

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

SUIT NO. 2016-11530 DIV. "J"
22ND JUDICIAL DISTRICT COURT

V.

PARISH OF ST. TAMMANY

ST. TAMMANY PARISH GOVERNMENT, by STATE OF LOUISIANA
and through the ST. TAMMANY PARISH
COUNCIL; and PATRICIA "PAT" BRISTER,
IN HER OFFICIAL CAPACITY AS PARISH
PRESIDENT

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

NOW INTO COURT comes Plaintiff Warren Montgomery, in his official capacity as District Attorney for St. Tammany Parish (the "District Attorney"), who submits this Motion for Summary Judgment, requesting summary judgment on his claims for declaratory and injunctive relief, as there are no genuine issues of material fact and he is entitled to judgment as a matter of law. Section 4-03(A) of the Home Rule Charter for a President-Council Government for St. Tammany Parish states:

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.¹

The terms could not be clearer. The District Attorney "shall serve as legal adviser" to the St. Tammany Parish Council and the St. Tammany Parish President "and represent Parish government in legal proceedings." The only means to change this provision is by a vote of the people of St. Tammany Parish, and those citizens have already overwhelmingly rejected such a change.² However, the Defendants' overarching opposition to the present lawsuit, along with the recent passage of Ordinance Calendar No. 5638 and introduction of Ordinance Calendar No. 5644, are nothing more than attempts by the St. Tammany Parish government—including the Parish President and the Parish Council—to circumvent the will of the citizens of St. Tammany Parish. And, at this time, the Defendants have begun to take actions in clear violation of the controlling law, which is further discussed in the accompanying memorandum in support.

¹ Home Rule Charter, Section 4-03(A) (emphasis added).

² Robert Rhoden, *St Tammany Parish voters reject charter Proposition 5*, THE TIMES-PICAYUNE (Nov. 21, 2015), http://www.nola.com/politics/index.ssf/2015/11/st_tammany_parish_charter_prop_2.html.

Therefore, for these reasons, and for the reasons explained more fully in the attached memorandum of law, Plaintiff Warren Montgomery, in his official capacity as District Attorney for St. Tammany Parish, respectfully requests that this Honorable Court enter summary judgment in his favor and against the Defendants, on his claims for declaratory and injunctive relief.

Dated: August 26, 2016

Respectfully submitted,

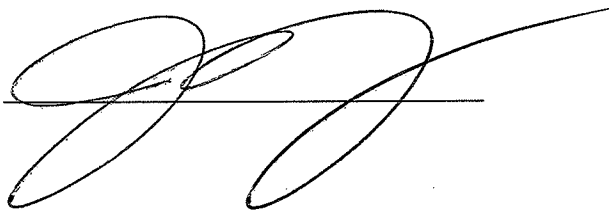


James C. Percy (LA Bar No. 10413)
Edward H. Bergin (LA Bar No. 2992)
Justin J. Marocco (LA Bar No. 35226)
Jones Walker LLP
Four United Plaza
8555 United Plaza Boulevard
Baton Rouge, Louisiana 70809-7000
Telephone: (225) 248-2130
Facsimile: (225) 248-3130
nbergin@joneswalker.com
jpercy@joneswalker.com
jmarocco@joneswalker.com
mcash@joneswalker.com

*Attorneys for Petitioner, Warren
Montgomery, in His Official Capacity as
District Attorney*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been forwarded on this 26th day of August, 2016, to all counsel of record via electronic mail.



PLEASE SERVE:

Office of the Attorney General
Civil Division
c/o Emily Andrews
1885 North 3rd St., 6th Floor
Baton Rouge, Louisiana 70802

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

SUIT NO. 2016-11530 DIV. "J"
22ND JUDICIAL DISTRICT COURT

V.

PARISH OF ST. TAMMANY

ST. TAMMANY PARISH GOVERNMENT, by STATE OF LOUISIANA
and through the ST. TAMMANY PARISH
COUNCIL; and PATRICIA "PAT" BRISTER,
IN HER OFFICIAL CAPACITY AS PARISH
PRESIDENT

RULE TO SHOW CAUSE

Considering the Motion for Summary Judgment filed on behalf of Plaintiff Warren Montgomery, in his official capacity as District Attorney for St. Tammany Parish;

IT IS ORDERED that the Defendants St. Tammany Parish Government, by and through the St. Tammany Parish Council; and Patricia "Pat" Brister, in her official capacity as Parish President, appear in this Court on the 12th day of September, 2016 at ____:____.m., and show cause why Plaintiff Warren Montgomery's Motion for Summary Judgment should not be granted.

Signed in _____, Louisiana, this _____, day of _____, 2016.

Judge, 22nd Judicial District Court

PLEASE SERVE:

Office of the Attorney General
Civil Division
c/o Emily Andrews
1885 North 3rd St., 6th Floor
Baton Rouge, Louisiana 70802

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

SUIT NO. 2016-11530 DIV. "J"
22ND JUDICIAL DISTRICT COURT

V.

PARISH OF ST. TAMMANY

ST. TAMMANY PARISH GOVERNMENT, by STATE OF LOUISIANA
and through the ST. TAMMANY PARISH
COUNCIL; and PATRICIA "PAT" BRISTER,
IN HER OFFICIAL CAPACITY AS PARISH
PRESIDENT

**PLAINTIFF'S MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT**

NOW INTO COURT comes Plaintiff Warren Montgomery, in his official capacity as District Attorney for St. Tammany Parish (the "District Attorney"), who submits this Memorandum in Support of his Motion for Summary Judgment.

INTRODUCTION

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.¹

Section 4-03(A) of the Home Rule Charter for a President-Council Government for St. Tammany Parish (the "Home Rule Charter")—shown above—could not be clearer. The District Attorney "shall serve as legal adviser" to the St. Tammany Parish Council ("Parish Council") and the St. Tammany Parish President ("Parish President") (collectively, the "Defendants") "and represent Parish government in legal proceedings." The only means to change this provision is by a vote of the people of St. Tammany Parish, and those citizens have already overwhelmingly rejected such a change.² However, the Defendants' overarching opposition to the present lawsuit, and their recent ordinances, are nothing more than attempts by the St. Tammany Parish government—including the Parish President and the Parish Council—to circumvent the will of the citizens of St. Tammany Parish. But, as the citizens have chosen not to change Section 4-03(A) of the Home Rule Charter, its provisions control and must be enforced.

¹ Home Rule Charter, Section 4-03(A) (emphasis added).

² Robert Rhoden, *St Tammany Parish voters reject charter Proposition 5*, THE TIMES-PICAYUNE (Nov. 21, 2015), http://www.nola.com/politics/index.ssf/2015/11/st_tammany_parish_charter_prop_2.html.

