifurcation of emergency management authority between branches of government; while Governor Blanco maintained effective control over the extension and retroactive revival of legal claims, the Louisiana Supreme Court held authority under the Constitution to

42. *Id.*; see generally LA. STAT. ANN. § 29:721 *et seq.* (2021).

43. Benjamin West Janke, *Revisiting Contra Non Valentum in Light of Hurricanes Katrina and Rita*, 68 LA. L. REV. 497, 535 n.190 (2008); see *supra* Part III for further discussion.

44. Exec. Order No. KBB 05-48, 31 La. Reg. 2352 (Sept. 23, 2005).

45. *Id.*

46. *Resolution*, LA. SUP. CT. (Oct. 3, 2005), https://www.lasc.org/court_closure_orders/katrina_orders/10_03Resolution.pdf.

47. *Resolution*, LA. SUP. CT. (Oct. 3, 2005), https://www.lasc.org/court_closure_orders/katrina_orders/10_03Resolution.pdf.

close its doors. The Supreme Court acted accordingly by declaring in late September that the Court would be closed through October 25, 2005.⁴⁸ The court would later extend its closure through November 25, 2005, stipulating that the periods from August 29, 2005, to November 25, 2005, would be considered legal holidays for the purpose of timeliness in filing.⁴⁹ Notably, however, the court stated that it would accept filings in the meantime at its temporary location.⁵⁰

III. THE EFFECTS OF THE GOVERNOR AND LEGISLATURE'S ACTIONS ON THE POST-KATRINA COURT SYSTEM

At first glance, the issue of which branch of government should possess authority to manage legal deadlines might seem superfluous in the aftermath of such a large-scale natural disaster. However, the months following Hurricane Katrina illustrate the importance of resolving the inefficiency in declaring legal suspensions. Then Orleans Parish Civil District Judge Madeleine Landrieu noted that it was not until the day after Katrina's landfall that Louisiana courts recognized the impending legal crisis; until courts were officially declared closed, legal deadlines would continue to accrue and thus extinguish legal rights.⁵¹ However, uncertainty soon mounted as to which branch of government actually possessed the authority to demand court closure.⁵² Although Governor Blanco would eventually take action to shut down courts and suspend legal claims via executive orders, many in the legal community questioned the legality of her actions.⁵³ Considering this issue, former Associate Justice Catherine Kimball stated:

Nobody knew who should do what, so we all just did it and decided to worry about the consequences later. Whether it was absolutely legal, it was certainly the right thing to do for the state. We laughed because it was probably the only time all three branches of government were trying to do the same

48. *Id.*

49. *Order*, LA. SUP. CT. (Oct. 25, 2005), https://www.lasc.org/court_closure_orders/katrina_orders/1025_LASC_order.pdf.

50. *Id.*

51. G.M. Filisko, *What did Katrina Teach Us?*, ABA JOURNAL (July 1, 2011), https://www.abajournal.com/magazine/article/what_did_katrina_teach_us/.

52. *Id.*

53. *Id.*

thing because we all realized real inequities could happen if somebody didn't do something.⁵⁴

In part, the legal community's concerns regarding the legality of the executive orders stemmed from Civil Code Article 3457, which provides that "[t]here is no prescription other than that established by legislation."⁵⁵ As a result, many questioned whether Governor Blanco held the authority to issue the executive orders regarding suspension at all.⁵⁶ Additional uncertainties arose as to whether Governor Blanco's reliance on the provisions of the Louisiana Disaster Act to interfere with legal deadlines had any basis in the law.⁵⁷ Notably, Louisiana Revised Statute 29:724 of the Louisiana Disaster Act only confers authority upon the governor to "suspend the provisions of any regulatory statute prescribing the procedures for conduct . . . if strict compliance with the provisions . . . would in any way prevent, hinder, or delay necessary action in coping with the emergency."⁵⁸

Before the legality of the Governor's actions could be considered in full, the Louisiana Legislature convened in November of 2005 in an extraordinary legislative session to ratify the orders suspending prescriptive and preemptive periods.⁵⁹ The legislature then established its own limited suspension through January 3, 2006, which was set to apply only to legal claims that would have lapsed between August 26, 2005, and January 3, 2006.⁶⁰ In effect,

54. *Id.*

55. LA CIV. CODE ANN. art. 3457 (2021).

56. Benjamin West Janke, *Revisiting Contra Non Valentum in Light of Hurricanes Katrina and Rita*, 68 LA. L. REV. 497, 535-36 (2008); see also G.M. Filisko, *What did Katrina Teach Us?*, ABA JOURNAL (July 1, 2011), https://www.abajournal.com/magazine/article/what_did_katrina_teach_us/; Rachal Cox * Laura Cannon, *The Governor's Authority: Potential Issues Surrounding Executive Orders After the 2016 Flood*, FLOOD LAW BLOG (Nov. 8, 2016), <https://www.floodlawblog.com/government-updates/governors-authority-potential-issues-surrounding-executive-orders-2016-flood/#:~:text=In%20response%20to%20Hurricane%20Katrina,Monday%2C%20August%2029%2C%202005%20%5B>.

57. Rachal Cox & Laura Cannon, *The Governor's Authority: Potential Issues Surrounding Executive Orders After the 2016 Flood*, FLOOD LAW BLOG (Nov. 8, 2016), <https://www.floodlawblog.com/government-updates/governors-authority-potential-issues-surrounding-executive-orders-2016-flood/#:~:text=In%20response%20to%20Hurricane%20Katrina,Monday%2C%20August%2029%2C%202005%20%5B>; Benjamin West Janke, *Revisiting Contra Non Valentem in Light of Hurricanes Katrina and Rita*, 68 LA. L. REV. 497, 535, n.190 (2008).

58. LA. STAT. ANN. § 29:724 (2021).

59. See LA. STAT. ANN § 9:5821 (2021).

60. *Id.*

the passage of revised statute 9:5822 allowed for any claims that otherwise would have prescribed or been perempted during this timeframe to instead lapse on January 4, 2006.⁶¹

The legislature's implementation of Revised Statute 9:5822 following Hurricane Katrina was significant in part because it revived claims which had already prescribed during the timeframe of August 26, 2005, through January 3, 2006, via a "limited suspension and/or extension."⁶² As a result, any claim which would have expired during this timeframe would instead lapse on January 4, 2006. The legality of the legislature's revival of prescribed claims post-Katrina and Rita proved dubious, particularly because "no Louisiana court has ever revived a prescribed claim based on legislative action."⁶³ Notably, Louisiana jurisprudence has actually held the contrary, stating that "the legislature is without the authority to revive a prescribed claim."⁶⁴ The policy rationale behind this rule is to protect defendants of otherwise prescribed claims. When a claim prescribes, the law bestows upon the defendant a vested right to raise the issue via a peremptory exception of prescription. Thus, any legislation which would thwart this vested right generally would not have retroactive effect.⁶⁵ For example, if a plaintiff's cause of action prescribed on August 26, 2005, the defendant would then have a vested right to allege the peremptory exception of prescription. After the implementation of Revised Statute 9:5822, such a defendant would be deprived of this vested right because the plaintiff's prescription period was retroactively extended to January 4, 2006.

