

EXEMPT

TWENTY-SECOND JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA

NO. 2016-11530

DIVISION "J"

WARREN MONTGOMERY, IN HIS OFFICIAL CAPACITY AS
DISTRICT ATTORNEY FOR ST. TAMMANY PARISH

VERSUS

ST. TAMMANY PARISH GOVERNMENT, BY AND THROUGH
THE ST. TAMMANY PARISH COUNCIL; AND PATRICIA "PAT" BRISTER,
IN HER OFFICIAL CAPACITY AS PARISH PRESIDENT

FILED: _____

DEPUTY CLERK

**DEFENDANTS' ANSWER TO PETITION FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF AND RECOVENTIONAL DEMAND**

NOW INTO COURT, through their respective undersigned counsel, come defendants, Patricia P. Brister, in her official capacity as Parish President, the St. Tammany Parish Council ("the Council"), and the St. Tammany Parish Government (hereinafter collectively referred to as "STPG") and respond to the Petition for Declaratory Judgment and Injunctive Relief (hereinafter referred to as the "Petition") filed by Plaintiff Warren Montgomery, in his official capacity as District Attorney for St. Tammany Parish (the "District Attorney").

EXCEPTIONS

STPG asserts the dilatory exceptions of prematurity and unauthorized use of summary proceeding, and the peremptory exceptions of no cause of action and no right of action as set forth in Defendant's Joint Dilatory and Peremptory Exception pleading filed simultaneously with this Answer.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The District Attorney's Petition fails to state a claim upon which the relief sought may be granted.

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SECOND AFFIRMATIVE DEFENSE

The District Attorney is prohibited from suing STPG under the Rules of Professional Conduct.

THIRD AFFIRMATIVE DEFENSE

Solely to the extent La. Rev. Stat. §§ 42:261 – 42:264 are construed as forcing STPG to accept the District Attorney and/or his office as its sole legal advisor and as prohibiting STPG from structuring and organizing a Legal Department under the administrative control and supervision of the Parish President pursuant to the St. Tammany Parish Home Rule Charter, the statutes are unconstitutional as they violate the equal protection clauses of the Louisiana and United States Constitutions, the Louisiana Supreme Court’s exclusive and plenary power to regulate the practice of law, the conduct of lawyers, and the attorney-client relationship pursuant to the constitutional separation of powers, and constitutional grants of power and control to home rule charter governments to structure, operate, and manage their local government.

FOURTH AFFIRMATIVE DEFENSE

Solely to the extent La. Rev. Stat. § 16:2 is construed as forcing STPG to accept the District Attorney and/or his office as its sole legal advisor and as prohibiting STPG from structuring and organizing a Legal Department under the administrative control and supervision of the Parish President pursuant to the St. Tammany Parish Home Rule Charter, the statute is unconstitutional as it violates the equal protection clauses of the Louisiana and United States Constitutions, the Louisiana Supreme Court’s exclusive and plenary power to regulate the practice of law, the conduct of lawyers, and the attorney-client relationship pursuant to the constitutional separation of powers, and constitutional grants of power and control to home rule charter governments to structure, operate, and manage their local government.

FIFTH AFFIRMATIVE DEFENSE

Solely to the extent Section 4-03(A) of the St. Tammany Parish Home Rule Charter is construed as forcing STPG to accept the District Attorney and/or his office as its sole legal advisor and it is determined that the Legal Department cannot be restructured, changed, altered, or reorganized pursuant to Section 4-12 of the Charter to change the District Attorney’s alleged role, Section 4-03(A) of the Charter is unconstitutional as it would violate the Louisiana Supreme

Court's exclusive and plenary power to regulate the practice of law, the conduct of lawyers, and the attorney-client relationship pursuant to the constitutional separation of powers.

SIXTH AFFIRMATIVE DEFENSE

Solely to the extent Section 4-03(A) of the St. Tammany Parish Home Rule Charter is construed as mandating that STPG utilize only the District Attorney and/or his office as its sole legal advisor and it is determined that the Legal Department cannot be restructured, changed, altered, or reorganized pursuant to Section 4-12 of the Charter to change the District Attorney's alleged role, Section 4-03(A) of the Charter is unconstitutional as it would violate the Louisiana Supreme Court's exclusive and plenary power to regulate the practice of law, the conduct of lawyers, and the attorney-client relationship pursuant to the constitutional separation of powers.

ANSWER

1. The allegations of fact contained in paragraph 1 of the Petition do not require a response by STPG. To the extent a response is deemed necessary, said allegations are denied.

2. The allegations of fact contained in paragraph 2 of the Petition do not require a response by STPG. To the extent a response is deemed necessary, said allegations are denied.

3. The allegations of fact contained in paragraph 3 of the Petition do not require a response by STPG. To the extent a response is deemed necessary, said allegations are denied.

4. The allegations of fact contained in paragraph 4 of the Petition do not require a response by STPG. To the extent a response is deemed necessary, said allegations are denied.

5. The allegations of fact contained in paragraph 5 regarding the domicile and office of the petitioner are admitted. The remaining allegations do not require a response by STPG.

6. The allegations of fact contained in paragraph 6 of the Petition that St. Tammany Parish Government is a political subdivision of the State of Louisiana, are admitted. The remaining allegations do not require a response by STPG.

7. The allegations of fact contained in paragraph 7 of the Petition do not require a response by STPG.

8. The allegations of fact contained in paragraph 8 of the Petition do not require a response by STPG.

9. The allegations of fact contained in paragraph 9 of the Petition do not require a response by STPG.

10. The allegations of fact contained in paragraph 10 of the Petition are admitted to the extent STPG is a political subdivision of the state and is governed by a home rule charter. The remaining allegations of fact are denied.

11. The allegations of fact contained in paragraph 11 of the Petition are denied. In further answering the allegations of fact contained in paragraph 11, STPG avers that the St. Tammany Parish Home rule charter is a written document which speaks for itself and contains terms and conditions as set forth therein.

12. The allegations of fact contained in paragraph 12 of the Petition do not require a response by STPG.

13. The allegations of fact contained in paragraph 13 of the Petition are denied.

14. The allegations of fact contained in paragraph 14 of the Petition are denied to the extent it is alleged that STPG violated any laws or regulations. It is admitted that STPG, pursuant to its home rule charter, maintained and supervised a legal department as permitted by state law and in accordance with its home rule charter and ordinances. The remaining allegations of fact contained in paragraph 14 which are not specifically admitted are denied as written.

15. The allegations of fact contained in paragraph 15 of the Petition are denied.

16. It is admitted that STPG hired an attorney in 2015 who is not an Assistant District Attorney. It is denied that attorneys employed by STPG are legally required to be Assistant District Attorneys and take an oath of office to provide legal services to STPG.

17. The allegations of fact contained in paragraph 17 of the Petition are denied as written. The legal department of St. Tammany Parish has been in existence since the adoption of its home rule charter.

18. The allegations of fact contained in paragraph 18 of the Petition are denied as written.

19. In response to paragraph 19 of the Petition, it is admitted that the charter amendment related to the legal department was not approved by voters of St. Tammany Parish. It is denied that a charter amendment is required to re-organize the legal department of St. Tammany

Parish. It is further denied that a charter amendment is necessary to create a legal department in Parish Government. The Legal Department has been in existence since the adoption of its home rule charter.

20. In response to paragraph 20 of the Petition, it is denied that the District Attorney can compel STPG to utilize his office as its sole legal advisor.

21. The allegations of fact contained in paragraph 21 of the Petition are denied.

22. In response to paragraph 22 of the Petition, it is admitted that the District Attorney sent correspondence to STPG outlining his position. It is denied that La. R.S. §16:2 applies to the District Attorney in this matter.

23. The allegations of fact contained in paragraph 23 of the Petition are denied.

24. The allegations of fact contained in paragraph 24 of the Petition are denied.

25. In response to the allegations of fact contained in paragraph 25 of the Petition, the proposed STPG budget for fiscal year 2016 included the salaries of all attorneys employed by STPG. The remaining factual allegations of paragraph 25 do not pertain to STPG. To the extent a response is deemed necessary, said allegations are denied.

26. In response to the allegations of fact contained in paragraph 26, it is admitted that STPG has the authority under its Home Rule Charter to create, change, alter, consolidate or abolish Parish departments, offices and agencies and reallocate their function, including the legal department and that such reorganization ordinances have been drafted at times. It is denied that the Legal Department has ever been under the purview and control of the District Attorney.

27. The allegations of fact contained in paragraph 27 are admitted to the extent the commissions of three Assistant District Attorneys were rescinded. The remaining allegations of fact contained in paragraph 27 are denied for lack of sufficient information in which to justify a belief therein.

28. The allegations contained in paragraph 28 of the Petition are statements of law and do not require a response by STPG.

29. The allegations contained in paragraph 29 of the Petition do not require a response by STPG.

30. The allegations contained in paragraph 30 of the Petition are statements of law and do not require a response by STPG.

31. The allegations of law contained in paragraph 31 of the Petition do not require a response by STPG. The allegations of fact contained in paragraph 31 are denied.

32. In response to paragraph 32 of the Petition, it is denied that the St. Tammany Parish home rule charter requires the District Attorney to represent it in every legal matter. In further response, it is admitted that the quoted language appears in the home rule charter which is a document that contains many other provisions related to Parish departments and personnel.

33. The statements of law contained in paragraph 33 of the Petition do not require a response by STPG. STPG denies that La. R.S. §42:261 is applicable to a home rule charter government.

34. The statements of law contained in paragraph 34 of the Petition do not require a response by STPG. STPG denies that La. R.S. §42:261 is applicable to a home rule charter government.

35. The allegations of fact and law contained in paragraph 35 of the Petition are denied.

36. The allegations of law contained in paragraph 36 of the Petition do not require a response by STPG. The allegations of fact and opinion contained in paragraph 36 of the Petition are denied. In further response, the home rule charter is a document which speaks for itself and is the best evidence of its contents.

37. The statements of law contained in paragraph 37 of the Petition do not require a response by STPG. The allegations of fact and opinion contained in paragraph 37 of the Petition are denied. In further response, the home rule charter is a document which speaks for itself and is the best evidence of its contents.

38. The allegations contained in paragraph 38 of the Petition pertaining to the STPG's home rule charter are admitted. The remaining conclusions of law and opinion are denied. In further response, the home rule charter is a document which speaks for itself and is the best evidence of its contents.

39. The allegations of fact contained in paragraph 39 are denied. In further response, the home rule charter is a document which speaks for itself and is the best evidence of its contents.

40. The allegations of fact contained in paragraph 40 are denied as written.
41. The statements of law contained in paragraph 41 of the Petition do not require a response by STPG. STPG denies that La. R.S. §42:263 is applicable to a home rule charter government.
42. The allegations of fact contained in paragraph 42 do not require a response by STPG.
43. The allegations of law contained in paragraph 43 do not require a response by STPG. STPG denies that the Louisiana Supreme Court's decision in *Reed v. Washington Parish Policy Jury* applies to a home rule charter government.
44. The allegations of law contained in paragraph 44 do not require a response by STPG.
45. The allegations of fact contained in paragraph 45 do not require a response by STPG. It is denied that the District Attorney is entitled to any relief sought in his Petition.
46. Paragraph 46 of the Petition does not require a response. To the extent a response is deemed necessary, STPG adopts by reference all prior responses to the enumerated paragraphs as set forth hereinabove.
47. The allegations of fact contained in paragraph 47 are admitted to the extent the District Attorney, by the filing of this lawsuit, has created a controversy that now exists. STPG denies that it is without authority to retain and/or employ legal counsel of its choice.
48. The allegations of fact contained in paragraph 48 of the Petition are denied as written.
49. The allegations of fact contained in paragraph 49 of the Petition are denied.
50. Paragraph 50 of the Petition does not require a response. To the extent a response is deemed necessary, STPG adopts by reference all prior responses to the enumerated paragraphs as set forth hereinabove.
51. The allegations of law contained in paragraph 51 do not require a response by STPG. STPG denies that the District Attorney is entitled to a preliminary injunction.

52. The allegations of law contained in paragraph 52 do not require a response by STPG. STPG denies that there is any violation of a prohibitory law or a deprivation of a constitutional right of the District Attorney at issue.

53. The allegations of fact and law contained in paragraph 53 are denied.

54. The allegations of fact contained in paragraph 54 are denied.

55. The allegations of fact contained in paragraph 55 are denied. STPG further denies that the District Attorney is entitled to any relief sought in his Petition.

56. The allegations of fact contained in paragraph 56 are denied. STPG further denies that the District Attorney is entitled to any relief sought in his Petition.

57. Paragraph 57 of the Petition does not require a response. To the extent a response is deemed necessary, STPG adopts by reference all prior responses to the enumerated paragraphs as set forth hereinabove.

58. The allegations of fact contained in paragraph 58 are denied. Further responding, STPG provides the funding required by the State to the District Attorney's office.

59. In response to the allegations of fact contained in paragraph 59, STPG denies that the District Attorney is entitled to any relief sought in his Petition. STPG denies that the Louisiana Supreme Court's decision in *Reed v. Washington Parish Policy Jury* applies to a home rule charter government.

60. STPG denies any fact not specifically admitted herein.

61. STPG denies any facts contained in any unnumbered paragraphs, headings, the caption and/or the prayer for relief.

62. STPG reserves its right to amend and supplement its Answer and Affirmative Defenses.

RECONVENTIONAL DEMAND

AND NOW, COMES, St. Tammany Parish Government through its executive and legislative branches, as plaintiff-in-reconvention, and respectfully avers as follows:

63. St. Tammany Parish Government (hereinafter referred to as "St. Tammany") is a local governmental subdivision of the state of Louisiana governed by a home rule charter approved

by the electorate of St. Tammany Parish on October 3, 1998 in compliance with Article VI, Section 5 of the Louisiana Constitution of 1974.

64. St. Tammany is a “president-council” form of government pursuant to Section 1-02 of its Home Rule Charter.

65. Made defendant herein is Warren Montgomery, in his official capacity as District Attorney for St. Tammany Parish (hereinafter referred to as the “District Attorney”).

66. The District Attorney filed suit in the captioned matter on April 11, 2016 seeking a declaratory judgment recognizing the legal rights, duties and obligations of the District Attorney to serve as the exclusive general legal advisor to St. Tammany.

67. The District Attorney prayed for preliminary and permanent mandatory injunctions enjoining St. Tammany from operating, controlling, or maintaining a civil legal department.

68. The District Attorney cites and relies upon La. Rev. Stat. §§ 42:261 – 42:263 in support of his Petition and position that his office is the sole legal advisor to St. Tammany. The Louisiana Supreme Court in *State v. Petrovich*, 396 So. 2d 1318, 1323 (La. 1981) stated in dicta: “. . . [T]he entire statutory scheme of La. Rev. Stat. §§ 42:261 – 264 is wrought with internal inconsistencies created by legislative exemptions of many state and local public bodies from the statutes’ parameters.” The Court further stated: “While finding it unnecessary to reach the constitutionality of R.S. 42:261 – 263, we suggest that the legislature re-examine these statutes with the view of removing any constitutional infirmities that may exist.”

69. Solely to the extent La. Rev. Stat. §§ 42:261 – 42:263 are construed as forcing STPG to accept the District Attorney and/or his office as its sole legal advisor and as prohibiting STPG from structuring and organizing a Legal Department under the administrative control and supervision of the Parish President pursuant to the St. Tammany Parish Home Rule Charter, the statutes would be unconstitutional as they would violate the equal protection clauses of the Louisiana and United States Constitutions, the Louisiana Supreme Court’s exclusive and plenary power to regulate the practice of law, the conduct of lawyers, and the attorney-client relationship pursuant to the constitutional separation of powers, and constitutional grants of power and control to home rule charter governments to structure, operate, and manage their local government.

