

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 MOTION FOR SUMMARY JUDGMENT

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 undersigned counsel, jointly move for summary judgment (1) dismissing 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") and (2) in favor of the Defendants' Amended Reconventional Demand for declaratory judgment regarding their rights under Sections 2-10, 3-09, and 4-12 of the St. Tammany Parish Home Rule Charter.

Summary judgment in the Defendants' favor is proper as a matter of law and fact. In his Petition, the District Attorney asks the Court to declare that the law requires him to be the sole general legal advisor and attorney to the Parish President, the Council, Parish Government, and all Parish boards and commissions regardless of whether they want the District Attorney to be their attorney and regardless of conflicts that ethically preclude him from serving in that role. The District Attorney further requests a declaratory judgment that the Defendants' hiring of Parish-employed attorneys and legal staff and management of the Parish's Legal Department violate the law. The statutes cited by the District Attorney, however, do not apply to St. Tammany Parish and nothing in the Home Rule Charter states that the District Attorney is the exclusive legal advisor or attorney to the Defendants or Parish Government. Further, as set forth in the Amended Reconventional Demand, the Defendants are expressly authorized by the Home Rule Charter to operate and maintain a Parish Legal Department and to hire attorneys and legal staff as necessary for the prudent and efficient operation of Parish Government, and have done so over a decade.

ST. TAMMANY PARISH
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Moreover, although St. Tammany Parish has effectively “opted out” of the statutory scheme on which this lawsuit is based, such that the Defendants are not required to rely on the District Attorney as their “regular attorney and counsel,”¹ the Defendants have expressly recognized in a pending ordinance that there may be situations when it is in the Parish’s interest to use the District Attorney’s legal services, and they have deliberately provided for the possibility of such situations in the future as long as there are no ethical obstacles to the District Attorney’s involvement as counsel. The ordinance, which (when passed) will become effective on September 1, 2016, makes clear that the District Attorney may be asked to provide legal services to the Defendants and to represent parish boards and commissions when he has no conflicts of interest, which is consistent with the mandates of the Louisiana Rules of Professional Conduct and our Supreme Court. Critically, though, even without the pending ordinance, this is the only legally viable and constitutional manner in which the subject statutes and the Home Rule Charter can be construed. In other words, the law requires that the District Attorney’s role as legal advisor and counsel to the Defendants be subject to the Defendants’ desire to have him as their attorney and ability to manage their own legal affairs, and the ethical rules governing attorneys. To hold otherwise would eviscerate the rule that a client has the right to choose counsel, part of the bedrock on which Louisiana law governing the attorney-client relationships is based.

For these reasons, which are detailed in the attached memorandum, the Defendants submit that summary judgment should be entered dismissing the remaining claims in the Petition and recognizing the Defendants’ legal right and ability to retain attorneys and legal staff separate from the District Attorney, and to maintain, operate, and reorganize the Parish’s Legal Department.

Respectfully submitted,

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¹ La. Rev. Stat. §§ 16:2, 42:261.

And

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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 26th day of August, 2016.


ROSS F. LAGARDE

TWENTY-SECOND JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. TAMMANY
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FILED: _____
DEPUTY CLERK

RULE TO SHOW CAUSE

Considering the foregoing Joint Motion for Summary Judgment filed by the Defendants, Patricia P. Brister, in her official capacity as Parish President, the St. Tammany Parish Council, and the St. Tammany Parish Government;

IT IS ORDERED that the Plaintiff, Warren Montgomery, in his official capacity as District Attorney for St. Tammany Parish, show cause, if any he can, on September 12, 2016, at 10:00 AM, why the Court should not grant the motion.

_____, Louisiana, this _____ day of August, 2016.

DISTRICT JUDGE

PLEASE SERVE:

PLEASE RETURN TO COUNSEL FOR SERVICE PURSUANT TO LA CCP 1313 (C) ON:

Emily Andrews, Esq.
Office of the Attorney General
Civil Division
1885 North 3rd St. 6th Floor
Baton Rouge, LA 70802

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DEPUTY CLERK

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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, submit this memorandum in support of their Joint Motion for Summary Judgment.

I. INTRODUCTION

The District Attorney inexplicably persists with this lawsuit despite (1) the production of documents evidencing his conflicts of interest and divided loyalties, (2) the introduction of ordinances by the Defendants, pursuant to provisions of the Home Rule Charter and within their Constitutionally granted powers, clarifying the District Attorney's role relevant to the Parish's Legal Department and providing clear notice to him of the Defendants' desire and intent to continue to employ and rely on their own separate attorneys and staff for general legal advice, and (3) multiple pleadings outlining why the statutes and the St. Tammany Parish Home Rule Charter (the "Charter") do not on their face provide the legal mandate he claims and cannot be construed in the manner he asserts without violating the Rules of Professional Conduct, Supreme Court jurisprudence, and the Louisiana Constitution. Because the District Attorney's claims and positions are legally untenable based on the plain language of the subject statutes and the Charter, as well as the undisputed facts relevant to this case, summary judgment dismissing the Petition

and in favor of the Defendants' reconventional claims regarding their authority and power under the Charter to manage their own legal affairs and employ their own attorneys is warranted.¹

II. BACKGROUND AND STATEMENT OF UNCONTESTED FACTS

A. The current structure of the Parish Government's legal representation has been in place for over a decade.

The District Attorney characterized the recently-introduced ordinances addressing the Council's authority to hire its own attorneys and the structure and organization of the Parish's Legal Department as implementing significant change.² But the basic manner in which the Parish Government is currently structured with respect to the two groups of attorneys who provide independent legal advice and services to the executive and legislative branches of local government, respectively, has been the long-followed practice, without disagreement, difficulty, or interference by the Office of the District Attorney until Mr. Montgomery was elected and certain of his constituents pushed him to question the structure. The only real changes that have been made since the District Attorney provoked this dispute with the Defendants is that three of the attorneys who provide the Council with legal services no longer hold Assistant District Attorney ("ADA") commissions and no longer receive any supplemental income from the State as a result of holding ADA commissions.³ As a result of this dispute, all of the attorneys at issue in this lawsuit are fully employed by the Parish Government, although some still have their ADA commissions.⁴

1. *The Council has been separately advised by counsel since the Home Rule Charter became effective.*

Since around the time the Home Rule Charter became effective in 2000, the Council has had at least one Assistant District Attorney from the District Attorney's Office assigned to it to

¹ A copy of the Charter is attached as Exhibit M. The Court may take judicial notice of the Charter as the law of St. Tammany Parish. La. C. Evid. art. 202; *see also Bailey v. Bolton*, 1998-2026 (La. App. 1 Cir. 9/10/98); 755 So. 2d 254, 256 (taking judicial notice of the City of Bogalusa Home Rule Charter).

² A copy of Ordinance Calendar No. 5368 (the "Council Ordinance"), is attached as Exhibit A. The Council Ordinance was introduced on July 7, 2016, passed on August 4, 2016, and became effective on August 19, 2016. A copy of Ordinance Calendar No. 5644 (the "Administration Ordinance") is attached as Exhibit B. The Administration Ordinance was introduced on August 4, 2016, and is on the Council's agenda for September 1, 2016. When passed, the Administration Ordinance will become effective on September 1, 2016.