To further rectify the time-barring issues caused by the Hurricanes, the Louisiana legislature enacted House Bill 1289 and House Bill 1302, which would subsequently become known as

61. LA. STAT. ANN. § 9:5822 (2021).

62. *Id.*; Benjamin West Janke, *Revisiting Contra Non Valentem in Light of Hurricanes Katrina and Rita*, 68 LA. L. REV. 497, 536 (2008).

63. Benjamin West Janke, *Revisiting Contra Non Valentem in Light of Hurricanes Katrina and Rita*, 68 LA. L. REV. 497, 536 (2008).

64. Benjamin West Janke, *Revisiting Contra Non Valentem in Light of Hurricanes Katrina and Rita*, 68 LA. L. REV. 497, 535 (2008) (citing *Elevating Boats, Inc. v. St. Bernard Parish*, 2000-3518, p. 14 (La. 09/05/01); 795 So. 2d 1153, 1164, *overruled on other grounds by Anthony Crane Rental v. Fruge*, 2003-0115 (La. 10/21/03); 859 So. 2d 631).

65. LA. CIV. CODE ANN. art. 6 (2021); *see also* Benjamin West Janke, *Revisiting Contra Non Valentem in Light of Hurricanes Katrina and Rita*, 68 LA. L. REV. 497, 536-37 (2008).

Acts 2006, Nos. 739 and 802.⁶⁶ In effect, these acts extended the prescriptive period for insurance claims related to Hurricanes Katrina or Rita.

Act number 739 resulted in the enactment of Louisiana R.S. 22:1894, which states:

A. Notwithstanding any other provision of this Title to the contrary, any person or entity having a claim for damages pursuant to a homeowners' insurance policy, personal property insurance policy, tenant homeowners' insurance policy, condominium owners' insurance policy, or commercial property insurance policy, and resulting from Hurricane Katrina shall have through September 1, 2007, within which to file a claim with their insurer for damages, unless a greater time period to file such claim is otherwise provided by law or by contract.

B. Notwithstanding any other provision of this Title to the contrary, any person or entity having a claim for damages pursuant to a homeowners' insurance policy, personal property insurance policy, tenant homeowners' insurance policy, condominium owners' insurance policy, or commercial property insurance policy, and resulting from Hurricane Rita shall have through October 1, 2007, within which to file a claim with their insurer for damages, unless a greater time period to file such claim is otherwise provided by law or by contract.⁶⁷

The implementation of this statute spurred immediate controversy amongst both insurance companies and their insured. In *State of Louisiana v. All Property Insurance Carriers Authorized and Licensed to do Business in the State of Louisiana*, the Supreme Court of Louisiana considered the constitutionality of Acts 2006, Nos. 739 and 802.⁶⁸ In a controversial decision, the court upheld the legislation, acknowledging that “these storms [Hurricanes Katrina and Rita] constitute the worst natural disaster ever to have occurred in the United States” and thus found that “the legislative extension of the prescriptive period for damage

66. FRANK L. MARAIST & THOMAS C. GALLIGAN, JR., *LA. TORT LAW* 622 (2d ed. 2012).

67. LA. STAT. ANN. § 22:1894 (2021).

68. See generally *State v. All Prop. & Cas. Ins. Carriers Authorized & Licensed to do Bus. in State, 2006-2030* (La. 08/25/06); 937 So. 2d 313.

claims is based upon a significant and legitimate public purpose.”⁶⁹ Reasoning that insurance companies should reasonably anticipate this type of impairment given the highly regulated nature of the industry, the court determined that the extension of the prescriptive period by one year was appropriate, particularly in light of its limited time and scope.⁷⁰

State v. All Property was only the beginning of the mass chaos as insurers and their insured grappled with the management of claims post-Katrina. One of the most significant concerns regarding the suspension of legal deadlines was their potential for interference with contractual freedom.⁷¹ Prior to an amendment in 2006, Louisiana law allowed for insurers and their insured to enter insurance contracts that limited the right of action against an insurer so long as the period was no less than twelve months. In effect, insurers contended that the extension of prescription provided by Acts 2006, Nos. 739 and 802 directly conflicted with their ability to contract freely with their insured. Article 3471 of the Louisiana Civil Code provides that “a juridical act purporting to exclude prescription, to specify a longer period than that established by law, or to make the requirements of prescription more onerous, is null.”⁷² Generally, a contractual claim would be considered a personal action, and, per the Civil Code, would be subject to a ten-year prescriptive period. However, the Supreme Court of Louisiana has explained that “insurers, like other individuals, are entitled to limit their liability and to impose and enforce reasonable conditions upon the policy obligations they contractually assume.”⁷³ In turn, insurers can limit prescriptive periods to a time different than that specified by law, unless they are unreasonable in length, violate public policy, or violate another statute.⁷⁴ The interplay between contractual freedom and codal time limitations is not always seamless. Rather, in the event of a large-scale disaster, the task of upholding contractual rights or equitably extending legal deadlines proves to be excessively difficult. To combat these issues, it is apparent that legislators must

69. *Id.* at 326.

70. *Id.* at 327.

71. See Lewis Booth II, *State v. All Property & Casualty Insurance Carriers: Short Term Relief May Yield Long Term Problems*, 36 S.U. L. REV. 285 (2009).

72. LA. CIV. CODE ANN. art. 3471 (2021).

73. *Taranto v. Louisiana Citizens Prop. Ins. Corp.*, 2010-0105, pp. 8-10 (La. 03/15/11); 62 So. 3d 721, 728 (citing *Louisiana Ins. Guar. Ass'n v. Interstate Fire & Cas. Co.*, 630 So. 2d 759, 763 (La. 1994)).

74. *Id.*

proactively set in place a system which successfully navigates the interplay between contractual prescriptive periods and codal time limitations.