70. The District Attorney cites and relies on La. Rev. Stat. § 16:2 in support of his Petition. Solely to the extent La. Rev. Stat. § 16:2 is construed as forcing STPG to accept the District Attorney and/or his office as its sole legal advisor and as prohibiting STPG from structuring and organizing a Legal Department under the administrative control and supervision of the Parish President pursuant to the St. Tammany Parish Home Rule Charter, the statute is unconstitutional as it would violate the equal protection clauses of the Louisiana and United States Constitutions, the Louisiana Supreme Court's exclusive and plenary power to regulate the practice of law, the conduct of lawyers, and the attorney-client relationship pursuant to the constitutional separation of powers, and constitutional grants of power and control to home rule charter governments to structure, operate, and manage their local government.

71. Solely to the extent Section 4-03(A) of St. Tammany Parish's home rule charter is interpreted to force St. Tammany to accept the District Attorney as its sole legal advisor and representative and it is determined that the Legal Department cannot be restructured, changed, altered, or reorganized pursuant to Section 4-12 of the Charter to change the District Attorney's alleged role, said provision is an unconstitutional encroachment on the Louisiana Supreme Court's exclusive authority to regulate the practice of law derived from the separation of power clauses of the state constitution.

72. Solely to the extent that La. Rev. Stat. §§ 42:261-42:263 and 16:2 are construed as forcing STPG to accept the District Attorney and/or his office as its sole legal advisor and as prohibiting STPG from structuring and organizing a Legal Department under the administrative control and supervision of the Parish President pursuant to the St. Tammany Parish Home Rule Charter, St. Tammany seeks a judgment declaring La. Rev. Stat. §§ 42:261 – 42:263 and 16:2 unconstitutional.

73. Solely to the extent Section 4-03(A) of St. Tammany Parish's home rule charter is interpreted to force St. Tammany to accept the District Attorney as its sole legal advisor and representative and it is determined that the Legal Department cannot be restructured, changed, altered, or reorganized pursuant to Section 4-12 of the Charter to change the District Attorney's alleged role, St. Tammany seeks a judgment declaring Section 4-03(A) of its home rule charter unconstitutional.

74. St. Tammany has standing to bring these constitutional challenges as it has rights in controversy and its interests will be seriously affected by the application of the these statutes and charter provision in the manner proposed by the District Attorney.

75. The District Attorney's proposed application of La. Rev. Stat. §§ 42:261 – 42:263, 16:2 and Section 4-03(A) of the home rule charter directly affects St. Tammany.

76. St. Tammany has a direct interest in this litigation and the determination of these issues will seriously affect its ability to govern and act as a home rule charter form of government.

77. The District Attorney's Petition seeks a declaratory judgment forcing St. Tammany (the client) to utilize the services of the District Attorney. This is an inherent conflict of interest under the Rules of Professional Conduct. An attorney cannot seek a declaratory judgment forcing a client to accept the attorney as legal counsel.

78. This conflict of interest under the Rules of Professional Conduct and bars the District Attorney or his office from serving as legal advisor to St. Tammany.

WHEREFORE, after due proceedings are had, and solely in the event the subject statutes and home rule charter provision are construed in the manner proposed by the District Attorney, St. Tammany Parish prays that this honorable court enter judgment in its favor granting the following relief:

1. Issue a declaratory judgment holding La. Rev. Stat. §§ 42:261 – 42:263 and 16:2 unconstitutional;
2. Issue a declaratory judgment declaring Section 4-03(A) of its home rule charter unconstitutional to the extent it mandates the District Attorney to serve as sole legal advisor to St. Tammany;
3. Issue a declaratory judgment holding Section 4-03(A) of its home rule charter unconstitutional to the extent it mandates St. Tammany to accept the District Attorney as its sole legal advisor and representative;
4. After all due proceedings are had herein, judgment be rendered in favor of defendants, Patricia P. Brister, in her official capacity as St. Tammany Parish President, the St. Tammany Parish Council ("the Council"), and the St. Tammany Parish Government ,

dismissing the petition for relief filed herein by Warren Montgomery, in his official capacity as District Attorney of St. Tammany Parish;

5. Defendants, STPG be granted all general and equitable relief as may be awarded herein.

Respectfully submitted,

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By: 


Ross F. Lagarde

PLEASE SERVE:

Warren Montgomery
District Attorney, 22nd Judicial District
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served on all counsel of record by e-mail, by facsimile, and/or by depositing same in the United States Mail, properly addressed and postage prepaid, this 6th day of May, 2016.



Ross F. Lagarde

EXEMPT

TWENTY-SECOND JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA

NO. 2016-11530

DIVISION "J"

WARREN MONTGOMERY, IN HIS OFFICIAL CAPACITY AS
DISTRICT ATTORNEY FOR ST. TAMMANY PARISH

VERSUS

ST. TAMMANY PARISH GOVERNMENT, BY AND THROUGH
THE ST. TAMMANY PARISH COUNCIL; AND PATRICIA "PAT" BRISTER,
IN HER OFFICIAL CAPACITY AS PARISH PRESIDENT

FILED: _____

DEPUTY CLERK

DEFENDANTS' JOINT DILATORY AND PEREMPTORY EXCEPTIONS

Defendants, Patricia P. Brister, in her official capacity as Parish President, the St. Tammany Parish Council ("the Council"), and the St. Tammany Parish Government, through their respective undersigned counsel, jointly submit these dilatory and peremptory exceptions to the Petition for Declaratory Judgment and Injunctive Relief filed by Plaintiff Warren Montgomery, in his official capacity as District Attorney for St. Tammany Parish (the "District Attorney").

I.

Peremptory Exception of No Cause of Action

The petition fails to state a cause of action for two, independent reasons. First, the very statutes relied on by the District Attorney in bringing this lawsuit and asserting that he must be accepted by the Defendants as their exclusive general legal counsel carve out from their provisions home rule charter local governments that provide for their own legal representation. That is the situation presented here. As detailed in the supporting memorandum, St. Tammany Parish is governed by its Home Rule Charter, which provides for the Parish Government's legal representation through the establishment of a Parish Legal Department. Pursuant to La. Rev. Stat. § 16:2(D), when a parish has adopted a home rule charter and the charter provides for the employment of counsel, "the district attorney *shall not be the regular attorney or counsel for*

such governing authority.” (Emphasis added). For that reason alone, the District Attorney’s petition fails to state a cause of action.

Second, the District Attorney’s lawsuit seeks a declaratory judgment and an injunction that essentially forces the Parish President, Council, and other departments and agencies of the Parish Government to accept Mr. Montgomery as their attorney, when they have not requested his services or representation and do not desire for him to act as their sole general counsel as he demands. An attorney has no cause of action under Louisiana law to force an individual, entity, or local governing authority to employ or accept his legal services. The concept is antithetical to the fundamental tenants of the attorney-client relationship and the Louisiana Rules of Professional Conduct, which govern attorneys – including district attorneys – and which have the force of substantive law. Such a requirement cannot be imposed by statute or otherwise. *See Succession of Wallace*, 574 So. 2d 348, 350 (La. 1991).

II.

Peremptory Exception of No Right of Action

Similarly, the Defendants plead the exception of no right of action under La. C. Civ. Proc. art. 927(6). An attorney does not have a right of action or standing under Louisiana law to sue an existing or potential client to force an attorney-client relationship, when the client has indicated he or she does not want to be represented by the attorney or desires to end the attorney’s representation. *See* La. R. Prof. Cond. 1.16(a)(1) and (3). Moreover, to the extent an attorney-client relationship is found currently to exist between the District Attorney and the Defendants by virtue of the statutes cited in the petition, the Defendants have instructed Mr. Montgomery to dismiss this lawsuit pursuant to La. R. Prof. Cond. 1.2(a). Mr. Montgomery has refused to follow the instructions of his alleged client. He does not have a legal right to continue this lawsuit, however, when his clients have instructed him to end the litigation.

III.

Dilatory Exceptions of Prematurity and Improper Use of Summary Proceedings

The dilatory exception of prematurity under La. C. Civ. Proc. art. 926(A)(1) questions whether the cause of action has matured to a point where it is ripe for judicial determination. *Williamson v. Hospital Service Dist. No. 1 of Jefferson*, 2004–0451 (La. 12/1/04); 888 So. 2d 782,

785. Here, the District Attorney's requests for preliminary injunctive relief, as well as the cause of action for a permanent injunction to provide additional funds to the District Attorney's Office, should be dismissed as premature. Additionally, the claims for preliminary injunction cannot properly proceed in a summary proceeding as they seek mandatory injunctive relief, and, thus, must be heard on a full evidentiary hearing on the merits. *See* La. C. Civ. Proc. art. 926(A)(3) (exception of unauthorized use of summary proceeding).

A. Claims for Preliminary Injunction

The District Attorney seeks a declaratory judgment regarding his rights, role, and function *vis-à-vis* the Defendants and the Parish Government pursuant to certain statutes and the St. Tammany Parish's Home Rule Charter and asserts that certain preliminary and permanent injunctive relief is a necessary corollary of those declaratory judgment claims. In particular, the District Attorney asserts that he is entitled to preliminary and permanent injunctive relief forcing the Defendants to, among other things, abolish its Legal Department, accept him as their sole attorney, and restructure Parish Government with respect to its legal employees.

Although the petition does not characterize these requests as seeking mandatory injunctive relief, it is obvious on the face of the pleading that the relief sought through a "preliminary injunction" goes well beyond maintaining the status quo. Far from, the requests for preliminary injunction, if granted, would force the Defendants to take extraordinary, affirmative actions, including but not limited to shutting down the Parish Government's Legal Department, which is established pursuant to the Parish's Home Rule Charter and employs 16 individuals, and restructuring Parish Government with respect to those executive branch employees and the separate set of attorneys employed by the Council to provide it with legal advice and services.

Accordingly, the request in reality is one for a mandatory injunction, which has the same basic effect as a permanent injunction, and can only be decided after a trial on the merits at which the District Attorney will have the burden to prove his entitlement to the injunctive relief sought by a preponderance of the evidence. *See City of Baton Rouge/Parish of East Baton Rouge v. 200 Government Street, LLC*, 2008-0510 (La. App. 1 Cir. 9/23/08); 995 So. 2d 32, 36. Because the District Attorney's requests for "preliminary" injunctive relief are mandatory in nature and, therefore, must be proven in the same manner and to the same extent as the claims for permanent

injunction and declaratory judgment (with which there is a complete overlap), the claims should be heard together at a trial. *See Chauvet v. City of Westwego*, 599 So. 2d 294, 296 (La. 1992) (explaining that a request for a mandatory injunction “is generally an ordinary proceeding” like a claim for declaratory judgment).

It would accordingly be improper for the Court to decide these requests in a summary proceeding on a preliminary injunction. *See Maestri v. Destrehan Veterinary Hosp., Inc.*, 554 So. 2d 805, 808 (La. App. 5 Cir. 1989) (holding it is improper to grant a mandatory injunction upon the hearing of a preliminary injunction unless there is a stipulation by the parties to consolidate trial on the merits with the rule for the preliminary injunction); *see also Werner Enterprises, Inc. v. Westend Development Dev. Co.*, 477 So. 2d 829, 832 (La. App. 5 Cir. 1985) (explaining that, although preliminary injunctions to maintain the status quo are decided in summary proceeding, a hearing on a mandatory injunction, like a permanent injunction, must be decided at a full hearing on the merits).

In addition, if the Court concludes that the petition does state a cause of action, then the District Attorney’s construction of the statutes cited in the petition and the Home Rule Charter gives rise to constitutional issues and challenges, as plead in the Defendants’ Reconventional Demand. *See State v. Petrovich*, 396 So. 2d 1318 (La. 1981) (holding that La. Rev. Stat. 42:264 is unconstitutional and noting that the other statutes addressing a district attorney’s role as general counsel to local governing authorities are plagued with the same problems); *Succession of Wallace*, 574 So. 2d 348, 350 (La. 1991) (explaining that statutes that interfere with the Supreme Court’s “exclusive and plenary power to define and regulate all facets of the practice of law” and that are inconsistent with the Louisiana Rules of Professional Conduct will be stricken as null, void, and unconstitutional); *Lafourche Parish Council v. Autin*, 1994-0985 (La. 1994); 648 So. 2d 343 (finding that a statute was unconstitutional as applied to a parish operating under a home rule charter because the statute impeded and restricted the home rule charter government’s “exclusive control over the operation, management and internal arrangement of the component parts of its local government”). Generally, resolution of a constitutional challenge to a statute is not appropriate on a preliminary injunction and should be adjudicated at the trial on the declaratory

judgment claims. *See Kruger v. Garden Dist. Ass'n*, 1999-3344 (La. 3/24/00); 756 So. 2d 309, 310.

A final insurmountable reason that the claims for preliminary injunction cannot be heard or granted in advance of a trial on the merits of the declaratory judgment claims is that the relief sought would force the Defendants to accept Mr. Montgomery as their exclusive general counsel *at the very same time that he is suing them and while the lawsuit remains pending*. The Defendants cannot be expected to rely on and trust Mr. Montgomery for unbiased legal advice under those circumstances. And the District Attorney would be in a position where he clearly has a conflict of interest and likely cannot act with the loyalty that is required of an attorney. *See* La. R. Prof. Con. 1.7(a)(2) (“[A] lawyer *shall not* represent a client if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to ... a third person or by a personal interest of the lawyer.”) (Emphasis added).

For these reasons, and as more fully explained in the Defendants’ supporting memorandum, the claims for preliminary injunction should be dismissed or, alternatively, deferred to the trial on the claims for declaratory judgment.

B. Cause of Action for Permanent Injunction

In his third cause of action, the District Attorney asks for a permanent injunction forcing the Defendants to provide additional funding to his office so that he may run the Parish’s Legal Department and perform the additional services and roles he asserts are required of him. The District Attorney does not, however, allege that the Defendants have failed to allocate sufficient funds for the services provided and the functions currently performed by his office, as was the situation in *Reed v. Washington Parish Police Jury*, 518 So. 2d 1044 (La. 1988). The claim for an injunction to force the Defendants to provide additional money to the District Attorney’s office is, instead, premised on three hypothetical facts that have not materialized and likely never will: (1) the Court grants the District Attorney all of the other relief sought in his petition, (2) the District Attorney’s Office, in fact, performs additional services and employs additional individuals in the future, which requires more money than what is budgeted for the operation of that office, and (3) the Defendants refuse to provide sufficient funds for those additional services and employees and/or to reimburse the District Attorney for the reasonable expenses incurred in the future. Only

if all three of those things occur in the future, would the District Attorney's claim become ripe. At this time, though, there is no justiciable controversy between the parties regarding the funding of the District Attorney's Office.

IV.

Conclusion

For the above reasons, and as more fully explained in the Defendants' supporting memorandum, the Defendants' exceptions should be granted, and the petition dismissed.

Respectfully submitted,

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By: 
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served on all counsel of record by e-mail, by facsimile, and/or by depositing same in the United States Mail, properly addressed and postage prepaid, this 6th day of May, 2016.