BACKGROUND

The St. Tammany Parish Government is a political subdivision operating in St. Tammany Parish and governed by a Home Rule Charter. The Preamble to the Home Rule Charter states that its purpose is “to establish an elected and accountable government that is responsive to and representative of all the citizens of the parish.” Among other things, the Home Rule Charter recognizes and reaffirms the duties and obligations of the District Attorney with respect to St. Tammany Parish. Specifically, Section 4-03(A) of the Home Rule Charter provides that the District Attorney “shall serve as legal adviser to the council, president and all departments . . . and represent the Parish Government in legal proceedings.” In January 2015, Warren Montgomery was sworn in as the District Attorney of the 22nd Judicial District for St. Tammany Parish. As the new District Attorney, Warren Montgomery took an oath to faithfully perform the duties of his office in accordance with the laws of Louisiana and the St. Tammany Home Rule Charter.

Since this litigation was initiated, the Defendants have taken two actions in clear violation of the Home Rule Charter. First, at the August 4, 2016 meeting, the Parish Council adopted Ordinance Calendar No. 5638—a copy of which is attached hereto as **Exhibit 1**—to amend the St. Tammany Parish Code of Ordinances to include a new section, Section 2-035 “Council Personnel.”³ Through this new section, the Parish Council has given itself the power to appoint one or more “Council Attorneys” to serve as the legal advisor to the Parish Council and to represent the Parish Government in all legal proceedings in conjunction with the Parish President attorneys. This is in clear and direct violation of Section 4-03(A) of the Home Rule Charter, and thus, cannot stand.

Second, the Parish President submitted Ordinance Calendar No. 5644—a copy of which is attached hereto as **Exhibit 2**—which will be taken up at the September 1, 2016 Parish Council meeting. Ordinance Calendar No. 5644 seeks to amend Section 2-092 of the Parish Code of Ordinances that delineates the duties and responsibilities of each office and department of the St.

³ The Court is entitled to take judicial notice of this fact, as it is “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,” and as such, Plaintiff respectfully requests that such be done for purposes of this Motion for Summary Judgment. La. Code Evid. art. 201(B)(2).

Tammany Parish Government. Of relevance, Section 2-092(8) presently recognizes the role of the District Attorney as set forth in Section 4-03(A) of the Home Rule Charter, and thus is consistent with Plaintiff's position. Through Ordinance Calendar No. 5644, the Parish President seeks to amend Section 2-092(8) to delete any reference to Section 4-03(A) of the Home Rule Charter, and thus to eliminate the provision that states the District Attorney shall act as legal adviser to the Parish President and St. Tammany Parish departments and as legal representatives in legal proceedings.⁴ Instead, the Parish President seeks to bestow upon herself the power to appoint an "Executive Counsel" and all attorneys in the Legal Department to serve at the pleasure of the Parish President and serve as legal adviser to the Parish Government, in **clear violation** of section 4-03(A) of the Home Rule Charter. Moreover, this Ordinance provides that attorneys appointed by the Parish President "shall co-administer with Council Attorneys all legal proceedings and litigation involving the Parish Government and jointly represent the Parish Government in such proceedings." This Ordinance, together with Section 2-035(c), virtually eliminates the District Attorney's involvement in the legal affairs of the Parish, and thus, totally nullifies the express language of Section 4-03(A) of the Home Rule Charter.

Plainly, as shown above, the Defendants have begun to take actions in clear violation of the controlling law, and thus, summary judgment is appropriate to prevent and nullify such illegal acts.

STATEMENT OF UNCONTESTED MATERIAL FACTS

Pursuant to Local Rule 9.10, Plaintiff Warren Montgomery submits that the following facts are material to this Motion for Summary Judgment and are not genuinely in dispute:

1. Section 4-03(A) of the Home Rule Charter provides: "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."

2. In November 2015, pursuant to a resolution by the Parish Council, Proposition 5 was submitted to the voters of St. Tammany Parish. This proposition stated:

⁴ See footnote 2, *infra*.

Shall the St. Tammany Parish Home Rule Charter be amended to provide for the legal representation of the St. Tammany Parish Government and the creation of the Legal Department, by amending Section 4-03 of Article IV of the St. Tammany Parish Home Rule Charter to read as stated in Part 5 of St. Tammany Parish Ordinance No. 5398 as adopted on August 6, 2015?

3. Ordinance No. 5398 referenced in Proposition 5 proposed to amend Section 4-03 of the Home Rule Charter, and specifically to rewrite Section 4-03(A) as follows:

The president, without the necessity of council approval, shall appoint an Executive Counsel who shall serve at the pleasure of the president. The Executive Counsel shall (1) direct the Legal Department and its respective staff members, (2) serve as legal advisor to the president, parish employees and all departments, comprising Parish administration, (3) represent and/or direct representation for the parish president, parish employees and/or parish government in legal proceedings and (4) co-administer Parish litigation with council attorneys.

4. Over 61% of the St. Tammany Parish voters rejected Proposition 5, including the proposed revision of Section 4-03(A) that would have allowed the Parish President to retain her own counsel in lieu of the District Attorney and to create her own legal department.⁵

5. At the August 4, 2016 meeting, the Parish Council adopted Ordinance Calendar No. 5638, whereby the St. Tammany Parish Code of Ordinances was amended to include a new section, Section 2-035 "Council Personnel."

6. New Section 2-035(c) provides:

The Council shall appoint one (1) or more attorneys as necessary Council staff members and who shall serve at the pleasure of the Council. The Council Attorney(s) shall (1) serve as legal advisor(s) to the Council, respective staff members, and boards and commissions established by Council, all as directed by the Council; (2) represent and/or direct representation for the Council in conjunction with Parish Government in legal proceedings; (3) represent boards and commissions established by the Council and as directed by the Council; and (4) co-administer Parish litigation with Parish President appointed attorneys and jointly represent the Parish Government with Parish President attorneys.

7. The Parish President submitted Ordinance Calendar No. 5644, which will be taken up at the September 1, 2016 Parish Council meeting.

8. Ordinance Calendar No. 5644 seeks to amend Section 2-092 of the St. Tammany Parish Code of Ordinances that delineates the duties and responsibilities of each office and department of the St. Tammany Parish Government.

9. Section 2-092(8) of the St. Tammany Parish Code of Ordinances presently reads:

⁵ Robert Rhoden, *St Tammany Parish voters reject charter Proposition 5*, THE TIMES-PICAYUNE (Nov. 21, 2015), http://www.nola.com/politics/index.ssf/2015/11/st_tammany_parish_charter_prop_2.html.

