

BOARD OF TAX APPEALS
STATE OF LOUISIANA

ASHLEY SANCHEZ AND ANGELA
GRUNEWALD, INDIVIDUALLY AND ON BEHALF
OF OTHERS SIMILARLY SITUATED

Plaintiffs,

VERSUS

DOCKET NO. 14215D

THE OFFICE OF DEBT RECOVERY,
KEVIN RICHARD, IN HIS OFFICIAL
CAPACITY AS SECRETARY OF THE
DEPARTMENT OF REVENUE, THE
OFFICE OF MOTOR VEHICLES, JAMES M.
LeBLANC, IN HIS OFFICIAL CAPACITY
AS SECRETARY OF THE LOUISIANA
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS, and KAREN G. ST.
GERMAIN, IN HER OFFICIAL CAPACITY
AS COMMISSIONER - CUSTODIAN OF
RECORDS OF THE LOUISIANA OFFICE
OF MOTOR VEHICLES

Defendants

JUDGMENT WITH REASONS

On April 16, 2025, this matter came before the Board for hearing on the Exceptions of Lack of Subject Matter Jurisdiction, No Cause of Action, No Right of Action, Lack of Procedural Capacity, Vagueness, and Improper Use of Class Action Procedure filed by the State of Louisiana, through the Louisiana Department of Revenue and Richard Nelson, as successor to Kevin Richard, Secretary of the Louisiana Department of Revenue ("Department"). Presiding at the hearing were Chairman Francis J. "Jay" Lobrano and Vice-Chair Judge Lisa Woodruff-White (Ret.). Present before the Board were J.R. Whaley and Andre LaPlace, attorneys for Ashley Sanchez ("Sanchez") and Angela Grunewald ("Grunewald"), individually, and on behalf of others similarly situated (collectively, "Plaintiffs"), and Sidney Menou, attorney for the Department. At the conclusion of the hearing, the Board took the matter under advisement. In accordance with the attached Written Reasons, the Board now rules as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Exception of Lack of Subject Matter Jurisdiction BE AND IS HEREBY DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Exception of No Right of Action BE AND IS HEREBY DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Exception of Lack of Procedural Capacity BE AND IS HEREBY GRANTED with respect to the Office of Debt Recovery, which is only a division of the Department as stipulated by the Plaintiffs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Exception of No Cause of Action BE AND IS HEREBY GRANTED.

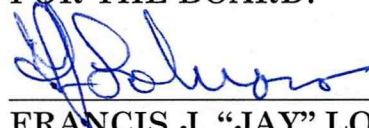
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs shall file a Second Supplemental and Amending Petition to state particularized constitutional claims under La. Const. art. I, §27, to assert claims against the state authorized by La. R.S. 47:1481, and for relief from a final assessment under La. R.S. 47:1565(C)(2)(b) – (c) in conformity with this Judgment ON OR BEFORE JUNE 9, 2025.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Exception of Vagueness BE AND IS HEREBY DEFERRED pending amendment of the Petition.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Exception of Improper Use of Class Action Procedure BE AND IS HEREBY DEFERRED pending a request to certify a class.

JUDGMENT RENDERED AND SIGNED AT BATON ROUGE, LOUISIANA, THIS 8th DAY OF MAY, 2025.

FOR THE BOARD:



FRANCIS J. "JAY" LOBRANO, CHAIRMAN
LOUISIANA BOARD OF TAX APPEALS

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REASONS FOR JUDGMENT

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matter under advisement. The Board now issues the foregoing Judgment for the following reasons.

Background

Plaintiffs filed their original Petition with the 19th JDC on October 3, 2023. The Department responded with exceptions. After being served with the Department's exceptions, but before any hearing occurred, Plaintiffs amended and supplemented their petition as a matter of right. Then, Plaintiffs and the Department jointly moved that the case be transferred to this Board. An Order to transfer the record was signed by the 19th JDC on August 22, 2024, and the record was received by the Board on December 11, 2024.

The underlying dispute concerns the validity of La. R.S. 47:1676. That statute sets forth a scheme by which the Office of Debt Recovery ("ODR") is to collect debts owed to the State. In particular, La. R.S. 47:1676(A)(1) authorizes ODR to collect debts by using the same remedies normally provided by law to facilitate the collection of taxes. Plaintiffs allege that they have been harmed by threat and implementation of these collection remedies and ask the Board to declare La. R.S. 47:1676 unconstitutional.

Plaintiff Sanchez alleges that she encountered ODR for the first time after incurring an Office of Motor Vehicles ("OMV") penalty from unintentionally allowing her auto insurance policy to lapse. Sanchez claims that she was unable to pay the OMV penalty and allegedly exorbitant ODR fee and was effectively forced to sign an installment agreement to repay the debt in order to maintain her driver's license.