Ross F. Lagarde

EXEMPT

TWENTY-SECOND JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA

NO. 2016-11530

DIVISION "J"

WARREN MONTGOMERY, IN HIS OFFICIAL CAPACITY AS
DISTRICT ATTORNEY FOR ST. TAMMANY PARISH

VERSUS

ST. TAMMANY PARISH GOVERNMENT, BY AND THROUGH
THE ST. TAMMANY PARISH COUNCIL; AND PATRICIA "PAT" BRISTER,
IN HER OFFICIAL CAPACITY AS PARISH PRESIDENT

FILED: _____

DEPUTY CLERK

DEFENDANTS' MEMORANDUM IN SUPPORT OF EXCEPTIONS

Defendants, Patricia P. Brister, in her official capacity as Parish President, the St. Tammany Parish Council ("the Council"), and the St. Tammany Parish Government, through their undersigned counsel, jointly submit this memorandum in support of their dilatory and peremptory exceptions to the Petition for Declaratory Judgment and Injunctive Relief filed by Plaintiff Warren Montgomery, in his official capacity as District Attorney for St. Tammany Parish (the "District Attorney").

The District Attorney's lawsuit is misguided and legally unfounded. The petition should be dismissed for the following reasons:

- The very statutes upon which the District Attorney relies to assert that the Defendants are mandated to accept him as their exclusive general legal counsel *exempt home rule charter governments – like St. Tammany Parish – from their provisions*; those statutes recognize that home rule charter governments can decide for themselves whether to rely on the district attorney or to employ their own counsel for general legal advice and services.
- Louisiana law does not provide an attorney with a legal right or cause of action to sue a client or potential client to force a legal representation that the client does not want.
- The District Attorney's claim for a permanent injunction forcing the Defendants to provide additional funding to his office is premature as it is predicated not only on his succeeding on the other claims alleged in the petition but also on hypothetical facts that assume the Defendants would refuse to allocate sufficient funds in the event he was required to perform additional services.
- In the alternative to dismissal of the petition, the claims for a preliminary injunction cannot proceed in a summary proceeding separately from any claims for declaratory judgment that

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survive these exceptions, as they seek mandatory injunctive relief which can only be granted after a full evidentiary hearing on the merits.

- Finally, because the claims for preliminary injunctive relief, like the claims for declaratory judgment, give rise to issues regarding the constitutionality of the statutes relied on by the District Attorney, the claims should all be heard together at a trial after the Attorney General has been put on notice and had the opportunity to appear.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

If this lawsuit strikes the Court as odd, it is no accident. In essence, it is a lawsuit by an attorney, Mr. Montgomery, against his putative clients, the St. Tammany Parish Government and its coordinate branches, seeking to force those clients to accept his services, and only his services, in connection with any general legal advice or legal representation they may need. The demand is even more striking and novel in that it ignores both the power and the right of the client to make a different choice, and is made notwithstanding the fundamental ethical rules that would preclude Mr. Montgomery from undertaking those representations, such as his discharge or non-engagement by the client or an apparent conflict of interest (*i.e.*, this very lawsuit). The suit also seems to ignore, at least at this point in the proceeding, the duties of confidentiality and loyalty an attorney owes to the client, as it includes both discovery requests to the clients and a refusal to abide by the clients' instructions to the lawyer. The relief sought here is both highly unusual and would be unprecedented; but, fortunately, as shown below, it is unsupportable as a matter of law.

Indeed, there is no legal or factual basis supporting the District Attorney's lawsuit. No one is interfering with the District Attorney's constitutional role and function to prosecute criminal matters in this judicial district, and the District Attorney cannot force the Defendants to accept him as their attorney when they perceive that inherent conflicts of interest exist, they do not desire him to be their attorney in all general matters, and they have employed their own, unbiased counsel pursuant to the authority and procedures set forth in the statutes cited in the petition, the St. Tammany Parish's Home Rule Charter, and the Parish's Code of Ordinances. The manner in which the Parish Government is currently structured with respect to the attorneys who provide independent legal advice and services to the Parish President and the executive branch, on one side, and the Council and legislative branch on the other, is not only legally authorized, but has been the long-followed practice by the coordinate branches of the local government, without disagreement, difficulty, or interference by the District Attorney's Office, which is part of the

judicial branch of State government. For those reasons alone, the petition should be dismissed for failure to state a viable cause of action.

The District Attorney's position – that the statutes generally defining district attorneys' duties and functions in Louisiana must be construed to force the Parish President and Council to accept Mr. Montgomery as their exclusive legal advisor and counsel in all general matters – regardless of whether they want him to be their attorney or not – not only contradicts the Parish's constitutional authority to control matters of local government pursuant to its Home Rule Charter, but is wholly contrary to the basic principles of the attorney-client relationship. Mr. Montgomery's assertions further require that the statutory scheme regarding district attorneys be construed in a manner inconsistent with the Louisiana Rules of Professional Conduct that govern lawyers in this State, including district attorneys. To read the statutes as Mr. Montgomery proposes to do, *i.e.*, as forcing clients to accept legal services from an attorney they perceive as conflicted, would render those statutes null and void according to the Louisiana Supreme Court. *See Succession of Wallace*, 574 So. 2d 348 (La. 1991) (explaining that legislative acts that impede or frustrate the Supreme Court's authority to regulate the practice of law and the attorney-client relationship and/or impermissibly conflict with the Rules of Professional Conduct are null and void).

If read and upheld in the manner Mr. Montgomery advances, the statutes he relies upon also would purport to create a cause of action and right of action that simply do not, and cannot, exist under Louisiana law. That is because there is no legally cognizable cause of action to force a current client to maintain an attorney-client relationship or to force a potential client to accept an attorney's representation. But that is precisely what Mr. Montgomery is attempting through his lawsuit. Similarly, Louisiana law does not provide an attorney with a legal interest or standing to sue a client or potential client to require the client to accept the attorney's legal services or advice. Thus, to the extent the petition asks the Court to declare that the Parish President, Council, and Parish Government must accept Mr. Montgomery as their general counsel and legal advisor in civil and administrative matters, it must be dismissed.

If any claims for preliminary injunction survive the exceptions of no cause and no right of action, those claims should be dismissed as premature, or, alternatively, deferred to the trial on the remaining claims for declaratory judgment. As explained in the exceptions and further herein,

because Mr. Montgomery seeks mandatory injunctive relief on the claims for a preliminary injunction, the law requires a full evidentiary hearing at which Mr. Montgomery will have to prove his entitlement to the injunctive relief sought by a preponderance of the evidence – the same burden he faces at a trial on the claims for declaratory judgment and permanent injunction. As a practical matter, because the claims for preliminary injunction are coextensive with the claims for declaratory judgment, a full evidentiary hearing on one set of those claims means a full evidentiary hearing on both of them, and it would be improper for the preliminary injunction claims to proceed separately in a summary proceeding. Further, unless the case is dismissed on exceptions, the resolution of the claims will require the Court to consider the constitutionality of the statutes relied upon by Mr. Montgomery, as plead in the Defendants’ Reconventional Demand, which means that the Attorney General must be given the opportunity to appear and participate at a hearing.

Finally, the District Attorney’s claim for a permanent injunction requiring the Defendants to provide his office with additional funding so that he can perform the additional services and functions he asserts are required of him is also premature as it is predicated on his other claims for relief. There is no current dispute between the parties over the funding of the District Attorney’s Office, and such a claim would only become ripe if the District Attorney were to win this lawsuit and the Defendants were to refuse to provide additional funds reasonably required by his office. There simply is no justiciable controversy between the parties over the amount of Parish funds allocated to the District Attorney’s Office at this time, such that the claim should also be dismissed.

II. BACKGROUND

A. **The Parish’s Legal Department has never been under the “purview and control of the District Attorney” as alleged in the suit; it has always been an administrative department in the executive branch of the Parish Government.**

Contrary to the suggestion in the petition that employees of the District Attorney’s Office have been usurped by the Parish’s Legal Department or improperly diverted from the District Attorney’s Office, all of the attorneys and other individuals who work in the Legal Department are now paid by St. Tammany Parish, not by the State or the District Attorney’s Office. The Parish’s annual budget allocates two separate amounts for legal work – (1) one amount for the attorneys and other employees who perform civil and administrative legal work for the Parish under the supervision of either the Parish President or the Council, and (2) a separate amount for the District

Attorney's Office, which is used to pay the Assistant District Attorneys ("ADAs") and other staff working directly for Mr. Montgomery's office.¹ The Legal Department and the District Attorney's Office are clearly separate and distinct from one another, and they were never intended to be one and the same as suggested in the lawsuit. Such a position is untenable, given that the Legal Department is a creation of the Parish Government existing in its executive branch, and the District Attorney's Office is part of the judicial branch of State government.

The Parish's Legal Department was formally established as part of the Parish Government when the St. Tammany Parish Home Rule Charter (the "Charter") was approved by the voters in 1998.² Contrary to Mr. Montgomery's assertion in the lawsuit that the Legal Department somehow falls under his "purview and control," Petition ¶ 26, the provision establishing a Legal Department is contained in Article IV ("Administration") of the Charter. Critically, the very first section of Article IV unambiguously states that, unless the Charter provides otherwise, "*all departments, offices and agencies shall be under the direction and supervision of the president,*" Charter, Art. IV, section 4-01 (emphasis added); *i.e.*, not Mr. Montgomery. The Legal Department, established in Section 4-03, and its employees are, thus, under the administrative direction and supervision of the Parish President, not the District Attorney. Further, pursuant to Section 4-01 of the Charter, the Parish President appoints all directors of the Parish departments "created by or under [the] Charter," and those directors "shall serve at the pleasure of the president...." *Id.* Although Section 4-03 of the Charter designates the district attorney as a legal adviser to the Parish Government, it does *not* state that he is the Director of the Legal Department or that the department is exempted in any way from Section 4-01 and the Parish President's ultimate administrative control, authority, supervision, or from entitlement to appoint the director.

The Legal Department is currently directed and supervised by the Parish President's Executive Counsel, who was appointed by the Parish President with the Council's approval

¹ Excerpts from the St. Tammany Parish 2016 Operating and Capital Budget, Ex. A. The allocation of funds to the District Attorney's Office is made pursuant to La. Rev. Stat. § 16:6, which, according to the Supreme Court's opinion in *Reed v. Washington Parish Police Jury*, 518 So. 2d 1044 (La. 1988), are mandated expenses to be funded by the parishes served by the District Attorney.

² See Section 4 of the Charter, Excerpts attached as Ex. B.

pursuant to the Charter and the St. Tammany Code of Ordinances (“the Code”).³ In addition to the Director, the department employs five other attorneys,⁴ Risk Management Officers, property acquisition specialists, paralegals, and administrative and legal assistants.⁵ All of the salaries and wages for those individuals are approved by the Council as part of the annual budget and do not come out of, or affect, the funds budgeted for the District Attorney’s Office.

The Legal Department, like all Parish Government departments, is ultimately directed and controlled by the Parish President.⁶ As set forth in the Code, the Legal Department includes the Parish’s Office of Risk Management,⁷ and also handles public records requests, code enforcement, property acquisition, and contract and public bid issues. In addition, the attorneys in the Legal Department provide representation to the Parish in civil litigation matters.

One of the Legal Department’s most important responsibilities is to provide the Parish President with independent legal advice and services related to Parish government and business. As the President has explained to Mr. Montgomery, she and her office, as the executive branch of the Parish Government, require independent and unbiased legal counsel, separate and apart from the attorneys who provide legal advice to the Council and from the District Attorney and his employees, as there are inherent conflicts of interest between the three branches of government and often differences in opinion and policy. Notably, until the filing of this lawsuit, Mr. Montgomery had indicated that he agreed that the President should have independent counsel. Regardless, the President has made clear to the District Attorney that her office does not wish to

³ See Charter, Ex. B, at Section 4-01; see also Excerpts from the Code, Ex. C, Sections 2-092.00(D)(1) and (D)(8).

⁴ It should be noted that four of the attorneys who work in the Legal Department, including the Director, have commissions from the State making them Assistant District Attorneys. For over a decade, this is the manner in which the Legal Department has functioned – with ADAs paid by the Parish providing the Parish and Executive Branch with legal advice, services, and representation.

⁵ See Legal Department Organizational Chart, attached to the Parish Budget, Ex. A. Although the Organizational Chart reflects that the Legal Department includes Code Enforcement Officers, since it was prepared, those employees have been transferred to a different Parish Department. Additionally, the Legal Department hired an additional attorney after the chart was prepared.

⁶ See Charter, Ex. B, Section 4-01.

⁷ Code, Ex. C, at Section 2-092.00.

rely on him as the executive branch's chief legal advisor, and that she intends to continue to rely on her Executive Counsel and the other attorneys in the Legal Department.

B. The attorneys who provide legal services and advice to the Council also are paid by the Parish.

The District Attorney also complains in this lawsuit about the fact that there are five attorneys employed with Parish funds who provide legal advice and services directly to the Council.⁸ Although three of these attorneys were originally hired through the District Attorney's Office (under Mr. Montgomery's predecessor) and assigned to work for the Council, their salaries and wages are included in the Parish's annual budget and do not come out of the funds allocated to the District Attorney's Office.

These five attorneys primarily provide legal advice to the Council in its role as the legislative branch of the Parish Government. They also draft ordinances, represent Parish boards and commissions, handle civil litigation matters for the Parish Government, and have worked cooperatively with the Legal Department for years in coordinating the representation of the Parish. Just as the President has explained to Mr. Montgomery the need for the executive branch to have its own independent counsel, the Council has explained its same need as a separate branch of the Parish Government. Pursuant to the authority vested in it by the Charter, the Council employs these attorneys because it is necessary to its functioning and the proper carrying out of its duties and responsibilities.⁹ It has also made clear to Mr. Montgomery that it does not desire to rely on the District Attorney's Office for general legal advice and intends to maintain as part of the legislative branch of Parish Government the five attorneys who provide it with independent legal advice and services.

C. Beginning in 2015, the District Attorney began to make illogical, impractical, and inconsistent demands that his office be treated as the Legal Department and that he be considered the chief general legal advisor to the Parish Government, President, and Council.

⁸ Organizational Chart for the Council, attached to the Parish Budget, Ex. A. Until immediately prior to this lawsuit being filed, all five of those individuals also held ADA commissions. In April 2016, Mr. Montgomery unilaterally had three of those commissions rescinded as a result of his dispute with the Council regarding its right to select legal counsel of its choice. Accordingly, only two of the five attorneys providing legal advice and services to the Council have ADA commissions at this time.

⁹ Charter, Ex. B, Section 2-10.

Mr. Montgomery took office as the District Attorney of the 22nd JDC on January 12, 2015. The 22nd JDC includes St. Tammany and Washington Parishes, such that Mr. Montgomery was elected by, and is thus answerable to, voters in both parishes, not just St. Tammany Parish.

After taking office, Mr. Montgomery began to question the Parish Government's right to maintain a Legal Department and employ counsel to advise the President and the Council who are not under his direct supervision and control. As he does in this lawsuit, Mr. Montgomery relied on language in the Home Rule Charter designating the 22nd JDC District Attorney as a legal advisor to the Parish and the statutory scheme addressing the roles and functions of district attorneys in Louisiana. His position leading up to the lawsuit not only ignored the broad powers granted the President, Council, and Parish Government as a home rule charter government and the nature of the attorney-client relationship, but fluctuated as to how he perceived his role with respect to his alleged clients – the Defendants herein – and what changes to the Legal Department or structure of the Parish Government he believes would be necessary to address his supposed concerns.

