

Supreme Court of Louisiana

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The Opinions handed down on the 20th day of May, 2021 are as follows:

BY Crichton, J.:

2020-CA-01037

CONRAD COMEAUX, IN HIS OFFICIAL CAPACITY AS ASSESSOR
FOR LAFAYETTE PARISH VS. THE LOUISIANA TAX
COMMISSION & KRAIG THOMAS STRENGE & KELLY PARKS
STRENGE (Parish of East Baton Rouge)

REVERSED IN PART; AFFIRMED IN PART. SEE OPINION

Weimer, C.J., concurs in part, dissents in part and assigns reasons.

Hughes, J., concurs in part, dissents in part and assigns reasons.

Griffin, J., concurs in part, dissents in part and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2020-CA-01037

**CONRAD COMEAUX, IN HIS OFFICIAL CAPACITY AS ASSESSOR FOR
LAFAYETTE PARISH**

VS.

**THE LOUISIANA TAX COMMISSION & KRAIG THOMAS STRENGE &
KELLY PARKS STRENGE**

**ON APPEAL FROM THE 19TH JUDICIAL DISTRICT COURT, PARISH
OF EAST BATON ROUGE**

CRICHTON, J.

Pursuant to La. Const. art. V, § 5(D),¹ Kraig and Kelly Strenge (“Taxpayers”) appealed directly to this Court from the Nineteenth Judicial District Court of East Baton Rouge Parish upon a declaration by that court that La. R.S. 47:1990 is unconstitutional, as applied. The district court’s ruling on partial summary judgment also held that the Louisiana Tax Commission (the “Commission”) exceeded its authority in promulgating Section 3103(Z) of Title 61, Part V of the Louisiana Administrative Code (the “Rules and Regulations”) and declared Section 3103(Z) unconstitutional. For the reasons set forth herein, we find the district court erred in ruling the Commission exceeded its authority in promulgating Section 3103(Z) and declaring Section 3103(Z) unconstitutional but correctly declared La. R.S. 47:1990 unconstitutional, as applied. Accordingly, we reverse in part and affirm in part.

¹ La. Const. art. V, § D provides: “**Appellate Jurisdiction.** In addition to other appeals provided by this constitution, a case shall be appealable to the supreme court if (1) a law or ordinance has been declared unconstitutional or (2) the defendant has been convicted of a capital offense and a penalty of death actually has been imposed.”

FACTS

Following the reappraisal of their residential property by Lafayette Parish Assessor Conrad Comeaux (the “Assessor”), Taxpayers challenged the correctness of their 2016 tax year assessment by appealing to the Lafayette City-Parish Council (the “Board of Review”).² After the Board of Review ruled in favor of the Assessor, Taxpayers appealed to the Commission.³ Orally on August 23, 2017, and later in a written judgment, the Commission ruled that the fair market value of the property for tax year 2016 was \$231,500, not \$288,270 as determined by the Assessor, and ordered the Assessor to reduce Taxpayers’ 2016 assessment accordingly. Two days after the Commission’s oral ruling, the Assessor assessed the fair market value of Taxpayers’ property for the 2017 tax year again at \$288,270.⁴

Despite the Assessor’s assertion in its “Notice of Assessment” to Taxpayers that “[i]f you feel there is an error in your assessment, please bring this letter to the Assessor’s Office . . . no later than August 30, 2017,” there is no evidence in the record that Taxpayers advised the Assessor of the inconsistency with the fair market value determined by the Commission. Nor did Taxpayers timely appeal the 2017 assessment to the Board of Review pursuant to the ordinary tax appeal process

² The Assessor reappraised Taxpayers’ property in accordance with the quadrennial reappraisal cycle established by the Louisiana Tax Commission. *See* La. Admin. Code 61:V.303(D).

³ When appealing their 2016 tax year assessment, Taxpayers followed the ordinary tax appeal procedure for a correctness challenge. *See* La. R.S. 47:1989 (“The Louisiana Tax Commission shall consider the appeal of any taxpayer, bona fide representative of an affected tax-recipient body, or assessor dissatisfied with the determination of a local board of review.”).

⁴ While Taxpayers’ appeal was pending before the Commission, on July 1, 2017 the Assessor listed on the assessment rolls the value of Taxpayers’ property for the 2017 tax year at \$288,270 – *i.e.*, the same value contested by Taxpayers in their then-pending 2016 correctness challenge. *See* La. R.S. 47:1987(A) (“The preparation and listing on the assessment lists of all real and personal property shall be completed by the assessor on or before the first day of July in each year.”). At that time, the Board of Review had affirmed the Assessor’s 2016 valuation.

In its original brief to this Court, the Assessor claimed the 2017 assessment at \$288,270 was in error due to the short timespan (two days) available to correct the assessment on its rolls following the Commission’s ruling on the 2016 assessment. The Assessor blamed the Commission for this error, asserting that the Commission failed to timely consider Taxpayers’ 2016 appeal and thus gave the Assessor little time to correct the 2017 assessment.

provided by La. R.S. 47:1992 and La. R.S. 47:1989.⁵ The Commission approved and certified the 2017 ad valorem tax assessment roll of Lafayette Parish on November 29, 2017.

Having thus failed to timely appeal to the Board of Review, Taxpayers appealed their 2017 assessment directly to the Commission.⁶ Observing that Taxpayers had bypassed the requirement of filing their appeal first with the Board of Review, the Commission nonetheless docketed Taxpayers' appeal on a newly-created docket to distinguish Taxpayers' appeal from ordinary tax appeals.⁷ The Commission likewise issued a rule to show cause to the Assessor, ordering that he appear before the Commission and demonstrate why Taxpayers' 2017 assessment and valuation should not be corrected to reflect the Commission's prior decision overturning the Assessor's 2016 appraisal value and assessment. The Commission cited Section 3103(Z) of its Rules and Regulations, which then provided⁸ in pertinent part:

A decision by the Tax Commission that determines the fair market value of a property shall be applied to subsequent tax years until reappraisal in a future mandated reappraisal year, unless there has been a change in the condition of the property that would justify reappraisal or a change in value.

The Assessor did not appear, and on December 20, 2017, the Commission ordered the Assessor to correct the 2017 assessed value of Taxpayers' property to

⁵ The phrase "ordinary tax appeal" is used herein to refer to appeals brought first to the local board of review and then to the Commission pursuant to La. R.S. 47:1992 and La. R.S. 47:1989, respectively, and in accordance with La. Const. art. VII, § 18(E).

⁶ By letter, Taxpayers requested the Commission consider their "appeal" as they had failed to timely file with the Board of Review.

⁷ To distinguish Taxpayers' appeal from all other appeals, the Commission added a "P" to the beginning of Taxpayers' docket number. Public service appeals are designated with a "PS" in the docket number, and ordinary tax appeals are given numbers only.

⁸ As will be discussed further herein, the Commission ultimately repealed Section 3103(Z) following an adverse ruling in the underlying litigation.

reflect the fair market value determination of the Commission in the 2016 appeal (the “Correction Order”), therein stating:

THIS MATTER came for hearing on December 20, 2017, on the Tax Commission’s Rule to Show Cause issued to the Lafayette Parish Assessor. After considering the evidence and oral argument, the Tax Commission determined that the Assessor failed to present sufficient evidence that would justify reappraisal or a change in value of the subject property in a non-reappraisal year. Accordingly, and for other reasons orally assigned:

IT IS HEREBY ORDERED, pursuant to La. Admin. Code § 61:3101(Z) [sic] and La. R.S. § 47:1990, that the 2017 assessment of 138 Azalea Street, Lafayette, LA 70506 shall be corrected to reflect the decision of the Louisiana Tax Commission determining the fair market value of the subject property to be \$231,500. Tax Commission staff is hereby directed to process a change order to perfect this ruling.

Rather than appeal the Correction Order, the Assessor filed a petition for declaratory judgment.⁹ The petition alleged that “[o]n information and belief, the Tax Commission has never before issued a ‘Rule to Show Cause’ ordering and commanding an assessor to appear before it and show cause why an assessment should not be corrected by the Tax Commission.” The Assessor prayed for the district court to declare, *inter alia*, (1) that Sections 121(A), 213(C), and 303(B) of the Commission’s Rules and Regulations, all of which relate to the Commission’s mandatory quadrennial reappraisal cycle,¹⁰ are unconstitutional; (2) that the Commission exceeded its authority in correcting an assessment outside of an ordinary tax appeal; (3) that La. R.S. 47:1990 is unconstitutional, as applied by the

⁹ See La. R.S. 47:1989(D) (“All decisions of the Tax Commission are final unless appealed to the district court within thirty days.”). Taxpayers argue to this Court that the Commission’s order was final due to the failure of the Assessor to appeal the ruling to the district court. However, Taxpayers’ argument presupposes that the Commission had the authority – or jurisdiction – to enter into the ruling at all, which is at the heart of the Assessor’s petition.

¹⁰ In pertinent part, these rules provided: “Real property, as defined in La. R.S. 47:2322, *shall be reappraised once every four years*,” La. Admin. Code 61:V.121(A) (emphasis added); “All property shall be reappraised and valued in accordance with the Constitution at intervals of *not more than once every four years*. This quadrennial cycle *reappraisal date shall be determined solely by the Louisiana Tax Commission*.” La. Admin. Code 61:V.213(C) (emphasis added); “The assessor’s office may reappraise property during a non-reappraisal year if that property in all or part of the assessing district, or within a certain classification, was appraised inaccurately or was not uniformly appraised during the current reappraisal cycle . . . all such property shall be valued based upon the most current valuation date and established by the Louisiana Tax Commission and on the same criterion as other similar property.” La. Admin. Code 61:V.303(B).

Commission in issuing the rule to show cause and Correction Order; and (4) that Section 3103(Z) of the Commission's Rules and Regulations exceeds the Commission's rulemaking authority and is unconstitutional. The Louisiana Assessors Association (the "LAA") intervened.

In their answer to the petition, Taxpayers asserted certain affirmative defenses, including that the Assessor's interpretation and application of the regulations and/or laws at issue constituted a taking of property without due process, a denial of equal protection, and a denial of due process and/or an abuse of process. For its part, the Commission asserted in its answer that it did not act outside of its authority, which included the authority to supervise the parish assessors, and that both La. R.S. 47:1990 and Section 3103(Z) did not conflict with the Louisiana Constitution.