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.

10. Through Ordinance Calendar No. 5644, the Parish President seeks to amend Section 2-092(8) to read as follows:

The President shall appoint an Executive Counsel who shall serve at the pleasure of the President. The Executive Counsel shall: (1) subject to the Council's approval pursuant to Home Rule Charter Section 4-01(A), be the Director of the Legal Department; (2) direct the Legal Department and its respective staff members, including attorneys; (3) serve as legal adviser to the President, parish employees and all departments comprising Parish Administration, all as directed by the Parish President; (4) represent and/or direct representation for the Parish President and Parish Administration in conjunction with Parish Government in legal proceedings; and (5) co-administer with Council Attorneys all legal proceedings and litigation involving Parish Government and jointly represent the Parish Government with Council Attorneys in such proceedings. All attorneys in the Legal Department shall be Parish President appointed attorneys subject to Section 3-09 of the Home Rule Charter. The Legal Department shall include the Office of Risk Management. Said duties shall include, but not be limited to, any and all actions necessary to carry out the functions of the Department.

Pursuant to Home Rule Charter Section 4-03(A), the District Attorney of the judicial district serving St. Tammany Parish shall, upon the request of the Parish Government: (a) serve as legal adviser to any departments, offices, and agencies of the Parish Government, and (b) represent the Parish Government in legal proceedings; provided, however, that the District Attorney has no conflict of interest with respect to any such matter for which such a request is made.

Nothing herein shall alter or change the procedure for retaining special legal counsel as set forth in Home Rule Charter Section 4-03(B).

11. In January 2015, Warren Montgomery was sworn in as the District Attorney of the 22nd Judicial District for St. Tammany and Washington Parishes.⁶

STATEMENT OF ESSENTIAL LEGAL ELEMENTS

Pursuant to Local Rule 9.10, Plaintiff Warren Montgomery represents that the following legal elements are essential to this motion:

⁶ Bob Warren, *Warrant Montgomery sworn into office as north shore DA, ending tenure of Walter Reed*, THE TIMES-PICAYUNE (Jan. 12, 2015), http://www.nola.com/crime/index.ssf/2015/01/montgomery_sworn_to_office_as.html.

1. Article VI, Section 5 of the Louisiana Constitution provides for the adoption of home rule charters by local government subdivisions, which “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.**”⁷

2. Article VI, Section 5(G) of the Louisiana Constitution specifically provides: “No home rule charter or plan of government shall contain any provision affecting . . . the offices of district attorney . . . , which is inconsistent with this constitution or law.”

3. “[U]nder the 1974 Louisiana Constitution a home rule charter government possesses, in affairs of local concern, power which within its jurisdiction are as broad as that of the state, except when limited by the constitution, laws permitted by the constitution, or its own home rule charter.”⁸

4. Article V, Section 26 of the Louisiana Constitution provides that the District Attorneys for each Louisiana Judicial District shall have the following powers:

Except as otherwise provided by this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution by the state in his district, be the representative of the state before the grand jury in his district, and be the legal advisor to the grand jury. **He shall perform other duties provided by law.**

5. The terminology “provided by law” has been interpreted by the Louisiana Supreme Court to mean “provided by legislation.”⁹

6. La. R.S. 16:2(A) states the following regarding a district attorney’s powers and function:

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

⁷ La. Const. art. VI, § 5(E) (emphasis added).

⁸ *Reed v. Washington Parish Police Jury*, 518 So. 2d 1044, 1049 (La. 1988).

⁹ *Board of Elementary and Secondary Educ. v. Nix*, 347 So. 2d 147, 151 (La. 1977).

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.

7. These obligations are mandatory. If the district attorney refuses or willfully fails to perform these duties, then he or she “shall be deemed guilty of malfeasance and gross misconduct and be removed from office in the manner prescribed by law.”¹⁰

8. La. R.S. 16:2(D) states:

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.

9. La. R.S. 42:261(A) states:

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.

10. La. R.S. 42:261(D)(1) states:

Except as otherwise permitted by this Section it shall be unlawful for any parish governing authority or state board or commission to retain or employ for any compensation whatever any attorney or counsel to represent it generally, or except as provided in R.S. 42:263, to retain or employ any special attorney or counsel for any compensation whatever to represent it in any special matter, or pay any compensation for any legal services whatever, provided that the board of commissioners of the port of New Orleans shall select its own attorney.

11. “A district attorney is a constitutional officer who serves in the judicial branch and exercises a portion of the sovereign power of the state within the district of his office. His

¹⁰ La. R.S. 16:2(C).

office, duties and powers are governed by the constitution and the legislature, and are not subject to local control. His office, therefore, is an office of state, not local government.”¹¹

12. “An injunction shall issue in cases where irreparable injury, loss or damage may otherwise result to the applicant, or in other cases specifically provided by law.”¹²

13. “[A] petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, i.e., when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right.”¹³

ANALYSIS

1. Legal Standard for Motions for Summary Judgment

There are no material facts in dispute. This case raises purely legal issues, i.e., whether the Parish President and Parish Council have the legal authority to take away or limit the role of the District Attorney as legal advisor and counsel to the Parish government. Summary judgments must be granted when there is “no genuine issue as to material fact” and the “mover is entitled to judgment as a matter of law.”¹⁴ While the burden of proof remains with the mover, summary judgments are favored under Louisiana law and “shall be” construed to accomplish the ends of securing a “just, speedy, and inexpensive determination of every action.”¹⁵

When a motion for summary judgment is supported by proof, “an adverse party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or . . . otherwise . . . must set forth specific facts showing that there is a genuine issue for trial.”¹⁶ If the adverse party does not respond with proof of specific facts showing that there is a genuine issue

¹¹ 433 So.2d 699, 701 (La. 1983) (citations omitted) (emphasis added). *See also Knapper v. Connick*, 681 So.2d 944, 945 (La. 1996) (citing this portion of *Diaz*); *Board of Commissioners of the Orleans Levee District v. Connick*, 654 So.2d 1073, 1077 (La. 1995) (same).

¹² La. Code Civ. P. art. 3601.

¹³ *Zeringue v. St. James Parish School Bd.*, 13-444, p. 6 (La. App. 5 Cir. 11/19/13); 130 So. 3d 356, 359 (citing *Jurisich v. Jenkins*, 99-76 (La. 10/19/99); 749 So. 2d 597).

¹⁴ La. Code Civ. P. art. 966(B).

¹⁵ La. Code Civ. P. art. 966 (A)(2).