The Fourth Circuit Court of Appeal of Louisiana confronted these allegations regarding violation of contractual freedom in the case of *Lila, Inc. v. Underwriters at Lloyd's London*.⁷⁵ In *Lila*, the plaintiff was a gas station and convenience store in New Orleans which alleged that it suffered significant wind damage due to Hurricane Katrina.⁷⁶ Subsequently, the plaintiff submitted a claim to Lloyd's for the damage sustained and loss of income.⁷⁷ When the policy was issued to Lila, the parties agreed to a two-year prescriptive period within which Lila could bring legal claims.⁷⁸ Although Lloyd's made payments to Lila's in response to this claim, Lila filed suit against Lloyd's on October 8, 2007, seeking to recover insurance proceedings. Lloyd's argued in defense that Lila's claim had prescribed not only because the two-year contractual period had lapsed, but also because extended time to file Katrina-related claims under the new legislation had passed.⁷⁹ Lila first argued, without success, that the proper prescriptive period to govern its action was the ten-year period provided for by the Civil Code for contractual actions, as opposed to the one-year period for delictual actions.⁸⁰ Further, Lila alleged that Lloyd's prior payments interrupted prescription, thus giving Lila an extended time period to file suit.⁸¹ Specifically, Lila argued that Lloyd's payouts acknowledged liability, which in turn, interrupted prescription.⁸² Under this line of reasoning, the interruption would occur on the date of the last payment, which was August 16, 2006. Lila argued that this alleged interruption had caused the stipulated two-year period to start over again, thus showing that the filing on October 8, 2007, was timely within the two-year frame.⁸³ In the alternative, Lila's counsel contended that legislative acts 802 and 739, which extended the prescriptive pe-

75. See generally *Lila, Inc. v. Underwriters at Lloyd's, London*, 2008-0681 (La. App. 4 Cir. 09/10/08); 994 So. 2d 139.

76. *Id.* at 141.

77. *Id.*

78. *Lila, Inc. v. Underwriters at Lloyd's, London*, 2008-0681, p. 3 (La. App. 4 Cir. 09/10/08); 994 So. 2d 139, 142.

79. *Id.*

80. *Id.* at 144.

81. *Id.* at 142-43.

82. *Id.*

83. *Id.* at 143.

riod for Katrina-related claims, caused prescription to cease running entirely until September 1, 2007.⁸⁴ As a result, Lila suggested that it had until September 2009 to timely file its claim within the two-year contractual period.⁸⁵ The fourth circuit explicitly rejected Lila's contention that the ten-year contractual period should apply. Instead, the Court concluded that the floor for filing insurance claims was statutorily set at a minimum of one year. Lila and Lloyd's contractually agreed to extend this filing period to two-years.⁸⁶ Therefore, the court found that Lila's cause of action had already prescribed because the suit was filed after both the two-year contractual limitation and the deadline provided for by statute under Acts 802 and 739.

The fourth circuit then turned to Lila's interruption arguments.⁸⁷ The court concluded that the two-year time limitation stipulated in the contract was "not a prescriptive period subject to interruption or suspension."⁸⁸ Instead, the time limitation was a "contractual pledge or agreement by the insurance company not to plead prescription if the insured institutes legal action within the two-year time frame."⁸⁹ Turning to policy, the court noted that taking Lila's position would essentially mean that any two-year contractual limitation to filing suit would have to restart anytime a payment is made by an insurance company to its policyholder.⁹⁰

Lila exemplifies the overarching issues with a post-hurricane system that struggles to manage contractual time limitations, Civil Code prescriptive and peremptive limitations, and legislative acts that amend the legal timeframe to file claims. Insurance companies contend that public policy requires courts uphold the contractual agreements between them and their insured.⁹¹ Particularly, an amicus brief submitted to the Louisiana Supreme Court in the case of *Taranto v. Louisiana Citizens Property In-*

84. *Lila, Inc. v. Underwriters at Lloyd's, London*, 2008-0681, p. 5 (La. App. 4 Cir. 09/10/08); 994 So. 2d 139, 143.

85. *Id.*

86. *Lila, Inc. v. Underwriters at Lloyd's, London*, 2008-0681, p. 2 (La. App. 4 Cir. 09/10/08); 994 So. 2d 139, 141.

87. *Id.* at 145.

88. *Id.* at 147.

89. *Id.*

90. *Id.*

91. See *Taranto v. Louisiana Citizens Prop. Ins. Corp.*, 2010-0105, pp. 17-18 (La. 03/15/11); 62 So. 3d 721, 728-29.

insurance Corp., contended that these mutually agreed upon time limitations must be enforced because they reduce the overall cost of insurance premiums by limiting the “time of exposure” in which an insurance company is required to pay out possible losses.⁹² In turn, enforcing these provisions promotes stability in the insurance market.⁹³ On the other hand, courts must further consider the abrupt and unplanned upheaval of claimants in the wake of a hurricane. Regardless of the interests involved on either side, the jurisprudence following Hurricanes Katrina and Rita indicates the critical need for a developed emergency court management scheme that addresses such concerns proactively rather than retroactively.

The primary contributing factors leading to ambiguity in critical areas, such as insurance law, following Hurricane Katrina can be attributed to two specific failures: the failure to maintain a concrete plan for extending prescriptive periods following an emergency and the failure to allocate authority to the proper branches of government. The current, inadequate legal regime not only contributed to this interference with contractual freedom, but also eroded public trust in Louisiana’s government.⁹⁴ Even considering the unprecedented nature of this proverbial “perfect storm,” the fact remains that the action taken in the nearly fifteen years since its landfall remain insufficient to prevent the same issues from reoccurring in the future.

IV. DISASTER PREPAREDNESS IN LOUISIANA’S POST-KATRINA AND RITA JUDICIAL SYSTEM

Since 2005, Louisiana’s judicial system has recognized the need for a comprehensive disaster preparation plan on a

92. *Taranto v. Louisiana Citizens Property Ins. Corp.*, 2010-0105, p. 17 (La. 03/15/11); 62 So. 3d 721, 729.