For instance, Mr. Montgomery assured the President and the Council in writing at various times that he understood that their relationship was (or would be) that of attorney and client and that he would provide legal advice to them and the Parish and not further his office's politics or policies. Yet, he would immediately, sometimes in the same writing, do an about-face and demand that the President and Council take steps that were obviously contrary to their wishes and that would cause disruption and confusion for the Parish's Legal Department and its employees and for the attorneys providing legal services to the Council. As an example, Mr. Montgomery demanded several times that the Parish immediately amend its budget to transfer "all monies" budgeted for the Legal Department to his office and transfer all physical property, including the physical office itself, files, and employees to his control. This would not only seriously disrupt Parish Government and be inconsistent with his alleged clients' wishes and best interests, but it was pointed out to Mr. Montgomery that such actions could cause employment-related claims by personnel against the Parish and interfere with the legal representation of the Parish in pending matters.

Similarly, although continuing to claim that the Parish and the Council are his clients, just recently, Mr. Montgomery unilaterally caused the Assistant District Attorney commissions of three

of the lawyers providing services to the Council to be rescinded without advance notice. Petition ¶ 27. This not only caused problems for the three individuals, but disrupted the Parish's representation in civil litigation matters in which those individuals were enrolled and was done without consultation with or approval by the Council, Mr. Montgomery's supposed client.

Further, although Mr. Montgomery has repeated that he believes he is mandated by statute to control and supervise the entire Legal Department (contrary to the express language in the Charter that the President directs and supervises all departments), he has also vacillated on whether he really wants to handle all of the department's functions. Contrary to his stated belief that he is required to take over the entirety of the Legal Department, at various times, the District Attorney has indicated that he does not want to assume the department's responsibilities related to insurance, risk management, code enforcement, or responding to public records requests. Rather, he appears to believe that (1) he is entitled to cherry pick the functions of the Legal Department that he would like to oversee upon a transfer of that department to his control, and (2) he can force his clients to restructure the local government in some fashion so that it can continue to handle and perform the remaining legal work that he finds less attractive.

Finally, pursuant to the Parish President's authority under the Charter and the President's and the Council's right under the Rules of Professional Conduct to instruct their attorney, the Defendants requested that Mr. Montgomery dismiss this lawsuit and agree to mediate any valid disputes between them regarding the structure of the Parish's Legal Department and representation of the Parish in civil matters. Mr. Montgomery refused to dismiss the lawsuit, thereby necessitating these exceptions and the Parish's continuing to incur legal fees and expenses.

III. LAW AND ARGUMENT

A. The petition should be dismissed in its entirety for failing to state a cause of action.

The exception of no cause of action tests whether the law invoked by a plaintiff affords the remedy sought if the facts alleged in the petition are accepted as true. La. C. Civ. Proc. art 927; *Foti v. Holliday*, 2009-0093 (La. 10/30/09); 27 So. 3d 813, 817 (citing *Everything on Wheels Subaru, Inc. v. Subaru South, Inc., et al.*, 616 So.2d 1234, 1235 (La. 1993)). Here, the statutes cited by the District Attorney and the Charter do not provide the District Attorney with a cause of

action against the Defendants. First, the statutes relied upon in the petition make clear that home rule charter governments are exempted from their provisions. And, second, the Charter expressly creates a Parish Legal Department that allows for both general and special counsel and gives the Parish Government the authority to reorganize and restructure that department in any way it deems necessary and proper to carry out the functions of the department and the business of the Parish.

In his petition, the District Attorney asserts that La. Rev. Stat. §§ 16:2 and 42:261 require him to be the exclusive general legal advisor to the Defendants and all parish boards and commissions. Petition ¶¶ 30-36. In particular, he relies on and references the following provisions:

A. The district attorneys of the several judicial districts of Louisiana, other than the parish of Orleans, shall ex officio be the regular attorneys and counsel for the police juries, parish school boards, and city school boards within their respective districts and of every state board or commission domiciled therein, including levee boards, hospital and asylum boards, education boards, and all state boards or commissions the members of which, in whole or in part, are elected by the people or appointed by the governor or other prescribed authority, except state boards and commissions domiciled at the city of Baton Rouge, parish of East Baton Rouge, and all boards in charge or in control of state institutions.

La. Rev. Stat. § 16:2(A).

A. Except as provided by Subsection C of this Section or as otherwise provided by law, the district attorneys of the several judicial districts other than the parish of Orleans shall, ex officio and without extra compensation, general or special, be the regular attorneys and counsel for the parish governing authorities, parish school boards, and city school boards within their respective districts and of every state board or commission domiciled therein, the members of which, in whole or in part, are elected by the people or appointed by the governor or other prescribed authority, except the state boards and commissions domiciled at the city of Baton Rouge, and all boards in charge or in control of state institutions.

La. Rev. Stat. § 42:261(A).¹⁰

¹⁰ The District Attorney also partially quotes from La. Rev. Stat. § 42:261(D)(1) in support of his claims, asserting “it shall be unlawful for any parish governing authority to retain or employ for any compensation whatever any attorney or counsel to represent it generally,” Petition ¶ 34. The petition omits the crucial first part of that statutory provision, however, which states in pertinent part, “*except as otherwise permitted by this Section ...*” Subsection (A) of that Section (quoted above), is clear that the entirety of the section is subject to the qualification “[e]xcept ... as otherwise provided by law...” La. Rev. Stat. § 42:261(A)(emphasis added). As discussed above, the law otherwise provides that home rule charter governments are exempted from these provisions.

Although cited in the petition, Mr. Montgomery glosses over the importance of the statutory exception to these provisions stating that the district attorney is to act as the regular counsel for parish local governing authorities, which is located in La. Rev. Stat. § 16:2(D):

D. Where a parish has adopted a charter for local self-government or other home rule charter and such charter provides for the employment of a parish attorney or a special attorney or counsel, the district attorney shall not be the regular attorney or counsel for such governing authority.

Notwithstanding the provisions of R.S. 42:261(C) and R.S. 42:263, in a parish which has adopted a charter for local self-government or other home rule charter, if the charter so provides, the parish governing authority may retain or employ any attorney or counsel to represent it generally or retain or employ any special attorney or counsel to represent it in any special matter without the approval of the attorney general.

Emphasis added. Section 16:2(D) is fatal to the District Attorney's petition, because St. Tammany Parish is a home rule charter government, *and* its Charter "provides for the employment of ... a special attorney or counsel," as it establishes a Legal Department in the executive branch of government that allows for general counsel and special counsel. As discussed below, the Charter also expressly authorizes the reorganization, change, or amendment of all parish departments, including the legal Department, by the Defendants. In these circumstances, the statutory default rule that the District Attorney will act as the Parish Government's regular counsel *unequivocally does not apply*.

On the face of the Charter, it is clear that the Parish's Legal Department falls under the administrative control and supervision of the Parish President.¹¹ It is further indisputable that the Parish President has exclusive authority to appoint a director of the department, which has been done (and is not the District Attorney), as acknowledged in the petition.¹² Section 4-03 of the Charter, when passed, provided not only for the establishment of a Parish Legal Department, but allowed for the Parish to have a legal advisor (subsection A) and to retain special counsel (subsection B). Although, when the Charter was first passed, the District Attorney for the Parish was designated in subsection A as a legal advisor to the Parish Government – not the *sole* or *exclusive* legal advisor – the Parish Government has since selected to have other, independent

¹¹ Charter, Ex. B, at Sections 3-01 and 4-01.

¹² *Id.*

general legal advisors as detailed above. This is permitted on the face of the Charter, which allows for “the creation, *change, alteration*, consolidation or abolition of Parish departments, offices and agencies *and the reallocation of the functions, powers, duties and responsibilities* of such departments, offices or agencies, *including those provided for in this charter.*”¹³

In other words, when the Charter was drafted, and as approved by the voters, it was decided that legal representation of the Parish was to be provided through the establishment of a Parish Legal Department, which like all parish departments, is part of the administration and under the supervision of the Parish President. And, as with all departments, it may be reorganized (or even abolished) by the President and the Council. In fact, the Defendants have already exercised that power, as the Code of Ordinances currently provides that the Director of the Legal Department (not the District Attorney) is responsible for coordination of legal services for Parish Government and “any and all actions necessary to carry of the functions of the Department.”¹⁴

In sum, the Defendants’ authority to select counsel to work in the Legal Department and provide the Council with legal advice and services is obvious on the face of the Charter. In addition to the provisions already discussed, the Charter is explicit that the Parish Government “shall have and is hereby granted the right and authority to exercise any power and perform any function necessary, requisite or proper for the management of its affairs, not denied by this charter, or by general state law, or inconsistent with the constitution.”¹⁵ Further, the Charter is to be “liberally construed in aid of its declared intent which is to establish for the people of St. Tammany Parish effective home rule free from legislative interference as to the structure and organization of its local government, and with the power and authority to manage its local affairs,” pursuant to La. Const. art. VI, §§ 5 and 6.¹⁶ There is no constitutional provision or law, general or otherwise, that

¹³ Charter, Ex. B, Section 4-12(A) (emphasis added).

¹⁴ Code, Ex. C, Section 2-091.00(8).

¹⁵ Charter, Ex. B, Section 1-04(A).

¹⁶ *Id.* at Section 9-06. Article VI, § 5 of the Louisiana Constitution provides in relevant part:

(E) Structure and Organization; Powers; Functions. A home rule charter adopted under the Section shall provide the structure and organization, powers, and functions of the government of the local governmental subdivision, which may include *the exercise of any power and performance of any function necessary*,

denies the Parish Government the authority to staff and structure its Legal Department as it desires, or that precludes the Defendants from selecting legal counsel other than the District Attorney to provide them with general legal advice and civil representation.¹⁷ The claims should be dismissed for failure to state a cause of action.¹⁸

B. The District Attorney does not have a right of action or cause of action to sue the Defendants to force them to accept his legal services and advice.

The focus on an exception of no right of action is on whether the particular plaintiff has a right to bring the suit, while the focus in an exception of no cause of action is on whether the law provides the remedy sought against the particular defendant. *See Industrial Companies, Inc. v. Durbin*, 2002–0665 (La. 1/28/03); 837 So. 2d 1207, 1212. Although the exceptions of no right of action and no cause of action are separate and distinct, on this particular issue, they are inextricably tied together as the fundamental point is that an attorney cannot sue a client under Louisiana law to force the client to accept his representation.

In *Succession of Wallace*, 574 So. 2d 348 (La. 1991), the Supreme Court discussed at length the “number of interrelated rules” it has adopted in the defining and regulating of the client-attorney relationship. Relevant here is the Court’s following discussion of certain ethical rules:

These rules are designed to give the client the right to control and direct the assertion and protection of his legal rights as fully as practicable, and to encourage and require an attorney to act with loyalty and in the best interest of his client. Rule 1.3, Comment [1] (“A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer”); Rule 1.4, Comment [1] (“Even when a client delegates authority to the lawyer, the client should be kept advised of the status of the matter.”); Rule 1.7, Comment [1] (“loyalty is an essential element in the lawyer’s relationship to a client.”); Rule 1.7,

requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution. (Emphasis added).

Article VI, § 6 provides that “[t]he legislature shall enact no law the effect of which changes or affects the structure and organization or the particular distribution and redistribution of the powers and functions of any local governmental subdivision which operates under a home rule charter.”

¹⁷ The Louisiana Constitution does mandate that the District Attorney prosecutes all criminal matters on behalf of the State in this judicial district, which provision is not at issue in this lawsuit or disputed. La. Const. art. V, § 26.

¹⁸ If the Court concludes otherwise, however, the constitutionality of the statutes will have to be adjudicated. As detailed below, to construe the statutes in the manner proposed by the District Attorney would violate the equal protection clause of the Constitution, interfere with the Louisiana Supreme Court’s regulation of the practice of law and conduct of attorneys, and impermissibly restrict the Parish Government’s powers as a home rule charter parish under Article VI of the Constitution.

Comment [6] (“The lawyer’s own interest should not be permitted to have an adverse effect on representation of a client.”); Rule 1.8, Comment [1] (“... all transactions between client and lawyer should be fair and reasonable to the client.”); Rule 2.1, Comment [1] (“A client is entitled to straightforward advice expressing the lawyer’s honest assessment.”)

Id. at 351. Louisiana R. Prof. Con. 1.16(a)(3) is also crucial as it gives “the client the absolute right to fire a lawyer in whom he has lost faith or confidence.” *Id.* at 355.

The overarching themes of these rules and the Supreme Court’s discussion in *Succession of Wallace* are that the attorney-client relationship is the result of the mutual agreement and understanding of the client and the attorney, centers on the client’s best interests and wishes, and can be terminated by the client at any time for any reason. At direct odds with those principles is the District Attorney’s assertion that he has a right to sue the Parish President, Council, and Parish Government, whom he asserts are his clients, to force them to accept him as their legal advisor and representative. Louisiana law simply does not recognize such a cause of action for a forced or mandatory legal representation. Nor is there any legal support that an attorney has a legal interest in suing his clients to force a representation.

The statutes setting forth a district attorney’s obligation to act as legal adviser to some parish governing authorities can only be read as meaning when the governing authority (the client) has requested the representation and there is no ethical prohibition to the arrangement under the Rules of Professional Conduct. Here though, not only is St. Tammany Parish exempted from the statutes by virtue of its Charter, it is undisputed that (1) the Defendants do not desire to have Mr. Montgomery serve as their general counsel, (2) they have selected their own counsel who are being paid by the Parish pursuant to the Parish budget, and (3) Mr. Montgomery has refused to abide by the Defendants’ wishes, instructions, and directives. Additionally, the Defendants believe that Mr. Montgomery has conflicts of interest that preclude him from acting as their exclusive general legal counsel as a result of his being part of a separate branch of government with different political interests and his being an elected official with perhaps conflicting loyalties to his constituents, who are both Washington Parish and St. Tammany Parish voters. Under these circumstances, the Rules of Professional Conduct preclude the District Attorney from representing the Defendants as asserted in this lawsuit. He simply does not have a legal right to sue the Defendants under these circumstances, and the law does not provide the remedy he seeks.

C. **The requests for preliminary injunction cannot be heard in a summary proceeding and should be dismissed as premature or deferred to trial on any surviving claims for declaratory judgment.**

1. *The District Attorney seeks mandatory injunctive relief that will require a full, evidentiary hearing.*

The District Attorney makes three requests for a preliminary injunction, asking that the Court issue an order to:

- (1) Stop the Defendants from operating, controlling, or maintaining a civil legal department that is separate from his own office;
- (2) Stop the Defendants from hiring or retaining any attorney other than him, now or in the future, for providing general legal advice and services; and
- (3) Stop the Defendants from allegedly interfering with his right to act as their attorney.

Petition, pp. 9-10. Mr. Montgomery seeks three overlapping declaratory judgments and requests for permanent injunction corresponding to each of the requests for “preliminary” injunctive relief. *Id.* To the extent these claims are not dismissed for no cause and no right of action, the requests for preliminary injunctive relief should be dismissed as premature or deferred until a trial on all of the claims in the petition.

“A preliminary injunction is essentially an interlocutory order issued in summary proceedings incidental to the main demand for permanent injunctive relief.” *Concerned Citizens for Proper Planning, LLC v. Parish of Tangipahoa*, 2004-0270 (La. App. 1st Cir. 3/24/05); 906 So. 2d 660, 664. In other words, a preliminary injunction is designed and typically used to preserve the *status quo* pending a trial on the merits of the case. *Id.* (Citing *Silliman Private School Corp. v. Shareholder Group*, 2000-0065, (La. App. 1st Cir. 2/16/01), 789 So. 2d 20, 23). Generally, a party seeking a preliminary injunction must (1) make a *prima facie* showing that it will prevail on the merits of the case and that it is entitled to the relief sought, and (2) demonstrate that it will suffer irreparable injury if the injunction does not issue. *Id.* (Citing *Roba, Inc. v. Courtney*, 2009-0509 (La. App. 1st Cir. 8/10/10); 47 So. 3d 509, 518).