¹⁶ La. Code Civ. P. art. 967(B).

for trial, then “summary judgment . . . shall be rendered against him.”¹⁷ So that this public policy may be fully realized, Louisiana no longer recognizes a presumption against summary judgments, and the resolution of cases by summary judgment is now “favored.”¹⁸

2. **May the St. Tammany Parish Home Rule Charter bestow upon the District Attorney the power to act as “legal adviser to the council, president and all departments, offices and agencies and represent the Parish government in legal proceedings”?**

The initial and central question in this litigation is: May the St. Tammany Parish Home Rule Charter bestow upon the District Attorney the power to act as “legal adviser to the council, president and all departments, offices and agencies and represent the Parish government in legal proceedings”? Simply stated, the St. Tammany Parish Home Rule Charter **may** and **does** bestow onto the District Attorney the power and responsibility of acting as the “legal adviser to the council, president and all departments, offices and agencies and represent the Parish government in legal proceedings.”¹⁹ The Louisiana Constitution and two Louisiana Revised Statutes—La. R.S. 16:2(A) and La. R.S. 42:261(A)—set forth a framework for the District Attorney to be the legal adviser for Parishes within their judicial district. And Section 4-03(A) of the St. Tammany Parish Home Rule Charter simply reaffirms this framework and makes it specifically applicable to St. Tammany Parish. Therefore, Section 4-03(A) of the Home Rule Charter is entirely consistent with the Louisiana Constitution and the Louisiana Revised Statutes. The Court should decline Defendants’ invitation to find a conflict where none exists.

First and foremost, Article VI, Section 5 of the Louisiana Constitution provides for the adoption of home rule charters by local government subdivisions, which “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.**”²⁰ Article VI, Section 5(G) specifically provides: “No home

¹⁷ *Id.*

¹⁸ La. Code Civ. P. art. 966(A)(2); *Berzas v. OXY USA, Inc.*, 29,835 (La. App. 2 Cir. 9/24/76); 699 So. 2d 1149, 1152; *Hayes v. Autin*, 96-287 (La. App. 3 Cir. 12/26/96); 685 So. 2d 691, 694–95.

¹⁹ Home Rule Charter, Section 4-03(A).

²⁰ La. Const. art. VI, § 5(E) (emphasis added).

rule charter or plan of government shall contain any provision affecting . . . the offices of district attorney . . . , which is inconsistent with this constitution or law.” In his concurring opinion in *Reed v. Washington Parish Police Jury*, Justice Dennis stated: “[U]nder the 1974 Louisiana Constitution a home rule charter government possesses, in affairs of local concern, power which within its jurisdiction are as broad as that of the state, **except when limited by the constitution, laws permitted by the constitution, or its own home rule charter.**”²¹

Article V, Section 26 (B) of the Louisiana State Constitution of 1974 provides that the District Attorneys for each Louisiana Judicial District shall have the following powers:

Except as otherwise provided by this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution by the state in his district, be the representative of the state before the grand jury in his district, and be the legal advisor to the grand jury. **He shall perform other duties provided by law.**

The terminology “provided by law” has been interpreted by the Louisiana Supreme Court to mean “provided by legislation.”²² Accordingly, a district attorney shall perform any and all duties provided by legislation, except as otherwise provided in the Louisiana Constitution.²³

The Louisiana Revised Statutes delineate the “other duties provided by law” with respect to District Attorneys. La. R.S. 16:2(A) provides:

The district attorneys of the several judicial districts of Louisiana . . . shall ex officio be the regular attorneys and counsel for the police juries, parish school boards, and city school boards within their respective districts.

These duties are mandatory. If the district attorney refuses or willfully fails to perform these duties, then he or she “shall be deemed guilty of malfeasance and gross misconduct and be removed from office in the manner prescribed by law.”²⁴ Additionally, La. R.S. 16:2(D) states:

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,

²¹ 518 So. 2d 1044, 1049 (La. 1988) (emphasis added).

²² *Board of Elementary and Secondary Educ. v. Nix*, 347 So. 2d 147, 151 (La. 1977).

²³ La. Const. art. V, § 26(B).

²⁴ La. R.S. 16:2(C).

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.

Accordingly, La. R.S. 16:2 provides the general rule for a district attorney's powers and functions, while carving out an exception that permits any parish that adopts a home rule charter to provide for the retention of a parish attorney, in which case the District Attorney is relieved of the obligation to serve as regular counsel. Rather than providing for a parish attorney, the St. Tammany Parish Home Rule Charter affirmatively bestows on the District Attorney the authority and responsibility to serve as "legal adviser to the council, president and all departments, offices and agencies and represent the Parish government in legal proceedings," and only permits the retention of special legal counsel for a "specific purpose."²⁵

La. R.S. 42:261(A) expands upon the duties of the district attorney found in La. R.S. 16:2:

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.

Additionally, La. R.S. 42:261(D)(1) declares it "unlawful for any parish governing authority or state board or commission to retain or employ for any compensation whatever any attorney or counsel to represent it generally, or except as provided in R.S. 42:263, to retain or employ any special attorney or counsel for any compensation whatever to represent it in any special matter, or pay any compensation for any legal services whatever," except as otherwise provided in La. R.S. 42:261.

Accordingly, as permitted by the Louisiana Constitution, the Louisiana Revised Statutes provide for the district attorney to be *the* legal adviser for parishes in his or her judicial district. The Home Rule Charter does nothing to contravene these provisions of law, and in fact, Section

²⁵ Home Rule Charter, Section 4-03(A) & (B).

4-03(A) of the Home Rule Charter²⁶ affirmatively adopts this legal precept and makes it applicable to St. Tammany Parish by providing that the District Attorney for 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.”²⁷ While Section 4-03(B) of the Home Rule Charter permits the retention of *special* counsel in addition to the District Attorney, the instances where this retention is permitted are limited to “specific purpose[s],” **not** general representation:

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.²⁸

Thus, under the St. Tammany Parish Home Rule Charter, the District Attorney is the general representative and legal adviser for St. Tammany Parish, including, but not limited to, its “council, president and all departments, offices and agencies.”²⁹ He is also designated to represent the Parish government in legal proceedings. The only exception is with respect to “special counsel” retained “for a specific purpose.”³⁰ This framework is entirely consistent with the relevant statutes, particularly La. R.S. 16:2(A) and La. R.S. 42:261(A). Section 4-03 makes no mention of other full time counsel to advise the Parish President or Parish Council or to represent Parish government in legal proceedings.

²⁶ Rule 4-03 (A) must be read *in pari materia* with La. R.S. 16:2(A) and La. R.S. 42:261(A). Both of these statutes use the definite article “the” before “regular attorneys and counsel.” When read together, they preclude Defendants’ argument that the District Attorney was only intended to be one of the possible regular attorneys and counsel for the Parish.