93. *Id.*

94. See Lewis Booth II, *State v. All Property & Casualty Insurance Carriers: Short Term Relief May Yield Long Term Problems*, 36 S.U. L. REV. 285 (2009) (stating “the court should have allowed the citizens to exercise all procedural devices available to them before intervening on their behalf. This would send the message to the insurers that, even in the face of horrible tragedy, the branches of Louisiana government will not intervene until there exists no other option. This exercise in restraint would display to all affected parties the willingness of Louisiana’s government to strike a fair and equitable balance in providing aid to all persons and entities found within its borders. After all, Louisiana courts operate using principles of equity, don’t they?”).

statewide scale.⁹⁵ Noting the decentralized nature of Louisiana's judicial branch, the Office of the Judicial Administrator acknowledged that practical challenges will inevitably arise when planning for disaster recovery and continuity of operations.⁹⁶ Shortly after the Hurricanes, the Louisiana District Judges Association (LDJA) formed a Disaster Recovery Planning Committee.⁹⁷ The Chief Justice of the Louisiana Supreme Court chaired the Judiciary Subcommittee Southeast Louisiana Criminal Justice Task Force in the wake of Hurricanes Katrina and Rita, which spurred the coordination of recovery efforts within Louisiana's judiciary.⁹⁸ Additionally, the Louisiana court system became involved in the State Unified Command Group (UCG), which sought to unify senior leaders, collectively manage disaster-preparedness plans, and provide related information to critical officials amidst a natural disaster.⁹⁹ The Louisiana Supreme Court also became involved in outreach to local courts through its implementation of the Louisiana District Judges Association (LDJA) and began to provide regular evaluation of the disaster preparedness initiatives of each local court.¹⁰⁰ Additionally, the NCSC has urged Louisiana courts to adopt Continuity of Operations Plans (COOP) to establish a concrete set of rules for the court to follow in the event of an emergency.¹⁰¹

While the Louisiana judiciary's efforts to maintain continuity of operations have proved to be excellent resources to courts for subsequent natural disasters, efforts to set in place a better plan for managing legal deadlines due to emergencies are scarce. Today, suspension of legal deadlines following disaster and emergency situations proves to be equally as unclear as it was in 2005.¹⁰² Despite the grave legal uncertainty caused by Governor Blanco's executive orders and ensuing legislation, only slight efforts have been made to streamline a system for managing legal

95. See generally *Emergency Preparedness and Continuity of Operations—"Lessons Learned,"* LA. SUP. CT., https://www.ncsc.org/_data/assets/pdf_file/0026/15299/ncsc-disaster-preparedness-louisiana-summary.pdf (last visited Feb. 18, 2021).

96. *Emergency Preparedness and Continuity of Operations—"Lessons Learned,"* LA. SUP. CT., https://www.ncsc.org/_data/assets/pdf_file/0026/15299/ncsc-disaster-preparedness-louisiana-summary.pdf (last visited Feb. 18, 2021).

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. See, e.g., LA CIV. CODE ART. ANN. 3472.1 (2021).

deadlines following a natural disaster. COOP initiatives have provided courts with “playbooks for the next disasters” and have taken strides to digitalize records. These initiatives include contingency plans for displacements of court officials, offsite computer backup programs, and emergency contact systems. However, the deeper legal issue of prescription and the power to control it still lingers in the background.”¹⁰³

Amidst the onset of the COVID-19 pandemic in Louisiana around March of 2020, legal practitioners again found themselves questioning the Governor’s authority to suspend legal deadlines under the Louisiana Disaster Act. Furthermore, concerns again mounted regarding the implications of the Governor’s Executive Orders. Just as in 2005, claimants and practitioners found themselves reliant on the state legislature to both ratify and clarify the Orders via the implementation of 2020 La. Act. No. 162. Months later, in June 2020, the Louisiana legislature effectively adopted Civil Code article 3472.1.¹⁰⁴ This article states, in pertinent part:

Notwithstanding any other provisions of the law, in the event the governor declares a state of emergency or disaster pursuant to R.S. 29:721 through 772, the Supreme Court of Louisiana may enter an order or series of orders as deemed necessary and appropriate to suspend all prescriptive and peremptive periods for a period of time not to exceed ninety days. Thereafter, should the need for continuing suspension be necessary to preserve access to the courts, the governor may issue executive orders as deemed appropriate. The period of suspension authorized by the provisions of this Article shall terminate upon the earlier of an order of the Supreme Court of Louisiana or upon termination of the declared state of disaster or emergency. Nothing in this Article limits the authority of the governor or the legislature to act in accordance with its authority.¹⁰⁵

Although an improvement from Louisiana’s abysmal attempts at creating piecemeal legislation to handle matters once they arise, the recently enacted Civil Code article falls short in several critical ways. First, article 3472.1 still does not vest authority in the Supreme Court of Louisiana to suspend legal dead-

103. G.M. Filisko, *What did Katrina Teach Us?*, ABA JOURNAL (July 1, 2011), https://www.abajournal.com/magazine/article/what_did_katrina_teach_us/.

104. See LA. CIV. CODE ANN. art. 3472.1 (2021).

105. *Id.*

lines unless and until the Governor declares a state of emergency.¹⁰⁶ In effect, this means that the Court remains without authority to suspend deadlines in emergency situations that may not quite require a declaration of emergency, but still have the potential to impair residents' constitutional right to court access. Second, the article only allows for the Court to suspend prescriptive periods for a maximum total of ninety days.¹⁰⁷ After the ninety days have elapsed, the new regime no longer applies, and individuals must again rely on the issuance of executive orders by the Governor. Such reliance again raises concerns about the Governor's authority to manage legal deadlines in the first place under the Louisiana Disaster Act. This raises the question of whether an executive order enacted under this code article would then require ratification by the legislature to be effective.

**A. ROOM FOR IMPROVEMENT: A COMPARISON OF LOUISIANA'S
STATUTORY REGIME FOR EMERGENCY SUSPENSION OF
DEADLINES WITH THAT OF OTHER STATES**

Louisiana lags far behind other states who have taken strides to learn from our mistakes as well as their own emergency situations.¹⁰⁸ In instances of disaster, a judiciary's problems are often administrative and managerial in nature; historically, state governments have granted local court systems little authority to control their own disaster recovery scheme.¹⁰⁹ Because of state courts' "decentralized and localized fashion," the executive and legislative branch often maintain much of the power to call the shots in emergency management. While other states inevitably face the same struggle over authority to control the courts, many similarly situated states have adopted judicial disaster management plans designed to combat the very problems faced by Louisiana. Thus, a comparison of these states' emergency management schemes is warranted.

106. See LA. CIV. CODE ANN. Art. 3472.1 (2021).

107. *Id.*

108. William Raftery, *Disaster Recovery: Spotlight on State Courts*, NAT'L ASS'N ATT'YS GEN. (Jan. 2, 2019), <https://www.naag.org/disaster/attorney-general-journal/state-courts-disaster-recovery/>.