Sanchez contends that, as a single mother, she has extensive financial obligations, and that no consideration was given to her financial situation or ability to pay. She alleges that over the past six years she has been forced to choose between paying for essentials like her electric bill or paying her ODR installments. She further alleges that this has led to missed ODR payments which in turn result in additional ODR fees.

According to the Petition, if a debtor misses an ODR installment payment, the installment agreement is immediately voided. The debt is then again referred to ODR. This results in additional collection fees. Further, if the debtor wants to, or is financially compelled to, get back on an ODR installment agreement, they must re-apply. As part of re-applying, they must make an upfront payment of ten percent of the amount owed. In addition, Sanchez alleges that ODR has intercepted her state tax refund every year since 2017 without providing updated balance information, and also refused to communicate regarding her debt except to tell her to contact OMV, who in turn has told her to contact ODR.

The allegations concerning the origin of Grunewald's debt are unspecified. However, like Sanchez, Grunewald alleges that she is a mother and sole provider for her children. Further, Grunewald alleges that she has two children with special needs who have been diagnosed as totally disabled since birth. Additionally, Grunewald contends that her financial situation is such that she has no choice but to enter into an ODR installment agreement.

Like Sanchez, Grunewald maintains that ODR has not considered her circumstances, has seized her tax refunds, will not provide her with any information regarding her account balance, and that the cost of further payments along with the threat of further penalties and collection actions has severely impacted her financial situation.

Both Sanchez and Grunewald allege that they are subject to the penalty of losing their driver's licenses should they default on their ODR debt. Both Plaintiffs are single mothers who must be able to drive in order to: take their children to school and doctor's appointments; go to the grocery store and pharmacy; and otherwise properly care for their children and themselves. Plaintiffs further contend that they will be able to represent similarly situated individuals, allegedly all persons who have had an outstanding debt referred to ODR and have been made to pay fees and interest.

In their prayer for relief, Plaintiffs seek: a declaration that ODR's actions are null, void, and unenforceable because La. R.S 47:1676 is unconstitutional; invalidation the portion of La. R.S 47:1676 that authorizes ODR's allegedly aggressive collection protocols that allegedly adversely affect Louisiana citizens by allowing ODR to treat any debt owed to the state as a tax, including authorization to charge citizens an additional twenty-five percent collection fee on top of any debt owed; an order from the Board to refund said twenty-five percent fee; compensation under La. Civ. Code art. 2298 for unjust enrichment; and other general and equitable relief as appropriate.

After this matter was transferred to the Board, the Department renewed most of its exceptions. However, the Department did not renew its Exception of Improper Venue, which counsel stipulate was resolved by transfer. Counsel have also stipulated that the Exception of Lack of Procedural Capacity should be granted as to ODR, which is a division of the Department, and that the Board need not rule on the Exception of Improper Use of Class Action Procedure. More specifically, the Plaintiffs have stipulated that there is no request to certify a class at this time, and the Department has, in turn, stipulated that the exception be deferred pending such request, or be rendered moot should the Board decide to dismiss the Petition.

In addition, counsel for the Department represented at the hearing that the Exception of Lack of Subject Matter Jurisdiction has been narrowed to only Plaintiffs' claims for unjust enrichment. Finally, at the hearing, counsel for the Plaintiffs represented to the Board that the Department of Public Safety and Corrections had been dismissed from the suit. Therefore, the remaining Exceptions for the Board to consider are: Lack of Subject Matter Jurisdiction; No Cause of Action; No Right of Action; and Vagueness.

Discussion:

La. R.S. 47:1676

The legislature established ODR by means of 2013 Act 399, which enacted La. R.S. 47:1676 and other provisions.¹ According to La. R.S. 47:1676(A)(1), “[i]t shall be the public policy of this state to aggressively pursue the collection of accounts or claims due and payable to the state of Louisiana through all reasonable means.” La. R.S. 47:1676(C)(1) further commands the Department, through ODR, to “collect and enforce certain delinquent debts due to agencies according to rules promulgated by the department.” La. R.S. 47:1676(2)(a)(i) mandates, in relevant part:

Agencies that do not have collection contracts with the attorney general’s office for the collection of delinquent debts shall refer all delinquent debts to the office as provided by rule. Such referrals shall include data and information in the required format necessary as provided for in Item (ii) of this Subparagraph to institute collection procedures. All delinquent debts shall be authenticated by the agency or officer prior to being referred to the office. Once the debt becomes final, and prior to referral to the office, the agency shall notify the debtor that failure to pay the debt in full within sixty days shall subject the debt to an additional collection fee as provided for in this Section.

La. R.S. 47:1676(2)(b) further requires:

After transferring the debt to the office for collection, the referring agency shall terminate all collection activities with respect to that debt except to provide assistance to the office as may be requested. The department shall notify the debtor by letter, within fifteen days of receiving the referral, that such debt has been referred to the office for collection. Upon receipt of the debt referral, the office shall assume all liability for its actions without recourse to the agency and shall comply with all applicable state and federal laws governing the collection of the debt. For purposes of this Section, the office shall not be considered a collection agency as defined in R.S. 9:3534.1.