³ Affidavit of Terrence J. Hand, Council Attorney, Ex. C, ¶ 8.

⁴ *Id.*; *see also* Affidavit of Kelly Rabalais, Ex. D, ¶¶ 2, 3, 6. The fact that certain of the Parish-employed attorneys remain commissioned as ADAs by the State does not in any way impact the District Attorney's Office. Their commissions do not impact the number of ADAs the District Attorney is permitted to hire or the amounts budgeted to his office.

provide legal advice and services separate from the executive branch of local government,⁵ a tacit recognition from the beginning that the coordinate branches of local government are not always aligned and require separate counsel. As the St. Tammany Parish Government grew and developed, the Council's need for legal advice and services also increased, such that additional attorneys were assigned to work for the Council over the years.⁶ Many years before Mr. Montgomery was elected, the practice developed that those ADAs assigned to the Council worked exclusively for the Council, reported to the Council as their client, and were paid from Parish funds that did not impact the Parish's budget for the District Attorney's Office.⁷ When the current District Attorney took office in January 2015, the Council had five ADAs exclusively assigned to it (the "Council Attorneys").⁸ Until January 2016 three of the Council Attorneys received supplemental income from the State; that is no longer the case.⁹

The Council Attorneys primarily provide legal advice to the Council in its role as the legislative branch of Parish Government. The Council requires such separate counsel to advise it on matters that fall uniquely within its legislative province and with respect to which there are certain inherent conflicts with the other branches of government.

The Council Attorneys provide the following legal services to the Council:

- a) Drafting all Parish ordinances and resolutions requested by the Council and/or its members;
- b) Legal research concerning the application, enforcement and effects of any proposed ordinance or resolution;
- c) Continually update and revise the St. Tammany Parish Code of Ordinances to reflect all additions and changes thereto, including review of all existing ordinances to determine and correct any internal conflicts;
- d) Represent and advise the Council on all litigation matters pending on behalf of and against St. Tammany Parish Government including any litigation naming individual Council members or employees;

⁵ Hand aff., Ex. C, ¶ 9.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*, ¶¶ 8-9.

⁹ Until immediately prior to this lawsuit being filed, all five of those individuals also held ADA commissions. In April 2016, the District Attorney 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. Those three attorneys are Terry Hand, Bernard Smith, and Karlin Riles. Accordingly, only two of the five attorneys providing legal advice and services to the Council have ADA commissions at this time – Neil Hall and Mike Sevante. Hand aff., Ex C, ¶ 8.

- e) Provide advice and recommendations with respect to the settlement of any litigation involving St. Tammany Parish Government;
- f) Represent and advise twenty-three (23) of the thirty-one (31) boards and commissions that are separate juridical entities and/or political subdivisions under the St. Tammany Parish Home Rule Charter or state law;
- g) Directly represent the St. Tammany Parish Zoning Commission and its members while acting in their official capacities;
- h) Directly represent the St. Tammany Parish Planning Commission and its members while acting in their official capacities;
- i) Provide legally required training to the members of the St. Tammany Parish Zoning Commission and St. Tammany Parish Planning Commission;
- j) Directly represent the St. Tammany Parish Board of Adjustments and its members while acting in their official capacities;
- k) Directly represent St. Tammany Parish Government serving as the legislatively established Board of Review for purposes of ad valorem tax appeals;
- l) Directly represent and advise the Council on legal issues concerning the Parish Government's utility business, Tammany Utilities Inc.;
- m) Coordinate, supervise and manage outside legal counsel retained by the Council including review and approval of all invoices and work performed;
- n) Advise the Council on all state legislation that may or could affect St. Tammany Parish; and
- o) Advise the Council on matters of personnel policies, municipal annexations, elections, franchises, economic development, servitudes, transportation, animal control, code enforcement and regulatory compliance.¹⁰

As expressly stated in Ordinance Calendar No. 5638 (the "Council Ordinance"), which was adopted on August 4, 2016, the Council's authority to employ these attorneys is derived from Section 2-10 of the Charter.¹¹ Section 2-10 explicitly permits the Council to approve by ordinance the hiring of such employees as necessary to assist the Council in carrying out its duties and responsibilities. Here, the Council's ability to routinely receive legal advice and services independent of the executive branch of Parish Government and the District Attorney's Office is necessary to its functioning and the proper carrying out of its duties and responsibilities.¹²

¹⁰ Hand aff., Ex. C, at ¶ 4.

¹¹ Exhibit A.

¹² Hand aff., Ex. C, ¶¶ 5-6.

2. *The Parish President has had separate counsel since 2000, and the Legal Department has operated as a distinct Parish department for years.*

Just as the Council has had one or more attorneys providing it with legal services and advice since around the time St. Tammany Parish became a home rule charter government, so has the Parish President. Soon after the Home Rule Charter became effective, the then Parish President proposed an ordinance to reorganize Parish Administration pursuant to the President's authority under Section 4-12 of the Home Rule Charter.¹³ By that ordinance, the Office of the President was created as a functioning administrative office, and it specifically included a Legal Counsel position.¹⁴ Thus, from inception, the President has had separate Legal Counsel. The position of Legal Counsel was changed by ordinance to Executive Counsel in 2012.¹⁵ Pursuant to the Code of Ordinances, the President's Executive Counsel serves in the Parish's executive branch of government and has no ties to the District Attorney's Office. Notably, the District Attorney has not specifically challenged Section 2-092.00 of the Code of Ordinances, which has included Executive Counsel as a Parish position since 2012.¹⁶ Today, and since December of 2007, Kelly Rabalais has served in that position.¹⁷ As Executive Counsel, Ms. Rabalais provides legal advice to the President on matters that require advice independent from the Council.¹⁸

Ms. Rabalais also currently serves as the Director of the Parish's Legal Department.¹⁹ The Parish's Legal Department was established as part of the Parish Government when the Home Rule Charter was approved by the voters in 1998, pursuant to Section 4-03 of the Charter. The Legal Department provision is located in Article IV of the Home Rule Charter ("Administration"), such

¹³ See Ordinance Council Series No. 00-0109, introduced on February 3, 2000, and passed on February 17, 2000, Exhibit E.

¹⁴ *Id.* p. 3 (no. 1).

¹⁵ See Code of Ordinances, Section 2-092.00, Exhibit F.

¹⁶ Moreover, this is consistent with the District Attorney's multiple statements in the past that he agrees that the President should have separate legal counsel from that of the Parish Council. See Affidavit of Patricia Brister, Ex. G, ¶ 7, with Ex. G-1, p. 29 (transcript from August 6, 2015 City Council meeting at which Mr. Montgomery stated that he agreed that the President should have separate counsel); Ex. G-2, pp. 18-19 (District Attorney's statement regarding the St. Tammany Parish Home Rule Charter Committee's Recommendations to Amend the St. Tammany Parish Home Rule Charter in which he again agreed that the President should have "an independent choice of counsel").