Where the issuance of a preliminary injunction would not merely maintain the *status quo*, but would command or mandate a party to take specific action, it is deemed to be a “mandatory injunction.” See *City of New Orleans v. Board of Directors of the Louisiana State Museum*, 1998-

1170 (La. 3/2/99); 739 So. 2d 748, 756; *Spine Diagnostics Center of Baton Rouge, Inc. v. Louisiana State Board of Nursing*, 2008-0813 (La. App. 1st Cir. 12/23/08); 4 So. 3d 854, 864. Because a mandatory preliminary injunction has the same essential effect as a permanent injunction by forcing certain action immediately, it may not issue on the usual *prima facie* showing. Rather, the party seeking the injunction must show by a *preponderance of the evidence at an evidentiary hearing* that it is entitled to the preliminary injunction. *City of New Orleans*, 739 So. 2d at 756; *Spine Diagnostics*, 4 So. 3d at 864 (citing *Concerned Citizens*, 906 So. 2d at 664). Accordingly, it is improper to proceed in a summary proceeding on a preliminary injunction when the relief sought is really mandatory in nature. See *Maestri v. Destrehan Veterinary Hosp., Inc.*, 554 So. 2d 805, 808 (La. App. 5 Cir. 1989); *Werner Enterprises, Inc. v. Westend Development Dev. Co.*, 477 So. 2d 829, 832 (La. App. 5 Cir. 1985).

Although the petition does not characterize the three requests for preliminary relief as mandatory in nature, it is obvious that granting the relief requested would not maintain the *status quo*, but would require the Defendants to take many drastic affirmative acts, such that it would be a mandatory injunction. Indeed, the Defendants would have to, among other things, eliminate the Legal Department (which is established by the Charter), terminate up to potentially 23 employees paid by the Parish, amend the Parish budget, have their attorneys withdraw from pending matters in which they are enrolled for the Parish, transfer multiple civil and administrative matters to the District Attorney's Office, and restructure the Parish Government with respect to functions of the Legal Department like Risk Management and public records. Indeed, the Defendants likely would be forced to pass ordinances to accomplish most of those and other necessary items. It would also force the Defendants to accept Mr. Montgomery as their general legal advisor with respect to all matters to which they currently turn to their selected counsel for advice at the very time that he is suing them and while the lawsuit remains pending. In other words, the relief requested goes far beyond maintaining the *status quo*, and, to the contrary, would cause upheaval, be extremely disruptive to the functioning of the Parish Government, and force the Defendants in this lawsuit to turn to the party suing them for their general legal needs.

Although the Defendants submit that these claims should be dismissed based on the statutes, Charter, and law on the nature of the attorney-client relationship, as a procedural matter,

they cannot be heard in a summary proceeding independent from the coterminous claims for declaratory judgment and permanent injunction. The claims for “preliminary” injunctive relief overlap completely with the claims for declaratory judgment and, because they seek a mandatory injunction, are subject to the same standard of proof in a full evidentiary trial. Accordingly, there should be one trial, at which Mr. Montgomery will have to prove entitlement to the relief requested by a preponderance of the evidence.

2. *Because the petition, including the claims for preliminary injunction, gives rise to issues of constitutionality, the claims are not appropriate for adjudication at a preliminary injunction hearing.*

If the Court does not find that the statutes and Charter on their face require dismissal of the petition, then the constitutionality of the statutes becomes an issue. *See* Defendants’ Reconventional Demand. All of the District Attorney’s claims, including those for preliminary injunctive relief, are premised on a reading of La. Rev. Stat. §§ 16:2 and 42:261 that would violate the Louisiana Constitution in three ways.

First, as discussed by the Louisiana Supreme Court in *State v. Petrovich*, 396 So. 2d 1318, 1323 (La. 1981), the statutory scheme relied on by the District Attorney “is wrought with internal inconsistencies created by legislative exemptions of many state and local public bodies from the statutes’ parameters.” In *Petrovich*, a group of parish commissioners were charged by criminal indictments with violating the provisions of these statutes relating to the hiring of special counsel to represent the parish governing authority. The Supreme Court declared La. Rev. Stat. § 42:264, which provided the criminal penalties for violating the procedure set forth in § 42:263 for retaining special counsel, unconstitutional because it violated the commissioner’s right to equal protection of the laws. *Id.*

Specifically, the Court found that the statutes at issue (La. Rev. Stat. §§ 42:261 – 42:264) created unreasonable, arbitrary, and irrational classifications of similarly-situated public entities due to the statutes’ exemptions of various public bodies from the penal provisions that were contained in § 42:264. *Petrovich*, 396 So. 2d at 1323. Because the statutes arbitrarily exempt certain parish boards and state commissions from their provisions for no discernable reason, the Court held that § 42:264 was unconstitutional and quashed the indictments to the defendants. *Id.*

Although the Court only struck down the statute under which the defendants had been indicted, it expressly noted:

... [T]he entire statutory scheme of La. Rev. Stat. §§ 42:261 – 264 is wrought with internal inconsistencies created by legislative exemptions of many state and local public bodies from the statutes' parameters. *** While finding it unnecessary to reach the constitutionality of R.S. 42:261 – 263, we suggest that the legislature re-examine these statutes with the view of removing any constitutional infirmities that may exist.

Somewhat incredibly, the Legislature did amend the statutes several times after the *Petrovich* case, but, in part, to except more public bodies and parishes from their provisions, thereby only further exacerbating the constitutional problem. *See, e.g.*, Acts 2011, 1st Ex. Sess., No. 35, § 1 (exempting Terrebonne Parish from § 42:261's provisions); Acts 2001, No. 359, § 2 (adding Calcasieu Parish to a list of parishes exempted from §§ 16:2 and 42:261). As a result, the statutes, if applied in the manner sought in the District Attorney's petition, would violate the Defendants' right to equal protection under the laws, as several bodies, boards, and parishes are carved out of the statutory regime and not subject to the provisions stating that the district attorney shall act as general legal counsel to local governing authorities.

Second, if the statutes at issue are interpreted to mean that the Defendants can be forced to accept the District Attorney as their general legal adviser, over their wishes to retain other counsel and even when they perceive that he has inherent conflicts of interest in his role as an elected official in a different branch of the government serving a different jurisdiction, the statutes would unconstitutionally interfere with the Supreme Court's regulation of the practice of law and the attorney-client relationship and would be wholly contrary to the Rules of Professional Conduct that govern attorneys. *See Succession of Wallace, supra.*

Succession of Wallace dealt with a challenge to the statute restricting the ability of an executor of a decedent's estate to discharge an attorney who was designated in a will. The Supreme Court struck the statute down as unconstitutional, concluding that it impermissibly conflicted with Rule of Professional Conduct 1.16(a), which requires an attorney to withdraw from a representation if he or she is discharged by the client. *Succession of Wallace*, 574 So. 2d at 360. As the Supreme Court explained, it has "exclusive and plenary power to define and regulate all facets of the practice of law, including ...the professional responsibility and conduct of lawyers

... and the attorney-client relationship.” *Id.* at 350. The Court’s sources of authority with respect to the practice of law “are the court’s inherent judicial power emanating from the constitutional separation of powers,” which is why the rules of the Supreme Court governing the conduct of attorneys “unquestionably have the force and effect of substantive law.” *Id.* The legislature, on the other hand, cannot enact laws defining or regulating the practice of law in any aspect without [the Supreme Court’s] approval or acquiescence....” *Id.* The Court explained that it would strike down statutes that impede or frustrate its authority over the conduct of attorneys and the practice of law, which it concluded the statute at issue there by adding a “for cause” requirement to the client’s right to discharge counsel. *Id.*

Similar to the statute in *Succession of Wallace*, which impermissibly purported to regulate the attorney-client relationship between an executor and a designated attorney and provided that the client (the executor) was not free to discharge the attorney except “for cause,” the statutes cited by the District Attorney in this case set forth a regime whereby public individuals and governing authorities must accept legal representation from an attorney regardless of their desire to be represented by that person, where a client cannot discharge the attorney at will, and where the attorney can continue to represent a client even if the client perceives that a conflict of interest exists. The District Attorney’s reading of the statutes cannot be reconciled with the Supreme Court’s rules governing attorney conduct and the attorney-client relationship,¹⁹ and are, thus, unconstitutional for the same reason as the statute in *Succession of Wallace*.

Third, as a home rule charter government, St. Tammany Parish has the exclusive discretion and control “over the operation, management and internal arrangement of the component parts of its local government,” including with respect to the structuring of its various offices, departments, agencies and elements of local government. *Lafourche Parish Council v. Autin*, 1994-0985 (La. 1994); 648 So. 2d 343, 355-56. That control extends to the assignment, allocation or distribution of purposes, work, authority and capacity among its offices and departments. *Id.* at 356. Statutes

¹⁹ See, e.g., La. R. Prof. Cond. 1.2(a) (lawyer must abide by the client’s decisions regarding the objectives of the representation); 1.7(a)(2) (a lawyer may not represent a client if there is a significant risk that the representation will be materially limited by a personal interest of the lawyer); 1.16(a)(1) and (3) (a lawyer may not represent a client where the representation would result in a violation of the rules or where the lawyer has been discharged).

that interfere with a home rule charter government's authority over its own internal affairs, the structure of its local government, and the internal distribution or redistribution of its powers and functions will be struck down as unconstitutional in violation of La. Const. art. VI, §§ 5-6.

In *Autin*, a statute was declared unconstitutional as applied to a home rule charter parish because it allowed for the election of members to parish boards and commissions in a manner that was inconsistent with the provisions set forth in the subject home rule charter and as established by the parish's governing authority. *Autin*, 648 So. 2d at 357-358. The Court found that the statute effected the parish's "administrative authority over its own boards and commissions, by blatantly changing and affecting the distribution of the [parish's] powers and functions," and was, thus, unconstitutional. *Id.*

Here, the statutes relied upon by the District Attorney, if applied as he urges, would also interfere with the Defendants' power and authority under the St. Tammany Parish Charter to structure and organize its Legal Department in the manner it deems appropriate and to retain counsel that it deems to be required and necessary to the Parish's functioning. Most notably, the Charter clearly authorizes the Parish President to propose to the Council "the creation, change, alteration, consolidation or abolition of Parish departments, ... and the reallocation of the functions, powers, duties and responsibilities of such departments," including departments provided for in the Charter – such as the Legal Department.²⁰ Yet, the District Attorney seeks injunctive and declaratory relief from the Court that would essentially prohibit the President and Parish from exercising this power with respect to the Legal Department. The statutes, if construed to provide for such relief, would be an unconstitutional limitation on the Defendants' authority to manage, control, and structure the Parish Government.

This is merely a preview as to each constitutional problem posed by the District Attorney's construction of the statutes at issue, as the Court does not need to reach the merits of these constitutional challenges on this exception. The critical point for purposes of the exception is that all of these challenges must be considered before the relief sought can be granted, whether framed as a preliminary injunction or otherwise. Generally, however, resolution of a constitutional

²⁰ Charter, Ex. B, Section 4-12.

challenge to a statute is not appropriate on a preliminary injunction and should be adjudicated at the trial on the declaratory judgment claims. *See Kruger v. Garden Dist. Ass'n*, 1999-3344 (La. 3/24/00); 756 So. 2d 309, 310. Further, as a practical matter, the Defendants are putting the Attorney General on notice of their Reconventional Demand and constitutional challenges, and the Attorney General must be given the opportunity to appear and participate in the hearing. *See* La. C. Civ. P. art. 1880 (the Attorney General must be placed on notice and is entitled to be heard in a declaratory judgment proceeding in which the constitutionality of a statute is at issue).

For all of these reasons, the Court should grant the Defendants' exception of prematurity as to the claims for preliminary injunction and set the entire matter for trial on a date that provides adequate time to conduct any necessary discovery and for the Attorney General to appear if he chooses to do so.

D. The district attorney's claim for injunctive relief to provide additional funds to his office should also be dismissed as premature.

In addition to seeking a preliminary and permanent injunction as to the three items discussed above, the District Attorney also asks for a permanent injunction to force the Defendants to provide additional funding to his office. Petition ¶¶ 57-59. The petition states that the District Attorney's Office is entitled to additional funds so that Mr. Montgomery can act as the general legal advisor to the Parish Government and its boards and commissions. In other words, he seeks injunctive relief to force the Parish to allocate more funds to his office in the event he is successful in this lawsuit and the Court declares that the Parish must accept him as its attorney.

The District Attorney does not, however, allege that the Defendants have failed to allocate sufficient funds for the services provided and the functions currently performed by his office, as was the situation in *Reed v. Washington Parish Police Jury*, 518 So. 2d 1044 (La. 1988). In *Reed*, which is cited in the petition, Mr. Montgomery's predecessor filed a mandamus action against the Washington Parish Police Jury because it refused to reimburse him for the reasonable operational expenses the District Attorney's Washington Parish office incurred, which expenses are itemized in La. Rev. Stat. § 16:6. In that case, there was no dispute as to the scope of the services the District Attorney's Office was providing or that the amount of the expenses incurred were reasonable and necessary. Rather, the question was whether the police jury's funding of those

itemized expenses under § 16:6 is compulsory or discretionary in nature. *Id.* at 1049. The Court concluded that § 16:6 provides a mandate to fund the reasonable expenses of the district attorney. *Id.*

The situation in *Reed* is not presented here. Importantly, Mr. Montgomery does not complain that the Parish has failed to allocate sufficient funds under the existing budget for the work and services his office currently performs, as required by La. Rev. Stat. § 16:6. Rather, his claim for additional funding assumes that the Court rules in his favor on his claims for declaratory judgment and declares that the District Attorney is entitled to perform the additional services for the roles he asserts are required of him. Even then, the claim for additional funding would not present a ripe or live controversy, as it cannot be assumed that the Defendants would refuse to allocate additional funds if the District Attorney demonstrated it was necessary and reasonable. At this time, though, the claim for permanent injunctive relief is premature as there is no justiciable controversy between the parties regarding the funding of the District Attorney's Office. *See American Waste & Pollution Control Co. v. St. Martin Parish Police Jury*, 627 So. 2d 158, 162 (La. 1993) (citing *St. Charles Parish School Bd. v. GAF Corp.*, 512 So.2d 1165, 1172 (La. 1987)) (“Cases submitted for adjudication must be justiciable, ripe for decision, and not brought prematurely”).

IV. CONCLUSION

The District Attorney's petition is fatally flawed. The very statutes relied on in the petition recognize the Defendants the right to choose their own counsel by virtue of their Home Rule Charter. That is consistent with Louisiana law governing the attorney-client relationship and the conduct of attorneys, as well as the broad powers granted home rule charter parishes under the Constitution. The Court should grant these exceptions and dismiss this lawsuit. Solely in the alternative, the claims for preliminary injunction must be dismissed or deferred to a trial on the merits of any claims surviving these exceptions.

Respectfully submitted,

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Government*

By: 

Ross F. Lagarde

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served on all counsel of record by e-mail, by facsimile, and/or by depositing same in the United States Mail, properly addressed and postage prepaid, this 6th day of May, 2016.