Relevant to this case, La. R.S. 47:1676(D)(1) provides ODR with the following authority:

Notwithstanding any other provision of law to the contrary, the secretary of the Department of Revenue may treat a delinquent debt

¹ The statute has since been amended several times. *See* 2014 Act 646; 2015 Act 121; 2015 Act 414; 2016 1st Ex. Sess. Act 11; 2016 Act 397; 2017 Act 260; 2019 Act 183; 2023 Act 87.

referral in the same manner as an assessment that has become final without restriction or delay. The secretary, through the office, may use any collection remedy provided by state law to facilitate the collection of taxes to collect the delinquent debt; however, the financial institution data match shall be used only in accordance with the provisions of R.S. 47:1677. The office may use a participating agency's statutory collection authority to collect the participating agency's delinquent debts owed to or being collected by the state. The office may also use authority granted in R.S. 47:299.3 regarding offset from income tax refunds or other accounts payable by the state for any delinquent debt transferred by agencies. The secretary has the discretion to determine which method or combination thereof is most suitable to collect the delinquent debt.

Finally, and also relevant to this case in light of the allegations concerning potential seizure of the Plaintiffs' driver's licenses, La. R.S. 47:1676(L) provides special rules for debt owed to OMV:

(1) The terms "delinquent debt" and "final debt" as defined in this Section shall not apply to "debt" defined by R.S. 32:8(A). For purposes of this Section, the terms "delinquent debt" and "final debt" as defined in R.S. 32:8 shall apply to "debt" defined by R.S. 32:8(A).

(2) Debt, whether defined by R.S. 32:8(A) or this Section, owed to the Department of Public Safety and Corrections, office of motor vehicles, which becomes delinquent debt, final debt, or final delinquent debt after June 8, 2016, and for which a debtor enters into an installment agreement with the office of motor vehicles to pay shall not be referred to the office of debt recovery or the office of the attorney general during the term of any such installment agreement.

The effect of incorporating reference to La. R.S. 32:8 is that debt owed to OMV becomes delinquent after one-hundred and eighty days, rather than sixty. In addition, the provision has the effect of preventing referral to ODR while the debt is subject to an installment agreement with OMV.

No Right of Action:

The Department argues that Plaintiffs lack standing to challenge their purportedly final and delinquent debts. An exception of no right of action is a threshold procedural device designed to test whether a plaintiff has a real and actual interest in the action. La. C.C.P. art. 927(A)(6); *Joseph v. Hosp. Serv. Dist. No. 2 of Par. of St. Mary*, 2005-2364, p. 4 (La. 10/15/06), 939 So.2d 1206, 1210. The Department argues that the debts referred to ODR are the equivalent of a final

judgment that Plaintiffs have no right of action to dispute a final judgment. Further, the Department cites *Church Point Wholesale Beverage Co., Inc. v. Tarver*, 614 So.2d 697, 706 (La. 1993), in support of its assertion that since the debt is final and not subject to review, a declaratory judgment would not benefit Plaintiffs because their right to recover the taxes are prescribed.

In *Church Point*, the taxpayers challenged the constitutionality of beer taxes that they had already paid without protest. Taxpayers sought to recover their payments, which would have been untimely as refund claims, through the claims against the state procedure. However, the Court found that the taxpayers' right to recover tax payments under La. R.S. 47:1481 was subject to the same prescriptive period as a claim for a refund of overpayment. Because the refund claims had prescribed any correlative claims against the state were also prescribed. Further, because the beer tax statute at issue had also been repealed, the Court ruled that the plaintiffs had no standing to challenge its constitutionality in a declaratory judgment action.

However, in the case presently before the Board, the Plaintiffs potential claims for refunds are not entirely barred by prescription. Plaintiffs allege that they are presently and continuously making monthly payments to ODR. Further, these payments include not just the original debt, but also ODR's added collection fees. La. R.S. 47:1623(A) provides for a prescriptive period of one year after the payment of a tax. Thus, at a minimum, Plaintiffs ability to pursue refunds of payments made within one year of filing their original Petition are not prescribed. In contrast, the claims in *Church Point* were entirely prescribed and the taxpayers in that case could not even claim *de minimis* amounts of relief.

The Department also argues that Plaintiffs have no right to seek a refund of final debt that is equivalent to a final judgment or assessment. The Department cites to this Board's decision in *Norred v. Department*, B.T.A. Docket No. 13401B (La. Bd. Tax App. May 4, 2023); 2023 WL 9290308, in support of its assertion. In *Norred*, the

plaintiff sought to recover parole supervision fees that had been collected by ODR. The Board found that the plaintiff had no right of action, however, because the debt was final. This holding was not just supported by ODR notice procedures. A critical element of the Board's decision in *Norred* was that the plaintiff had had the opportunity for judicial review of the parole fees under the Code of Criminal Procedure. The plaintiff in *Norred* also had had the further right to apply for supervisory writs to an appellate court.