¹⁷ Brister aff., Ex. G, ¶ 5; Rabalais aff., Ex. D, ¶ 2.

¹⁸ Brister aff., Ex. G, ¶¶ 5-6; Rabalais aff., Ex. D, ¶ .

¹⁹ Brister aff., Ex. G, ¶ 5; Rabalais aff., Ex. D, ¶¶ 7-9.

that the department, like all other Parish Administration “departments, offices and agencies” is “under the direction and supervision of the president.” Charter, Art. IV, Section 4-01.

Although there was no formal Legal Department in the early days of the Parish’s home rule charter government, as Parish Government and Administration developed and expanded, so grew the need to formally organize and staff the Legal Department to serve the Parish President, the Parish Administration, and the Parish Departments.²⁰ Since 2012, the Legal Department has functioned as a distinct department in Parish Administration that has been responsible over the years for a wide range of Parish legal matters, including responding to public records requests, risk management, code enforcement, property acquisition, and contract and public bid issues.²¹ In addition, the attorneys in the Legal Department provide representation to the Parish in civil litigation matters in coordination with the Council Attorneys.²²

More specifically, the Legal Department is responsible for the following Parish legal matters:

- a) Processing and conducting land acquisitions;
- b) Reviewing and approving contracts;
- c) Receiving and processing public records requests;
- d) Providing advice on the Public Works Act, state and federal procurement requirements, and defending against related claims;
- e) Providing advice and direction on employment matters and policies;
- f) Administering the Office of Risk Management;
- g) Addressing regulatory matters, grant requirements, and audit matters;
- h) Drafting and negotiating all governmental agreements;
- i) Addressing ethics issues;
- j) Handling and addressing emergency and disaster related legal issues;
- k) Responding to bid protests and enforcement of contracts;
- l) Overseeing the prosecution of Code Enforcement and Animal Services violations;
- m) Overseeing the Code Enforcement Division;²³
- n) Drafting legislation and monitoring State legislative sessions;

²⁰ Rabalais aff., Ex. D, ¶ .

²¹ *Id.* at ¶ 4.

²² *Id.* at ¶ 5.

²³ As of 2016, Code Enforcement is no longer part of the Legal Department’s routine functions.

- o) Providing general advice on written policies and interpretation of same; and
- p) Management of outside counsel and litigation on matters assigned to the Legal Department.²⁴

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. The President 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 natural conflicts of interest between the three branches of government and frequently differences in opinion and policy.²⁵

Because of the broad scope of services the Legal Department provides to the President and the Parish, it currently employs 15 individuals, including five, full-time attorneys in addition to Ms. Rabalais, paralegals, administrative assistants, and risk management officers.²⁶ 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.²⁷ This was the situation when the District Attorney took office and when this lawsuit was filed.²⁸ The ordinance recently proposed by the Parish President and set on the September 1, 2016 Council agenda (the "Administrative Ordinance") does not change any of this; rather, it further clarifies this structure and practice.²⁹

B. The District Attorney seeks to disrupt the established structure of the Parish Government's legal representation and force the Defendants to accept him as their sole general legal advisor notwithstanding their stated desire to rely on their separate Parish-employed counsel and his obvious conflicts of interest.

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, is funded by, and is thus answerable to, voters in both parishes, not just St. Tammany Parish.

After taking office, the District Attorney began to question the Parish Government's right to maintain a Legal Department and employ counsel, who are not under his direct supervision and

²⁴ Rabalais aff., Ex. D, ¶4.

²⁵ Brister aff., Ex. G, ¶ 6; Rabalais aff., Ex. D, ¶ 9.

²⁶ Rabalais aff., Ex. D, ¶ 6.

²⁷ *Id.*

²⁸ *Id.*, ¶ 11.

²⁹ Exhibit B.

control, to advise the President and the Council. Based on emails recently produced by the District Attorney in this lawsuit, it appears that this was, at least in part, at the urging of a group of his political constituents, Concerned Citizens of St. Tammany (“CCST”).³⁰ Prior to the filing of this lawsuit, that same group encouraged the District Attorney to object to ordinances proposed by the Defendants regarding the structure and legal representation of Parish Government. In fact, in an email dated February 3, 2016, which was apparently sent to at least one official in the District Attorney’s Office, CCST announced that it and the District Attorney were aligned and adverse to Parish Government with respect to those proposed ordinances and, more generally, regarding Parish Government’s right to operate its own Legal Department separate from the Office of the District Attorney.³¹

Since taking office, the District Attorney has continued to challenge the established structure and organization of the legal representation of Parish Government, apparently in response to the opinions and complaints expressed by these particular political constituents and in furtherance of his own political ambitions and desire to control the legal representation of Parish Government. Yet, his stance as to what is wrong with the existing structure and practices, the nature of his desired role within Parish Government, the scope of what Parish legal services and functions he wants to take over, who he understands his clients to be, or to whom his duties of loyalty and confidentiality would run has constantly fluctuated, making any out-of-court resolution impossible. The District Attorney’s shifting positions, which have been mostly adverse to the interests and wishes of the Council and the Parish President have wasted valuable Parish Government resources and time. As detailed below and in the attached affidavits, Mr. Montgomery has a fundamental misunderstanding of the nature of the attorney-client relationship, an attorney’s duty of loyalty to his clients, and an attorney’s inability to engage in a representation when conflicts of interest exist.

³⁰ See Email exchange between Rick Franzo, President of CCST, and the District Attorney, dated March 4, 2015, attached as Exhibit H-1.

³¹ Email from Rick Franzo, dated February 3, 2016, apparently received and printed by Tony LeMon, Ex. H-9. The emails between CCST and the District Attorney’s Office that were recently produced demonstrate a lack of loyalty by the District Attorney with respect to the Council and Parish President, whom he claims are legally his clients. More than one of the emails sent to the District Attorney by CCST is disparaging of the Parish Government and its officials, yet, it does not appear that the District Attorney defended his putative clients or indicated any allegiance or loyalty to them. To the contrary, and as discussed further herein, the emails have resulted in further distrust between the Defendants and the District Attorney and show his ability to serve as the Defendants’ counsel would be materially limited by his loyalty to CCST and his own personal and political interests.

For instance, just shortly after taking office, on February 12, 2015, the District Attorney issued a memorandum to the Council Attorneys unilaterally announcing that “all outside counsel who are to be retained on existing or future legal work, on claims of any kind, are to be approved in writing by [him].”³² The District Attorney’s purported new rule whereby he would essentially have veto power over all outside and special counsel retained by the Parish was not only unprecedented, but has absolutely no basis in Section 4-03(B) of the Charter, which sets forth the manner in which special counsel may be retained by Parish Government and which does not provide any power to the District Attorney in that process. This was a transparent attempt by the District Attorney to usurp the Council’s authority under the Charter and statutes so that he could control what outside counsel are retained to represent the Parish.