The Commission also filed a reconventional demand, again asserting "[a]s long as taxes have not been paid, the Tax Commission has the authority to change or correct any and all assessments of property" and the Commission "is only required to issue written instructions to the assessor to make the change, but in the instant case, the Tax Commission went further than required and offered the assessor a hearing." The Commission prayed for judgment declaring that the Commission "has the authority to supervise and exercise oversight over the parish assessors and assessment procedure;" the Commission "has the authority to promulgate rules and regulations to ensure uniform assessment practices and procedures;" the parish assessors are required to follow and comply with the rules and regulations promulgated by the Commission; and the Commission "has the authority to enforce its rules and regulations if not followed by the parish assessors."

On June 18, 2018, the Assessor and LAA filed a joint motion for partial summary judgment, seeking, *inter alia*, to have Sections 121(A), 213(C) and

303(B)(2) of the Commission’s Rules and Regulations declared unconstitutional as contrary to and inconsistent with Article VII, Sections 18(D) and (F) of the Louisiana Constitution and La. R.S. 47:2331.¹¹ Notably, the Commission amended these regulations in 2017 to include mandatory language as to the quadrennial reappraisal cycle – *i.e.* that property be reappraised no more than every four years – whereas prior to the 2017 amendments the quadrennial reappraisal cycle established by the Commission was not expressly mandatory.¹²

On November 13, 2018, the district court entered partial summary judgment against the Commission, striking down Sections 121(A), 213(C) and 303(B)(2) of the Commission’s Rules and Regulations on grounds that they “exceed the Tax Commission’s authority and unconstitutionally infringe on powers granted to Assessors in this State vis-à-vis Article VII, Section 18(D) of the Louisiana Constitution.” Although the judgment was made final, neither the Commission nor Taxpayers appealed.

¹¹ La. Const. art. VII, § 18(D) (“[E]ach assessor shall determine the fair market value of all property subject to taxation within his respective parish . . . Fair market value and use value of property shall be determined in accordance with criteria which shall be established by law and which shall apply uniformly throughout the state.”); La. Const. art. VII, § 18(F) (“All property subject to taxation shall be reappraised and valued in accordance with this Section, at intervals of ***not more than four years.***”) (emphasis added); La. R.S. 47:2331 (“real property shall be reappraised ***at least every four years.***”) (emphasis added).

¹² While real property is reassessed annually, it is only reappraised as of the “uniform lien date” set by the Commission – *i.e.*, the date by which real property must be reappraised for purposes of ad valorem taxation. Reappraisal is currently set to occur every four years. La. Admin. Code 61:V.303(D). The 2017 amendments clarified that reappraisals are to occur *only* on the quadrennial reappraisal cycle set by the uniform lien date absent exception for change in property value due to a change in its condition, La. Admin. Code 61:V.3103(Z), or because the property was mistakenly reappraised (or not reappraised at all), La. Admin. Code 61:V.303(B).

Assessor Comeaux and LAA representative Bobby Edminston testified by deposition that the Commission establishes the uniform lien date on which they reappraise property. Assessor Edminston explained that a change in assessed values in non-reappraisal years could occur if, for example, the assessor’s office erroneously failed to reappraise a property or if an owner improves the property.

Following this adverse ruling and on its own motion, the Commission rescinded its Correction Order by a second order dated December 4, 2018 (the “Rescission Order”), therein stating:

In part in light of the Ruling by Honorable Judge Richard “Chip” Moore on October 23, 2018, the Tax Commission hereby voluntarily rescinds and vacates the November 15, 2017 Rule to Show Cause and December 20, 2017 Order concerning Lafayette Parish Assessor Conrad Comeaux’s 2017 assessment and valuation for the property located in Lafayette Parish at 138 Azalea Street, Lafayette, LA 70506. *Upon reconsideration, the Tax Commission also determines that this action was not authorized outside the context of an appeal.* As the Taxpayers failed to timely appeal their 2017 assessment, the Tax Commission determines that it was without jurisdiction to correct Assessor Comeaux’s 2017 assessment for the subject property. *The Commission also determines that La. Admin. Code 61:V.3103(Z) does not apply outside the context of an appeal.*

(Emphasis added.)¹³

On the same day it issued the Rescission Order, the Commission filed an exception of lack of subject matter jurisdiction with the district court. The Commission therein “conceded and acknowledge[d] that it lacked jurisdiction to correct the 2017 assessment of the subject property outside the context of an appeal.” Such concession, the Commission argued, rendered the Assessor’s petition for declaration as to the authority and constitutionality of that action moot.

In opposition to the Commission’s exception, the Assessor and LAA argued a justiciable controversy remains because the Commission maintained its reconventional demand in which it asserted, *inter alia*, “[a]s long as taxes have not been paid, the Tax Commission has the authority to change or correct any and all assessments of property” and “[t]he Tax Commission was acting within its authority to change the subject assessment to ‘conform to the true and correct valuation.’” They additionally noted that none of the statutes or administrative regulations relied upon by the Commission in issuing the Correction Order had then been repealed or

¹³ The Commission itself filed the motion for reconsideration.

amended. Without judicial action, then, nothing prevents the Commission from changing its position on its authority to engage in the disputed behavior again. Finally, they argued “this case did not arise in a vacuum but instead is simply the latest installment in the [Commission’s] ongoing efforts to assert control over Assessors and their assessments.”

On January 10, 2019, the Assessor and LAA moved for partial summary judgment as to whether the Commission exceeded its authority in reviewing and correcting the 2017 assessment, as to the constitutionality of La. R.S. 47:1990, as applied, and as to the validity and constitutionality of Section 3103(Z). In arguing that the district court should render summary judgment that Section 3103(Z) is unconstitutional, the Assessor and LAA relied in part on the district court’s November 13, 2018 ruling wherein it declared unconstitutional certain of the Commission’s Rules and Regulations related to the mandatory quadrennial reappraisal cycle. Because Section 3103(Z) “clearly suffers from the same constitutional defects,” the Assessor and LAA argued, the district court should likewise declare it unconstitutional.

Following a hearing on the Commission’s exception and the Assessor and LAA’s partial motion for summary judgment, on July 23, 2019 the district court denied the Commission’s exception, ruling that the matter remained a justiciable controversy. The court also granted the Assessor and LAA’s motion for summary judgment, issuing the following declarations: that the Commission unconstitutionally exceeded its authority under La. Const. art. VII, § 18(E) and unconstitutionally infringed on powers exclusively granted to the parish assessors under La. Const. art. VII, § 18(D) when it ordered the Assessor to correct the 2017 assessment of Taxpayers’ property; that Section 3101(Z) unconstitutionally exceeded the Commission’s rulemaking authority and unconstitutionally infringed

upon powers granted exclusively to the parish assessors under La. Const. art. VII, § 18(D); and that La. R.S. 47:1990, as applied by the Commission as a means by which it could issue a rule to show cause to the Assessor and then issue an order changing a property assessment outside the context of an ordinary tax appeal, unconstitutionally exceeded the Commission's authority under La. Const. art. VII, §18(E) and unconstitutionally infringed on the constitutional authority granted solely to parish assessors under La. Const. art. VII, § 18(D).

Taxpayers filed a motion for new trial in which they raised their affirmative defense that the actions by the Assessor and Commission amounted to an unconstitutional denial of equal protection and/or due process and/or abuse of process. Observing that Taxpayers effectively argued that their affirmative defenses should be treated as a reconventional demand against the Assessor, the district court denied Taxpayers' motion for new trial on February 20, 2020. The court reasoned that comment (f) of the 2008 comments to La. C.C.P. art. 1005 makes clear that an affirmative defense cannot be used in the place of an incidental demand.

Taxpayers subsequently appealed the July 23, 2019 judgment directly to this Court pursuant to La. Const. art. V, § 5(D).

DISCUSSION

There are multiple significant issues presented in this matter. We will first address whether the matter is moot. Finding that a justiciable controversy remains, the Court will review the district court's rulings on summary judgment. Specifically, we will address the validity and constitutionality of Section 3103(Z) of the Commission's Rules and Regulations and the constitutionality of La. R.S. 47:1990, as applied by the Commission as authority to issue a rule to show cause to the

Assessor and thereafter correct an assessment outside of the ordinary tax appeal process.¹⁴

MOOTNESS

As a threshold matter, we must first determine whether the questions before the Court present a justiciable controversy or are moot. *See, Cat's Meow, Inc. v. City of New Orleans Through Dep't of Fin.*, 98-0601 (La. 10/20/98), 720 So. 2d 1186. Specifically, the Court must address whether the Commission's Rescission Order and its repeal of Section 3103(Z) render moot the Assessor's constitutional challenge of La. R.S. 47:1990, as applied, and challenge to the validity and constitutionality of Section 3103(Z).

The positions of the Assessor and the Commission on this issue have been inconsistent.¹⁵ The parties' shifting positions on mootness is irrelevant, however, as jurisdiction cannot be conferred by consent, nor can it be waived. La. C.C.P. art. 3; *see St. Charles Par. Sch. Bd. v. GAF Corp.*, 512 So. 2d 1165, 1171 (La. 1987), *on reh'g* (Aug. 7, 1987) ("In order to avoid deciding abstract, hypothetical or moot

¹⁴ In their briefs to this Court, Taxpayers also argued the district court erred in failing to rule on their individual constitutional rights arguments. However, these claims were not before the district court when it entered the judgment at issue. The judgment under review arose from the district court's ruling on a partial summary judgment motion filed by the Assessor and LAA, which narrowly challenged the constitutionality of La. R.S. 47:1990, as applied, the validity and constitutionality of Section 3103(Z), and the Commission's authority to review the correctness of an assessment outside of an ordinary tax appeal. Taxpayers' individual constitutional rights arguments were not raised in that motion. Taxpayers did not file a cross motion for summary judgment raising those issues, nor did they file an opposition to the Assessor and LAA's summary judgment motion.