Here, however, the process by which an ODR debt becomes final, and by which the ODR collection fees are added to that debt is outlined in La. R.S. 47:1676(G), which provides:

Agencies may exercise the following procedures, in combination with its own statutes or as a standalone procedure, to make any debt owed to the agency a final delinquent debt that is collectible by the office.

(1) Once an agency determines a debt is owed, it shall send the debtor an initial notice of the debt which requests payment, outlines any additional information necessary to identify the nature of the debt and the amount due, and notifies the debtor that failure to pay the debt in full within sixty days shall subject the debt to be transferred to the office for collection of the maximum amount owed with an additional collection fee added to the debt.

(2) If, after thirty days from the date of the initial notification, the debtor has failed to pay the debt owed, the agency shall send a second notice to the debtor with the same information required in Paragraph (1) of this Subsection.

(3) If the debt remains unpaid sixty days after the date of the initial notice, the debt shall be considered a final delinquent debt and shall be owed to the state and collectible by the office.

(4) If an agency utilizes the procedures above and transfers the final delinquent debt to the office for collection, in lieu of any other notice, the office shall send the debtor a notice informing the debtor of the debt's transfer to its office for collection and of the additional collection fee that shall be added to the debt.

The underlying debts in this case are not parole or supervision fees and are not subject to the same opportunities for judicial review. The procedure used to render the debt in this case "final" is distinguishable from the procedure in *Norred*.

The Department maintains that procedure outlined in La.R.S. 47:1676(G) supports the same distraint procedures available after the perfection of notice and assessment under La. R.S. 47:1565. However, the notice and assessment procedure affords taxpayers a meaningful opportunity for pre-deprivation and post-deprivation judicial review. By contrast, when questioned by the Board at the hearing, counsel for the Department stated that the La. R.S. 47:1676(G) process only affords debtors the option of entering into an installment agreement. That is a far cry from the process afforded to taxpayers under La. R.S. 47:1565 *et. seq.* Thus, the finality of the debts in this case is not predicated on a process comparable to the process afforded to the plaintiff in *Norred*.

In addition, even if the debt is final as the Department maintains, that does not totally deprive the Plaintiffs of means of redress with this Board. With the enactment of La. R.S. 47:1565(C)(2)(b)- (c) by 2024 Act 307 now provides a limited right of action for relief from a final assessment. These provisions state:

(b) A person may petition the Board of Tax Appeals within thirty days of receipt of a notice related to a seizure, levy, garnishment, offset, or other collection action, whether occurred or intended, related to an assessment that qualifies for relief pursuant to Paragraph (1) of this Subsection. If the board finds clear and convincing evidence that the otherwise final assessment qualifies for relief pursuant to Paragraph (1) of this Subsection, it shall order that the matter be referred to the secretary for review pursuant to provisions of this Subsection, and the assessment shall not be collectible until such time as the assessment has been redetermined pursuant to this Subsection. The secretary shall submit any redetermination to the board for approval in the same manner as provided in Subparagraph (a) of this Paragraph.

(c) A person who has been the subject of a collection action related to an otherwise final assessment that qualifies for relief pursuant to this Subsection may file a refund claim with the secretary within the applicable prescriptive period pursuant to R.S. 47:1623 following the secretary's receipt of the funds. Any refund authorized by this Subparagraph shall be additionally limited to any amount actually collected by the secretary that was not actually due considering a redetermination made pursuant to this Subsection due to the petition filed pursuant to this Paragraph.

The relief contemplated by La. R.S. 47:1565(C)(2)(b) – (c) may be available even if a taxpayer failed to file a petition with the Board within sixty days from the date of an assessment. Further, La. R.S. 47:1565(C)(2)(b) specifies that a taxpayer's

petition must be filed within thirty days of a collection action or intended collection action. Plaintiffs have alleged that collection actions continue to occur each month under their installment agreements. Thus, in addition to their rights to bring a claim against the state and seek declaratory judgment, Plaintiffs also have a right of action to seek relief under La. R.S. 47:1565(C)(2)(b) – (c). Accordingly, the Exception of No Right of Action will be denied.

Lack of Subject Matter Jurisdiction:

The Department conceded that the portion of this Exception based on the purported impropriety of venue in the 19th JDC was mooted by transfer of this matter to the Board. However, the Department maintains a “narrowed” Exception of Lack of Subject Matter Jurisdiction as to claims for money damages based on a theory of unjust enrichment. Plaintiffs do not contest the Exception as to their claims for unjust enrichment.