Further, around the beginning of 2016, the District Attorney began demanding that the President and Council take additional steps that were obviously contrary to their wishes and that would cause disruption and confusion for the Parish’s Legal Department and its employees, as well as the Council’s Attorneys. Specifically, on December 18 and 28, 2015, the District Attorney demanded that the Parish immediately amend its budget to transfer all funds budgeted for the Legal Department to his office and transfer all physical property, including the physical office itself, files, and employees to his control.³³ Such action would have seriously disrupted Parish Government and, as was pointed out to the District Attorney, could have caused employment-related claims by personnel against the Parish and interfered with the legal representation of the Parish in pending matters.³⁴ Moreover, the District Attorney recently responded to discovery making clear that, despite his demands for an immediate transfer of all Parish Government legal work and functions at the beginning of the year and again in this lawsuit, he has taken no steps to prepare internally or otherwise to take over the role and extensive work of the Legal Department or the Council Attorneys.³⁵

Further demonstrating his seeming lack of concern with whether his actions interfere with the representation of the Parish in civil matters, in early 2016, the District Attorney unilaterally

³² Exhibit C-2.

³³ Correspondence from the District Attorney to Pat Brister and Richard Tanner, dated December 18, 2015, Ex. G-3; Correspondence from the District Attorney to Terry Hand, dated December 28, 2015, Ex. C-1.

³⁴ Correspondence from Terry Hand to Tony LeMon, dated December 30, 2015, Ex. C-3.

³⁵ District Attorney’s Responses to Requests for Production Nos. 3-8, Exhibit I.

rescinded the ADA commissions of three Council Attorneys without advance notice.³⁶ That not only caused personal damage to the three individuals, but disrupted the Parish's representation in the civil litigation matters in which those individuals were enrolled, without prior consultation with or approval by the Council, the District Attorney's supposed client.

Additionally, although the District Attorney has repeated that he believes he is mandated by statute to control and supervise the entire Legal Department, he has also vacillated on whether he really wants to handle all of the department's functions. For instance, contrary to his stated belief in this lawsuit 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 Legal Department's responsibilities related to insurance, risk management, code enforcement, or responding to public records requests.³⁷ Indeed, immediately prior to the District Attorney's filing of this suit, representatives of Parish Government believed they had reached an agreement in principle as to a cooperative endeavor agreement with the District Attorney, pursuant to which many functions of the Legal Department and the Council's Attorneys would be allocated among the three branches of government.³⁸ But, in one of the District Attorney's many about-faces, after months of meetings and discussions, which cost Parish Government time and money, he turned around and rejected the agreement (which had been authored by his office).³⁹ Instead of moving forward with the cooperative endeavor agreement, the District Attorney filed this suit, insisting that he is legally mandated to take over and control all functions of the Parish's Legal Department and the attorneys employed by the Council. Again though, it appears he has no practical plans for how such a drastic change and transition would be accomplished.

Finally, and further evidencing his lack of understanding of the adversity he has created and the conflicts arising from his suing the Defendants, just recently the District Attorney attempted to make legal recommendations to the Council regarding the very subject matter of this action. On June 29, 2016, and July 27, 2016, he sent letters directly to the Council, recommending and requesting that it remove the Council Ordinance and Administrative Ordinance from the respective Council agendas.⁴⁰ The District Attorney's lack of appreciation as to why those letters

³⁶ Hand aff., Ex. C, ¶ 8.

³⁷ See Brister aff., Ex. G, ¶ 8; Rabalais aff., Ex. D, ¶ ; see also District Attorney's Correspondence, dated April 8, 2016, Ex. G-3.

³⁸ See Brister aff., Ex. G, ¶ 11; Exhibit L-1.

³⁹ Brister aff., Ex. G, ¶ 11.

⁴⁰ Exhibits J-1 and J-2 (attached to Affidavit of Marty Dean).

were improper and why the Defendants will not voluntarily accept his legal advice or services at this time is somewhat astounding. Indeed, while suing the Council in this suit, he continues to attempt to legislate as if he were the fifteenth member of the Council.

Nevertheless, through the recent ordinances, the Defendants have specifically allowed for the possibility of future representation by the District Attorney and/or a cooperative endeavor agreement with his office to the extent deemed by the Parish to be in its best interest. The Parish Government has done this despite the District Attorney's history of attempting to interfere with and disrupt Parish Government and the Parish's legal representation and documents recently produced by him evidencing his lack of loyalty to the Defendants, his purported clients. The possible role of the District Attorney is preserved through the Administration Ordinance in the hopes that the relationship between the parties may be mended in the future.

III. LAW AND ARGUMENT

A. Summary of the District Attorney's Remaining Claims and the Reconventional Demand

In the light of the partial granting of the Defendants' original exceptions, the following are the claims set forth in the Petition that remain to be adjudicated.

The District Attorney seeks a declaratory judgment that:

- He is the general legal advisor to the Parish Government and all Parish boards and commissions (first prayer for relief);
- The Defendants' operation of the Legal Department involving attorneys providing general legal services not under the District Attorney's direction is contrary to law (second prayer for relief); and
- The Defendants are not allowed to retain any attorney other than the District Attorney to represent them in general legal matters (third prayer for relief).

The District Attorney asks for a permanent injunction preventing the Defendants from:

- Operating or maintaining a civil legal department separate from the Office of the District Attorney (seventh prayer for relief);
- Hiring any attorney other than the District Attorney for the purpose of providing general legal services and advice to the Parish Government (eighth prayer for relief); and
- Interfering with the District Attorney's ability to act as their sole general legal advisor (ninth prayer for relief).

The Defendants, through their Amended Reconventional Demand, ask for a declaratory judgment that:

- The statutes relied on by the District Attorney and Section 4-03 of the Charter are unconstitutional to the extent they are construed to provide the relief sought by the District

Attorney and to mandate that they accept him as their sole general legal advisor (first, second, and third prayer for relief);

- The Council is authorized to employ its own attorneys and support staff, pursuant to Section 2-10 of the Charter (fourth prayer for relief);
- Pursuant to Section 4-12 of the Charter, the Parish President is authorized to propose reorganization, altering, and changing of the functions of the Legal Department, which the Council may approve by ordinance (fifth prayer for relief); and
- The Parish President may, pursuant to Section 3-09 of the Charter, appoint Parish employees, including attorneys, to staff all Parish Administration departments, including the Legal Department (sixth prayer for relief).

As detailed below, it is not necessary for the Court to reach the questions of constitutionality raised by the Defendants in their Amended Reconventional Demand, as the District Attorney's claims are subject to dismissal on the face of the statutes, ordinances, Charter, the applicable law, and the undisputed facts.

B. Summary Judgment Standard

The purpose of summary judgment is to dispose of cases involving only issues of law or uncontested issues of fact in an expeditious manner. *See LeBlanc v. Hullinghorst Industries, Inc.*, 542 So. 2d 642, 646 (La. App. 5 Cir. 1989) (citing *Dette v. Covington Motors, Inc.*, 426 So. 2d 718 (La. App. 1 Cir. 1983)). A motion for summary judgment should be granted if the motion and supporting documents show that there is no genuine issue of material fact for trial and the mover is entitled to judgment as a matter of law. La. C. Civ. P. art. 966.

C. Summary judgment is appropriate on the face of La. Rev. § 16:2(D) and the Charter.

1. By virtue of its Charter, St. Tammany Parish is exempted from the statutory provisions cited by the District Attorney.