109. *Id.*

B. SEPTEMBER 11, 2001, AND COVID-19 IN NEW YORK: WAITING ON THE GOVERNOR TO SAVE THE LEGAL SYSTEM

After September 11, 2001, New York called into question local courts' emergency management schemes.¹¹⁰ Following the terrorist attacks, then-Governor George Pataki invoked his legislatively conferred authority to issue Executive Order No. 113.7, which temporarily suspended some legal claims.¹¹¹ Notably, Governor Pataki did not suspend all claims, but instead only suspended those which would have lapsed during the state of emergency.¹¹² Later, Governor Pataki declared that the suspension period would come to a general end on October 12, 2001, but those directly affected by the disaster would have a lengthier deadline of November 8, 2001, to file their claims.¹¹³ In 2009, New York enacted legislation which essentially repealed the existing statutory regime set in place to manage judicial emergencies.¹¹⁴ Senate Bill S2849 was introduced at the behest of New York's Judicial branch in efforts to modernize the State's emergency management system.¹¹⁵ Under then existing Judiciary Law, the Governor, the Mayor, or presiding judge of a court (if the governor has not acted), all possessed authority to relocate court operations to other locations within that court's district.¹¹⁶ Advocates for the bill noted two significant issues with this statutory scheme.¹¹⁷ First, the bill's sponsors noted that limiting a court's ability to relocate to an area within the affected district was not practical given concerns that "modern threats ranging from the natural (e.g. avian flu, flood) to the manmade (e.g. terror attack) can effectively paralyze a court's entire district."¹¹⁸ Second, sponsors

110. William Raftery, *Disaster Recovery: Spotlight on State Courts*, NAT'L ASS'N ATT'YS GEN. (Jan. 2, 2019), <https://www.naag.org/disaster/attorney-general-journal/state-courts-disaster-recovery/>.

111. Exec. Order No. 113.7, 2001-40 N.Y. St. Reg. 84 (Sept. 11, 2001).

112. *Id.*

113. Exec. Order No. 113.28, 2001-43 N.Y. St. Reg. 101 (Oct. 4, 2001); see also Benjamin West Janke, *Revisiting Contra Non Valentem in Light of Hurricanes Katrina and Rita*, 68 LA. L. REV. 497, 521-22 (2008).

114. See N.Y. JUD. LAW § 8 (McKinney 2019); see William Raftery, *Maintaining Court Operations when Disaster Strikes: Emergency Powers*, NAT'L CTR. STATE CTS. (Sept. 2017), <https://ncsc.contentdm.oclc.org/digital/collection/facilities/id/208>.

115. 2009 Legis. Bill History N.Y. S.B. 2849, *Sponsor Memo*, <https://www.nysenate.gov/legislation/bills/2009/S2849>.

116. *Id.*

117. *Id.*

118. 2009 Legis. Bill History N.Y. S.B. 2849, *Sponsor Memo*, <https://www.nysenate.gov/legislation/bills/2009/S2849>.

argued that the then-existing scheme provided for a “fracturing” of court relocation authority across multiple authorities.¹¹⁹ Specifically, the sponsors claimed that “it is the Chief Judge and Chief Administrative Judge that have the systemwide power and resources to ensure that courts function properly in a temporary location.”¹²⁰

Ultimately, the New York Legislature enacted a new statutory regime which repealed the old judicial management scheme.¹²¹ Current law now provides that if a court becomes “unsafe or impractical for the holding of a trial court,” the governor possesses the authority to provide a new location for court operations only after consulting with the Chief Judge.¹²² In situations where the governor has not acted, the law grants authority to the Chief Judge to act.¹²³ Still, the legislature grants the Governor of New York broad authority to act under New York’s Executive Laws:

Subject to the state constitution, the federal constitution and federal statutes and regulations, the governor may by executive order temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster.¹²⁴

Significantly, the legislature amended Section 29-A of the Executive laws of New York (quoted above) upon the onset of the COVID-19 pandemic in March 2020 to both “clarify that a disaster declaration can be issues for an urgent or impending threat of wide spread injury or loss of life resulting from disease outbreak” and “to allow the Governor to issue directives when a state disaster emergency is declared to allow for appropriate response to such a disaster.”¹²⁵ Section 29-A as amended was slated for repeal

119. *Id.*

120. *Id.*

121. See N.Y. JUD. LAW § 8 (McKinney 2019).

122. 2009 Legis. Bill History N.Y. S.B. 2849, *Sponsor Memo*, <https://www.nysenate.gov/legislation/bills/2009/S2849>; See N.Y. JUD. LAW § 8 (McKinney 2019).

123. N.Y. JUD. LAW § 8 (McKinney 2019).

124. *Id.* at § 29-a.

125. 2020 Sess. Law News of N.Y. Ch. 23 (S. 7919) (McKinney).

on April 30, 2021.¹²⁶ In March of 2021, the legislature declared the need to “restore the pre-pandemic balance of power of the governor and legislature, and to continue to move forward with the response and recovery while maintaining the authority of public-health focused directives taken by the Governor, with reasonable limitations, during the possibly waning days of the pandemic.”¹²⁷ While New York has taken steps to address concerns over the fracturing of legal authority in terms of court relocation, the Governor of New York still possesses sole authority to suspend legal deadlines. Just as Louisiana has faced challenges with its nearly identical scheme, New York has recently suffered from the same setbacks. As recently as March of 2020, Governor Andrew Cuomo declared a statewide disaster emergency amidst the outbreak of the COVID-19 pandemic.¹²⁸ Notably, action to toll legal deadlines during the novel COVID-19 outbreak was not immediate. Rather, these deadlines were tolled only after eighteen state senators penned a letter to Governor Cuomo requesting that he invoke his power to suspend laws to toll the statutes of limitation.¹²⁹ Despite the Office of Court Administration’s efforts to manage the COVID-19 crisis in its courts, the power to suspend legal deadlines ultimately remains in the hands of the Governor.¹³⁰ In the words of the New York senators who penned this open-letter to Governor Cuomo: “Prosecutors, litigants, and attorneys should not have to choose between placing themselves at risk of exposure to COVID-19 and pursuing civil and criminal justice.”¹³¹ The Governor ultimately acted on the Senators’ proposal via executive order after the New York State Bar Association and acting Attorney General Leticia James publicly backed the suspension of legal deadlines. Prior to the issuance of the order, At-

126. *Id.*

127. 2021 Sess. Law News of N.Y. Ch. 71 (S. 5357) (McKinney).