¹⁵ Since issuing its Rescission Order and up to and including oral argument, the Commission has held the position that this Court was without subject matter jurisdiction to review the constitutionality of La. R.S. 47:1990 and Section 3103(Z). In its post-argument brief, however, the Commission switched its position entirely. The Commission now not only argues that review of the district court's summary judgment ruling is not moot but also that Section 3103(Z) and La. R.S. 47:1990 are constitutional (even as applied) and that the Commission had authority thereunder to issue a rule to show cause and the Correction Order to the Assessor. Further, after initially contesting mootness, the Assessor now concedes that review of Section 3103(Z)'s constitutionality is moot.

questions, courts require that cases submitted for adjudication be justiciable, ripe for decision, and not brought prematurely.”).

In the context of a declaratory judgment action, we have defined “justiciable controversy” as connoting “an existing and actual and substantial dispute, as distinguished from one that is merely hypothetical or abstract.” *Abbott v. Parker*, 249 So. 2d 908, 918 (La. 1971). The party seeking the declaratory judgment should have a “legally protectable and tangible interest at stake, and the dispute presented should be of sufficient immediacy and reality to warrant the issuance of the declaratory judgment.” *Id.*; *St. Charles Par. Sch. Bd.*, 512 So. 2d at 1171 (“The doctrine that courts will not hear moot cases serves two complementary purposes: it prevents the useless expenditure of judicial resources and assures that the courts will not intrude prematurely into policymaking in a manner that unnecessarily constrains the other branches of government.”).

A case may become moot for several reasons, including because a defendant has voluntarily ceased the challenged behavior. *Cat’s Meow*, 720 So. 2d at 1193 (“[A] case may become moot because the law has changed; because defendant has paid moneys owed and no longer wishes to appeal . . . because allegedly wrongful behavior has passed, been mooted, and could not reasonably be expected to recur; because a party could no longer be affected by a challenged statute . . . or because a party has died.”) (quoting ROTUNDA & NOWAK, TREATISE ON CONSTITUTIONAL LAW, Vol. 1, § 2.13). One example of voluntary cessation that may render a case moot is the repeal or amendment of a statute or ordinance that effectively resolves the underlying controversy. *E.g.*, *Ulrich v. Robinson*, 2018-534 (La. 3/26/19), 282 So. 3d 180.

It is well-settled that a defendant’s voluntary cessation of a challenged practice, however, does not necessarily deprive a court of its jurisdiction because

“the defendant would then be free to return to his old ways.” *See, e.g., Cat’s Meow*, 720 So. 2d at 1194. In order to succeed on a mootness argument arising out of voluntary cessation, the defendant must further “show with assurance that there is no reasonable expectation that the alleged violation will recur.” *Id.* The purpose of the voluntary cessation doctrine is to prevent defendants from creating a “technical mootness as a sham.” *Id.*

In *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 102 S. Ct. 1070, 71 L. Ed. 2d 152 (1982), the United States Supreme Court held that the City of Mesquite’s voluntary cessation of the challenged practice, including an amendment to the relied-upon ordinance, did not deprive the Court of jurisdiction because it would not preclude the City “from reenacting precisely the same provision if the District Court's judgment was vacated.” *Id.* at 284. The Court reasoned that the City had a prior practice of doing so and had expressed its intention of reenacting the challenged ordinance following litigation. Similar facts are present here.

As in *Aladdin’s Castle*, the Commission’s sudden switch in its position is more indicative of an attempt to create a “technical mootness as a sham” than a genuine change of heart. *Cat’s Meow*, 720 So. 2d at 1194. The underlying facts of this case do not present a hypothetical or abstract question of law but instead are demonstrative of an ongoing jurisdictional conflict arising from the Commission’s efforts to press its claim of authority to supervise and oversee the parish assessors and assessment procedure. The underlying case is simply the latest installment of the power struggle between the Assessor and Commission. *See, e.g., D90 Energy, LLC v. Jefferson Davis Par. Bd. of Review*, 2020-00200, p. 4–5 (La. 10/1/20), ___ So. 3d ___; *Williams v. Opportunity Homes Limited Partnership*, 2017-0955 (La. 3/13/18), 240 So. 3d 161.

While not dispositive, it is significant that La. R.S. 47:1990 has not been repealed or amended. Unlike *Ulrich* and *Cat's Meow*, there is no “solemn legislative act” clarifying that the Commission did not have the authority to correct an assessment outside of the context of an ordinary tax appeal. *Cf. Cat's Meow*, 720 So. 2d at 1195; *Ulrich, supra*. While the act of repealing or passing legislation to correct a complained-of statute is not required to render a controversy moot, the fact that La. R.S. 47:1990 has not been repealed is indicative that the Commission can and might reengage in the complained-of behavior and increases the “reasonable expectation” that the alleged violation will reoccur. Similarly, the Commission’s act of repealing Section 3103(Z) during its annual update to its Rules and Regulations can be more easily reversed than a legislative act, as echoed by the Commission’s own description of the process as “simple,” and does not carry the same weight as a legislative amendment or repeal.

Also key to the mootness analysis is the Commission’s failure to relinquish its prayer on reconventional demand, which included arguments such as: “[a]s long as taxes have not been paid, the Tax Commission has the authority to change or correct *any and all assessments of property*” under La. R.S. 47:1990, “that the Tax Commission has the authority to enforce its rules and regulations if not followed by the parish assessors,” and that “[t]he Tax Commission was acting within its authority to change the subject assessment to ‘conform to the true and correct valuation.’” Even in its briefs to this Court, the Commission maintains the validity of Section 3103(Z) and its authority under La. R.S. 47:1990 to engage in the same or similar conduct in the future.¹⁶

¹⁶ *But see Cat's Meow*, 720 So. 2d at 1193 (“[I]t is not enough that the requirements of justiciability are satisfied when the suit is initially filed: the requirements must remain throughout the course of litigation up to the moment of final disposition.”).

In light of these facts, we find the district court did not err in finding the Commission's Rescission Order and change of position on its authority was an attempt to thwart a final and binding ruling on constitutionality of La. R.S. 47:1990 and Section 3103(Z). The Commission has failed to meet its burden of proving with assurance that there is no "reasonable expectation" it would reengage in the same or similar conduct to that out of which this litigation arose.¹⁷

SUMMARY JUDGMENT

Taxpayers challenge the district court's grant of partial summary judgment in favor of the Assessor and LAA. The law is well-settled that appellate review from the grant of summary judgment is *de novo*, with the reviewing court using the same criteria that govern the district court's determination of whether summary judgment is appropriate – *i.e.*, whether there is any genuine issue of material fact and whether the movant is entitled to judgment as a matter of law. *See, e.g., Davis v. A Bar and Grill with a Bite, Inc.*, 2019-1928, p. 2 (La. 3/16/20), 294 So. 3d 1051, 1052; La. C.C.P. art. 966(B). Moreover, this Court conducts a *de novo* review of a judgment that declares a statute unconstitutional. *Iberville Par. Sch. Bd. v. La. State Bd. of Elementary and Secondary Educ.*, 2017-0257, p. 8 (La. 3/13/18), 248 So. 3d 299, 305 ("The constitutionality of legislation is a legal question, which is reviewed by this court *de novo*.").

La. Admin. Code 61:V.3103(Z) – Statutory Authority

¹⁷ In support of its finding that the case was not moot, the district court recounted that the Commission's chairman said in open hearing that the district court's first summary judgment ruling finding the mandatory quadrennial reappraisal cycle unconstitutional "was just one District Judge's opinion" and that "District Courts don't make law." While this statement, if true, would be further indication that the Commission's Rescission Order is a technical sham to avoid litigation and that the courts could not reasonably expect the Commission not to reengage in the challenged behavior in this case, there is no evidence in the record to support the district court's factual account.

In the judgment under review, the district court declared Section 3103(Z) of the Commission’s Rules and Regulations “null, void and without effect” on grounds that it “exceeds the Tax Commission’s rulemaking authority and unconstitutionally infringes upon powers granted to Assessors in this State by Article VII, Section 18(D) of the Louisiana Constitution.” In accordance with the doctrine of constitutional avoidance, we first address the question of statutory authority.

The Legislature is vested with the legislative power of the state. La. Const. art. III, § 1. Unless the Constitution expressly provides otherwise, neither another branch of government nor any person holding office in one of them, may exercise legislative power. La. Const. art. I, § 2. Where the Legislature has delegated certain administrative authority to an agency, the agency is of course bound not to promulgate regulations exceeding the authorization. *See, e.g., Jurisich v. Jenkins*, 99-0075 (La. 10/19/99), 749 So. 2d 597, 605 (“[I]f the Constitution limits the authority of the Legislature to delegate to administrative agencies, the corollary that follows is that those agencies cannot exceed the authority that the Legislature has granted them.”); *see also* La. Const. art. III, § 1.¹⁸

Article VII, Section 18(D) of the Louisiana Constitution provides parish assessors with the authority to determine the fair market value of property. Its proviso that such determination must be made “in accordance with *criteria* which *shall be established by law* and which *shall apply uniformly throughout the state*,”

¹⁸ The district court erroneously addressed whether the enabling statutes pursuant to which the Commission promulgated Section 3103(Z), *see* Discussion *infra*, are constitutional delegations of authority under *Schwegmann Brothers Giant Super Markets v. McCrory*. 112 So.2d 606, 613 (La. 1959). Neither the Assessor’s original petition for declaratory judgment nor the Assessor and LAA’s motion for partial summary judgment challenged the constitutionality of the Legislature’s delegation of authority to the Commission. Instead, the relevant question presented is whether the Commission exceeded the authority delegated to it or unconstitutionally infringed on the powers of the Assessor. *See State v. Hatton*, 2007-2377, p. 13 (La. 7/1/08), 985 So. 2d 709, 718–19 (“It is well-settled that a constitutional challenge may not be considered by an appellate court unless it was properly pleaded and raised in the trial court below. . . . A corollary of these principles is that courts are generally reluctant to address the constitutionality of legislation unless required by the particular case and issue before them.”).

however, subjects parish assessors' authority to conditions and limitations as provided by the Legislature. La. Const. VII, § 18(D) (emphasis added); *Dow Chemical Co. v. Pitre*, 468 So. 2d 747, 752–53 (La. 1985). In accordance with this constitutional delegation, in La. R.S. 47:2323(A) the Legislature sets forth the appraisal procedures by which the fair market value of real and personal property shall be determined:

The *criteria* for determining fair market value *shall apply uniformly throughout the state*. Uniform guidelines, procedures and rules and regulations as are necessary to implement said *criteria* shall be adopted by the Louisiana Tax Commission only after public hearings held pursuant to the Administrative Procedure Act.