The District Attorney's claims depend on his argument that La. Rev. Stat. §§ 16:2 and 42:261 apply here. But § 16:2(D) makes clear that home rule charter governments are exempted from the general provisions regarding a district attorney's role as "the regular attorney" for local parish governments. Specifically, although § 42:261(A) provides that the district attorney shall be "the regular attorney[] and counsel" for a parish governing authority, § 16:2(D) states that "[w]here a parish has adopted a charter for local self-government ... 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.** (Emphasis added). Section 16:2(D) further states:

... 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.

Section 16:2(D) is, therefore, fatal to the District Attorney's claims that the statutes mandate that he be sole general legal advisor to the Defendants. St. Tammany Parish is a home rule charter government, and its Charter, pursuant to Section 4-03, creates a Parish Legal Department as part of the executive branch of government and the Parish Administration. By virtue of the Legal Department's inclusion in Article IV, the Charter authorizes the Parish President to appoint a Director and employees to staff the Department (Charter, Section 3-09) and to supervise and control the Department (Charter, Section 3-01). Section 4-03 also provides a process for the Parish Government to retain special counsel when necessary. Additionally, Section 2-10 of the Charter expressly authorizes the Council to approve, by ordinance, the hiring of any employees it deems necessary to fulfill its duties and obligations to the Parish. There is no limitation as to the type of employees the Council may hire pursuant to that section of the Charter (*i.e.*, attorneys are not carved out).

Accordingly, because St. Tammany Parish is a home rule charter government and its Charter authorizes the Parish Government to employ attorneys and special counsel, the District Attorney "shall ***not*** be the regular attorney or counsel for such governing authority" and "the parish governing authority may retain or employ any attorney or counsel to represent it generally...." La. Rev. Stat. § 16:2(D) (emphasis added).

2. The District Attorney's reliance on the Charter as authority for his position is misplaced.

The District Attorney has also asserted that his authority to act as the sole general legal advisor to Parish Government is derived directly from Section 4-03 of the Charter. According to the District Attorney, Section 4-03 confers on him the absolute right to act as the sole general legal advisor to the Defendants.

First, nowhere in the Charter does it state that the District Attorney is the ***sole*** or ***exclusive*** general legal advisor to the Parish Government, as the District Attorney asserts in this lawsuit. Section 4-03(A) is the only place in the Charter where the District Attorney is referenced, and it simply does not state that he is the only attorney who may provide general legal services and advice to the Council, the President, Parish Government, and any of the Parish's boards, agencies, and commissions. Likewise, nowhere in the Charter is there any express limitation on the Council's or the President's respective right and ability to employ their own separate counsel to provide

general legal advice and services. The only limitation set forth in the Charter as to the hiring of counsel is that special (or outside) counsel can only be hired through a written contract approved by a majority of the Council,⁴¹ but the parties agree that that provision is not in dispute.

Second, Section 4-03(A), which designates the District Attorney as a legal advisor to the Defendants, must be read in *pari materia* with the other relevant provisions of the Charter. Those provisions, as previously discussed, (1) explicitly authorize the Council to hire any employees it deems necessary to carry out its functions, duties, and responsibilities (Charter, Section 2-10), (2) make clear that the Parish's Legal Department falls under the administrative control and supervision of the Parish President (Charter, Sections 3-01 and 4-01), and (3) give the Parish President the authority to appoint the Director of the Legal Department and employees to work in the Legal Department (Charter, Sections 3-01, 3-09, and 4-01). When these various provisions are read together, it is obvious that the Charter does not require the Defendants to rely exclusively on the District Attorney as their sole general legal advisor, but authorizes the President to appoint counsel and staff to work in the Parish's Legal Department and the Council to hire attorneys and other employees necessary to its work and responsibilities.

Accordingly, based on the face of the Charter and La. Rev. Stat. § 16:2(D), the District Attorney's claims for declaratory judgment and injunctive relief should be dismissed as a matter of law and judgment entered on the Defendants fourth and sixth prayers for relief.

D. Summary judgment is also proper because the Parish has the authority to reorganize the Legal Department, and the Administration Ordinance refines the District Attorney's role with respect to Parish Government.

Solely to the extent there is any concern that Section 4-03, as originally passed, was intended to require the Parish Government to rely exclusively on the District Attorney for general legal advice and services, the Defendants have exercised their express powers under the Charter to alter any such role of the District Attorney *vis-à-vis* the Parish Government and the Parish's Legal Department.

Specifically, the Administration Ordinance provides that the Legal Department is directed by the Executive Counsel, the Legal Department's staff includes attorneys who are Parish employees subject to the administrative authority of the Parish President, and the Legal Department attorneys are legal advisors to the Parish President and Parish Administration and

⁴¹ Charter, Section 4-03(B).

jointly represent and/or co-administer the representation of the Parish Government with the Council Attorneys.⁴² The Administration Ordinance further provides that, pursuant to Section 4-03(A) of the Charter, the District Attorney shall serve as legal advisor to Parish departments, offices, and agencies and shall represent the Parish Government, *but only when requested and when the District Attorney has no conflict of interest.*⁴³

The Parish President proposed the Administration Ordinance pursuant to Section 4-12 of the Charter, which provides:

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.⁴⁴

Notably, pursuant to this express authority, Parish Government has, in the past, reorganized and completely abolished Parish Departments created by and included in the Charter. By way of example, pursuant to the authority of Section 4-12, in 2012 the Parish Government reorganized (among others) the Department of Engineering, the Legal Department, and the Department of Development and abolished the separate Departments of Permits and Planning.⁴⁵ That same authority is properly being exercised now through the proposal of the Administration Ordinance, which is on the Council's September 1, 2016 agenda.

The District Attorney's argument that the Parish Government does not have the authority to change or alter his role under Section 4-03 ignores the plain language of Section 4-12, a reading of the Charter as a whole, and the general powers and authority granted to home rule charter

⁴² Exhibit B.

⁴³ *Id.* (Emphasis added).

⁴⁴ Charter, Sections 4-12(A)-(B) (emphasis added).