128. Exec. Order No. 202, 9 NYCRR 8.202 (Mar. 7, 2020).

129. Emma Cueto, *NY Gov. Urged to Pause Court Deadlines over COVID-19*, LAW360 (Mar. 20, 2020), <https://www.law360.com/articles/1255226/ny-gov-urged-to-pause-court-deadlines-over-covid-19>.

130. See Emma Whitford, *NY Landlords can File Cases Despite Eviction Moratorium*, LAW360 (March 18, 2020), <https://www.law360.com/newyork/articles/1254495/ny-landlords-can-file-cases-despite-eviction-moratorium>; see also Letter from N.Y. State Senator Brad Hoylman et al., to N.Y. Gov. Andrew Cuomo (Mar. 19, 2020), https://www.nysenate.gov/sites/default/files/article/attachment/bh_-_2020.03.19_-_letter_to_gamc_re_sol_tolling.pdf.

131. Letter from N.Y. State Senator Brad Hoylman et al., to N.Y. Gov. Andrew Cuomo (Mar. 19, 2020), https://www.nysenate.gov/sites/default/files/article/attachment/bh_-_2020.03.19_-_letter_to_gamc_re_sol_tolling.pdf

torney General James asserted: “Right now, New Yorkers are faced with such a predicament—either they ignore calls for social distancing in order to submit documents to a court by a fixed deadline, or they abandon their right to seek justice through the judiciary all together.”¹³²

The ultimatum described by the New York Senators and Attorney General James is ultimately not unique to New York. Rather, New York’s current situation closely parallels the legal uncertainties faced by the Louisiana Court system after Katrina. Since the issuance of this initial executive order suspending deadlines, Governor Cuomo has issued several additional orders.¹³³ Due to variance in the language of the orders, the legal community struggled to determine which terms applied and how such terms would affect their clients’ legal claims.¹³⁴ Specifically, attorneys and claimants faced uncertainty as to whether Cuomo’s orders tolled or suspended the applicable statute of limitations. The ambiguity in the orders and questions regarding the extent of the Governor’s powers to either toll or suspend deadlines exemplifies the larger issues that arise from such a grant of power to the Governor alone. As a result, this misplacement of power solely in the Executive to make these critical decisions regarding legal claims has been an overarching issue in New York’s COVID-19 legal suspension debacle. New York’s drawn-out response to court management in the wake of the COVID-19 pandemic further demonstrates the risks that states like Louisiana continue to impose on its citizens. In bifurcating power to suspend deadlines between the Judiciary and the Executive Branch, the Louisiana government almost inevitably puts its citizens at risk of confusion regarding the viability of their legal claims. In situations such as this one, where social distancing and public safety reign supreme, inconsistency between governmental branches can be life threatening, as tenants struggling to understand their rights may leave their self-quarantine to physically go into the courthouse and resolve the situation.

132. Emma Cueto, *NY Gov. Urged to Pause Court Deadlines over COVID-19*, LAW360 (Mar. 20, 2020), <https://www.law360.com/articles/1255226/ny-gov-urged-to-pause-court-deadlines-over-covid-19>.

133. Adam Swanson & Stephanie Pisko, *NY Courts Deadline Extensions Bring Confusion for Litigants*, LAW360 (Oct. 29, 2020), <https://www.law360.com/articles/1324021/ny-court-deadline-extensions-bring-confusion-for-litigants>.

134. *Id.*

**C. SHOULD HURRICANE PRONE STATES HAVE TO RELY ON AN
EXECUTIVE EMERGENCY DECLARATION TO SUSPEND
DEADLINES? AN ANALYSIS OF TEXAS'S AND FLORIDA'S ACTIONS
SINCE HURRICANE KATRINA**

While Louisiana certainly can and should learn from the missteps of New York, a hurricane or natural disaster situation is inherently different than the terrorist attacks and viral pandemic New York faced. In a hurricane based statewide emergency, oftentimes most of the affected citizens are displaced from their homes. Displacement makes communication among court management difficult, if not nearly impossible in some situations. As noted by then-Orleans Parish Judge Madeleine Landrieu: “Nothing on this scale has ever happened in this country—unlike the terrorist attacks in New York and Washington D.C. on September 11, 2001—Hurricane Andrew and other huge disasters, like Katrina, the authority to fix the disaster was itself in the disaster.”¹³⁵

Unlike the COVID-19 crisis, where most individuals are sheltering in place with effective means of communication, a hurricane often hinders technological communication and, moreover, impedes access to court records and necessary documents through the physical destruction of courthouses and office buildings. Further, terrorist attacks and viral pandemics are not frequently occurring crises which can be anticipated fully. In contrast, hurricanes are common in the Gulf South, and advancements in hurricane detection methods provide advanced knowledge of both the likelihood that a state will suffer a future hurricane and where the storm may hit. For these reasons, hurricane-prone states can proactively mitigate the devastation that hurricanes have historically brought to legal systems.

1. TEXAS'S STEPS AND MISSTEPS AMIDST HURRICANE SEASON

Several hurricane-prone states have recently reconsidered who should possess the authority to suspend legal deadlines in emergency situations, along with what the scope of that power should be.¹³⁶ In 2017, Hurricane Harvey slammed into the Texas

135. Sandi McCarthy-Brown & Susan L. Waysdorf, *Katrina Disaster Family Law: The Impact of Hurricane Katrina on Families and Family Law*, 42 IND. LAW J. 721, 725 (2009).

136. See William Raftery, *Maintaining Court Operations when Disaster Strikes: Emergency Powers*, NAT'L CTR. STATE CTS. (Sept. 2017), <https://ncsc.org>.

coast, putting to the test Texas's own court emergency management scheme.¹³⁷ Significantly, Texas updated its method of suspending court proceedings in 2009, following Hurricane Katrina.¹³⁸ Under the version of Texas Government Code 22.0035 in place during 2017, the Texas Supreme Court was granted authority to "modify or suspend procedures for the conduct of any court proceeding affected by a disaster during the pendency of a disaster declared by the governor."¹³⁹ At the time, this order was limited to thirty days unless later renewed by the Supreme Court.¹⁴⁰ Significantly, Section 22.0035 grants authority to modify or suspend procedures exclusively to the Supreme Court, the chief justice of the supreme court, the court of criminal appeals, or the presiding judge of the court of criminal appeals, respectively, depending on the those higher up in the hierarchy's ability to act in wake of the disaster.¹⁴¹ Furthermore, only the chief justice of the supreme court possesses the authority to renew the order beyond the ninety day time limitation.¹⁴²

Invoking its authority under this provision, the Supreme Court of Texas issued an emergency order following Hurricane Harvey which merely encouraged Texas courts to consider "disaster-caused delays as good cause for modifying or suspending all deadlines and procedures."¹⁴³ In essence, this permissive language order reads as a mere suggestion to courts. The next day, the Supreme Court of Texas issued a second order, which stated that if a statute of limitation was not subject to a good-cause exception, that statute of limitation would be suspended for civil suits provided that Hurricane Harvey prevented the claim from

contentdm.oclc.org/digital/collection/facilities/id/208; *see also* William Raftery, *Disaster Recovery: Spotlight on State Courts*, NAT'L ASS'N ATT'YS GEN. (Jan. 2, 2019), <https://www.naag.org/disaster/attorney-general-journal/state-courts-disaster-recovery/>.