(Emphasis added.) Likewise, La. R.S. 47:1837 sets forth the duties and responsibilities of the Commission, including the authority to ensure uniformity of appraisals, providing in pertinent part:

In order to promote compliance with the requirements of the constitution and laws of the state, the tax commission shall issue and, from time to time, may amend or revise rules and regulations containing minimum standards of assessment and appraisal performance.

(Emphasis added.)

In *D90 Energy, LLC v. Jefferson Davis Par. Bd. of Review*, we recognized that this statutory framework charges the Commission “with implementing ‘uniform guidelines, procedures and rules and regulations’ for statewide application and adoption of criteria to determine fair market value.” 2020-00200, p. 4–5 (La. 10/1/20), ___ So. 3d ___.¹⁹ It is thus established that the Commission acts within its authority – and, indeed, within its statutory duty – when issuing and implementing “criteria” ensuring the uniform application of appraisal procedures. *See also Dow Chemical*, 468 So. 2d 747 (upholding the “valid expression of the legislature's will encompassed in LSA R.S. 47:2331” because “all similarly situated taxpayers were

¹⁹ This case was pending when the parties filed their original briefs.

treated in a similar manner and no taxpayer suffered excess valuation from the methods employed by the assessors” in the context of reappraisal); *Williams v. Opportunity Homes Limited Partnership*, 2017-0955, p. 5, n.3 (La. 3/13/18), 240 So. 3d 161, 165, n.3 (“The responsibility of the Commission as the supervisory state agency over parish tax assessors is clear.”); La. R.S. 47:1957(A) (“The assessors shall be responsible, *under the supervision of the tax commission*, for listing and assessing all property within their respective parishes, except such property as is subject to direct assessment by the tax commission. . . .”) (emphasis added).

Per these legislative mandates and in order to ensure the uniformity required by La. Const. art. VII, § 18(D), in 2017 the Commission revised its Rules and Regulations to clarify the mandatory nature of its longstanding quadrennial reappraisal cycle,²⁰ including the addition of Section 3103(Z). At the time of the events out of which this litigation arose, that section provided:

A decision by the Tax Commission that determines the fair market value of a property shall be applied to subsequent tax years **until reappraisal in a future mandated reappraisal year**, unless there has been a change in the condition of the property that would justify reappraisal. **A change in value in subsequent tax years for a property that the Tax Commission determined fair market value of, prior to a reappraisal year, shall serve as prima facie evidence of a prohibited reappraisal.** The assessor must show that there has

²⁰ The 2017 amendments related to the quadrennial reappraisal cycle did not change, and instead clarified, the Commission’s Rules and Regulations. As noted herein, the district court in an earlier ruling not appealed by any party also ruled that certain regulations related to the mandatory quadrennial appraisal process are unconstitutional. *See* Notes 10 and 12, *supra*. We acknowledge the district court’s prior judgment on the constitutionality of these specific rules is not under review in this case, but we reject the Assessor’s argument that we are bound, by the doctrine of res judicata, to find Section 3103(Z) is unconstitutional for the reasons assigned in the district court’s prior ruling as to these other sections of the Commission’s Rules and Regulations. *See Burguières v. Pollingue*, 2002-1385 (La. 2/25/03), 843 So. 2d 1049, 1053 (“A reading of La. R.S. 13:4231 reveals that **a second action** is precluded when all of the following are satisfied: (1) the judgment is valid; (2) the judgment is final; (3) the parties are the same; (4) the cause or causes of action asserted **in the second suit** existed at the time of final judgment in the first litigation; and (5) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation.”). We address herein a question not already addressed by the district court, but critical to evaluating the district court’s rulings below: whether Section 3103(Z) is valid and constitutional. *See also* La. Admin. Code 61:V.303(D) (the Commission’s rule, neither challenged by the Assessor and LAA nor found to be unconstitutional in the district court’s ruling, setting the quadrennial reappraisal cycle by which assessors are to reappraise properties).

been a change in the condition of the property that would justify reappraisal or a change in value in a non-reappraised year.

(Emphasis added.)²¹

As in *D90 Energy*, the foregoing rule falls within the Commission's authority under La. R.S. 47:1837(D) and La. R.S. 47:2323 to establish uniform rules related to appraisal of property for purposes of ad valorem taxation.²² Inequity and a loss of uniformity would result if a parish assessor reappraised a single property in a neighborhood while leaving the other values alone. Without the mandatory quadrennial reappraisal cycle, a similar inequity and violation of uniformity would occur if the assessor in one parish reappraised the properties in his or her parish at a frequency greater than the assessor in the neighboring parish. Where property value is increasing year to year, for example, the taxpayers in one parish would receive the benefit of a slower reappraisal cycle as compared to the taxpayers in the other where property values increase more frequently. Thus, the mandatory quadrennial reappraisal cycle furthers the foregoing statutory and constitutional requirements of uniformity by preventing any such inequity.

In connection with this uniform reappraisal cycle, Section 3103(Z) for its part ensured that once an appraised value has been corrected, the appraised value would apply for the entire period following a taxpayers' appeal and before reappraisal absent a change in condition of the property that would justify more frequent reappraisal. For the same reasons that apply to the quadrennial reappraisal cycle, this rule ensured that the reappraised value was uniformly applied throughout the state. Accordingly, Section 3103(Z) was within the Commission's authority to establish

²¹ The mandatory reappraisal year is determined by the Commission, which sets a "uniform lien date" by which all reappraisals must be valued. *See* Notes 10 and 12, *supra*.

²² The Assessor argues that the mandatory quadrennial reappraisal cycle conflicted with La. R.S. 47:2331's mandate that "real property shall be reappraised *at least* every four years." Since the plain language of La. R.S. 47:2331 requires reappraisal of real property at least every four years and the mandatory quadrennial reappraisal cycle requires reappraisal of real property within that timeframe, this argument is easily dismissed.

“criteria” to ensure the uniform reappraisal of property throughout the state, and the district court erred in finding otherwise.

La. Admin. Code 61:V.3103(Z) – Constitutionality

In addition to finding Section 3103(Z) exceeded the Commission’s statutory authority, the district court ruled that Section 3103(Z) unconstitutionally infringed upon the Assessor’s authority under La. Const. art VII, § 18(D) and unconstitutionality conflicted with the mandates of La. Const. art. VII, § 18(D) that property shall be reappraised “at intervals of not more than four years.” It is axiomatic that the Constitution is the supreme law of this state to which all legislative instruments must yield. *Iberville Par. Sch. Bd.*, 248 So. 3d at 306 (citing *La. Fed’n of Teachers*, 13-01230 at p. 22, 118 So. 3d at 1048 (citing *World Trade Ctr. Taxing Dist. v. All Taxpayers, Prop. Owners*, 908 So. 2d 623, 632)). When a legislative instrument conflicts with a constitutional provision, the legislative instrument must fall. *See Caddo–Shreveport Sales and Use Tax Com’n v. Office of Motor Vehicles Through Dept. of Public Safety and Corrections of the State*, 97–2233, p. 6 (La. 4/14/98), 710 So. 2d 776, 780. Logically, we apply the same standards when addressing whether an administrative regulation conflicts with the Constitution.

For the same reasons that Section 3103(Z) does not exceed the legislative authority granted to the Commission within this Constitutional framework, Section 3103(Z) does not unconstitutionally infringe on the powers of the state assessors provided in La. Const. VII, § 18(D). *See also Dow Chemical*, 468 So. 2d at 755 (finding La. Const. art. VII, § 18(D) does not limit the Legislature’s authority to *set appraisal cycles* for different types of properties); *see also D90 Energy*, 2020-00200 at pp. 4–6.

Turning to Article VII, Section 18(F), the mandate that property be reappraised at least every four years for purposes of ad valorem taxation clearly sets

a maximum amount of time that can lapse between assessments. The mandatory quadrennial reappraisal cycle established by the Commission’s challenged Rules and Regulations – including Section 3103(Z) – required reappraisal of real property at least every four years and thus did not exceed this maximum. Accordingly, Section 3103(Z) did not unconstitutionally conflict with the requirements set forth in La. Const. art. VII, § 18(F).

For the foregoing reasons, we find the district court erred in ruling Section 3103(Z) unconstitutional.

La. R.S. 47:1990 – Constitutionality, As Applied²³

Having found Section 3103(Z) – the substantive basis for the Correction Order – to be valid and constitutional, the final question is whether the Commission appropriately invoked jurisdiction over Taxpayers’ appeal under La. R.S. 47:1990. Specifically, we must address whether the Commission’s invocation of the broad grant of authority under La. R.S. 47:1990²⁴ to docket Taxpayers’ appeal, issue a rule to show cause, hold a hearing to review the correctness of the 2017 assessment, and correct an assessment outside of an ordinary tax appeal unconstitutionally conflicts with and thus violates La. Const. art. VII, § 18(D) and (E).²⁵ La. Const. art. VII,

²³ While the Assessor argues La. R.S. 47:1990 is facially unconstitutional, that constitutional challenge is not properly before the Court. Rather, the narrow constitutional challenge presented in the Assessor’s petition sought a declaration that La. R.S. 47:1990 is unconstitutional *as applied* in this case, and the district court determination of unconstitutionality was also “as applied” to the Commission’s actions. *State v. Hatton*, 2007-2377, p. 13 (La. 7/1/08), 985 So. 2d 709, 718–19 (“It is well-settled that a constitutional challenge may not be considered by an appellate court unless it was properly pleaded and raised in the trial court below. . . . A corollary of these principles is that courts are generally reluctant to address the constitutionality of legislation unless required by the particular case and issue before them.”). *See also Segura v. Frank*, 93-1271 (La. 1/14/94), 630 So.2d 714, 725 (“appellate courts will not consider issues raised for the first time” in appellate court).

²⁴ In pertinent part, La. R.S. 47:1990 provides: “The tax commission may change or correct *any and all assessments of property* for the purpose of taxation . . . at any time before the taxes levied have actually been paid.” (Emphasis added.)