⁴⁵ See Ordinance Council Series No. 12-2761(2), introduced on June 7, 2012, and adopted on July 12, 2012, Exhibit F. Another example of Parish Government's authority to alter, amend, or supplement certain provisions of the Charter is demonstrated in the recent case of *Mederos v. St. Tammany Parish Government*, 2015-1602 (La. App. 1 Cir. 7/11/16); -- So. 3d --, 2016 WL 3683478. In that case, a discharged Parish employee sued Parish Government, the Parish President, and others alleging that she was impermissibly terminated without "just cause" in violation of the Charter, § 3-09. Although the Charter does state that the President may remove an employee "for just cause," Section 3-09 also recognizes that additional personnel rules may be passed pursuant to the Charter, in which case those rules would apply. The Court concluded that such additional personnel rules were in fact passed by ordinance subsequent to the enactment of the Charter, which made the plaintiff's employment "at will" notwithstanding the "just cause" language in the Charter. 2016 WL 3683478, at *4.

governments to manage their affairs and structure their departments. Article IV of the Charter, as passed in 1998, set forth the initial structure and organization of the executive branch of Parish Government. Through Section 4-12, the drafters made clear their intent that the Council would have the authority, upon a proposal by the Parish President, to completely reorganize or even abolish entire departments initially created by the Charter via ordinance. As demonstrated, this has been accomplished in the past. Thus, the structure of any department created under Article IV was not made immutable by its inclusion in the Charter. To the contrary, the authority to make changes to the structure based on need was expressly reserved to Parish Government. That reserved authority is wisely exercised to preserve efficiency and resolve functional disputes among department or agencies, such as the one now before the Court.⁴⁶

The Louisiana First Circuit Court of Appeal has previously affirmed a local government's administrative reorganization that effectively removed a police chief whose position was identified in the local government's Home Rule Charter.⁴⁷ In *Devall v. Depaula*, the Police Chief of the City of Hammond filed for injunctive relief and a declaratory judgment to prevent an administrative reorganization from taking effect. The City of Hammond's Home Rule Charter contained the following provisions.

Section 4-01 General Provisions

All departments, offices and agencies shall be under the direction and supervision of the mayor, except as otherwise provided by this charter . . .

Section 4-04 Police Department

A The head of the Police Department shall be the police chief, who shall be appointed by the mayor, subject to confirmation by the council, in accordance with applicable state law.

Section 4-10 Administrative Reorganization

A. The mayor shall have the right as chief executive officer to propose to the council the creation, change, alteration, combination or abolition of City departments, offices or agencies and/or the reallocation of the functions, powers, duties and responsibilities of such agencies including those provided in this charter.

Pursuant to Section 4-10 of the City's Home Rule Charter, the Mayor proposed an administrative reorganization of the Police and Fire Departments. Under the proposed ordinance, the Police and Fire Departments would fall under the supervision of a newly-created Department of Public Safety instead of the Police Chief.⁴⁸ A public hearing was held to determine if the proposed ordinance amounted to an amendment to the City Charter (which required a vote of the

⁴⁷ *Devall v. Depaula*, 1996-1067 (La. App. 1 Cir. 05/09/97); 694 So. 2d 1137.

⁴⁸ *Id.* at 1139.

people) or simply an administrative reorganization authorized by the Home Rule Charter.⁴⁹ The Police Chief's position in the City of Hammond, like the reference to the District Attorney in the St. Tammany Parish Home Rule Charter, was included in the Hammond Home Rule Charter at the time of adoption. The Hammond City Council concluded that the action was an administrative reorganization and the ordinance was adopted effectively deleting the Police Chief's position in the Home Rule Charter.⁵⁰ The trial court denied the injunction. The First Circuit Court of Appeal affirmed the denial of the injunction and appended the trial court's reasons for judgment to its opinion.⁵¹

The District Attorney's argument in the instant case is no different than the Police Chief's argument in *Devall*. When the Administration Ordinance is adopted on September 1, 2016, it, in conjunction with the Council Ordinance and other relevant provisions of the Charter, clearly require dismissal of the District Attorney's claims. In *Devall*, the Louisiana First Circuit upheld an identical administrative reorganization under charter provisions that are also almost identical to Section 4-12 of St. Tammany's Home Rule Charter. For the same reasons, summary judgment on the Defendants' request for declaratory judgment that they are authorized to pass this legislation, operate the Legal Department, and hire their own independent separate counsel is also proper.

E. Louisiana law regarding the duties and obligations of lawyers and the nature of the attorney-client relationship also require dismissal of the District Attorney's claims.

Louisiana law does not recognize any right by an attorney to force unwanted representation on a putative client. Likewise, an attorney may not represent a client if the representation would violate the Louisiana Rules of Professional Conduct, which have the force and effect of law.⁵² As the Supreme Court discussed in *Succession of Wallace*, it has exclusive and plenary power to define and regulate all facets of the practice of law in Louisiana, including professional responsibility and conduct of lawyers.⁵³ The Court explained that the sources of its power are "the court's inherent judicial power emanating from the constitutional separation of powers, the traditional inherent and essential function of attorneys as officers of the courts, and [its] exclusive

⁴⁹ *Devall*, 694 So. 2d at 1140.

⁵⁰ *Id.*

⁵¹ *Id.* at 1142.

⁵² *See Succession of Wallace*, 574 So. 2d 348, 350 (La. 1991).

⁵³ *Id.* at 350.

original jurisdiction of attorney disciplinary proceedings.”⁵⁴ As a result of the Supreme Court’s power and authority over the practice of law, “the legislature cannot enact laws defining or regulating the practice of law without [the] court’s approval or acquiescence...”⁵⁵ Indeed, the Court will strike down statutes that impede or frustrate its authority.⁵⁶

In *Succession of Wallace*, the Court struck down a statute requiring the executor of a decedent’s estate to accept the attorney designated in the testator’s will as the estate’s and executor’s counsel unless there existed “just cause” to terminate the attorney.⁵⁷ The Court found that the statute was unconstitutional to the extent it conflicted with the Rules of Professional Conduct.⁵⁸ In reaching its holding, the Court discussed a “number of interrelated rules” it has adopted in the defining and regulating of the client-attorney relationship, many of which are relevant here:

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, 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.”).⁵⁹

Louisiana Rule of Professional Conduct 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.”⁶⁰ Under Rule 1.16, an attorney cannot “force his continued representation of a client who wishes to discharge him....”⁶¹

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 are

⁵⁴ *Succession of Wallace*, 574 So. 2d at 350 (internal citations omitted).

⁵⁵ *Id.* at 349, 359-60.

⁵⁶ *Id.*

⁵⁷ *Id.* at 359-60.

⁵⁸ *Id.* at 360.

⁵⁹ *Id.* at 351.

⁶⁰ *Id.* at 355.

⁶¹ *Id.* at 351.

the District Attorney's claims in this lawsuit by which he asks for a declaration that he is the Defendants' only general legal advisor, regardless of whether they want him as their attorney or not; and to enjoin the Defendants from retaining counsel of their choice, whom they trust to provide them with unbiased legal advice and services.

In the light of the Supreme Court's directives in *Succession of Wallace*, the statutes setting forth a district attorney's obligation to act as legal adviser to some parish governing authorities, and Section 4-03(A) of the Charter, cannot, as a matter of law, be construed to mean the District Attorney shall be the legal advisor or "regular attorney" when the governing authority (the client) does not want the representation and/or there are ethical prohibitions to the arrangement under the Rules of Professional Conduct. This is precisely the situation here, as there is no genuine issue of material fact that (1) the legislative and executive branches of Parish Government routinely need independent and separate counsel as a natural result of their different governmental functions and powers, (2) the District Attorney's ability to represent the Defendants would be materially limited by his loyalty to his political constituents and his own political interests, and (3) the Defendants do not desire to have the District Attorney serve as their general counsel and have permissibly hired their own counsel who are being paid by the Parish pursuant to the Parish budget.