137. *See* William Raftery, *Maintaining Court Operations when Disaster Strikes: Emergency Powers*, NAT'L CTR. STATE CTS. (Sept. 2017), <https://ncsc.contentdm.oclc.org/digital/collection/facilities/id/208>.

138. *See id.*

139. TEX. GOV'T CODE ANN. § 22.0035 (West 2009).

140. *Id.*

141. TEX. GOV'T CODE ANN. § 22.0035(c-e) (West 2009).

142. *Id.* at § 22.0035.

143. *Emergency Order Authorizing Modification and Suspension of Court Procedures in Proceedings Affected by Disaster*, TEX. SUP. CT. (Aug. 28, 2017), <https://www.txcourts.gov/media/1438759/179091.pdf>.

being timely filed.¹⁴⁴ These orders represent a shift in court management schemes following both Hurricane Katrina and the September 11 terrorist attacks.¹⁴⁵ As noted by one legal expert, Texas's practices following Hurricane Harvey demonstrate efforts "to provide state courts more explicit authority to move, modify, or even suspend their proceedings to address crises."¹⁴⁶

Texas's Hurricane Harvey response reflected a positive change in that it allowed courts more effective control of their own activities in the wake of a statewide emergency. However, Texas's response still missed the mark for achieving a truly streamlined court emergency management scheme for several reasons. First, the 2009 law still required courts to rely on a declaration of disaster by the governor, which may prevent courts from acting in their own best interest during an emergency. For instance, situations may arise which require court closure to protect the public interest but do not necessarily warrant a declaration of a statewide emergency, including scenarios where court administrators may feel that court access is unduly hindered.¹⁴⁷ Second, the Texas Supreme Court issued seven orders within the first week of Harvey, which likely proved to be confusing and overwhelming for litigants and attorneys across the state.¹⁴⁸

2. FLORIDA'S LESSONS LEARNED FROM HURRICANE SEASON

One month following Hurricane Harvey's landfall in Texas, Florida faced its own natural disaster—Hurricane Irma.¹⁴⁹ However, the Florida judiciary possessed unique authority to issue administrative orders to suspend legal deadlines, thus allowing for the streamlined emergency management of the court sys-

144. *Emergency Order on Statutes of Limitation in Civil Cases*, TEX. SUP. CT. (Aug. 29, 2017), <https://www.txcourts.gov/media/1438804/179098.pdf>.

145. See William Raftery, *Maintaining Court Operations when Disaster Strikes: Emergency Powers*, NAT'L CTR. STATE CTS. (Sept. 2017), <https://ncsc.contentdm.oclc.org/digital/collection/facilities/id/208>.

146. See *id.*; see also William Raftery, *Disaster Recovery: Spotlight on State Courts*, NAT'L ASS'N ATT'YS GEN. (Jan. 2, 2019), <https://www.naag.org/disaster/attorney-general-journal/state-courts-disaster-recovery/>.

147. See generally TEX. GOV'T CODE ANN. § 22.0035 (West 2009).

148. Dylan O. Drummond, *Texas Supreme Court and Court of Criminal Appeals Pass Emergency Relief Orders in Hurricane Harvey's Wake*, TEX. SUP. CT. HIST. SOC'Y J., Fall 2017, at 59, 60.

149. See William Raftery, *Disaster Recovery: Spotlight on State Courts*, NAT'L ASS'N ATT'YS GEN. (Jan. 2, 2019), <https://www.naag.org/disaster/attorney-general-journal/state-courts-disaster-recovery/>.

tem.¹⁵⁰ Notably, Florida's Constitution explicitly gives the Supreme Court the authority to "adopt rules for the practice and procedure in all courts."¹⁵¹ As the administrative official of the judicial branch and of the Florida Supreme Court, the Chief Justice wields the power to "direct the implementation of policies and priorities as determined by the supreme court for the operation of the branch and of the court."¹⁵² The Florida Rules of Judicial Administration expressly include within the Chief Justice's powers and duties the power to act *sua sponte* "to suspend, toll, or otherwise grant relief from time deadlines imposed by otherwise applicable statutes and rules of procedure for such period as may be appropriate."¹⁵³ Thus, four days before Irma's landfall, Chief Justice Jorge Labarga proactively issued an administrative order which directed court closures and extended specific legal deadlines.¹⁵⁴ Importantly, the Chief Justice did not have to rely on the Governor's actions to issue an order.¹⁵⁵ Instead, Chief Justice Labarga relied on the authority vested in him via both the Florida Constitution and the Florida Rules of Judicial Administration.¹⁵⁶ This authority bestowed upon the Chief Justice not only allowed him the ability to suspend legal deadlines without needing to rely on the Governor's order to do so, but also allowed him to act days before Hurricane Irma made landfall in Florida.¹⁵⁷

The Chief Justice's actions in modifying court closures and legal deadlines did not immediately extend all legal deadlines for a thirty-day period. Rather, the Chief Justice's initial order only extended deadlines that would otherwise lapse on Thursday, September 7, 2017, to Monday, September 11, 2017.¹⁵⁸ In the days

150. See generally Admin. Order 17-46, *Closure of Florida State Courts in Preparation for Hurricane Irma*, FLA. SUP. CT. (Sept. 6, 2017), <https://www.floridasupremecourt.org/content/download/644750/file/AOSC17-46.pdf>.

151. FLA. CONST. art. IV, § 2.

152. Fla. R. Jud. Admin., Rule 2.205(a)(2)(B), *amended by* 2020 Florida C.O. 0021 (effective Mar. 13, 2020).

153. *Id.* at Rule 2.205(a)(2)(B)(iv).

154. Admin. Order 17-46, *Closure of Florida State Courts in Preparation for Hurricane Irma*, FLA. SUP. CT. (Sept. 6, 2017), <https://www.floridasupremecourt.org/content/download/241182/2131923/AOSC17-46.pdf>.