Nevertheless, Plaintiffs argue that, whether or not they can actually recover any moneys collected by ODR, they have a right to Petition the Board for a declaration that La. R.S. 47:1676 is unconstitutional, because a declaratory action is provided for by law in La. CCP art. 1871, and the Board has jurisdiction over such actions under La. R.S. 47:1407, which authorizes:

A petition for declaratory judgment or other action relating to any state or local tax or fee, concerning taxing districts and related proceeds, or relating to contracts related to tax matters; and including disputes related to the constitutionality of a law or ordinance or validity of a regulation concerning any related matter or concerning any state or local tax or fee.

Furthermore, as the First Circuit has held, the Board has jurisdiction over, “[a]ll matters related to state or local taxes or fees” and “petition[s] for declaratory judgment or other action[s] relating to any state or local tax or fee . . . or relating to contracts related to tax matters; and including disputes related to the constitutionality of a law . . . concerning any related matter or concerning any state or local tax or fee.” *Gross v. State Through Louisiana Dep’t of Revenue*, 2023-0142, p.

11 (La. App. 1 Cir. 9/15/23), 376 So.3d 151, 158, *reh'g denied* (Nov. 9, 2023) (quoting La. R.S. 47:1407). Thus, the issue with Plaintiffs claims for unjust enrichment is not jurisdictional. Rather, the issue is that while La. R.S. 47:1407(3)(a) confers jurisdiction on the Board over all matters related to taxes and fees, it “does not establish any cause of action outside the remit of Louisiana’s laws related to taxes and fees.” *Gross v. Robinson*, B.T.A. Docket No. 13677D (La. Bd. Tax App. 5/2/24); 2024 WL 2034943. Indeed, the Department also challenges Plaintiffs claims for unjust enrichment in its Exception of No Cause of Action. That exception is the proper procedural mechanism for the Department’s argument.

No Cause of Action:

The Department asserts that Plaintiffs have failed to state a cause of action that articulates grounds upon which La. R.S. 47:1676 is unconstitutional. The function of the exception of “no cause of action” is to test the legal sufficiency of the Petition by determining whether the law affords a remedy on the facts alleged in the petition. *Law Indus., LLC v. Dep’t of Educ.*, 23-794, p. 4 (La. 1/26/24), 378 So.3d 3, 7; *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So.2d 1234, 1238 (La. 1993). In this context, a cause of action is defined as the operative facts that give rise to the plaintiffs’ right to judicially assert the action against the defendant. *Watson Mem’l Spiritual Temple of Christ v. Korban*, 2024-00055, p. 9 (La. 6/28/24); 387 So.3d 499, 506, *reh'g denied*, 2024-00055 (La. 8/2/24). For purposes of the exception, the Board must determine whether the law affords any relief to the Plaintiffs if they can prove the factual allegations in the petition and attachments thereto at trial. *Ramey v. DeCaire*, 03-1299, p. 7 (La. 3/19/04), 869 So.2d 114, 118. Accordingly, for this purpose, all allegations in the petition are accepted as true. *Jackson v. State ex rel. Dep’t. of Corrections*, 00-2882, p. 3 (La. 5/15/01), 785 So.2d 803, 806. No evidence may

be submitted in support or opposition to the exception.² Furthermore, any doubt as to the sufficiency of the petition must be resolved in favor of denying the exception. La. C.C.P. art. 931; *State ex rel. Tureau v. BEPCO, L.P.*, 2021-0856, p. 17 (La. 10/21/22), 351 So.3d 297, 310.

The Department asks the Board to hold Plaintiffs to a higher standard of pleading in their constitutional challenge, citing Louisiana Supreme Court's statement that:

All laws are presumed to be constitutional until the contrary is made to appear. As a general rule a litigant cannot raise the unconstitutionality of a statute unless its unconstitutionality is specially pleaded and the grounds particularized. As a corollary of this rule, a litigant who fails to plead the unconstitutionality of a statute in the trial court cannot raise the constitutional issue in the appellate court.

David v. Our Lady of the Lake Hosp., Inc., 2002-2675 (La. 7/2/03), 849 So.2d 38, 50. However, the Supreme Court did not articulate such a heightened standard in *David*. In that case, the recipient of a blood transfusion attempted to sue a hospital on the theory of strict liability. The plaintiff discovered the injury in 1999, 20 years after he had received the contaminated transfusion. The medical provider argued that under La. R.S. 9:5628, the prescriptive period for the action was limited to three years from the date of the transfusion. The Court agreed that the matter was prescribed.