²⁵ Both the Commission and Taxpayers argue that the authority granted to the Commission by La. R.S. 47:1990 is essential to the interpretation and application of various statutes in Title 47. These arguments are immaterial here because when and how La. R.S. 47:1990 may be validly invoked by the Commission is not before the Court.

§18 (E) (providing that an assessment shall be subject “to review” *first* by the board of review and *then* by the Commission); La. Const. art. VII, § 18(D) (providing that the parish assessors “shall determine the fair market value of property” for purposes of ad valorem taxation).

The Louisiana Legislature may enact any legislation that the Constitution does not prohibit. *Polk v. Edwards*, 626 So. 2d 1128, 1132 (La. 1993). There is a presumption that a legislative instrument is constitutional, and the party challenging its validity bears the burden of proof. *State v. Citizen*, 04-1841, p. 11 (La. 4/1/05), 898 So. 2d 325, 324. “If a legislative instrument is susceptible to two constructions, one of which would render it unconstitutional or raise grave constitutional questions, the court will adopt the interpretation of the legislative instrument which, without doing violence to its language, will maintain its constitutionality.” *Iberville Par. Sch. Bd.*, 248 So. 3d at 306. Yet, legislation must yield to the Constitution. *Id.*

The Louisiana Constitution grants the parish assessors the responsibility and authority to determine the fair market value of real property (except public service property) within their respective parishes. La. Const. art. VII, § 18(D). The assessments by the parish tax assessors are subject to review under La. Const. art. VII, § 18(E), which states “[t]he correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.”

The “procedures established by law” for a review proceeding provide for protest first to the parish governing authority sitting as the board of review, followed by appeal to the Commission, and then judicial review. *See* R.S. 47:1992(D) (“Any taxpayer or assessor dissatisfied with the determination of the board of review may appeal to the tax commission in accordance with rules and regulations established

by the tax commission.”); La. R.S. 47:1989(A) (“[T]he tax commission shall conduct public hearings to hear real and personal property appeals of taxpayers, bona fide representatives of an affected tax-recipient body, or assessors, from the action of the board of review.”); La. R.S. 47:1998 (“Any taxpayer . . . dissatisfied with the final determination of the [Commission] under the provisions of R.S. 47:1989 shall have the right to institute suit within thirty days of the entry of any final decision of the [Commission] in the district court”). This Court recently upheld this ordinary tax appeal process for review of assessments in *D90 Energy, supra*, finding “[t]his statutory scheme . . . guarantees the due process rights of the taxpayer by affording a meaningful opportunity to challenge the assessor's valuations.” *Id.*, 2020-00200 at p. 8.

Significantly, the narrow facts present in this case do not involve an appeal through the ordinary process set forth above and upheld by this Court in *D90 Energy*. Instead, this case involves a docketed appeal in which the Commission ordered the Assessor to show cause as to why Taxpayers’ 2017 assessment should not be corrected even though Taxpayers had not first appealed to the Board of Review pursuant to the ordinary tax appeal process. No one contests this was an appeal.

The Commission argues that while La. R.S. 47:1990 does not authorize it to unilaterally review the correctness of an assessment outside the context of a properly and timely filed correctness challenge, the Commission can nonetheless rely on authority granted therein to “change or correct any and all assessments of property for the purpose of taxation, in order to make the assessments conform to the true and correct valuation.” Stated another way, the Commission argues it is authorized under La. R.S. 47:1990 to change an assessment in this case because the value had already been adjudicated in Taxpayers’ 2016 appeal.

This argument is not persuasive. Section 3103(Z) provides that, if changed prior to the quadrennial reappraisal, a property's change in value is prima facie evidence of a prohibited reappraisal. However, a party may still contest any such reappraisal and rebut the prima facie evidence. In order to have reached a determination as to whether the Assessor had invalidly reappraised property in a non-reappraisal year, Section 3103(Z) required the Commission to consider evidence – or in this case, the lack thereof – that the Assessor might bring forward as to the change in condition of the property justifying reappraisal. In sum, Section 3103(Z) never permitted the Commission to treat the prima facie evidence as definitive.

Moreover, the Commission's assertion that it did not "review" or adjudicate the correctness of the 2017 assessment is not supported by the record. In fact, the record shows that the Commission not only docketed this matter as an appeal but also ordered the Assessor to "show cause" as to why the assessment should not be corrected. The very act of issuing a rule to show cause designated that the Commission would *review* the assessment of the Assessor after evaluating the arguments and evidence of both parties. The Commission's subsequent hearing was not merely an act of enforcement. Instead, the Commission's hearing was adjudicatory and thus inherently one of "review."

Under the plain language of La. Const. art. VII, § 18(E), Taxpayers were obligated to seek "review" first by the Board of Review and only thereafter could the Commission review and correct their assessment. The Commission acted outside the scope of proper appellate proceedings by improperly using R.S. 47:1990 to circumvent the constitutional requirements for reviewing assessments. Accordingly, we find La. R.S. 47:1990, as applied by the Commission here, unconstitutionally

conflicts with the plain language of La. Const. art. VII, § 18(E), and uphold the district court's summary judgment finding in that respect.²⁶

DECREE

For the foregoing reasons, we find the district court erred in finding the Commission exceeded its authority in promulgating Section 3103(Z) and declaring Section 3103(Z) unconstitutional. We further find the district court correctly declared La. R.S. 47:1990 unconstitutional, as applied.

REVERSED IN PART; AFFIRMED IN PART.

²⁶ Having found La. R.S. 47:1990 is unconstitutional, as applied, due to its conflict with La. Const. art. VII, § 18(E), we preterm a determination as to whether the district court correctly found that La. R.S. 47:1990 unconstitutionally conflicts with La. Const. art. VII, § 18(D).

05/20/21

SUPREME COURT OF LOUISIANA

NO. 2020-CA-01037

**CONRAD COMEAUX, IN HIS OFFICIAL CAPACITY AS
ASSESSOR FOR LAFAYETTE PARISH**

VS.

**THE LOUISIANA TAX COMMISSION &
KRAIG THOMAS STRENGE & KELLY PARKS STRENGE**

*ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT,
PARISH OF EAST BATON ROUGE*

WEIMER, C.J., dissenting in part.

The majority opinion does an excellent job for sorting through the Gordian procedural knot presented in this complicated case. However, I respectfully dissent in part based on the district court’s prior declaration that former La. Admin. Code 61:V.121(A), 213(C), and 303(B)(2), “all of which relate to the Commission’s mandatory quadrennial reappraisal cycle,”¹ are unconstitutional.

Formerly, those administrative code provisions read:

Real property, as defined in La. R.S. 47:2322, **shall be reappraised once every four years.** [La. Admin. Code 61:V.121(A) (emphasis added).]

All property shall be reappraised and valued in accordance with the Constitution at intervals of **not more than once every four years.** This quadrennial cycle reappraisal date shall be determined solely by the Tax Commission. [La. Admin. Code 61:V.213(C) (emphasis added).]

The assessor’s office may reappraise property **during a non-reappraisal year if** that property in all or part of the assessing district, or within a certain classification, was appraised inaccurately or was not uniformly appraised **during the current reappraisal cycle ...** all such property shall be valued based upon the most current valuation date established by the Tax Commission and on the same criterion as

¹ See Comeaux v. Louisiana Tax Commission, 20-1037, slip op. at 4 (La. 5/ /21).

other similar property.” [La. Admin. Code 61:V.303(B)(2) (emphasis added).]

As the majority recognizes, those provisions were revised by the Commission “in 2017 to include mandatory language as to the quadrennial reappraisal cycle—*i.e.* that property be reappraised **no more than every four years**—whereas prior to the 2017 amendments the quadrennial reappraisal cycle established by the Commission **was not expressly mandatory.**”² See La. Admin. Code 61:V.303(D) (which establishes the quadrennial reappraisal cycle).³

In summary, those former regulations were revised in 2017 to make the quadrennial reappraisal cycle established in La. Admin. Code 61:V.303(D) mandatory.⁴ By judgment dated November 13, 2018, the district court deemed the

² *Id.* at 6 (emphasis added).

³ La. Admin. Code 61:V.303(D) provides:

The Louisiana Tax Commission has ordered all property to be reappraised for the 2016 tax year in all parishes. All property is to be valued as of January 1, 2015.

1. The Louisiana Tax Commission has ordered all property to be reappraised for the 2020 tax year in all parishes. Beginning in tax year 2020, all real property is to be valued as of January 1, 2019.

⁴ Despite the 2017 addition of language making those provisions mandatory, twice in the opinion, the majority states that the 2017 amendments were for clarification purposes. See *id.* at 6 n.12 (“[t]he 2017 amendments clarified that reappraisals are to occur *only* on the quadrennial reappraisal cycle set by the uniform lien date absent exception for change in property value due to a change in its condition, La. Admin. Code 61:V.3103(Z), or because the property was mistakenly reappraised (or not reappraised at all), La. Admin. Code 61:V.303(B).”); *id.* at 17 n.20 (“The 2017 amendments related to the quadrennial reappraisal cycle did not change, and instead clarified, the Commission’s Rules and Regulations.”). Such a pronouncement is legally significant.

“When an existing law is not clear, a subsequent statute clarifying or explaining the law may be regarded as interpretive, and the interpretive statute may be given retrospective effect because it does not change, but merely clarifies, pre-existing law.” *St. Paul Fire & Marine Ins. Co. v. Smith*, 609 So.2d 809, 817 (La. 1992). However, “[i]nterpretive laws do not establish new rules. What they do is to determine the meaning of existing laws.” *Id.* at 818 (quoting 1 M. PLANIOL, CIVIL LAW TREATISE, No. 251 (La.St.L.Inst.Transl. 1959)). There is “no bright line between substantive laws which change existing standards and interpretive laws which change existing standards by redefining and returning to their ostensible ‘original’ meaning.” *Id.* at 819 (quoting *Pierce v. Hobart Corp.*, 939 F.2d 1305, 1309 (5th Cir.1991)).