Ross F. Lagarde

2016 St. Tammany Parish Operating & Capital Budgets

Department of Finance
21490 Koop Drive
Mandeville, Louisiana 70471
985-898-2513



www.stpgov.org

EXHIBIT A

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ST. TAMMANY PARISH

PATRICIA P. BRISTER
PARISH PRESIDENT

October 1, 2015

Dear Council Chairman and Members:

Today I present for your consideration and approval, St. Tammany Parish Government's Operating and Capital Budgets for 2016. These are budgets that will continue to move us toward the achievement of the goals and initiatives outlined in the tenets of my administration: customer service, transparency, accountability, and cooperation.

In keeping with previous years, my administration will continue to focus on Public Health, Infrastructure and Drainage Projects, and the enhancement of the tremendous quality of life we have come to expect in St. Tammany Parish. Special projects also include: the St. Tammany Advanced Campus, the Cultural Arts District, and Safe Haven – our behavioral health campus formerly known as Southeast Louisiana Hospital. While the majority of our initiatives continue to be long-term, we have made great progress and have met several milestones associated with these projects in the past year.

When compiling this budget for your approval, I made every effort to ensure we are fiscally responsible and conservative, and to that end, we made cuts where needed and adjusted our revenue projections based on several years of history. It has been a goal of mine, over the last four years, to reduce the use of the fund balance of the General Fund for operating costs, and we have accomplished that goal again with this budget. Since taking office, my administration has reduced Parish Government's debt by \$36 million, a near twenty five percent reduction in less than four years. This, along with Standard and Poor's recent announcement of bond rating upgrades for two Parish issued bonds only proves that we have ensured the strength and stability of our finances, and we look forward to continuing this effort in the future.

The proposed Total Operating and Capital Budget for 2016 is \$133,665,097, an increase of 7.59% from the 2015 Budget. We have worked hard to ensure Parish Government has the resources necessary to provide the best services to our residents while maintaining financial stability, which will enable us to best serve future generations. We have recently completed a Cost Allocation plan to ensure our departments are funded appropriately based on the work performed. Parish Operations consists of \$75,423,537 of the total capital and operating budget. As St. Tammany Parish continues to expand and mature, our Parish Government must continue to serve our citizenry and respond to demands for more services.

The proposed Capital Budget for 2016 is \$15,490,000. This number represents what is required to maintain current infrastructure as well as the design and construction of new roads and drainage projects. We work regularly with state and federal granting agencies to help supplement this budget to accomplish even more while leveraging our local dollars to be able to address more of the growing needs of our Parish. Later this month, we will submit our final application in the National Disaster Resilience Competition, and money awarded from that grant will address major flood control projects and community enhancement projects that will help us to make needed improvements in areas which been most affected by disasters and ensure our Parish is even more resilient than ever before.

OFFICE OF THE PARISH PRESIDENT

P.O. BOX 628 | COVINGTON, LOUISIANA | 70434 | PBRISTER@STPGOV.ORG | 985-898-2362

WWW.STPGOV.ORG

EXHIBIT A

This is a snapshot of the projects that will be underway across the Parish next year. In consultation with you, we continue to analyze the most pressing needs of our Parish. I appreciate the cooperative relationship we have shared over the past four years and look forward to continuing our work together. Thank you for your consideration in approving this budget.

Sincerely,

A handwritten signature in blue ink that reads "Patricia P. Brister". The signature is written in a cursive style with a large initial "P".

Patricia P. Brister
Parish President
St. Tammany Parish Government

PPB/lo

ST.TAMMANY PARISH COUNCIL

ORDINANCE

ORDINANCE CALENDAR NO. 5462

ORDINANCE COUNCIL SERIES NO.

COUNCIL SPONSOR: TANNER/BRISTER

PROVIDED BY : DEPT OF FINANCE

INTRODUCED BY:

SECONDED BY:

ON THE 1ST DAY OF OCTOBER, 2015

AN ORDINANCE ADOPTING THE 2016 OPERATING BUDGET

WHEREAS, the Parish has prepared an operating budget in accordance with La. R.S. 39:1305 and generally accepted accounting principles; and

WHEREAS, the General Fund expenditures are closely monitored; and

WHEREAS, all Departments are required to follow proper Purchasing Procedures and

WHEREAS, each Department Director is responsible for controlling expenditures within his or her Department in order to ensure that said expenditures do not exceed the amount appropriated; and

WHEREAS, the St. Tammany Parish Council has held public hearings on the proposed budget as required by La. R.S. 39:1307.

NOW, THEREFORE, BE IT ORDAINED by the St. Tammany Parish Council acting in its capacity as the authority of the Parish of St. Tammany that the 2016 Operating Budget is adopted as follows:

SECTION I: The General Fund is adopted as follows:

010 - GENERAL FUND

General Fund Revenues

Taxes	
Ad Valorem	4,737,143
Other Taxes, Penalties, and Interest	2,332,000
Licenses	4,002,300
Permits	1,854,000
Intergovernmental Revenues	
Other Federal Funds	60,000
State Revenue Sharing	270,000
Other State Funds	6,000
Fees, Charges, and Commissions for Services	637,750
Fines and Forfeitures	179,400
Other Revenues	605,650
Interfund Charges	12,455,194
Total Revenues	<u>27,139,437</u>

Expenditures

Parish President	1,100,889
Parish Council	2,465,931
Finance	1,581,178
Technology	2,055,344
Human Resources	712,175
Chief Administrative Officer	773,745
Procurement	608,791
Archive Management	318,745
Geographical Information Systems	381,832
Data Management	405,246
Facilities Management	1,366,567
Development-Administration	495,555
Planning	670,712
Permits	1,493,616
Public Information	813,362
General Building Maintenance	43,700
Levee Board Building	44,763
Fairgrounds	83,092
22nd Judicial District Court	2,798,293
22nd Judicial District Court Reimb	178,855

010 - GENERAL FUND, CONTINUED

Expenditures	
Ward Courts	283,575
District Attorney	3,141,791
Registrar of Voters	261,049
Assessor	5,883
Parish Jail	96,938
Legal	1,690,592
Code Enforcement	862,237
Veterans Affairs	131,616
Camp Salmen Nature Park	260,256
Grants Management	525,228
Greater St. Tammany Airport	235,977
General Expenditures	1,158,272
Total Expenditures	<u>27,045,805</u>
Revenue Over (Under) Expenditures	93,632
Projected Fund Balance, Beginning	8,762,499
Less Minimum Fund Balance Reserved	8,113,742
Projected Available Fund Balance, Ending	<u><u>742,389</u></u>

SECTION II: The Special Revenue Funds are adopted as follows:

013 - ST. TAMMANY PARISH LIBRARY FUND

Revenues	10,168,637
Expenditures	10,168,637
Revenue Over (Under) Expenditures	0
Projected Fund Balance, Beginning	0
Less Minimum Fund Balance Reserved	0
Projected Available Fund Balance, Ending	<u><u>0</u></u>

014 - STARC/COUNCIL ON AGING FUND

Revenues	3,726,930
Expenditures	3,726,930
Revenue Over (Under) Expenditures	0
Projected Fund Balance, Beginning	0
Less Minimum Fund Balance Reserved	0
Projected Available Fund Balance, Ending	<u><u>0</u></u>

015 - PUBLIC WORKS FUND

Revenues	33,196,987
Expenditures	
Development-Engineering	1,226,916
General Maintenance & Road Repair	6,640,850
Airport Barn	701,979
Brewster Barn	556,308
Bush Barn	475,695
Covington Barn	858,378
Fritchie Barn-North	353,477
Fritchie Barn-South	754,094
Hickory Barn	488,411
Highway 59 Barn	801,014
Keller Barn	634,944
Folsom Barn	568,116
Fleet Management	5,744,344
Trace Maintenance	1,429,525
Trace Administration	209,541
Public Works Director	1,223,786
Project Management Office	610,678
Engineering	1,689,348

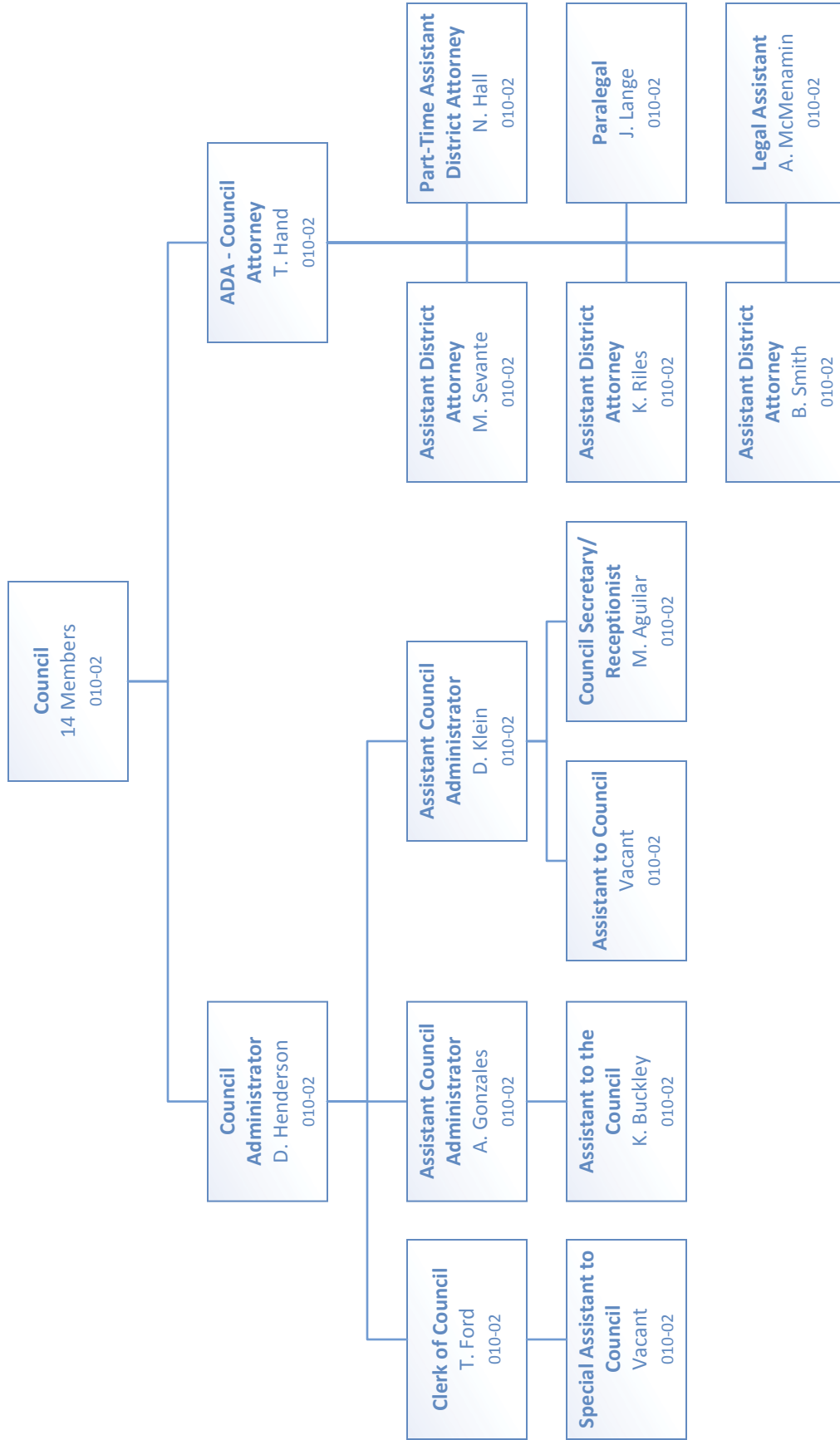
2016 OPERATING BUDGET

Account No.	Account Title	2014 Actual	2015 Revised Budget	2015 Projected	2016 Recommended for Adoption
DISTRICT ATTORNEY					
010-50-51000	SALARIES	1,565,712.00	2,055,203.00	1,960,813.00	2,130,889.00
010-50-51002	ANNUAL/SICK LEAVE PAYOUT	12,523.00	2,772.00	2,772.00	0.00
010-50-51005	EMPLOYEE BENEFITS	710,675.00	948,000.00	780,000.00	996,602.00
010-50-51025	PEHP-ANNUAL/SICK LEAVE PAYOUT	0.00	25.00	0.00	0.00
010-50-51100	SERVICES-PROFESSIONAL	0.00	0.00	0.00	5,000.00
010-50-52090	DUES AND SUBSCRIPTIONS	0.00	0.00	0.00	4,300.00
010-50-52390	SUPPLIES-OFFICE	0.00	0.00	0.00	5,000.00
010-50-52805	INSURANCE-AUTO	13,000.00	14,300.00	14,300.00	0.00
010-50-59901	REIMBURSEMENT-EXPENDITURES	0.00	(334,000.00)	0.00	0.00
	TOTAL DISTRICT ATTORNEY EXPENDITURES	2,301,910.00	2,686,300.00	2,757,885.00	3,141,791.00

2016 OPERATING BUDGET

Account No.	Account Title	2014 Actual	2015 Revised Budget	2015 Projected	2016 Recommended for Adoption
LEGAL					
010-80-51000	SALARIES	936,530.00	1,027,402.00	1,027,402.00	1,140,920.00
010-80-51002	ANNUAL/SICK LEAVE PAYOUT	13,829.00	575.00	575.00	0.00
010-80-51005	EMPLOYEE BENEFITS	284,644.00	337,700.00	337,700.00	342,998.00
010-80-51015	TRAVEL, TRAINING, & OTHER EMPLOYEE EXPENSE	5,368.00	6,000.00	6,000.00	7,750.00
010-80-51025	PEHP-ANNUAL/SICK LEAVE PAYOUT	8,256.00	0.00	0.00	0.00
010-80-51100	SERVICES-PROFESSIONAL	80,904.00	20,180.00	20,180.00	0.00
010-80-51200	FACILITY O & M	63,221.00	71,118.00	71,118.00	86,726.00
010-80-51205	RENT-EQUIPMENT	9,871.00	14,400.00	14,400.00	8,700.00
010-80-51315	UTILITIES-COMMUNICATIONS	4,745.00	5,000.00	5,000.00	5,000.00
010-80-51405	MAINTENANCE-VEHICLE	206.00	500.00	500.00	500.00
010-80-51500	VEHICLE FUEL & LUBRICANTS	21.00	300.00	300.00	300.00
010-80-52010	ADVERTISING	492.00	2,750.00	2,750.00	0.00
010-80-52050	BOOKS-LAW LIBRARY	3,573.00	2,074.00	2,074.00	2,574.00
010-80-52075	COMPUTER EXPENSES	8,335.00	3,175.00	3,175.00	11,400.00
010-80-52085	COURT REPORTER COSTS	972.00	5,880.00	5,880.00	0.00
010-80-52090	DUES AND SUBSCRIPTIONS	46,591.00	53,895.00	53,895.00	49,383.00
010-80-52150	FEES	14,530.00	7,800.00	7,800.00	7,800.00
010-80-52190	FEES-SOFTWARE	7,642.00	6,640.00	6,640.00	5,000.00
010-80-52310	POSTAGE	1,435.00	2,040.00	2,040.00	2,040.00
010-80-52370	SUPPLIES-GENERAL	3,222.00	4,052.00	4,052.00	3,000.00
010-80-52390	SUPPLIES-OFFICE	22,187.00	12,015.00	12,015.00	11,800.00
010-80-52400	UNIFORMS	4,176.00	4,000.00	4,000.00	4,250.00
010-80-52805	INSURANCE-AUTO	662.00	729.00	729.00	451.00
010-80-55030	ARCHIVE MANAGEMENT	0.00	7,410.00	7,410.00	0.00
010-80-55053	WEBSERVICES	1,322.00	1,185.00	1,185.00	0.00
010-80-55061	CFO CHARGES	12,212.00	0.00	0.00	0.00
010-80-55063	CAO CHARGES	0.00	20,112.00	20,112.00	0.00
010-80-57011	BUILDINGS & IMPROVEMENTS-NON- CAPITALIZED	5,064.00	0.00	0.00	0.00
010-80-59901	REIMBURSEMENT-EXPENDITURES	(3,275.00)	0.00	0.00	0.00
	TOTAL LEGAL EXPENDITURES	1,536,735.00	1,616,932.00	1,616,932.00	1,690,592.00