In deciding whether to remand to allow the plaintiff to plead for a declaration that La. R.S. 9:5628 was unconstitutional, the Supreme Court noted the general rule that constitutional challenges cannot be raised for the first time on appeal. Further, the Court noted that the plaintiff had not raised any such challenge nor had the grounds for such a challenge been particularized. Nevertheless, the Court held that in the extraordinary context of changing blood bank immunity statutes, it was in the interest of justice to allow the plaintiff a chance to amend his petition. Thus, *David*

² La. C.C.P. art. 931; *Law Indus.*, 2023-00794, p. 4; 378 So.3d at 7. However, "evidence may be introduced to support or controvert any of the objections pleaded, when the grounds thereof do not appear from the petition." La. C.C.P. art. 931.

does not require that the plaintiffs in this case meet a heightened standard of pleading in articulating their constitutional challenge.

In *State v. Hatton*, 2007-2377 (La. 7/1/08), 985 So.2d 709, the Louisiana Supreme Court considered the proper procedure for challenging the constitutionality of a statute. The Court identified a three step analysis, stating that, “[f]irst, a party must raise the unconstitutionality in the trial court; second, the unconstitutionality of a statute must be specially pleaded; and third, the grounds outlining the basis of unconstitutionality must be particularized.” *Id.* The procedure is intended to afford interested parties sufficient time to brief and prepare arguments defending the constitutionality of the challenged statute. In turn, this provides the court with thoughtful and complete arguments relating to the issue of constitutionality and also provides reviewing courts with an adequate record for consideration.

In *Hatton*, the Louisiana Supreme Court found that the third prong of the test was not complied with when the trial Court found La. R.S. 14:81.3(C)(3) unconstitutional on grounds not argued by either party. The Court observed that pleading the unconstitutionality of a statute with particularity requires, at a minimum, identifying the particular constitutional provisions allegedly violated. By relying on provisions not alleged to be violated, the lower court short-circuited the procedural safeguards intended to ensure that constitutional questions are thoroughly briefed and decided on an adequate record.

The particularity requirement protects against nebulous claims that simply assert a vague, general constitutional attack. *State v. 2003 Infiniti G35 VIN No. JNKCV51E93MO24167*, 2009-1193, p. 17 (La. 1/20/10), 27 So.3d 824, 836. In *2003 Infiniti*, a plaintiff challenged the forfeiture of his car. The car was seized by police after the plaintiff was investigated for dealing methamphetamine. The State commenced forfeiture proceedings in accordance with La. R.S. 40:2601 through La. R.S. 40:2622. The plaintiff alleged that his property had been “unconstitutionally seized . . . [because] La. R.S. 40:2601–2622 is unconstitutional under the 4th, 5th,

and 14th Amendments to the United States Constitution and the laws and Constitution of the State of Louisiana,” and that “the provisions of La. R.S. 40:2605 are ambiguous and irreconcilable thereby rendering the entire forfeiture provisions of La. R.S. 40:2601–2622 unconstitutional.” *2003 Infiniti*, 2009-1193, p. 16, 27 So.3d at 835. The Supreme Court found this to be exactly the sort of claim that the particularity requirement was intended to prevent.

Here, Plaintiffs allege that La. R.S. 47:1676 violates: La. Const. art. I, §27, “which provides Louisiana citizens with the explicit right and freedom to hunt, fish, and trap”; the 14th Amendment to the Constitution of the United States, “where ODR is enabled to deprive citizens their livelihood . . . a deprivation of property rights without due process of law”; The Equal Protection Clause of the 14th Amendment, “because the effect of §1676 primarily lands upon Louisiana’s most vulnerable, her poor; thus making the law an inequitable exaction of additional penalties and harsh consequences upon a protected class of people”; and the 8th Amendment to the Constitution of the United States, “which prohibits excessive fines, where the state imposes penalties upon penalties and upon penalties,” and Plaintiffs allege that the ODR Fee is “grossly disproportional to the gravity of the offense.”

With respect to La. Const. art. I, §27, the relevant article states in full:

The freedom to hunt, fish, and trap wildlife, including all aquatic life, traditionally taken by hunters, trappers and anglers, is a valued natural heritage that shall be forever preserved for the people. Hunting, fishing and trapping shall be managed by law and regulation consistent with Article IX, Section I of the Constitution of Louisiana to protect, conserve and replenish the natural resources of the state. The provisions of this Section shall not alter the burden of proof requirements otherwise established by law for any challenge to a law or regulation pertaining to hunting, fishing or trapping the wildlife of the state, including all aquatic life. Nothing contained herein shall be construed to authorize the use of private property to hunt, fish, or trap without the consent of the owner of the property.³

³ La. Const. art. 9 §1 states:

The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible

The Board has reviewed La. R.S. 47:296.3, which provides a statutory mandate that “[h]unting or fishing licenses shall be suspended, revoked, or denied,” when the Department has a final assessment against a taxpayer “in excess of five hundred dollars of individual income tax, exclusive of penalty, interest, costs, and other charges.” La. R.S. 47:296.3(A) (emphasis added). Within La. R.S. 47:296.3, the only mechanism provided for relief is La. R.S. 47:296.3(C), which exempts those who qualify for innocent spouse relief under La. R.S. 47:101(B)(7) and La. R.S. 47:1584. Neither does the corresponding regulation, LAC 61:I.1351, provide for any kind of hearing or review to determine whether the penalty should apply to a taxpayer.