First, simply by virtue of the Parish Government's President-Council system, the concept of one "regular attorney" or legal advisor providing services and advice concurrently to both branches of government on all issues and matters is unworkable because of the inevitable conflicts that naturally arise between independent branches of government.⁶² Indeed, the system is one intended to ensure checks and balances between independent governmental branches, where each branch has actions it can take with respect to the operations and power of the other. If this system of government works, it naturally gives rise at times to "conflicts" or divergent views on governmental and political issues.

By way of example, the Council and the President are not always completely aligned on issues related to the Parish's budget, the drafting of new ordinances and resolutions, the scope and application of personnel policies, and the division of ad valorem tax revenues.⁶³ In such situations, the Council and the President's office will negotiate with one another to reach compromises and

⁶² See Affidavit of Dane Ciolino, Esq., Ex. K, ¶¶ 33-34.

⁶³ Hand aff., Ex. C, ¶ 5; Brister aff., Ex. G, ¶ 6; Rabalais aff., Ex. D, ¶ 9.

common ground.⁶⁴ To the extent legal advice is desired or necessary on such issues, a single attorney representing both branches, as the District Attorney asserts is required, would be prohibited by the Rules of Professional Conduct.⁶⁵ *See* La. R. Prof. C. 1.7(a)(1) (“[A] lawyer shall not represent a client if ... the representation of one client will be directly adverse to another client...”). Because the Council and the President frequently seek legal advice and counsel regarding issues on which the two branches of government are not entirely in agreement,⁶⁶ they cannot be forced to share one general legal advisor.

This issue of concurrent conflicts of interest is further complicated by the fact that the District Attorney is an elected official in the judicial branch of government who serves constituents in two parishes and who represents the State and other political subdivisions, such that his office necessarily has its own set of policies, interests, and political agendas that may not always converge with those of the Council and the President. For example, additional funding requests by the District Attorney’s Office, which historically have occurred on an annual basis, create a natural conflict with the other branches of local government, as the Parish’s funds have to be allocated among all three branches.⁶⁷

In addition to the conflicts that naturally arise between the independent branches of government, in this case there is also evidence of a Rule 1.7(a)(2) conflict. That rule precludes an attorney from representing a client when “there is a significant risk that the representation ... will be materially limited by the lawyer’s responsibilities to ... a third person or by a personal interest of the lawyer.”⁶⁸ As previously noted, recently produced communications between the District Attorney, on one side, and members of the political group CCST, on the other, evidence the District Attorney’s political alignment with that group on issues pertinent to this lawsuit, as well as a lack of loyalty to the Council and President, his putative clients.⁶⁹ Those documents further demonstrate that the District Attorney does not appreciate the nature of his putative role as legal advisor to Parish Government, but instead sees himself and his office more as “watchdogs” over his alleged clients.

⁶⁴ Hand aff., Ex. C, ¶ 5; Brister aff., Ex. G, ¶ 6; Rabalais aff., Ex. D, ¶ 9.

⁶⁵ Ciolino aff., Ex. K, ¶¶ 32-34.

⁶⁶ Brister aff., Ex. G, ¶ 6; Hand aff., Ex. C, ¶ 5.

⁶⁷ Hand aff., Ex. C, ¶ 6(c). *See also id.*, ¶ 6(d).

⁶⁸ La. R. Prof. C. 1.7(a)(2).

⁶⁹ *See* Emails, Exhibits H-1 through H-12.

Additionally, the District Attorney has evidenced through his actions leading up to this lawsuit and the lawsuit itself that his own interest in taking over and controlling the general civil legal representation of Parish Government materially limits his ability to provide unbiased legal advice and services to the Defendants or to follow their instructions. Indeed, he has refused to abide by the Defendants' wishes and directives, disrupted Parish business, upset the Parish's representation in pending litigation, demanded that the Defendants take steps that clearly contradict their goals, desires, and independent interests, and unnecessarily cost the Parish the expense of this lawsuit instead of working to resolve any disputes outside of court or through a cooperative endeavor agreement. It is clear that the District Attorney's own interests and loyalty to third parties materially limit his ability to provide sound, unbiased legal advice to the Council and the President. Because the District Attorney has a personal interest that would materially limit his ability to provide objective legal advice to the Council and the President, Rule 1.7(a)(2) prohibits the representation he seeks through this lawsuit.⁷⁰

Finally, the Defendants do not desire to have the District Attorney as their general legal advisor and do not trust him to provide them with independent, unbiased legal advice under the current circumstances. Pursuant to the Supreme Court's opinion in *Succession of Wallace*, this alone should result in the District Attorney's claims failing as a matter of law:

The relation of attorney and client is one of special confidence and trust and the dignity and integrity of the legal profession demand that the interests of the client be fully protected. ***If the basis of the trust and confidence underlying a client-attorney relationship has been substantially undermined, the client must have the absolute right to terminate the relationship.***⁷¹

In Louisiana, the client maintains the absolute right to select and discharge their counsel, and there is simply no authority that permits a lawyer to force his services on an unwilling client.⁷² This means that the District Attorney can be the Defendants' counsel **only** if his services are requested by them⁷³ and **only** if he does not have a conflict of interest. That is precisely the framework set

⁷⁰ Ciolino aff., Ex. K, ¶ 35.

⁷¹ *Succession of Wallace*, 574 So. 2d at 352 (emphasis added).

⁷² Ciolino aff., Ex. K, ¶ 28.

⁷³ Of note is the federal court's opinion in *Leleux-Thubron v. Iberia Parish Gov't*, 20115 WL339617 (W.D. La., Jan. 23, 2015). In that case, the parish president moved to disqualify the district attorney from representing the parish council in litigation in which the president was a witness based on an alleged concurrent conflict of interest arising from the language of the Iberia Parish Home Charter. The Iberia Charter stated that the district attorney "shall serve as the legal advisor to the Parish Council, Parish President, and all Parish departments, offices, and agencies." *Id.* at *1 (emphasis added). The president argued that, simply by virtue of that language (which is similar to ours, but includes the word "the" where our Charter does not), both the council and the

forth in the Administration Ordinance. The District Attorney's claims that he is required to be their attorney against their wishes and despite conflicts of interest must be dismissed as a matter of law.

F. Solely in the alternative to summary judgment being entered on the above grounds, the District Attorney's claims must be dismissed because the statutes and Charter, as he construes them, are unconstitutional.

In their Amended Reconventional Demand, the Defendants ask for a declaratory judgment that La. Rev. Stat. §§ 16:2 and 42:261 and Section 4-03(A) of the Charter, if applied to force the District Attorney's general legal services and representation on the Defendants over their objections, are unconstitutional.