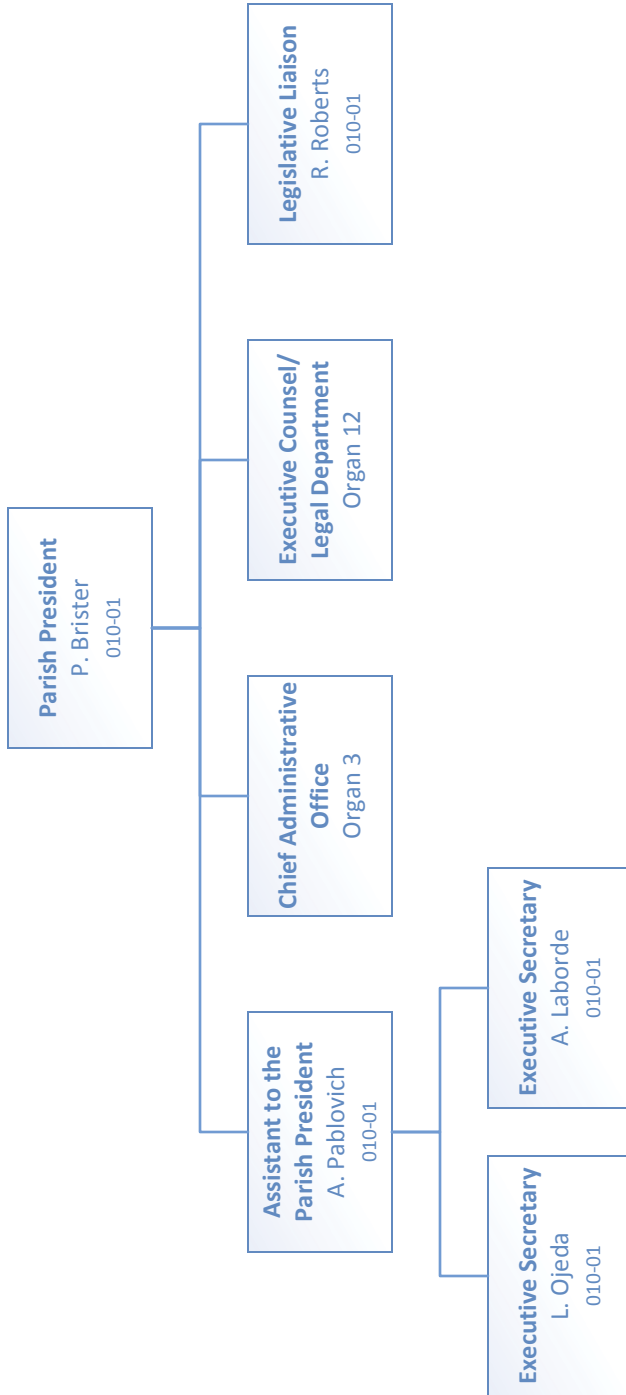
ST. TAMMANY PARISH ORGANIZATIONAL CHART
 COUNCIL – LEGISLATIVE BRANCH



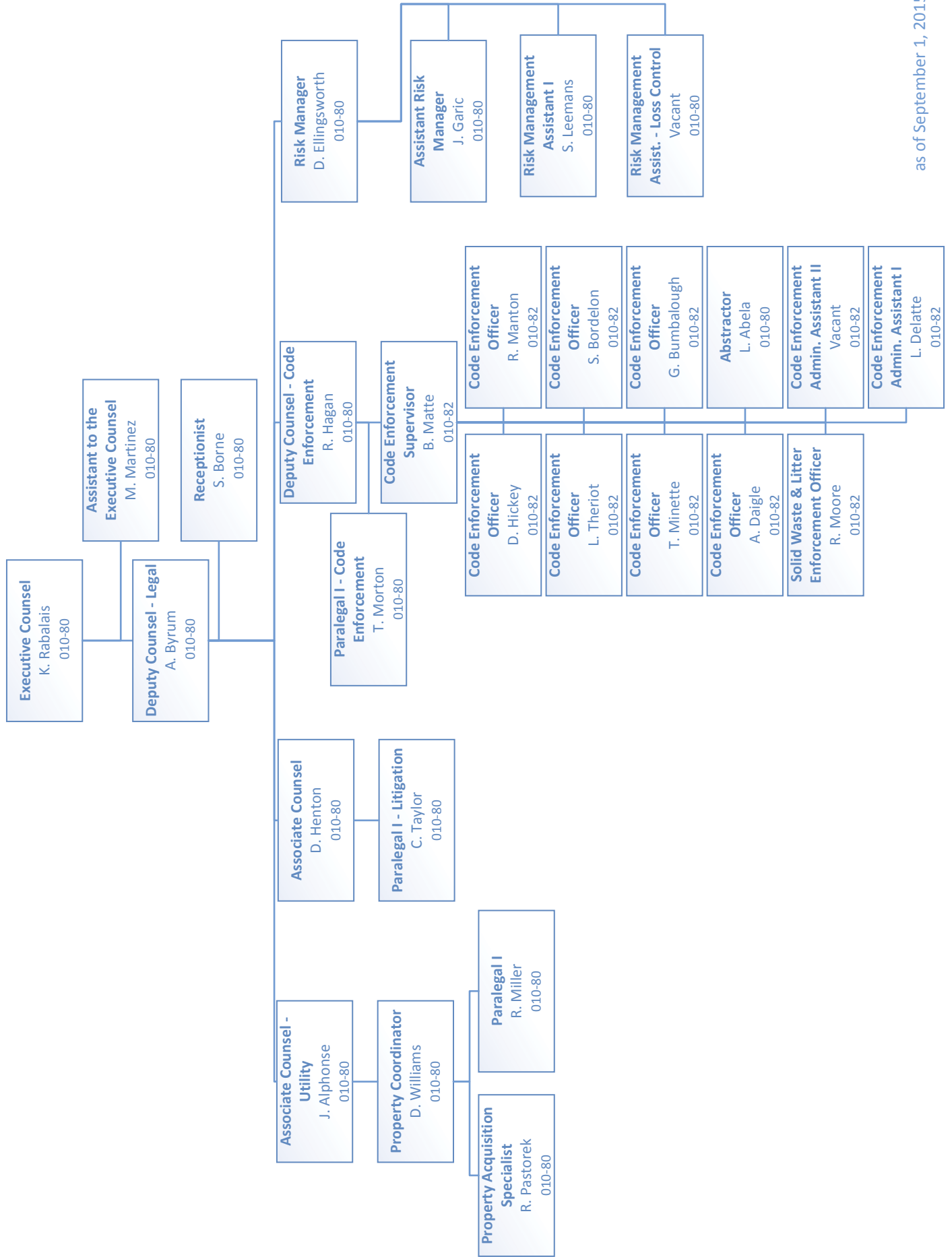
ORGAN 1 – COUNCIL

EXHIBIT A

**ST. TAMMANY PARISH ORGANIZATIONAL CHART
PARISH PRESIDENT – EXECUTIVE BRANCH**



**ST. TAMMANY PARISH ORGANIZATIONAL CHART
EXECUTIVE COUNSEL / LEGAL**



A
HOME RULE CHARTER
FOR A
PRESIDENT-COUNCIL GOVERNMENT
FOR
ST. TAMMANY PARISH

Prepared by the
St. Tammany Parish Home Rule Charter Commission
May 4, 1998
Approved by the voters of St. Tammany Parish
October 3, 1998
Amended by the voters of St. Tammany Parish
November 21, 2015

PREFACE

We, the members of the St. Tammany Parish Home Rule Charter Commission, respectfully present to the citizens of St. Tammany Parish a proposed home rule charter for our government. The proposed charter was drafted under the authority of Article VI, Section 5, of the Constitution of Louisiana and LSA-R.S. 33:1395, as amended and the Police Jury is hereby requested to call an election on October 3, 1998 concerning adoption of the charter as provided by state law.

COMMISSION MEMBERS

Judge James R. Strain, Jr.

Chair

Dave Doherty

Vice Chair

Kevin Davis

Joseph F. Mitternacht

Edgar J. Dillard

Bart Pepperman

Deborah Cunningham Foshee

W. Michael Sims

Floyd Glass

Thomas J. Smith, Jr.

Patrick Grainier

Staff Assistance

David Anderson Jr.

Secretary

Hammy Gason

Legal Counsel

Technical Assistance Provided by Public Affairs Research Council of La., Inc.

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PREAMBLE

We, the people of St. Tammany Parish, in order to establish an elected and accountable government that is responsive to and representative of all the citizens of the parish; that recognizes and acknowledges all constitutional rights granted by federal and state sovereignty; that undertakes planning and policy making to preserve and enhance the quality of life and the environment for ourselves and future generations; and that provides services and leadership needed and desired by the citizens in an efficient and effective manner, do ordain this charter in trust with God for St. Tammany Parish.

ARTICLE I. INCORPORATION, FORM OF GOVERNMENT, BOUNDARIES, POWERS.

Section 1-01. Home Rule Charter.

The St. Tammany Parish Home Rule Charter Commission has proposed and the electors have adopted this, their home rule charter, hereinafter referred to as "charter," under the authority of Article VI, Section 5 of the Louisiana Constitution of 1974, hereinafter referred to as "constitution." The St. Tammany Parish Government is therefore a local governmental subdivision which operates under a home rule charter and, subject to said charter, is authorized as hereinafter provided to exercise any power and perform any function necessary, requisite or proper for the management of its local affairs.

Section 1-02. Form of Government.

The plan of government provided by this home rule charter shall be known as the "president-council" form of government. It shall consist of an elected president who shall be the chief executive officer and head of the executive branch and an elected council which shall be called the St. Tammany Parish Council and shall constitute the legislative branch of the government.

Section 1-03. Boundaries.

The boundaries of St. Tammany Parish shall be those in effect as of the effective date of this charter and shall be subject to change thereafter as provided by law.

Section 1-04. General Powers.

A. Except as otherwise provided by this charter the Parish government shall continue to have all the powers, rights, privileges, immunities and authority heretofore possessed by St. Tammany Parish under the laws of the state. The government shall have and exercise such other powers, rights, privileges, immunities, authority and functions not inconsistent with this charter as may be conferred on or granted to a local governmental subdivision by the constitution and general laws of the state, and more specifically, the government shall have and is hereby granted the right and authority to exercise any power and perform any function necessary, requisite or proper for the management of its affairs, not denied by this charter, or by general state law, or inconsistent with the constitution.

Section 2-10. Council Employees.

A. The council shall, by vote of a majority of its authorized membership, appoint a clerk of the council who shall serve at the pleasure of the council. The clerk shall give notice of council meetings to its members and the public, keep the journal of its proceedings, be official secretary of the council and perform such other duties as are assigned to the position by this charter or by the council.

B. The council may, by ordinance approved by two-thirds of its authorized membership, authorize the hiring of such other employees as may be necessary to assist the council in carrying out its duties and responsibilities. Such employees shall serve at the pleasure of the council.

C. The council shall, by ordinance approved by two-thirds of its authorized membership, fix the salaries of its employees.

Section 2-11. Action Requiring an Ordinance.

A. An act of the council having the force of law shall be by ordinance. An act requiring an ordinance shall include but not be limited to those which:

- (1) Adopt or amend an administrative code.
- (2) Provide a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty may be imposed.
- (3) Levy taxes, assessments and charges.
- (4) Adopt the operating budget and capital improvement budget and appropriate funds for the Parish government.
- (5) Grant, renew or extend a franchise.
- (6) Provide for raising revenue.
- (7) Regulate the rate or other charges for service by the Parish government.
- (8) Authorize the borrowing of money in any manner authorized by law.
- (9) Incur debt in any manner authorized by law.
- (10) Dispose of any real property owned by the Parish government.
- (11) Convey or lease or authorize the conveyance or lease of any lands or property of the Parish government.
- (12) Acquire real property on behalf of the Parish government.
- (13) Adopt or modify the official map.
- (14) Adopt or modify regulations for review and approval of plats.

B. The council shall cause each ordinance and each amendment to this charter to be printed or otherwise reproduced promptly following enactment. Such printed or reproduced amendments and ordinances, including codes of technical regulations adopted by reference pursuant to the section on "Codes of Technical Regulations", shall be available in the office of the clerk of the council for review by any citizen. Copies may be distributed to the public at no cost or sold to the public at cost.

Section 2-17. Power to Levy Taxes.

A. The power to perform any service or provide any facility granted to the Parish government by this charter or by the constitution and general laws of the state shall in all cases carry with it the power to levy taxes and to borrow money within the limits and in accordance with procedures prescribed by the constitution and general laws of the state. The council shall have and is hereby granted all of the authority to levy and collect taxes, to incur debt, and to issue bonds and other evidences of indebtedness, as is now or hereafter conferred on governing authorities of local governments by the constitution and general laws of the state, or as may be hereafter specially conferred by the electors of the parish.

B. Any tax being levied by St. Tammany Parish on the effective date of this home rule charter is ratified.

C. All proposals to levy property taxes in excess of that which the constitution authorizes to be levied without a vote of the people shall be submitted to the voters for approval in accordance with the election laws of the state.

D. All proposals to renew, levy a new or increase an existing sales and use tax shall be submitted to the voters for approval in accordance with the election laws of the state.

Section 2-18. Powers of Enforcement.

For the purpose of carrying out the powers generally or specially conferred on the Parish government, the council shall have the power to grant franchises, to require licenses and permits and fix the fees to be paid therefor, to charge compensation for any privilege or franchise granted or service rendered, and to provide penalties for the violation of any ordinance or regulation, as provided by law.

ARTICLE III. EXECUTIVE BRANCH.

Section 3-01. Executive Authority.

The president shall be the chief executive officer of the Parish government and shall exercise general executive and administrative authority over all departments, offices and agencies of the Parish government, except as otherwise provided by this charter.

(5) Sign contracts for projects, equipment, professional services and materials and supplies specifically identified in the approved operating and capital improvement budgets or as specifically identified by ordinance. Contracts for projects, equipment, professional services or materials and supplies not so identified shall be submitted to the council for approval.

(6) Submit to the council and make available to the public, within ninety (90) days after the end of the fiscal year, a complete report on the finances and administrative activities of the Parish government as of the end of the fiscal year.

(7) Make such other reports as the council may reasonably request to enable the council to conduct its functions.

(8) The president shall attend all meetings of the council and keep the council fully advised as to the financial condition and future needs of the Parish government and make such recommendations to the council concerning the affairs of the Parish government as deemed desirable.

(9) Perform such other duties as are specified in this charter or may be required by the council, not inconsistent with this charter.

Section 3-10. Prohibitions.

A. The president shall be a full-time official and shall hold no other elected public nor any other compensated appointive Parish government office or employment during the term of office for which elected. The president shall not engage in any activity unrelated to Parish government business that would interfere with or detract from the performance of duties as president.