²⁷ Home Rule Charter, Section 4-03(A). Subsection A of Section 4-03 of the Home Rule Charter pertains to the District Attorney and grants him two related, but distinct, responsibilities: (i) to serve as legal adviser to the council, president and all departments, offices and agencies and (ii) to represent the Parish government in legal proceedings.

²⁸ Home Rule Charter, Section 4-03(B). *See also* La. R.S. 42:263(A) (“No parish governing authority, levee board except as provided in Subsection B hereof, parish school board, city school board, or other local or state board shall retain or employ any special attorney or counsel to represent it in any special matter or pay any compensation for any legal services whatever unless a real necessity exists, made to appear by a resolution thereof stating fully the reasons for the action and the compensation to be paid. The resolution then shall be subject to the approval of the attorney general and, if approved by him, shall be spread upon the minutes of the body and published in the official journal of the parish.”)

²⁹ Home Rule Charter, Section 4-03(A).

³⁰ Home Rule Charter, Section 4-03(B).

Therefore, with regards to whether the Home Rule Charter properly could designate the District Attorney as “legal adviser to the council, president and all departments, offices and agencies,” the answer is a definitive and resounding **yes**. The attempts of the Parish President and Council to nullify Section 4-03(A) of the Home Rule Charter through ordinances after the voters rejected a Charter change makes a mockery of the Preamble to the Home Rule Charter which calls for an “accountable government that is responsive to . . . all the citizens of the parish.”

3. Does Section 4-12 of the Home Rule Charter allow the Defendants to reallocate the District Attorney’s duties and responsibilities to a Legal Department?

It has become evident that Defendants construe Section 4-12 of the Home Rule Charter to permit them to reallocate the District Attorney’s duties to a Legal Department that does not include the District Attorney, and thus effectively to nullify Section 4-03(A). The question begs to be asked: Is Defendants’ interpretation of Section 4-12 correct? Contrary to Defendants’ persistent arguments, the answer is **no**.

Section 4-12 of the Home Rule Charter authorizes the Parish President (and the Parish Council) to create, change, alter, consolidate, or abolish “Parish departments, offices and agencies” and reallocate the “functions, powers duties and responsibilities of such departments, offices or agencies.”³¹ However, this provision does **not** give the Parish President or the Parish Council the power to alter or reallocate the functions of the District Attorney, an individual who is plainly not a department, office, or agency of the Parish. In fact, the Defendants affirmatively acknowledge this in their previously-filed memorandum in support of exceptions: “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.”³²

Through the express and specific wording of the Home Rule Charter, the District Attorney shall be “legal adviser to the council, president and all departments, offices and agencies and represent the Parish government in legal proceedings.”³³ Thus, what is plainly

³¹ Home Rule Charter, Section 4-12(A).

³² Defendants’ Memorandum in Support of Exceptions, p. 5.

³³ Home Rule Charter, Section 4-03(A).

prohibited is the creation of a Legal Department that usurps the duties and responsibilities of the District Attorney that have been delegated by the Home Rule Charter and the Revised Statutes.

Although Section 4-03(B) permits the retention of “special counsel” for a “specific purpose,” Section 4-03 makes no mention of a legal staff employed by the Parish. Despite Section 4-03 being entitled “Legal Department,” the general rule is that “the title of an act is not part of a statute and can be used to interpret legislative intent only when the language of the statute leaves doubt as to its meaning.”³⁴ Accordingly, such a heading cannot override the plain text in Section 4-03, which clearly ascribes duties to the Office of the District Attorney, not a Legal Department. And, as previously acknowledged by the Defendants, the District Attorney is simply not a department, office, or agency of St. Tammany Parish.³⁵

Moreover, La. R.S. 42:261(D)(1) provides:

Except as otherwise permitted by this Section it shall be unlawful for any parish governing authority or state board or commission to retain or employ for any compensation whatever any attorney or counsel to represent it generally, or except as provided in R.S. 42:263, to retain or employ any special attorney or counsel for any compensation whatever to represent it in any special matter, or pay any compensation for any legal services whatever, provided that the board of commissioners of the port of New Orleans shall select its own attorney.

This provision applies to “any parish governing authority,” and thus establishes general law to which St. Tammany Parish must adhere, notwithstanding its Home Rule Charter.³⁶

In *Diaz v. Allstate Ins. Co.*, the Louisiana Supreme Court interpreted Article V, Section 26 of the Louisiana constitution and held:

A district attorney is a constitutional officer who serves in the judicial branch and exercises a portion of the sovereign power of the state within the district of his office. *His office, duties and powers are governed by the constitution and the legislature, and are not subject to local control.* His office, therefore, is an office of state, not local government.³⁷

³⁴ *State v. Williams*, 10-1514, p. 6 (La. 3/15/11); 60 So. 3d 1189, 1192 (citing *State v. Madere*, 352 So. 2d 666, 668 (La. 1977)). *See also* La. R.S. 1:13(A) (“Headings to sections, source notes, and cross references are given for the purpose of convenient reference and do not constitute part of the law.”)

³⁵ Defendants’ Memorandum in Support of Exceptions, p. 5.

³⁶ This statute has been amended to allow Terrebonne, St. Charles, Ouachita, Morehouse, Calcasieu and Vermilion Parishes to retain counsel to represent them generally. *See* La. R.S. 42:261(C) and (G).

³⁷ 433 So.2d 699, 701 (La. 1983) (citations omitted) (emphasis added). *See also Knapper v. Connick*, 681 So.2d 944, 945 (La. 1996) (citing this portion of *Diaz*); *Board of Commissioners of the Orleans Levee District v. Connick*, 654 So.2d 1073, 1077 (La. 1995) (same).

Consistent with the holding of *Diaz* that the office of District Attorney is not subject to local control, Article VI, Section 5(G) of the Louisiana Constitution provides: “No home rule charter or plan of government shall contain any provision affecting a school board or the offices of district attorney, . . . which is inconsistent with this constitution or law.” Significantly, this provision is not limited to “general law.” In light of this constitutional limitation on home rule charters, Section 4-12 cannot be interpreted to allow the Parish to make changes under the guise of reorganization if those changes affect the authority of the District Attorney as set forth in Section 4-03(A) of the Home Rule Charter, as well as in La. R.S. 16:2 and La. R.S. 42:261.