Nevertheless, Plaintiffs have not alleged how the statute violates a constitutional provision. In particular, Plaintiffs have not alleged that they have hunting and fishing licenses that were suspended or revoked, or if they attempted to obtain hunting and fishing licenses but were blocked by operation of La. R.S. 47:1676. If plaintiffs wish to maintain this line of attack, they must amend their Petition to specify how their rights to hunt and fish have been violated by the enactment of La. R.S. 47:1676.

Plaintiffs allege that La. R.S. 47:1676 violates the Due Process Clause of the 14th Amendment to the United States Constitution. Both the United States Constitution and the Louisiana Constitution provide protections for “procedural” and “substantive” due process. *Central Properties v. Fairway Gardenhomes, LLC*, 2016-1855 (La. 6/27/17); 225 So.3d 441. Due process under the United States and Louisiana Constitutions prohibits a person from being deprived of life, liberty or property, except by due process of law. U.S. Const. amends V and XIV; La. Const. art. 1, § 2. Procedural due process concerns the means or processes used by the state to effect the deprivation of a fundamental right or property interest. *Stevens v. St. Tammany*

and consistent with the health, safety, and welfare of the people. The legislature shall enact laws to implement this policy.

Par. Gov't, 2019-1555, p. 21 (La. App. 1 Cir. 4/8/21), 322 So.3d 1268, 1285, *writ denied*, 2021-00800 (La. 11/3/21), 326 So.3d 898. Substantive due process may be broadly defined as the constitutional guaranty that no person shall be arbitrarily deprived of their life, liberty, or property. *Id.* The essence of substantive due process is protection from arbitrary and capricious action. *Boudreaux v. Larpenner*, 11-0410, p. 13 (La. App. 1 Cir. 6/1/12), 110 So. 3d 159, 170.

Read in conjunction with the rest of the Petition, Plaintiffs are alleging that the harm from the threatened seizure or revocation of their driver's licenses.⁴ Unlike their allegations concerning hunting and fishing licenses, the Plaintiffs individualized allegations set forth how and why they believe that the threat of losing their driver's license is causing them harm. In addition, Plaintiffs have alleged that they have been deprived of property rights by imposition of ODR collection fees as additions to their underlying debt. These allegations are sufficient to put the State on notice of the need to defend against allegations that the collection mechanisms provided for by La. R.S. 47:1676 do not satisfy the minimum requirements of due process under the 14th Amendment.⁵

Plaintiffs allege that La. R.S. 47:1676 violates the Equal Protections Clause of the 14th Amendment because the statute's effects allegedly "primarily land[] upon Louisiana's most vulnerable, her poor, thus making the law an inequitable exaction of additional penalties and harsh consequences upon a protected class of people." The function of the equal protection clause is to measure the validity of classifications created by state laws. *City of Baton Rouge/Par. of E. Baton Rouge v. Myers*, 2013-2011, p. 13 (La. 5/7/14), 145 So.3d 320, 332. This constitutional safeguard requires

⁴ See La. R.S. 47:296.2; LAC 61:I.1355.

⁵ Although not cited by the Plaintiffs, the Louisiana State Constitution also provides that, "[n]o person shall be deprived of life, liberty, or property, except by due process of law." to La. Const. art. I, §2. Plaintiffs' omission, if inadvertent, could be cured when they are afforded an opportunity to amend their Petition.

that the law be applied equally as between persons in similar circumstances. *Id.* As stated by our Supreme Court:

In the area of equal protection, a two-stage process of analysis is employed. Initially, a determination is necessary as to whether the subject Act disadvantages a “suspect class” or infringes upon a fundamental right. If so, a strict scrutiny analysis is required; if not, it is only necessary to determine whether the act rationally furthers some legitimate, articulated state purpose or goal. *Bazley v. Tortorich*, 397 So.2d 475, 483 (La. 1981). . . . Classifications based on race, religion or political beliefs are, of course, absolutely prohibited, but other classifications are tested on a less rigorous basis, depending on the character of the classification involved and the strength of the state interest supporting the distinction.

Sibley v. Bd. of Sup’rs of Louisiana State Univ., 462 So.2d 149, 155 (La. 1985), *on reh’g*, 477 So.2d 1094 (La. 1985).