B. The president shall not hold any compensated appointive Parish government office or employment until two (2) years after expiration of the term for which elected. Compensation means any thing of economic value which is paid, loaned, granted, given, donated, or transferred or to be paid, loaned, granted, given, donated, or transferred for or in consideration of personal services.

C. In the event a person is elected to the office of president while a participant in a contract with the Parish government, either individually or with a firm, the contract shall be null and void upon the date the person is elected to the office of president.

ARTICLE IV. ADMINISTRATION.

Section 4-01. General Provisions.

A. Except as otherwise provided by this charter all departments, offices and agencies shall be under the direction and supervision of the president. The directors of all departments and agencies created by or under this charter shall be appointed by the president, subject to council approval, and shall serve at the pleasure of the president, except as otherwise provided by this charter.

B. The salaries of the chief administrative officer and directors of the departments and agencies appointed by the president shall be set by the president, subject to approval by the council.

Section 4-02. Chief Administrative Officer.

A. The president shall appoint a chief administrative officer who shall serve at the pleasure of the president. The chief administrative officer shall, subject to the direction of the president, supervise all departments, offices and agencies of the Parish government under the direction and supervision of the president except the legal department, and perform such other functions as may be directed by the president, including but not limited to maintenance and upkeep of the computer informational system, building maintenance, public access TV channel, building supervision, and personnel administration.

B. The chief administrative officer at the time of appointment shall have a master's degree in public administration or a related field from an accredited college or university, and at least three years experience as a chief administrative officer or head of a major department, or higher, in a governmental organization.

Section 4-03. Legal Department.

A. The district attorney of the judicial district serving St. Tammany Parish shall serve as legal adviser to the council, president and all departments, offices and agencies and represent the Parish government in legal proceedings.

B. No special legal counsel shall be retained by the Parish government except by written contract for a specific purpose approved by the favorable vote of a majority of the authorized membership of the council. Such authorization shall specify the compensation, if any, to be paid for such services.

Section 4-04. Department of Finance.

A. The director of the department of finance shall direct and be responsible for:

- (1) Collection (except where specifically otherwise provided for by law) and custody of all monies of the Parish government from whatever source.
- (2) Assistance to the president in the preparation of the annual operating budget and the capital improvement budget.
- (3) Maintenance of a record of indebtedness and the payment of the principal and interest on such indebtedness.
- (4) Ascertaining that funds are available for payment of all contracts, purchase orders and any other documents which incur a financial obligation for the Parish government, and that such documents are in accordance with established procedures.
- (5) Disbursement of Parish funds.

Thereafter all appointments will be for three (3) years.

I. The nominated organizations shall make such nominations within thirty (30) days after the effective date of this charter, and the council shall make appointments within thirty (30) days after the nominations are received. Should the council fail to make an appointment from the list submitted within the allotted thirty (30) days, the first named nominee shall automatically become a member of the personnel board. Should an organization fail to make the nominations within thirty (30) days, the council shall call a public hearing to discuss and develop the list of candidates. Whenever the term of a board member expires or there is a vacancy in an unexpired term, the council shall make an appointment in the same manner as that designated for that member being replaced.

A member of the personnel board may be removed by the Parish council for cause after being served with written specifications of the charges and being afforded an opportunity for a public hearing thereon by the Parish council.

J. The personnel board shall:

- (1) Serve as a review board for personnel policies and rules established by the Parish council.
- (2) Hold hearings on dismissals, demotions, and other disciplinary matters as may be provided in the rules. On appeal to the personnel board by an employee relative to the actions of the employer, the burden of proof shall be on the employee. The decisions of the personnel board in these matters shall be final, subject to judicial review.
- (3) Perform such other quasi-judicial duties as may be required under the rules developed pursuant to this section.

K. A full-time employee of the Parish government who has been employed by the Parish at least one year prior to the time of adoption of this charter shall continue to be an employee of the Parish government and shall continue without competitive test or other method approved by the council but shall be subject in all other respects to this section.

Section 4-11. Other Departments.

Except as otherwise provided by this charter, all Parish government departments, offices and agencies and functions in existence on the effective date of this charter, insofar as they do not conflict with this charter, shall continue in existence as organized on that date until reorganized in accordance with the section on "Administration Reorganization."

Section 4-12. Administration Reorganization.

A. The president may propose to the council the creation, change, alteration, consolidation or abolition of Parish departments, offices and agencies and the reallocation of the functions, powers, duties and responsibilities of such departments, offices or agencies, including those provided for in this charter.

B. Upon receipt of the president's proposed plan of reorganization, the presiding officer of the council shall cause to be introduced an ordinance to implement the proposed reorganization plan. The ordinance shall follow the same procedure as provided in the section on "Ordinances in General" of this charter.

C. The reorganization plan submitted by the president shall become effective if the council fails to act on the proposed reorganization within ninety (90) days of its submission to the council.

ARTICLE V. FINANCIAL PROCEDURES.

Section 5-01. Fiscal Year.

The fiscal year of the Parish government shall be January 1 through December 31, subject to change by the council by ordinance.

Section 5-02. Operating Budget Preparation and Adoption.

A. At least ninety (90) days prior to the beginning of each fiscal year, the president shall submit to the council a proposed operating budget in the form required by this charter. At the meeting of the council at which the operating budget is submitted, the council shall order a public hearing and shall cause to be published in the official journal, at least ten (10) days prior to the date of such hearing, the time and place thereof, a general summary of the proposed budget and the times and places where copies of the proposed budget are available for public inspection. At the time and place so advertised, the council shall hold a public hearing on the budget as submitted. Changes in the proposed operating budget by the council shall be by the favorable vote of at least a majority of the authorized membership of the council. Upon final adoption, the budget shall be in effect for the budget year and copies shall be filed with the clerk of the council. The budget as finally adopted shall be reproduced and sufficient copies shall be made available for use by all offices, departments and agencies of the Parish government. Copies shall be available for public use in the office of the clerk of the council. Additional copies may be purchased at cost by the public.

B. Upon failure of the council to adopt a budget before the end of the current fiscal year, the budget for the prior year shall continue in effect until amended by the council.

Section 5-03. The Operating Budget Document.

The operating budget for the Parish government shall present a complete financial plan for the ensuing fiscal year and shall consist of at least three (3) parts as follows:

Part I shall contain: (1) a budget message, prepared by the president, which shall outline the proposed fiscal plan for the Parish government and describe significant features of the budget for the forthcoming fiscal period; and (2) a general budget summary which, with supporting schedules, shall show the relationship between total proposed expenditures and total anticipated available funds for the forthcoming fiscal period and which shall compare these figures with

D. Receipts from fees, charges, rentals and royalties, taxes, federal and state grants, and shared revenues and taxes applicable to special districts which are less than parish wide geographically shall be used only for services to be rendered in those geographic areas.

E. The levy of property tax millages above the constitutional maximum previously approved by the voters of St. Tammany Parish or a special district shall continue to be levied by the Parish government and used for the approved purposes. Such levies may be renewed upon the favorable vote of the electors within the geographical area involved.

Section 9-04. Special Legislative Acts.

All special legislative acts pertaining to St. Tammany Parish insofar as they are in conflict with the provisions of this charter, shall henceforth be inoperative and of no effect.

Section 9-05. Retirement Systems.

No pension and retirement plans for employees of St. Tammany Parish in existence at the time this charter is approved shall be affected in any way by this charter. The plans shall remain in full force and effect and shall be carried out and regulated in accordance with applicable laws and procedures.

Section 9-06. Declaration of Intent.

This charter shall be liberally construed in aid of its declared intent which is to establish for the people of St. Tammany Parish effective home rule free from legislative interference as to the structure and organization of its local government, and with the power and authority to manage its local affairs, all as contemplated and intended by the provisions of Article VI, Sections 5 and 6 of the constitution.

Section 9-07. Severability.

If any provision of this charter is declared invalid for any reason, that provision shall not affect the validity of this charter or any other provisions thereof.

Section 9-08. Violation of Voting Rights Act.

In the event the Civil Rights Division of the United States Department of Justice or any court of competent jurisdiction declares any part of this charter to be in violation of the Voting Rights Act prior to the date the charter becomes effective, the St. Tammany Parish Charter Commission shall reconvene for a period not to exceed ninety (90) days for the purpose of drafting and proposing amendments to the charter to resolve the cited violations of the Voting Rights Act and submitting the amendments to the electors of St. Tammany Parish.

Section 9-09. Schedule of Transition.

The provisions of this charter pertaining to the election of Parish government officials created hereunder shall become effective on the date this charter is adopted. The remaining provisions of this charter shall become effective on the date of taking of office of the newly elected officials provided for by this charter, such date being established in the section on "Election of Officials".

ST. TAMMANY PARISH GOVERNMENT

**ST. TAMMANY PARISH CODE OF
ORDINANCES**

January 14, 2016

Ord. No. 13-2998, adopted 08/01/2013; amended by Ord. No. 14-3109, adopted 03/06/2014; amended by Ord. No. 15-3303, adopted 04/02/2015; amended by Ord. No. 16-3450, adopted 01/14/2016)

SEC. 2-092.00 Duties of Departments

DUTIES AND RESPONSIBILITIES

The general duties and responsibilities of each office and/or department herein shall be as follows:

- A. To perform such services as is necessary to carry out its legislative functions.
- B. To ensure the safety, health and well-being of the citizens of this Parish.
- C. To be responsive and responsible to the needs of the citizens of St. Tammany Parish.
- D. To perform other such activities not enumerated herein as directed by the President, Chief Administrative officer and/or Deputy Chief Administrative Officer(s).

The further duties of these offices, agencies and/or departments shall be as follows:

1. The Office of the President shall include the Parish President, Chief Administrative Officer, one or more Deputy Chief Administrative Officers, Chief Financial Officer, Executive Counsel, and such administrative assistants and clerical staff necessary to perform the charges mandated by the Charter and effectively govern the day to day affairs of parish government. The President shall also possess those powers outlined in the Parish Charter, together with those inherent duties and powers not otherwise enumerated in the Charter as are necessary to operate the affairs of this Parish. All duties previously listed for the Parish Manager under section 2-048 shall now be transferred to the position of the Chief Administrative Officer (CAO); the CAO is directly answerable to the President. The CAO shall have the authority to establish a hierarchy and/or chain-of-command between and among the Departments and Officers, except the Legal Department and Finance Department, who shall answer directly to the President. The prior Parish code is amended accordingly.

(a) The Office of the CAO shall include the Legislative Liaison and shall carry out intergovernmental relations.

2. The Department of Finance, under the direction of the Chief Financial Officer, shall provide such administrative and technical support to ensure that the finances of St. Tammany Parish are maintained and fiscally sound. This department shall maintain all Parish accounting, budgeting, collection of funds, financial reporting, investing and maintenance of indebtedness; distribution of Parish funds shall be included in the powers and duties of this Department. Custodian of securities for developmental

obligations to this Parish shall likewise be responsibility of this Department. Said duties shall include, but not be limited to, any and all actions necessary to carry out the functions of the Department.

3. The Department of Public Works shall include but is not limited to Infrastructure Maintenance, Drainage Maintenance, Vehicle Maintenance and Tammany Trace Maintenance. This Department shall be responsible for the scheduling, coordinating and administration of Public Works activities in this Parish that involve or that in anyway are related to the maintenance of all Parish roads, bridges and/or drainage structures. This Department shall also be responsible for administration of the District Capital projects and the Lighting Districts. This Department shall oversee all activities and maintain all documentation for Parish road and/or drainage maintenance activity. Said duties shall include, but not be limited to, any and all actions necessary to carry out the functions of the Department. This Department shall include the Sub-Department of Engineering which shall be supervised by a director who, in turn, is under the supervision of the director of the Department of Public Works. The Sub- Department of Engineering shall include but is not limited to the oversight and administration of major road, drainage and capital projects. Said duties shall include, but not be limited to, any and all actions necessary to carry out the functions of the Department as provided for in the Code of Ordinances, Subdivision Regulatory Ordinance No. 499 and any other applicable regulations. The Director of Engineering shall be, at the time of his/her appointment, a Professional Engineer licensed by the Louisiana Professional Engineering and Land Surveying Board and shall have been engaged in the practice of engineering for a period of five years.

4. The Department of Facilities Management shall include but is not limited to the general upkeep, maintenance and repair of all Parish owned grounds, buildings and movables. Said duties shall include, but not be limited to, any and all actions necessary to carry out the functions of the Department.

5. The Department of Environmental Services shall provide control, monitoring and inspection of water and sewer services as well as regulatory authority over solid waste collection, hauling, transfer and disposal, septage, on-site wastewater treatment, individual water wells and litter enforcement and abatement. The Department shall also continue to implement the authorities of the former Environmental Services Commission (R.S. 33:4064.1, et seq.) transferred to the Parish by Act 146 of the First Extraordinary Session of the 2000 Louisiana Legislature, and operate and maintain Parish-owned water and sewer utility systems. Said duties shall include, but not be limited to, any and all actions necessary to carry out the functions of the Department.

6. The Department of Planning and Development shall serve as a one-stop Department for all permitting, planning, development, zoning and land use regulation within the Parish. This Department shall oversee the administration of all land use control and building permitting activities of the Parish, including but not limited to permitting of land clearing and site development. Said duties shall include those outlined in Louisiana Revised Statutes 33:101-119 (Planning), 33:4780.40-4780.50, and/or the St. Tammany

Parish Code of Ordinances, as same may be amended, restated and/or re-codified from time to time. Said duties shall include, but not be limited to, any and all actions necessary to carry out the functions of the Department.

All references in the Code of Ordinances to the Department of Planning shall mean the Department of Planning and Development.

7. The Department of Human Resources. This Department shall administer all payroll functions and general oversight of payroll; recruiting and staffing; employment and regulatory compliance; employee orientation, development and training; personnel rules and policy development and documentation; compensation and benefits administration; employee safety, welfare, wellness and health; records management; administration of employee grievance procedure for dismissals, demotions and other disciplinary matters; and employee services and counseling. Said duties shall include, but not be limited to, any and all actions necessary to carry out the functions of the Department.

8. The Legal Department. In accordance with Home Rule Charter Section 4-03(A) Legal Department, the District Attorney of the judicial district serving St. Tammany Parish shall serve as legal adviser to the Council, President and all departments, offices and agencies and represent the Parish government in legal proceedings. Counsel serving as legal adviser to the Parish President shall be under the direction of the President in carrying out the President's duties as Chief Executive Officer of the Parish government. The legal department shall include the Office of Risk Management. The Assistant District Attorney serving as Director of the legal department will be responsible for coordination of the provision of legal services for Parish government. Said duties shall include, but not be limited to, any and all actions necessary to carry out the functions of the Department.

9. The Department of Technology shall provide technology systems and services, geographical information services and archive management to the Parish. Said duties shall include, but not be limited to, any and all actions necessary to carry out the functions of the Department.

10. The Department of Animal Services shall pursue the health, safety and welfare needs of animals and citizens in St. Tammany Parish by protecting citizens from dangers and nuisances caused by uncontrolled animals, enforcing the legal protections of animals from mistreatment and by promoting, motivating and enforcing responsible pet ownership. Said duties shall include, but not be limited to, any and all actions necessary to carry out the functions of the Department.

11. The Department of Fire Services shall serve as liaison among the independent fire districts and St. Tammany Parish. The Department shall assist the independent fire districts to provide the best available fire protection to their communities. The Department shall assist the Homeland Security and Emergency Operations Department in planning and preparing for emergencies. Said duties shall include, but not be limited to, any and all actions necessary to carry out the functions of the Department.