Defendants do not deny this limitation; rather, they attempt to avoid it by arguing that their changes have left the District Attorney as *a* possible legal advisor and *a* possible counsel in legal proceedings, when and if the Parish wishes to use him. Defendants argue that by doing this, they have left the District Attorney’s responsibilities under Section 4-03(A) intact. However, Defendants cannot avoid the fact that the changes that they have implemented through the challenged ordinances have “affected” the office of District Attorney, because he is no longer the primary legal advisor to the Parish, nor is he the primary attorney responsible for representing Parish government in legal proceedings any longer. Defendants cannot argue that his responsibilities and authority have not been *affected* merely because he remains as a potential legal advisor and litigation counsel on an “on-call,” as-needed basis. Moreover, La. R.S. 16:2 and La. R.S. 42:261 both make it clear that the District Attorney is to serve as *the* legal advisor to the Parish, not merely *a* legal advisor.

More importantly, Defendants’ argument ignores the fact that Section 4-03(A), like La. R.S. 16:2 and La. R.S. 42:261, uses the word “shall,” not “may.” Pursuant to La. R.S. 1:3, “[t]he word ‘shall’ is mandatory and the word ‘may’ is permissive.” By use of the word “shall,” Section 4-03 imposes mandatory obligations on Parish government as well as the District Attorney—the District Attorney is obligated to provide these services and Parish government is obligated to use his services. The changes that Defendants are implementing through Ordinance Calendar No. 5638 and Ordinance Calendar No. 5644 provide that the District Attorney will act as *a* legal adviser and counsel “upon the request of the Parish Government.” Thus, while these ordinances

purport to make the District Attorney's responsibilities mandatory on his part, they change the nature of the Parish's obligation to use these services from mandatory to permissive, which is contrary to Louisiana law that provides that the word "shall" is mandatory.

Additionally, Defendants new interpretation of the Home Rule Charter is inconsistent with the Council's prior interpretation of the Home Rule Charter as reflected in the Ordinances that the Council previously passed. Specifically, Section 2-092(8) of the St. Tammany Code of Ordinance addresses the Legal Department and currently provides in pertinent part:

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.

This provision tracks the language of Section 4-03(A) and recognizes that the District Attorney *shall* serve as legal adviser to the Council, President, and all departments, offices and agencies, and represent the Parish government in legal proceedings. It does not provide that the District Attorney may serve as *a* legal advisor at the discretion of the Parish President and/or Council.

Moreover, if Defendants truly believed that they could use Section 4-12 of the Home Rule Charter to rewrite Section 4-03, then there was no need for them to have submitted a proposition to the voters in November 2015 to formally amend Section 4-03. The fact that the Council felt compelled to submit a proposal to amend Section 4-03 to the voters is particularly telling and stands in stark contrast to Defendants' current position that they can use Section 4-12 to change Section 4-03 without regard to the will of the St. Tammany Parish voters.

Therefore, any argument that Section 4-12 of the Home Rule Charter allows the Defendants to reallocate the District Attorney's duties and responsibilities to a Legal Department, and thus effectively eliminate the District Attorney's involvement in Parish legal affairs, is a nonstarter.

4. Does La. R.S. 16:2(D) justify the Defendants' actions?

The answer is no. Defendants argue that because Section 4-03(B) of the St. Tammany Parish Home Rule Charter authorizes employment of special legal counsel for a specific purpose, the Parish has opted out from having the District Attorney serve as counsel. In making this argument, Defendants rely on La. R.S. 16:2(D), which provides:

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.

Defendants' reliance on this statute is misplaced. The first paragraph of R.S. 16:2(D) gives a home rule charter parish a binary choice: It can either have the district attorney serve as its legal advisor and counsel pursuant to La. R.S. 16:2(A) and 42:261(A), or it can opt in its home rule charter to retain its own counsel, in which case the District Attorney is relieved from any responsibilities to act as general attorney for the Parish. Given Article VI, Section 5(G) of the Louisiana Constitution and the holding in *Diaz*, the Parish does not have the right to define the circumstances under which it will use the legal services of the District Attorney. Here, the St. Tammany Home Rule Charter does not provide for employment of a parish attorney, nor does it indicate that it intends that the District Attorney shall not be the regular attorney or counsel for such governing authority. To the contrary, Section 4-03(A) reaffirms that the Parish desires to have the District Attorney serve "as legal advisor and to represent the Parish in legal proceedings."

If Defendants' argument that the Parish opted out of using the District Attorney pursuant La. R.S. 16:2(D) were correct and the District Attorney was no longer "the regular attorney or counsel for such governing authority," then Section 4-03(A) of the Home Rule Charter was meaningless from the time that the Home Rule Charter was adopted, which is contrary to the rule of statutory construction that unambiguous words shall not be disregarded.³⁸

Moreover, Defendants' argument is undercut by their own actions in adopting ordinances (i) that initially recognized the responsibility for the District Attorney to act as legal advisor and counsel for Parish government and (ii) which later attempt to retain the option for the Parish to use the District Attorney, "upon the request of the Parish Government." If the Parish had truly

³⁸ See, e.g., La. R.S. 1:4 ("When the wording of a Section is clear and free of ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit.").

elected under La. R.S. 16:2(D) not to have the District Attorney serve as regular legal advisor, then none of these ordinances would not have been necessary.

The first paragraph of La. R.S. 16:2(D) must be read in conjunction with the second paragraph, which gives a parish two options “if the charter so provides”: (i) the parish can retain an attorney to represent it generally, or (ii) it can retain a special counsel to represent it in a special matter. Here the St. Tammany Parish Home Rule Charter only provides for the retention of special counsel for specific matters; it does not provide for retention of an attorney to represent the Parish. Therefore, the first option is not available to St. Tammany Parish. While the Home Rule Charter allows for the retention of special legal counsel for a special matter, that is not what the Defendants are attempting to do. Rather, they are attempting to retain attorneys to represent the Parish President, the Parish Council, and the Parish government in legal proceedings. La. R.S. 16:2(D) does not authorize such actions.

5. Do the Defendants’ actions violate the Home Rule Charter?

There is no question that the current actions by the Defendants violate Section 4-03(A) of the Home Rule Charter. At the present time, the Defendants have passed one ordinance and are in the process of passing another ordinance. The ordinance that has been passed—Ordinance Calendar No. 5638—adds Section 2-035 to the St. Tammany Parish Code of Ordinances and gives the Parish Council the power to appoint one or more “Council Attorneys” to serve as the legal advisor to the Parish Council. It also provides that these Council Attorneys shall represent the Parish government in legal proceedings along with the attorneys appointed by the Parish President.