In light of the tenuous line between the lawmaker’s intent to “clarify” existing laws and the

Commission’s mandatory quadrennial reappraisal cycle to be unconstitutional, based on a finding that in promulgating those regulatory provisions, the Commission exceeded its “authority and unconstitutionally infringe[d] on powers granted to Assessors”⁵ by La. Const. art. VII, § 18(D), which provides:

Each assessor shall determine the fair market value of all property subject to taxation within his respective parish Fair market value and use value of property shall be determined in accordance with criteria which shall be established by law and which shall apply uniformly throughout the state.

That 2018 judgment is now final since it was not appealed.

Subsequently, the Commission revised La. Admin. Code 61:V.121(A), 213(C), and 303(B)(2) to remove the mandate imposed by the 2017 amendments, to wit:

Real property, as defined in R.S. 47:2322, shall be reappraised and reassessed **at least every 4 years**. [La. Admin. Code 61:V.121(A) (emphasis added).]

All property shall be reappraised and valued in accordance with the Constitution at intervals of **not more than four years**. This quadrennial cycle reappraisal date is determined by the Louisiana Tax Commission. [La. Admin. Code 61:V.213(C) (emphasis added).]

The assessor may reappraise property based on property transfers **more often than every four years**, if transfers indicate that property in all or a part of the assessing district, or within a certain classification, was appraised inaccurately or was not uniformly appraised **during the prior reappraisal**. However, the reappraisal shall not be applied on a parcel by parcel basis, but rather, across the board in a given geographical area. Values determined from recent transfers would then be indexed to the date of the last reappraisal. [La. Admin. Code 61:V.303((B)(2) (emphasis added).]

enactment of new substantive provisions, see *id.*, it is improper for this court to make such a determination when the issue has not be raised by the parties, especially since former La. Admin. Code 61:V.121(A), 213(C), and 303(B)(2) are “not under review in this case. See *Comeaux*, slip op. at 17 n.20.

⁵ *Comeaux*, slip op. at 6.

As revised, these provisions now conform with La. Const. art. VII, § 18(F)⁶ and La. R.S. 47:2331.⁷

At issue here is former La. Admin. Code 61:V.3103(Z), which was in existence when Taxpayers appealed their 2017 assessment directly to the Commission and provided:⁸

A decision by the Tax Commission that determines the fair market value of a property shall be applied to subsequent tax years **until reappraisal in a future mandated reappraisal year**, unless there has been a change in the condition of the property that would justify reappraisal or a change in value. A change in value in subsequent tax years for a property that the Tax Commission determined fair market value of, prior to a reappraisal year, shall serve as prima facie evidence of a prohibited reappraisal and shall create a rebuttable presumption against the assessment. The assessor must show that there has been a change in the condition of the property that would justify reappraisal or a change in value in a non-reappraisal year. [Emphasis added.]

Former Section 3103(Z) referenced the “mandated reappraisal year” implemented by former La. Admin. Code 61:V.121(A), 213(C), and 303(B)(2) in 2017. In urging the unconstitutionality of Section 3103(Z):

[T]he Assessor and LAA relied in part on the district court’s November 13, 2018 ruling wherein it declared unconstitutional certain of the Commission’s Rules and Regulations related to the mandatory quadrennial reappraisal cycle. Because Section 3103(Z) “clearly suffers from the same constitutional defects,” [as those Rules and Regulations that made the quadrennial reappraisal cycle mandatory,] the Assessor and LAA argued, the district court should likewise declare [Section 3103(Z)] unconstitutional.⁹

⁶ Article VII, § 18(F) provides that “[a]ll property subject to taxation shall be reappraised and valued in accordance with this Section, at intervals of **not more than four years**.” Emphasis added.

⁷ La. R.S. 47:2331 provides that “real property shall be reappraised **at least every four years**.” Emphasis added.

⁸ In its brief to this court, the Commission stated that La. Admin. Code 61:V.3103(Z) was deleted “during its annual update of its Rules and Regulations in calendar 2019.”

⁹ **Comeaux**, slip op. at 8.

The district court agreed and found that, like former La. Admin. Code 61:V.121(A), 213(C), and 303(B)(2), La. Admin. Code 61:V.3101(Z) “unconstitutionally exceeded the Commission’s rulemaking authority and unconstitutionally infringed upon powers granted exclusively to the parish assessors under La. Const. art. VII, § 18(D).”¹⁰

While recognizing “the district court’s [November 13, 2018] judgment on the constitutionality of [former La. Admin. Code 61:V.121(A), 213(C), and 303(B)(2) (2017)] is not under review in this case,”¹¹ the majority nonetheless proceeds to revisit the constitutionality of the “mandatory quadrennial reappraisal process” for purposes of determining the constitutionality of former La. Admin. Code 61:V.3103(Z).¹² As urged by the Assessor and LAA, I believe this court lacks subject matter jurisdiction¹³ to determine the correctness of the district court’s November 13, 2018 judgment as that judgment, which was then appealable,¹⁴ became final due to the lack of an appeal. See Tolis v. Bd. of Sup’rs of Louisiana State Univ., 95-1529, pp. 2-3 (La. 10/16/95), 660 So.2d 1206, 1206-07.¹⁵

¹⁰ *Id.* at 8-9.

¹¹ *Id.* at 17 n.20.

¹² *Id.*

¹³ The issue of subject matter jurisdiction addresses the court’s authority to adjudicate this matter; the issue may be considered at any time, even by an appellate court on its own motion, at any stage of an action. **Boudreaux v. State, Dept. of Transp. and Development**, 01-1329, pp. 7-8 (La. 2/26/02), 815 So.2d 7, 13.

¹⁴ See La. C.C.P. art. 1915; La. C.C.P. art. 1841 (“A judgment that determines the merits in whole or in part is a final judgment.”).

¹⁵ The **Tolis** court found that, under the doctrine of *res judicata*, a final judgment which had dismissed the action in its entirety barred subsequent modification by any court except on direct review. *Id.*, 95-1529 at 3, 660 So.2d at 1207. The **Tolis** court noted that the appellate court confused the doctrine of law of the case in cases involving interlocutory judgments with the doctrine of *res judicata* involving final judgment. *Id.*, 95-1529 at 2, 660 So.2d at 1206. Similarly, in **First National Bank, Bienville Parish v. Smith**, 29,350, p. 4 (La.App. 2 Cir. 4/2/97), 691 So.2d 355, 358, the court found that a prior summary judgment on the plaintiff’s principal demand on a promissory note, which had become final due to the failure to appeal, was *res judicata* and, therefore, barred certain issues defendants later raised in the same lawsuit in defense of plaintiffs’ exceptions to defendants’ reconventional demand.

When a court renders a judgment that decides the merits of the case in whole or in part, the judgment is a final judgment. La.Code Civ.Proc. art. 1841. A final judgment may be rendered by either a trial court or an appellate court. ...

A final judgment is conclusive between the parties except on direct review. La.Rev.Stat. 13:4231. Moreover, a final judgment acquires the authority of the thing adjudged if no further review is sought within the time fixed by law or if the judgment is confirmed on further review. ... Once a final judgment acquires the authority of the thing adjudged, no court has jurisdiction, in the sense of power and authority, to modify, revise or reverse the judgment, regardless of the magnitude of the error in the final judgment.

Accordingly, this court does not currently have jurisdiction, in the sense of power and authority, to modify, revise or reverse the November 13, 2018 judgment—directly or indirectly, regardless of the magnitude of the error in the final judgment. See *id.*¹⁶

In summary, although this court has not yet opined on the constitutionality of the mandatory quadrennial reappraisal cycle implemented by former La. Admin. Code 61:V.121(A), 213(C), and 303(B)(2) (2017), this court is not now jurisdictionally free to do so in reviewing the constitutionality of former La. Admin. Code 61:V.3103(Z).

As urged by the Assessor and LAA, this court’s review of the constitutionality of former La. Admin. Code 61:V.3103(Z) must be made based on the underlying premise that the mandatory quadrennial reappraisal cycle is unconstitutional. Because former La. Admin. Code 61:V.3103(Z) is based on the previously-declared unconstitutional “mandated reappraisal” cycle, the district court properly found that

¹⁶ The majority rejects “the Assessor’s argument that [this court is] bound, by the doctrine of *res judicata*, to find Section 3103(Z) is unconstitutional for the reasons assigned in the district court’s prior ruling as to” former La. Admin. Code 61:V.121(A), 213(C), and 303(B)(2) (2017). **Comeaux**, slip op. at 17 n.20. Its reliance on **Burquieres v. Pollingue**, 02-1385 (La. 2/25/03), 843 So.2d 1049, for this rejection is misplaced as the conclusiveness of the November 13, 2018 judgment between the parties herein is not dependent on the filing of a second action. Although the **Burquieres** court discussed the application of *res judicata* in a second action, **Burquieres** is distinguishable from the instant case in that the **Burquieres** court was not called on to address the conclusive effect of a prior judgment that became final due to the passage of time without an appeal in the same action. *Id.*, 02-1385 at 7, 843 So.2d at 1053. The applicability of *res judicata* does not require the filing of a separate lawsuit. See **Gladney v. Anglo-Dutch Energy, L.L.C.**, 19-93, p. 14 (La.App. 3 Cir. 10/2/19), 280 So.3d 964, 973; see also **Tolis and First National Bank, Bienville Parish**, *supra*.

Section 3103(Z) (in the words of the Assessor and LAA) “clearly suffers from the same constitutional defects” as former La. Admin. Code 61:V.121(A), 213(C), and 303(B)(2) (2017).

Furthermore, this court in **City of New Orleans v. Louisiana Assessors’ Ret. & Relief Fund**, 05-2548, pp. 11-13 (La. 10/1/07), 986 So.2d 1, 12-13, set forth the “Principles of Review for Constitutionality” as follows:

As a general rule, statutes are presumed to be constitutional; therefore, the party challenging the validity of a statute has the burden of proving its unconstitutionality. Because the provisions of the Louisiana Constitution are not grants of power but instead are limitations on the otherwise plenary power of the people, exercised through the legislature, the legislature may enact any legislation that the constitution does not prohibit. As a result, a party challenging the constitutionality of a statute must point to a particular provision of the constitution that would prohibit the enactment of the statute, and must demonstrate clearly and convincingly that it was the constitutional aim of that provision to deny the legislature the power to enact the statute in question. A constitutional limitation on the legislative power may be either express or implied.