155. See generally *id.*

156. See *id.*

157. See FLA. STAT. ANN. § 2.205, *amended by* 2020 Florida C.O. 0021 (effective Mar. 13, 2020).

158. See Admin. Order 17-46, *Closure of Florida State Courts in Preparation for Hurricane Irma*, FLA. SUP. CT. (Sept. 6, 2017), <https://www.floridasupremecourt.org/content/download/241182/2131923/AOSC17-46.pdf>.

following the Hurricane's landfall in Florida, the Chief Justice executed several subsequent orders which addressed the needs of specific counties regarding court closures and legal deadlines.¹⁵⁹ This kind of piecemeal extension of suspensive periods leaves room for confusion amongst claimants who may not be aware of the multiple orders. Further, the potential for gaps in the suspensive period create additional potential burdens on the legal community as they attempt to discern the implications of the orders. Additionally, the administrative orders also allowed for equitable extensions of judicial time limits on a case-by-case basis.¹⁶⁰

Florida's post-Hurricane steps to manage court closures and deadlines are significant in that they represent a dramatic shift regarding the level of autonomy granted to the judiciary in hurricane-prone states. Unlike Texas and Louisiana, Florida essentially granted its Chief Justice ultimate authority to proactively address any court emergency, including those not deemed statewide emergencies by the Governor. This autonomy is significant because it allows the judiciary the authority to immediately and effectively address its own needs without relying on another branch of government to first act for them.

V. PROPOSAL TO RECTIFY THE CURRENT COURT EMERGENCY MANAGEMENT SCHEME

Today, Louisiana's current emergency court management scheme remains incompatible with the state's propensity for natural disasters and the evolving climate crisis. Louisiana inevitably will face future natural disasters that will impede the efficiency of the legal system. Therefore, Louisiana must take steps to streamline the judiciary's management of emergency deadlines to prevent the occurrence of yet another legal disaster. Thus, this Comment proposes legislation that will bestow upon the Chief Justice of the Louisiana Supreme Court, as the chief administrative officer of the judicial system per Article V, Section 6 of the Louisiana Constitution, authority to act in the interest of the judiciary before, or in the absence of, any action by the Governor of the state via the declaration of a judicial emergency. Specifically, this legislation should confer upon the Chief Justice the ability to

159. See generally Admin. Orders AOSC 17-48 through 88, FLA. SUP. CT. (2017), <https://www.floridasupremecourt.org/Practice-Procedures/Administrative-Orders/2017-Administrative-Orders>.

160. See generally *id.*

act *sua sponte* to institute uniform court closures which would immediately suspend prescriptive periods in affected parishes for a pre-determined period. After this initial period has run, the judiciary shall be granted discretion to either issue an extended blanket-suspension for all affected parishes or to instead assess special cases individually and allow equitable extensions as it deems necessary.

Louisiana's implementation of a statutory regime which precludes the need for excessive executive and legislative action is critical to prevent the reoccurrence of the legal issues faced after Hurricane Katrina. Former Judge Landrieu, who served as the Chairman of the Disaster Recovery Committee (DRC) under the auspices of the District Judges Association, has advocated for legislation that extends beyond COOPs.¹⁶¹ Landrieu has promoted the need for legislation that would spur uniformity in court closures following disasters.¹⁶² Further, Landrieu has suggested that, despite strides made to develop disaster planning within the judicial system, "[she'd] feel even better if we had legislation that would obviate the need for executive orders. It would say that if there's a parish affected, deadlines there would automatically be extended for thirty days."¹⁶³ Given her vast amount of personal experience serving as both judge and chairman of the DRC, her feedback provides instructive criticism of the current system and suggestions for reform.

While the newly enacted Civil Code article is a step in the right direction, it does not eradicate the need for an executive order. This proposal recommends broad conferral of authority upon the chief justice to declare judicial emergencies and to provide sufficient safeguards to claimants' legal rights. Additionally, the outlined proposal grants continuous authority to the judicial branch and does not transfer authority between branches after a set period. The granting of such authority to the Chief Justice extirpates the public's need to rely on the Governor to issue executive orders after the ninety days currently set forth in Article 3472.1. In doing so, courts can protect legal claimants from the vague and ambiguous language that is often set forth in these ex-

161. 2006 *Disaster Recovery Template*, LA. DIST. JUDGES ASS'N, http://nhma.info/uploads/resources/coop/louisiana_20district_20judges_20association_20disaster_20recovery_20template-1.pdf (last visited Mar. 7, 2021).

162. G.M. Filisko, *What did Katrina Teach Us?*, ABA JOURNAL (July 1, 2011), https://www.abajournal.com/magazine/article/what_did_katrina_teach_us/.

163. *Id.*

ecutive orders. Additionally, expressly granting the power to control legal deadlines to the judiciary avoids potential concerns as to whether the Executive branch possesses the requisite authority under the law to manage such deadlines.

Rather than provide for piecemeal suspensive periods at the outset, the proposed legislation would set a blanket suspension lasting thirty days into motion upon the Chief Justice's issuance of a judicial emergency order. By only extending claims that otherwise would expire during this timeframe, there is less room for the potential retroactive revival of claims by future legislation. Further, this plan provides for minimal interference with contractual rights—although the extension of claims by thirty days may extend beyond a contractually agreed upon time-limitation, this interference would likely be minimal, unlike the extension of contractual limitations by over a year following Hurricanes Katrina and Rita.

Finally, the proposed legislation provides for the analysis of cases on an as-needed basis. Inevitably, any emergency will likely include particularized situations that require unique consideration by the court. This legislation accommodates that need and allows for the equitable extension of claims on a case-by-case basis.

VI. CONCLUSION

Although Louisiana courts cannot prevent natural disasters within their jurisdiction, viable options exist which can bolster the efficacy of the judicial system following a hurricane. Following a natural disaster as devastating as Hurricane Katrina, the last thing a Louisiana citizen should have to think about is the potential termination of his or her legal rights. Despite the passage of nearly fifteen years since the landfall of Hurricanes Katrina and Rita in the Gulf Coast region, these issues remain equally, if not more, relevant today. Thus, the judiciary must ensure that it remains vigilant and continues to develop cogent disaster preparedness schemes. We must learn from other states who have essentially learned our own lesson for us through their implementation of statutory schemes which give their judiciary the authority to act in an emergency. Importantly, there is always more work to be done, and it is the legal community's responsibility to ensure that it continues to promote equity and ensure the public's faith in the legal system even during the worst of times.