The ordinance that is pending at the September 1, 2016 council meeting—Ordinance Calendar No. 5644—seeks to amend Section 2-092 of the St. Tammany Parish Code of Ordinances to bestow upon the Parish President the power to appoint an “Executive Counsel” and all attorneys in the Legal Department to serve at the pleasure of the Parish President. This Ordinance also provides that the attorneys appointed by the Parish President, will represent Parish government in all legal proceedings along with the Council Attorneys. Yet, Section 4-03(A) still provides that “[t]he 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.” The passage of these ordinances neither changes nor overrides the provisions of Section 4-03, and thus, the Defendants’ actions plainly violate Section 4-03 of the Home Rule Charter and must be prohibited as such.³⁹

6. Does the *Succession of Wallace* render unconstitutional La. R.S. 16:2, La. R.S. 42:261, and/or Section 4-03 of the Home Rule Charter?

Defendants have previously cited *Succession of Wallace* in support of the proposition that any statute that impairs the right of a client to discharge a client contradicts provisions of Rule 1.16 of the Rules of Professional Conduct, and thus is unconstitutional as interfering the Supreme Court’s inherent authority to regulate the practice of law.⁴⁰ *Wallace* dealt with a statute involving private parties that limited when a succession representative could discharge the succession attorney appointed in a will. No Louisiana court has ever expanded *Wallace* to invalidate Home Rule Charter provisions or Louisiana statutes that authorize District Attorneys to serve as counsel for political subdivisions. No court has ever applied *Wallace* to invalidate any statutes addressing the retention of counsel for political bodies. Further, as explained below, various courts have enforced the statutes that Defendants challenge without any underlying concern about their validity.

Moreover, in *Wallace*, the Court did not hold that every statute that had some effect on regulating the practice of law was automatically invalid. What the Court actually held was:

Conversely, the legislature cannot enact laws defining or regulating the practice of law in any aspect without this court's approval or acquiescence because that power properly belongs to this court and is reserved for it by the constitutional separation of powers. La. Const. 1974, Art. II. Accordingly, a legislative act purporting to regulate the practice of law has commendatory effect only until it is approved by this court as a provision in aid of its inherent judicial power. This court will ratify legislative acts that are useful or necessary to the exercise of its

³⁹ While the main thrust of Plaintiff’s argument is on how these ordinances violate Section 4-03(A), these ordinances also violate Section 4-03(B) because the “Council Attorneys” and those appointed by the Parish President are not appointed for a specific purpose, nor are they appointed by a written contract approved by a favorable vote of the Council. Allowing the Parish President to appoint counsel in the Legal Department in her sole discretion, would be an improper delegation of the Council’s responsibility under Section 4-03(B) to approve the retention of special counsel. Nor do the ordinances authorizing the “Council Attorneys” and the attorneys appointed by the Parish President specify the compensation to be paid for their services as is also required by Section 4-03(B).

⁴⁰ 574 So. 2d 348 (La. 1991).

inherent judicial power, but it will strike down statutes which tend to impede or frustrate its authority.⁴¹

Thus, the Supreme Court reserved to itself the exclusive right to determine whether a law “purporting to regulate the practice of law” should be ratified and approved, or declared unconstitutional. As the Court held in *Wallace*, the Supreme Court has the “exclusive and plenary power to define and regulate all facets of the practice of law.”⁴² This power is not shared with the lower courts.

Where an organization or corporate entity is involved, as is the case here, the right to discharge counsel under Rule 1.16 of the Rules of Professional Conduct must be understood in conjunction with Rule 1.13, which addresses the organization as a client. Rule 1.13(a) provides: “A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.” Here, the District Attorney has been appointed to represent Parish government. If there are no conflicts of interest, he may also represent constituents of Parish government, including the Parish President and Parish Council, as Section 4-03 of the Home Rule Charter contemplates. On this point, Rule 1.13(g) provides; “A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7,” which governs conflicts of interests with current clients. ABA comment (9) to Rule 1.13 explains: “The duty defined in this Rule applies to governmental organizations.” The same comment goes on to explain: “In addition, duties of lawyers employed by the government . . . may be defined by statutes and regulation. This Rule does not limit that authority.” Thus, the official ABA commentary to the Rules of Professional Conduct expressly acknowledges that the duties of government lawyers may be defined by statutes and regulation and Rule 1.13 does not limit that authority.

If the right to retain and discharge counsel was as paramount as Defendants have contended and automatically invalidates any law addressing attorneys who represent political subdivisions, then the Governor of Louisiana could discharge the elected, constitutionally empowered Attorney General, and appoint a substitute attorney of his own choosing. Similarly,

⁴¹ *Id.* at 350.

⁴² *Id.*

any political subdivision could discharge District Attorneys appointed by statute to represent them, even when no conflict or other special circumstance exists. No Louisiana court has ever made such a far-reaching decision. Moreover, the Louisiana Supreme Court is the only court which has the authority to make such a determination.

Clients have the right to retain and discharge their attorneys under most circumstances. Here, the client is St. Tammany Parish and the Parish government. The electors of the Parish have retained the District Attorney to represent that client through their adoption of Section 4-03(A) of the St. Tammany Home Rule Charter and have reaffirmed their choice through their recent rejection of a proposed change to that provision. ABA comment (3) to Rule 1.16 states: “When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority.” Here, the appointing authority is the electors of St. Tammany Parish, and they have not approved the withdrawal of the District Attorney from representation of St. Tammany Parish and Parish government. In fact, they have expressly rejected such a suggestion.⁴³ Defendants apparently believe that they are entitled to ignore the selection of counsel made by the electors of St. Tammany Parish, despite having no authorization to do so. Additionally, ABA Comment (5) to Rule 1.16 states: “Whether a client can discharge appointed counsel may depend on applicable law.” Here applicable law does not permit the Parish President or Parish Council to simply discharge the District Attorney without cause when he has been appointed by the revised statutes and the Home Rule Charter.

As noted above, not every statute that impacts the practice of law is automatically invalid. In fact, in several cases, Louisiana Courts have upheld statutes even though they directly regulate the practice of law. For example, in *Williams v. City of New Orleans ex rel. Public Belt Railroad Commission of the City of New Orleans*, the Louisiana Supreme Court upheld and enforced La. R.S. 37:214, which regulated the right of visiting attorneys to practice in Louisiana.⁴⁴

In *Teague v. St. Paul Fire and Marine Ins. Co.*, the Louisiana Court of Appeal held that while the Rules of Professional Conduct were relevant and instructive in determining

⁴³ Robert Rhoden, *St Tammany Parish voters reject charter Proposition 5*, THE TIMES-PICAYUNE (Nov. 21, 2015), http://www.nola.com/politics/index.ssf/2015/11/st_tammany_parish_charter_prop_2.html.