Finally, because it is presumed that the legislature acts within its constitutional authority in enacting legislation, this court must construe a statute so as to preserve its constitutionality when it is reasonable to do so. In other words, if a statute is susceptible of two constructions, one of which would render it unconstitutional, or raise grave constitutional questions, the court will adopt the interpretation of the statute which, without doing violence to its language, will maintain its constitutionality. Nevertheless, the constitution is the supreme law of this state, to which all legislative acts must yield. When a statute conflicts with a constitutional provision, the statute must fall. [Citations omitted.]

Consequently, while La. Const. art. VII, § 18(D) requires that an assessor’s determination of the fair market value of property “must be made ‘in accordance with *criteria which shall be established by law and which shall apply uniformly throughout the state,*’”¹⁷ any such “[u]niform guidelines, procedures and rules and

¹⁷ **Comeaux**, slip op. at 15.

regulations”¹⁸ implemented by the Commission, like statutes enacted by the legislature, must not conflict with the constitution. See Caddo-Shreveport Sales & Use Tax Comm’n v. Off. of Motor Vehicles, Dep’t of Pub. Safety & Corr. of State, 97-2233, p. 6 (La. 4/14/98), 710 So.2d 776, 780. As previously stated, La. Const. art. VII, § 18(F) provides: “All property subject to taxation shall be reappraised and valued in accordance with this Section, at intervals of **not more than four years**,” and La. R.S. 47:2331 similarly provides that “real property shall be reappraised **at least every four years**” (Emphasis added.) These constitutional and statutory provisions require that reappraisal occurs at least once every four years, but do not prohibit reappraisal more frequently. Although the “legislative” implementation of a “mandatory quadrennial reappraisal cycle” by the Commission does not violate the constitutional requirement that reappraisal occur at least every four years, as found by the majority,¹⁹ rules and regulations making such a cycle mandatory limit the assessor’s general authority to conduct a reappraisal to once every four years. Even though done pursuant to the Commission’s supervisory authority over parish assessors with the goal of ensuring uniformity, the “legislative” implementation of a mandatory quadrennial reappraisal cycle by the Commission impermissibly restricts the assessor’s implied constitutional right to reappraise the property more often.

For these reasons, I respectfully dissent from the majority’s discussion related to both the Commission’s statutory authority to promulgate former La. Admin. Code 61:V.3103(Z) and the constitutionality of that provision.

¹⁸ La. R.S. 47:2323(A).

¹⁹ **Comeaux**, slip op. at 20.

SUPREME COURT OF LOUISIANA

NO. 2020-CA-01037

**CONRAD COMEAUX, IN HIS OFFICIAL CAPACITY AS
ASSESSOR FOR LAFAYETTE PARISH**

VERSUS

**THE LOUISIANA TAX COMMISSION & KRAIG THOMAS STRENGE
& KELLY PARKS STRENGE**

HUGHES, J., concurring in part, dissenting in part.

I concur, in part, with the majority decision to reverse the judgment of the district court, ruling La. Admin. Code, Title 61, § 3103(Z) unconstitutional. However, I dissent, in part, from the majority decision to affirm the judgment of the district court, ruling La. R.S. 47:1990 unconstitutional as applied to the December 20, 2017 action of the Louisiana Tax Commission (“LTC”) (which ordered Conrad Comeaux, in his official capacity as Assessor for Lafayette Parish (“Assessor”), to correct his 2017 tax assessment valuation of the taxpayers’ property from \$288,270 to \$231,500, when the LTC had ruled on October 18, 2017 that the \$288,270 valuation by the Assessor for the 2016 tax year should be reduced to the correct valuation of \$231,500), for the following reasons.

Firstly, La. R.S. 47:1998(C) does not provide the Plaintiff/Assessor with the right to file a *legality challenge*¹ in the district court unless it is “necessary to protect

¹ Louisiana’s constitutional and statutory law formulates a two-track procedure that must be adhered to in challenging property tax assessments; one track encompasses challenges to the *correctness* of assessments by the assessor, while the other track covers challenges to the *legality* of the tax levied. **Gisclair v. Louisiana Tax Comm’n**, 09-0007 (La. 6/26/09), 16 So.3d 1132, 1135. Accordingly, under our jurisprudence, challenges to ad valorem property tax assessments are categorized either as challenges to the “correctness of assessments” or challenges to the “legality of assessments,” and the nature of the challenge dictates the body in which our constitution grants jurisdiction to hear and resolve these disputes. **Id.** For assessment correctness challenges, La. Const. art. VII, § 18(E) instructs that the “correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.” **Id.**, 16 So.3d at 1135. Claims challenging the constitutionality of tax provisions constitute *legality* challenges over which the district courts exercise original jurisdiction. **Id.**, 16 So.3d at 1138. Thus, the LTC has original jurisdiction over *correctness* challenges, while the district court has original jurisdiction over *legality* challenges, including the constitutional claims presented that arise out of correctness challenges. See **ANR Pipeline Co. v. Louisiana Tax Comm’n**, 02-1479 (La. 7/2/03), 851 So.2d 1145, 1149-51.

the interest of the state,” and there is no assertion by the Assessor that he filed the instant district court suit to protect any state interest. Therefore, the Assessor’s suit was subject to a peremptory exception pleading the objection of no right of action, pursuant to La. C.C.P. art. 927(B) (“The ... failure to disclose ... a right or interest in the plaintiff to institute the suit ... may be noticed by either the trial or appellate court on its own motion.”)

Secondly, even if this suit met the requirements of La. R.S. 47:1998(C), the Assessor failed to bear his burden to show that La. R.S. 14:1990 was unconstitutional as applied.

Unlike the provisions of the federal constitution, the constitutional provisions in our state constitution are not grants of power but instead are limitations on the otherwise plenary power of the people of a state exercised through its legislature. **State in Int. of J.M.**, 13-1717 (La. 1/28/14), 144 So.3d 853, 859; **Radiofone, Inc. v. City of New Orleans**, 93-0962 (La. 1/14/94), 630 So.2d 694, 697. The power to tax is vested in the state as an attribute of its sovereignty and is not dependent upon a grant of power in the constitution. **Radiofone, Inc. v. City of New Orleans**, 630 So.2d at 697. Article VII, § 1 of the 1974 Louisiana Constitution recognizes and incorporates that principle: “Except as otherwise provided by this constitution, the power of taxation shall be vested in the legislature, shall never be surrendered, suspended, or contracted away, and shall be exercised for public purposes only.” **Id.** Therefore, the power of the state to tax is unlimited except as restricted by constitutional provisions. **Id.** On the contrary, it is generally recognized that *local governments* possess, with respect to taxation, only such power as has been granted to them by the state constitution or the statutes. **Id.** Therefore, unless the state constitution provides otherwise, the exercise of the power of taxation is vested exclusively in the state legislature and is *subject to legislative control*. **Id.**

Accordingly, this state’s legislature has deemed it appropriate to give extensive duties and powers to the LTC, directing in Paragraph (A) of La. R.S. 47:1837 that the LTC “shall ***administer and enforce*** all laws related to the state supervision of local property tax assessments and the assessment of public service properties” “[i]n addition to any duties, powers, or responsibilities otherwise conferred upon the tax commission.” (Emphasis added.) Importantly, La. R.S. 47:1957(A) states that “(t)he assessors shall be responsible, ***under the supervision of the tax commission***, for listing and assessing all property within their respective parishes....” (Emphasis added.) Further, Paragraph (G) of La. R.S. 47:1957 provides that “[t]he tax commission ***shall publicly reprimand*** any assessor if it shall appear that he is wilfully negligent or unfair in the assessment of property, or in omitting it from the rolls, ***and if the tax commission deems it necessary, shall institute removal proceedings*** through the attorney general, ***for gross misconduct in office.***” (Emphasis added.) In addition, La. R.S. 47:1837(C)(4) provides: “***Any person who disobeys any order of the Louisiana Tax Commission*** or fails or refuses to comply with any request of the Louisiana Tax Commission issued or made under the authority of any Section of this Part or who disobeys any subpoena duces tecum, or refuses to testify when requested to do so by the Louisiana Tax Commission, either orally or by the Louisiana Tax Commission, ***shall for each offense be fined a sum of not less than fifty dollars, nor more than one hundred dollars, or imprisoned for not more than thirty days, or both.***” (Emphasis added.) Clearly, the Legislature intended the LTC to have extensive supervisory power over local assessors, in order to establish the aim of La. Const. Art. VII, § 18, that “[t]he percentage of fair market value shall be ***uniform throughout the state*** upon the same class of property....” (Emphasis added.)²

² See also La. R.S. 47:1836 (authorizing the LTC to “examine carefully into all cases where evasion or violation of the laws for assessment and taxation of property is alleged, complained of or discovered, and ascertain wherein existing laws are defective or are improperly or negligently

The statute at issue herein, La. R.S. 47:1990, contains an express grant of enforcement power to the LTC, stating that the LTC “*may change or correct any and all assessments* of property for the purpose of taxation, *in order to make the assessments conform to the true and correct valuation* In order to correct or change any such assessment, *it shall only be necessary for the tax commission to issue written instructions to the assessor* to make the change upon the assessment roll....” (Emphasis added.)

In his claim that La. R.S. 47:1990 is unconstitutional as applied, the Assessor asserts, in essence, that the December 20, 2017 LTC order to the Assessor, correcting the 2017 tax assessment valuation of the taxpayers’ property to the fair market value determined by the LTC to be correct for the 2016 tax year, conflicts with La. Const. Art. VII, § 18(D) (“Each assessor shall determine the fair market value of all property subject to taxation within his respective parish or district...”) and that because the taxpayers appealed the assessment value in 2016, not in 2017, the LTC’s correction order impermissibly fell outside of an appeal proceeding contrary to La. Const. Art. VII, § 18(E) (“The correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.”).

Statutes are presumed to be constitutional; accordingly, the party challenging the validity of a statute generally has the burden of proving unconstitutionality.