1. *The statutes and Section 4-03(A) would be unconstitutional pursuant to the Supreme Court's holding in Succession of Wallace.*

As discussed above, if the statutes at issue and Section 4-03(A) of the Charter are interpreted to mean that the Defendants can be forced to accept the District Attorney as their general legal adviser over their wishes and when conflicts of interest exist, those laws 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. As discussed above, in *Succession of Wallace* the Supreme Court specifically stated that it would strike down statutes that impede or frustrate its authority over the conduct of attorneys and the practice of law.⁷⁴

Similar to the statute in *Succession of Wallace*, the statutes in this case, as construed by the District Attorney, set forth a regime whereby local authorities must accept legal representation from an attorney regardless of whether the representation is desired, where a client cannot discharge the attorney at will, and where the attorney can continue to represent a client even if there appear to be conflicts of interest. The District Attorney's reading of the statutes and language

president were the district attorney's clients, and he could not represent one, who was a defendant, adversely to the other, who was a witness, in that case. The court rejected the argument, noting that the president had expressly refused the representation of the district attorney: "It is obvious that [the president] cannot be a 'client' of [the district attorney] unless an attorney-client relationship exists between them. The test for determining whether an attorney-client relationship exists is a subjective one and hinges on the purported client's belief that he or she is consulting with the lawyer in his professional capacity with the intention of seeking professional legal advice." *Id.* at *6. The Court concluded that it would be absurd for it to find that the president was a client of the district attorney based solely on the charter language when the facts demonstrated that the president refused to accept the district attorney's legal representation and made it clear he had no intention of consulting with or seeking the district attorney's legal advice. *Id.* The Court found that there, thus, was no concurrent conflict. *Id.*

⁷⁴ *Succession of Wallace*, 574 So. 2d at 350.

in Section 4-03(A) of the Charter cannot be reconciled with the Supreme Court's rules governing attorney conduct and the attorney-client relationship,⁷⁵ and are, thus, unconstitutional for the same reason as the statute in *Succession of Wallace*.

2. *The same statutes and Charter provision violate the Parish's authority and rights under the Constitution as a home rule charter government.*

Louisiana Constitution art. VI, § 5(E) provides that “[a] home rule charter adopted under this 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, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution.” Article VI, § 6 of the Louisiana Constitution limits the Legislature’s ability to limit, restrict or interfere with a home rule charter government’s authority over its own affairs: “The 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.” As the Supreme Court explained in *Lafourche Parish Council v. Autin*, 1994-0985 (La. 1994); 648 So. 2d 343, 355-56, these constitutional provisions are intended to grant home rule charter governments exclusive control over the operations and management of local affairs, as well as structural autonomy, and to prohibit the Legislature from interfering with or substituting its own judgment for that of the local government “unless it is necessary to prevent an abridgement of a reasonable exercise of the police power.” (Citing *Francis v. Morial*, 455 So. 2d 1168 (La. 1984)).

The St. Tammany Parish Charter evidences the Parish’s intent to extend its local government’s authority and power over the management of local affairs to the allowed constitutional limits. Under the Charter, Parish Government has “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.” Charter, Section 1-04(A). The Parish Government further has the right and power to pass all ordinances “on all subject matters necessary, requisite or proper for the management of its affairs,” subject to the Constitution and any applicable general law. Charter, Section 1-05.

⁷⁵ 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).

As a home rule charter government with such broad authority in place, St. Tammany Parish Government has the exclusive discretion and control “over the operation, management and internal arrangement of the component parts of its local government,” including the structuring of its various offices, departments, agencies and elements of local government.⁷⁶ That control includes the assignment, allocation or distribution of purposes, work, authority and capacity among its offices and departments.⁷⁷ Statutes, like those purporting to require the District Attorney to be the Parish Government’s attorney, 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 are unconstitutional violations of La. Const. art. VI, §§ 5-6. Moreover, “[w]hen a court is resolving whether a statute should be stricken as an unconstitutional legislative interference with local deployment of home rule charter powers and functions, home rule abilities and immunities are broadly construed and any claimed exception is carefully scrutinized.”⁷⁸

In *Autin*, based on a discussion of the foregoing principles, 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.⁷⁹ 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.⁸⁰

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 Charter to structure and organize its Legal Department in the manner it deems appropriate and to retain counsel that they deem necessary to the Parish Government’s functioning. Likewise, the District Attorney’s construction of Section 4-03(A) is inconsistent with the broad powers provided to the Council and President to retain necessary employees and to create, change, abolish, and reorganize Parish Departments, pursuant to Sections 2-10, 3-09, and 4-12 of the Charter. The statutes and Section 4-03(A) of the

⁷⁶ *Autin*, 648 So. 2d at 355-56.

⁷⁷ *Id.* at 356.

⁷⁸ *Id.* at 356-57 (citing *City of New Orleans v. Board of Commissioners of the Orleans Levee Board*, 1993-0690 (La. 7/5/94); 640 So. 2d 237, 252).

⁷⁹ *Id.* at 357-358.

⁸⁰ *Id.*

Charter, if construed to provide for the relief requested by the District Attorney, would be an unconstitutional limitation on the Defendants' authority to manage, control, and structure the Parish Government as they deem in the Parish's best interest.

3. *The statutes are unconstitutional special laws.*

Article III, § 12 of the Louisiana Constitution prohibits the Legislature from passing a special law concerning civil actions. A special law is one that “operates upon and affects only a fraction of the persons or a portion of the property encompassed by a classification, granting privileges to some while denying them to others.”⁸¹ By contrast, a general law “operates equally and uniformly upon all persons brought within its confines or operates equally upon all of a designated class which has been founded upon a reasonable classification.”⁸²

Regarding the statutory scheme relied on by the District Attorney in this lawsuit, the Supreme Court has specifically discussed the special nature of that scheme and described it as “wrought with internal inconsistencies created by legislative exemptions of many state and local public bodies from the statutes' parameters.”⁸³ 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.⁸⁴

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 § 42:264.⁸⁵ 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.⁸⁶

⁸¹ *Morial v. Smith & Wesson Corp.*, 2000-1132 (La. 4/3/01); 785 So. 2d 1, 18 (citing *Kimball v. Allstate Ins. Co.*, 1997-2885 (La. 4/14/98); 712 So. 2d 46, 52).

⁸² *Id.*

⁸³ *State v. Petrovich*, 396 So. 2d 1318, 1323 (La. 1981).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *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 in part, to exempt more public bodies and parishes from their provisions, thereby only further exacerbating the constitutional problem.⁸⁷ As a result, the statutes clearly are special laws concerning civil actions involving St. Tammany Parish that do not operate and apply equally and uniformly to all local governments and political subdivisions. To the contrary, the statutes grant the right and privilege to retain any counsel desired to certain parishes and political subdivisions and not to others. The statutes are, accordingly, unconstitutional special laws.

IV. CONCLUSION

The law supports that the Defendants have permissibly and properly exercised their power and authority to select their own independent counsel to provide legal advice and guidance with respect to the management of Parish business and affairs. The factual record demonstrates that the District Attorney has conflicts of interest that prevent him ethically from acting as the Defendants' general legal advisor at this time. Nevertheless, through the Administration Ordinance, Parish Government has preserved the possibility of the District Attorney having a role in the Parish's legal representation, when circumstances ethically permit and if it is determined to be in the Parish's interest.

Accordingly, summary judgment dismissing the District Attorney's claims and in favor of the Defendants' Reconventional Demand regarding their right and ability to hire counsel apart from the District Attorney, operate and manage the Legal Department, and pass the Administration Ordinance pursuant to Section 4-12 of the Charter is proper and warranted.

⁸⁷ 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).

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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 26th day of August, 2016.

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