⁴⁴ 02-1127 (La. 12/4/02); 831 So. 2d 947.

malpractice, they did not establish the legal standard for malpractice so as to invalidate La. R.S. 6:1351-54, which addressed the professional responsibilities and standards of care for attorneys.⁴⁵ Thus, even though there could be circumstances where the standards imposed by the Rules of Professional Conduct were different than those imposed by La. R.S. 6:1351-54, the court did not declare the statute to be unconstitutional.⁴⁶

The Defendants' final, persistent argument is that, "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.'"⁴⁷ The Plaintiff agrees wholeheartedly! But, contrary to the Defendants' assertions, St. Tammany Parish gave to the District Attorney the power to serve as "legal adviser to the council, president and all departments, offices and agencies and represent the Parish government in legal proceedings."⁴⁸ The Defendants cannot nullify that express charter provision through whatever powers they may have to reorganize departments within the Parish. Through the present lawsuit, the Plaintiff simply seeks to have the Defendants abide by the provision of law approved by the citizens of St. Tammany Parish and found within its Home Rule Charter, and which is completely consistent with relevant revised statutes.

Moreover, in *Breaux v. Lafourche Parish Council*, the Louisiana Court of Appeal for the First Circuit rejected an argument that La. R.S. 42:263 was unconstitutional as violating Article VI, Section 6 of the Louisiana Constitution: "We agree and do not believe that LSA-R.S. 42:263 abridges or impinges upon the local government's structure or organization or distribution of powers and functions."⁴⁹ In reaching this decision, the First Circuit stated: "Representation by counsel for advice and response to a lawsuit is not a matter of structure and organization. It is a matter of legal representation."⁵⁰

⁴⁵ 06-1266 (La. App. 1 Cir. 4/7/09); 10 So. 3d 806.

⁴⁶ *Id.*

⁴⁷ Defendants' Memorandum in Support of Exceptions, p. 19.

⁴⁸ Home Rule Charter, Section 4-03(A).

⁴⁹ 02-1422, p. 10 (La. App. 1 Cir. 5/9/03); 851 So. 2d 1173, 1179, rehearing denied, writ denied 860 So.2d 1163, 2003-2678 (La. 12/12/03).

⁵⁰ *Id.*

7. Is the foregoing analysis affected by the existence of an alleged conflict of interest?

The answer is no. Defendants have attempted to justify their actions by arguing that there are conflicts of interest between Parish government and the District Attorney, or between the Parish President and the Parish Council, that requires the retention of separate counsel. This argument is a “red herring.” The Defendants have not identified and cannot identify a conflict of interest that precludes the District Attorney from representing Parish government or the Parish President, or the Parish Council. Nor can they identify a conflict of interest that precludes the Parish President and Parish Council from being represented by the same counsel. Indeed, Section 2-035(c) of the St. Tammany Parish Code of Ordinances, as well as proposed Section 2-092(8), contemplate that Parish government would be jointly represented by the “Council Attorneys” and the attorneys appointed by the President. This would not be possible if a conflict of interest existed in every instance.

Admittedly, there may be circumstances that arise from time to time such that there is a conflict of interest between the District Attorney and the Parish President or Parish Council. There also may be circumstances where there is a conflict of interest between the Parish President and the Parish Council that precludes them from being represented by the same counsel. However, the St. Tammany Parish Home Rule Charter already contemplates and provides for such situations. These are the type of circumstances where the retention of “special legal counsel” for “a specific purpose” is authorized pursuant to Section 4-03(B) of the Home Rule Charter.

8. Is the Plaintiff entitled to summary judgment on his claim for a declaratory judgment?

As shown above, the Defendants’ actions run afoul of the provisions of Section 4-03 of the Home Rule Charter. As such, and based on their being no genuine issue of material fact, the Plaintiff is entitled to summary judgment on its request for a declaratory judgment recognizing the legal duties and obligations of the District Attorney under Section 4-03 of the Home Rule Charter to “serve as legal adviser to the council, president and all departments, offices and agencies and represent the Parish government in legal proceedings.” Furthermore, as there is no

genuine issue of material fact, Plaintiff is also entitled to a declaratory judgment finding that the District Attorney is legally obligated to serve as general legal adviser to the Defendants.

Finally, as there is no genuine issue of material fact, Plaintiff is entitled to a declaratory judgment finding the legal department currently operated by the Defendants, including as provided in Ordinance Calendar No. 5638 and Ordinance Calendar No. 5644, is contrary to the law, and that the Defendants cannot retain other counsel to represent them in a general manner, as opposed to for a special and limited matter, under the terms of Section 4-03 of the Home Rule Charter.

9. Is the Plaintiff entitled to summary judgment on his claim for a permanent injunction enjoining the Defendants from operating, controlling, or maintaining a civil legal department in violation of Louisiana law and the Home Rule Charter, separate and distinct from the District Attorney?

Under Louisiana Code of Civil Procedure Article 3601, “[a]n injunction shall issue in cases where irreparable injury, loss or damage may otherwise result to the applicant, or in other cases specifically provided by law.” “However, a petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, i.e., when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right.”⁵¹

Here, the Defendants conduct is in clear violation of Section 4-03 of the Home Rule Charter, and thus, a showing of irreparable harm is unnecessary. As there is no genuine issue of material fact, Plaintiff is entitled to judgment as a matter of law, whereby a permanent injunction is entered enjoining the Defendants from operating, controlling, or maintaining a civil legal department or hiring external counsel in violation of Louisiana law and the Home Rule Charter, separate and distinct from the District Attorney.

CONCLUSION

Therefore, for all of the foregoing reasons, the Motion for Summary Judgment filed by Plaintiff Warren Montgomery, in his official capacity as District Attorney for St. Tammany Parish, should be granted.

⁵¹ *Zeringue v. St. James Parish School Bd.*, 13-444, p. 6 (La. App. 5 Cir. 11/19/13); 130 So. 3d 356, 359 (citing *Jurisich v. Jenkins*, 99-76 (La. 10/19/99); 749 So. 2d 597).

Dated: August 26, 2016

Respectfully submitted,



James C. Percy (LA Bar No. 10413)

Edward H. Bergin (LA Bar No. 2992)

Justin J. Marocco (LA Bar No. 35226)

Jones Walker LLP

Four United Plaza

8555 United Plaza Boulevard

Baton Rouge, Louisiana 70809-7000

Telephone: (225) 248-2130

Facsimile: (225) 248-3130

nbergin@joneswalker.com

jpercy@joneswalker.com

jmarocco@joneswalker.com

mcash@joneswalker.com

*Attorneys for Petitioner, Warren
Montgomery, in His Official Capacity as
District Attorney*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been forwarded on this 26th day of August, 2016, to all counsel of record via electronic mail.