Moore v. RLCC Techs., Inc., 95-2621 (La. 2/28/96), 668 So.2d 1135, 1140. The provisions of the Louisiana Constitution are not grants of power but instead are

administered”); La. R.S. 47:1837(B) (authorizing the LTC to “measure the level of appraisals or assessments and the degree of uniformity of assessments for each major class and type of property in each parish throughout the state”); and La. R.S. 47:1837.1 (authorizing the LTC to formulate a “program for the creation of a statewide ad valorem tax assessment database” to be “comprised of information from assessment rolls of parishes participating in the program ... utilizing the assessment rolls submitted to the tax commission”).

limitations on the otherwise plenary power of the people, exercised through the Legislature, the Legislature may enact any legislation that the constitution does not prohibit. **M.J. Farms, Ltd. v. Exxon Mobil Corp.**, 07-2371 (La. 7/1/08), 998 So.2d 16, 31. As a result, a party challenging the constitutionality of a statute must point to a particular provision of the constitution that would prohibit the enactment of the statute, and must clearly and convincingly demonstrate it was the constitutional aim of that provision to deny the Legislature the power to enact the statute in question.

Id.

Because it is presumed that the legislature acts within its constitutional authority in promulgating a legislative instrument, this court must construe a legislative instrument so as to preserve its constitutionality when it is reasonable to do so. **Louisiana Federation of Teachers v. State**, 13-0120 (La. 5/7/13), 118 So.3d 1033, 1048. In other words, if a legislative instrument is susceptible to two constructions, one of which would render it unconstitutional or raise grave constitutional questions, the court will adopt the interpretation of the legislative instrument which, without doing violence to its language, will maintain its constitutionality. **Id.** Even so, the constitution is the supreme law of this state to which all legislative instruments must yield; therefore, when a legislative instrument conflicts with a constitutional provision, the legislative instrument must fall. **Id.**

In this case, the Constitutional article pointed to by the Assessor, La. Const. Art. VII, § 18, in Paragraphs (D) - (E), gives local governmental assessors the power to determine the fair market value of property for ad valorem taxation, but Paragraph (D) provides that fair market value must be determined “in accordance with criteria which shall be established by law and which shall apply uniformly throughout the state.” The Legislature specified criteria in La. R.S. 47:2323 and further directed that “[u]niform guidelines, procedures and rules and regulations as are necessary to implement said criteria shall be adopted by the Louisiana Tax Commission....”

Further, Paragraph (E) of Art. VII, § 18 subjects the local assessors' fair market value assessments to a "correctness" review, first by the parish governing authority, then by the LTC and, finally by the courts "all in accordance with procedures established by law."

Although the jurisprudence discussed herein requires a court: to place the burden of proof on the party pleading unconstitutionality, to presume that legislative acts are constitutional, and to construe a legislative provision so as to preserve its constitutionality when it is reasonable to do so, the district court in this case ruled La. R.S. 47:1990 unconstitutional, as applied, based on supposition. Since La. R.S. 47:1990 was first enacted in 1934, prior to the 1974 Constitution (which removed the power of assessing the fair market value of residential property from the LTC and placed that duty with local assessors), the district court assumed that La. R.S. 47:1990 conflicts with the updated provisions of the 1974 Constitution. The district court further reasoned that the "Commission simply had no basis under the law to believe that La. R.S. 47:1900 [sic] somehow made it a 'Super Commission' with the power now to bypass Louisiana's Constitution. As applied by the Commission, it's [sic] action utilizing La. R.S. 47:1900 [sic] was an unconstitutional infringement of powers granted solely to Assessors." Notwithstanding, the Legislature has, since the 1974 Constitution, vested the LTC with extensive administrative and supervisory duties and powers over assessments by local assessors, and in the more than forty years since the enactment of the 1974 Constitution, had the Legislature intended to revoke the authority granted to the LTC by La. R.S. 47:1990, it could have repealed the statute. Under the circumstances, it would appear the Assessor failed to bear its burden to prove that La. R.S. 47:1990 is invalid and without effect. No conflict between La. R.S. 47:1990 and La. Const. Art. VII, § 18 was demonstrated by the Assessor.

Further, the conclusion by the majority opinion that, in issuing the December 20, 2017 order, the LTC was conducting a “review” of the Assessor’s 2017 tax assessment valuation of the taxpayers’ property, is belied by the language of the rule to show cause issued by the LTC to institute the December 20, 2017 hearing, following which the December 20, 2017 order was issued. The November 15, 2017 rule to show cause by the LTC stated that the LTC had determined in connection with its review of the 2016 assessment that the correct fair market value of the tax property at issue was \$231,500 and that La. Admin. Code, Title 61, §3103(Z) requires an LTC corrected fair market value to “be applied to subsequent tax years until reappraisal in a future mandated reappraisal year, unless there has been a change in the condition of the property that would justify reappraisal or a change in value”; therefore, pursuant to its authority under La. R.S. 47:1990, it “commanded” the Assessor to appear and show cause on December 20, 2017 why the 2017 tax assessment should not be corrected to reflect the LTC’s correct fair market valuation for the property of \$231,500. The subsequent LTC’s December 20, 2017 order stated that, at the hearing on the rule to show cause, “the Assessor failed to present sufficient evidence that would justify reappraisal or a change in value of the subject property in a reappraisal year,” and the LTC ordered the 2017 assessment to be corrected to reflect the fair market value of the subject property as \$231,500. Clearly such action was within the scope of the authority granted to the LTC by the Legislature in La. R.S. 47:1990, since the Assessor’s actions, in continuing to record a fair market value of \$288,270 even though the Assessor was aware that the LTC had determined the correct fair market value to be \$231,500, was in violation of La. Admin. Code, Title 61, §3103(Z), *supra*. The deposition testimony of the Assessor, filed in the district court record, reflected his opinion that he was not legally obligated to comply with La. Admin. Code, Title 61, §3103(Z) (which was enacted by the LTC in conjunction with the authority to enact rules and regulations granted

to it by the Legislature in La. R.S. 47:1837(G), and in compliance with Louisiana's Administrative Procedure Act, La. R.S. 49:950 et seq., as required therein).³ Therefore, the LTC's rule to show cause issued to the Assessor pursuant to La. R.S. 47:1990, and resulting in the December 20, 2017 correction order, was an action instituted by the LTC to enforce the rules and regulation it had lawfully established and which the Assessor was violating.

³ The district court judgment herein was issued following a motion for summary judgment and, in connection with that motion, excerpts of the June 7, 2018 deposition of the Assessor were filed into the record. In his deposition, the Assessor explained that his 2017 assessment of the taxpayers' property was entered on the parish tax rolls in July of 2017, when no ruling by the LTC had been issued at that time and the parish board of review had affirmed his fair market value for the property, so the Assessor said that he "carried forward" his 2016 valuation of \$288,270 for the property into the 2017 tax assessment. When the Assessor learned that the LTC had decided to correct the fair market value for the property for the 2016 tax year to \$231,500, the Assessor stated in his deposition that he "decided to accept the value the Tax Commission was going to put on that property for 2016 but not 2017. Twenty-seventeen [sic] my numbers were still good, 288,270." One of the taxpayers, Thomas Streng, who is also an attorney and who was questioning the Assessor during the deposition, then asked the Assessor whether the Assessor was telling him that he would have to go through the whole appeal process two years in a row, and the Assessor answered, "That is correct."

05/20/21

SUPREME COURT OF LOUISIANA

No. 2020-CA-01037

**CONRAD COMEAUX, IN HIS OFFICIAL CAPACITY AS ASSESSOR FOR
LAFAYETTE PARISH**

VS.

**THE LOUISIANA TAX COMMISSION & KRAIG THOMAS STRENGE &
KELLY PARKS STRENGE**

*On Appeal from the 19th Judicial District Court,
Parish of East Baton Rouge*

GRIFFIN, J., concurs in part, dissents in part and assigns reasons.

I agree with the majority opinion that this case is not moot and that La. Admin. Code § 3103(Z) is constitutional. However, I disagree with the holding that La. R.S. 47:1990 is unconstitutional as applied.

“The correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.” La. Const. art. 7 § 18 (E). In my view, the language of the last clause gives the legislature the power to grant the Tax Commission the authority to enforce its prior rulings, even if that enforcement does not technically comply with strict procedures set forth in subpart (E). Thus, the power to review includes the power to enforce. This view is supported by the original understanding of the framers of the 1974 Louisiana Constitution. They expressly intended the legislature to have the power to upset the procedures set forth in Subsection (E) and to grant the Tax Commission the type of police action exercised in this case.¹ The legislature

¹ **Mr. Lanier:**

Well, suppose somebody doesn't use fair market value, is it your opinion that, even without authority in the constitution, and with no statutory authority, that the Tax Commission could require an assessor to assess at fair market value?

exercised that power in enacting La. R.S. 47:1990 (“The tax commission may change or correct any and all assessments of property for the purpose of taxation, in order to make the assessments conform to the true and correct valuation.”).

-
- Mr. Mire:** Well, I don't follow your question that this proposal does not provide for fair market value assessment.
- Mr. Lanier:** I know it does, but I'm getting at...suppose somebody doesn't?
- Mr. Mire:** Well, the legislature will have to provide for a police action of a sort that will make it positively that the local governing authority and/or the Tax Commission, both jointly or individually, can, in fact, come in and check and make the assessor do it under certain penalties.
- Mr. Lanier:** Is there any provision in here that says that the legislature shall do this?
- Mr. Mire:** Well, of course, it says that they will establish the law, and I assume that they will because there will be many, many local taxing authorities looking at them to do so. This was discussed at length, and we certainly would like to be positive about that that it will have to be done. We feel that the court order will mandate it, you see. You know, even so.
- Mr. Lanier:** What is the present law with reference to the authority or ability of a parish governing authority to review an assessment?
- Mr. Mire:** Well, presently he can review the tax roll and recommend to the Louisiana Tax Commission, changes. This is done on an annual basis.
- Mr. Lanier:** Can the local government itself, make changes or does it only recommend?
- Mr. Mire:** It can only recommend to the Louisiana Tax Commission.
- Mr. Lanier:** Under the present constitution, does the Tax Commission have that authority to mandate the assessor make changes?
- Mr. Mire:** Yes, sir.
- Mr. Lanier:** But that authority is not specifically granted in this proposal is that correct?
- Mr. Mire:** No. We would like that to be statutory.

Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts, Volume VII, page 1729-1730.