Furthermore, Louisiana jurisprudence does not recognize an equal protection claim in the context of only a single member, or a class of one plaintiff, under the Louisiana Constitution. *Stevens v. St. Tammany Par. Gov’t*, 2019-1555, p. 21 (La. App. 1 Cir. 4/8/21), 322 So.3d 1268, 1285, *writ denied*, 2021-00800 (La. 11/3/21), 326 So.3d 898 (citing *Ray v. City of Bossier City*, 37,708, pp. 14-15 (La. App. 2nd Cir. 10/24/03), 859 So. 2d 264, 274). Plaintiffs have alleged that a category of persons exists and that that they are included in said category. For purposes of the Exceptions presented to the Board in this case, these allegations are sufficient. Further, it would not be proper on an Exception of No Cause of Action for the Board to pass on the merits of the purported category described by the Plaintiffs. Whether or not Plaintiffs can show that their purported class actually exists and that La. R.S. 47:1676 actually discriminates against that class is a determination for the merits.

Plaintiffs further allege that La. R.S. 47:1676 violates the 8th Amendment to the United States Constitution by imposing “penalties upon penalties and upon penalties,” and because the ODR fee is allegedly grossly disproportional to the gravity

of the offense.⁶ The Department argues that the Plaintiffs state no support for the position that the fees imposed are excessive, and that Plaintiffs' obligation of approximately \$2,700, inclusive of debt owed, is necessary to defray the costs of collection. The Department's Exception is directed at the merits of Plaintiffs' contentions and is not an appropriate argument to be raised in an exception.

Finally, Plaintiffs' failure to state a claim for money damages based on unjust enrichment can be cured by amendment.⁷ If Plaintiffs prevail on their constitutional challenge, they may be entitled to a refund of payments under La. R.S. 47:1481. *See Church Point Wholesale Beverage Co., Inc. v. Tarver*, 614 So.2d 697, 706 (La. 1993). The claims against the state procedure provided for in La. R.S. 47:1481 allows "any person who has a claim against the State of Louisiana for money erroneously paid into the State Treasury, or for any other claim" to present such claim to the Board. *Church Point Wholesale Beverage Co., Inc. v. Tarver*, 614 So.2d 697, 706 (La. 1993). As the Supreme Court has stated, "[i]t is easily apparent that a tax voluntarily paid pursuant to an unconstitutional statute is 'money' 'erroneously paid into the State Treasury' by the taxpayer. . . . At the very least, such a situation falls under the term 'any other claim.'" *Id.* Accordingly, Plaintiffs will be afforded an opportunity to amend their Petition to assert claims under La. R.S. 47:1481. In addition, also for the reasons discussed above, Plaintiffs will be permitted to amend their Petition to assert claims for relief from a final assessment under La. R.S. 47:1565(C)(2)(b) – (c).

⁶ Generally, Louisiana Courts have held that the "the protection from cruel and unusual punishment [or excessive fines under the Eighth Amendment to the United States Constitution claims], arise only under certain circumstances, typically involving criminal convictions and do not govern or apply to civil cases." *See e.g. Coxe Prop. Mgmt. & Leasing v. City of New Orleans*, 2019-0911, p. 15 (La. App. 4 Cir. 4/8/20), 294 So.3d 1098, 1108 (quoting *Murray v. Windmann*, 2018-530, p. 15 (La. App. 5 Cir. 5/29/19), 274 So.3d. 787, 797). However, Louisiana jurisprudence is equally clear that that "laws regulating the collection of taxes are sui generis and constitute a system to which the general provisions of the Civil Code have little, if any application." *Church Point Wholesale Beverage Co., Inc. v. Tarver*, 614 So.2d 697, 708 (La. 1993).

⁷ The Department notes that Plaintiffs have already amended their Petition once. However, Plaintiffs amended their Petition before the 19th JDC as a matter of right, prior to the filing of an answer by the Department or other defendants. Plaintiffs represented at the hearing that the purpose of the amendment was simply to clarify the parties involved in the suit. Moreover, the prior amendment was made without the benefit of the Board's ruling on the exceptions.

Conclusion:

For the foregoing reasons, the Department's Exceptions of Lack of Subject Matter Jurisdiction and No Right of Action is properly denied. However, the Department's Exception of No Cause of Action is properly sustained as to Plaintiffs' claims for unjust enrichment and with respect to their claims that La. R.S. is unconstitutional under La. Const. art. I, §27. Accordingly, the Board is granting Plaintiffs leave to amend their Petition to state particularized constitutional claims under La. Const. art. I, §27, to assert claims against the state authorized by La. R.S. 47:1481, and for relief from a final assessment under La. R.S. 47:1565(C)(2)(b) – (c). Ruling on the Department's Exception of Vagueness is properly deferred pending the filing of Plaintiffs' amended Petition. Finally, the Exception of Improper Use of Class Action Procedure is properly deferred pending a request to certify a class.

BATON ROUGE, LOUISIANA, THIS 8TH DAY OF MAY, 2025.

FOR THE BOARD:



**FRANCIS J. "JAY" LOBRANO, CHAIRMAN
LOUISIANA BOARD OF TAX APPEALS**