

SUPREME COURT OF LOUISIANA

NO. 17-C-1811

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

VERSUS

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

ON WRIT OF CERTIORARI OR REVIEW TO THE FIRST CIRCUIT COURT OF APPEAL,
No. 2017-CA-0136, AND TO THE TWENTY-SECOND JDC, PARISH OF ST. TAMMANY,
No. 2016-1 1530J, HONORABLE MARION F. EDWARDS, JUDGE AD HOC, PRESIDING

RESPONDENTS' JOINT BRIEF

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TABLE OF CONTENTS

Table of Authorities ii

I. Introduction..... 1

II. STPG’s Statement of the Case..... 2

 A. The record demonstrates that the Council and the President have been separately advised since the Charter became effective in 2000. 3

 B. After taking office, the District Attorney challenged STPG’s right to receive legal advice and services from the independent Council Attorneys and Legal Department..... 6

 C. That Proposition 5 did not pass does not affect the validity of the Council and Administration Ordinances. 8

 D. Although the lower courts correctly pretermitted ruling on STPG’s constitutional challenges to the statutes, those challenges remain relevant. 10

III. Law and Argument 11

 A. The constitutional and statutory framework relied upon by the District Attorney specifically allows a Home Rule Charter government, like STPG, to opt out. 11

 B. The District Attorney reads § 16:2(D) far too restrictively. 12

 C. The District Attorney’s reliance on Section 4-03 is misplaced. 13

 D. The Council and Administration Ordinances are consistent with the Charter..... 14

 E. Louisiana law regarding the duties and obligations of lawyers and the nature of the attorney-client relationship required dismissal of the District Attorney’s claims. 16

 F. As a factual matter, the District Attorney’s claims had to be dismissed as there are multiple ethical problems that also prohibit the representation. 19

 G. Solely in the alternative, the statutes and Section 4-03(A) of the Charter are unconstitutional..... 21

 1. The statutes and Section 4-03(A) would be unconstitutional pursuant to Succession of Wallace. 21

 2. The same statutes and Charter provision violate the Parish’s authority and rights under the Constitution as a home rule charter government. 21

 3. The statutes are unconstitutional special laws. 23

IV. Conclusion 25

TABLE OF AUTHORITIES

Cases

<i>ANR Pipeline Co. v. La. Tax Comm'n</i> , 2005-1142 (La. App. 1 Cir. 9/7/05); 923 So. 2d 81	10
<i>City of New Orleans v. Bd. of Comm'rs of the Orleans Levee Bd.</i> , 1993-0690 (La. 7/5/94); 640 So. 2d 237	23
<i>Collins v. Chenel</i> , 416 So. 2d 945 (La. 1982).....	15
<i>DeVall v. Depaula</i> , 1996-1067 (La. App. 1 Cir. 5/9/97); 694 So. 2d 1137	15, 16
<i>Francis v. Morial</i> , 455 So. 2d 1168 (La. 1984).....	23
<i>In re Caillouet</i> , 2001-2461 (La. 11/9/01); 800 So. 2d 367	19
<i>In re Toups</i> , 2000-0634 (La. 11/28/00); 773 So. 2d 709	19
<i>Kimball v. Allstate Ins. Co.</i> , 1997-2885 (La. 4/14/98); 712 So. 2d 46	24
<i>Lafourche Parish Council v. Autin</i> , 1994-0985 (La. 1994); 648 So. 2d 343.....	22, 23, 24
<i>Morial v. Smith & Wesson Corp.</i> , 2000-1132 (La. 4/3/01); 785 So. 2d 1	24, 25
<i>Randolph v. Alexandria Civil Serv. Comm'n</i> , 2004-1620 (La. App. 3 Cir. 4/6/05); 899 So. 2d 857.....	16
<i>Scheffler v. Adams & Reese, LLP</i> , 2006-1774 (La. 2/22/07); 950 So. 2d 641.....	20
<i>State v. All Property and Cas. Ins. Carriers Authorized and Licensed To Do Business in State</i> , 2006-2030 (La. 8/25/06); 937 So. 2d 313.....	11
<i>State v. Petrovich</i> , 396 So. 2d 1318 (La. 1981).....	2, 25, 26
<i>Succession of Wallace</i> , 574 So. 2d 348 (La. 1991).....	<i>passim</i>
<i>Yenni v. Parish Council</i> , 1993-0722 (La. App. 4 Cir. 9/30/93); 625 So. 2d 301.....	16

Statutes

Acts 2001, No. 359, § 2	24
Acts 2011, 1st Ex. Sess., No. 35, § 1	24
La. Code Civ. Proc. art. 2133.....	11
La. Const. art. I	24
La. Const. art. III, § 12.....	23
La. Const. art. V, § 26.....	11
La. Const. art. VI, § 5.....	12, 21, 22, 24
La. Const. art. VI, § 6.....	21, 22
La. Const. art. VI, § 44.....	23
La. Rev. Stat. § 16:2.....	<i>passim</i>
La. Rev. Stat. § 24:177.....	10
La. Rev. Stat. § 42:261.....	<i>passim</i>
La. Rev. Stat. § 42:262.....	24
La. Rev. Stat. § 42:263.....	24, 25
La. Rev. Stat. § 42:264.....	24

Other Authorities

Rule 1.7 of the Louisiana Rules of Professional Conduct	20
Rule 1.13 of the Louisiana Rules of Professional Conduct	18
Rule 1.16 of the Louisiana Rules of Professional Conduct	17, 18, 19
William Josephson & Russell Pearce, <i>To Whom Does the Government Lawyer Owe the Duty of Loyalty When Clients Are in Conflict?</i> , 29 HOW. L.J. 539 (1986).....	18

RESPONDENTS' JOINT BRIEF

Defendants-Respondents, Patricia P. Brister, in her official capacity as Parish President, the St. Tammany Parish Council (“the Council”), and the St. Tammany Parish Government (collectively, “STPG”), through undersigned counsel, jointly submit this brief in response to the brief filed by Warren Montgomery, in his official capacity as the District Attorney for the Twenty-Second Judicial District.

I. INTRODUCTION

The District Attorney sued the Respondents (his putative clients) and asked the trial court to declare that they are legally bound to accept him as their attorney and sole general legal advisor, regardless of whether they want him as their lawyer and regardless of the inherent and inevitable conflicts of interest among the branches of government that necessitate the President and the Council having independent general counsel. The District Attorney further requested a declaratory judgment that it is illegal for STPG to hire Parish-employed attorneys and legal staff and to manage the Parish’s Legal Department, despite that St. Tammany Parish is a Home Rule Charter government with broad powers to structure, organize, and manage its local affairs and business, hire employees necessary to its operations, and assign, allocate, and distribute authority and functions among its offices and departments. In sum, the District Attorney sought a judgment that the President and the Council have no choice other than to accept him as their sole lawyer and have no authority to retain any lawyer independent of his office for purposes of providing general legal advice. Given the unprecedented nature of the District Attorney’s lawsuit, it is not surprising that both the trial and appellate courts rejected his claims.

For all of the reasons provided in STPG’s opposition to the District Attorney’s writ application, this Court should affirm the lower courts, as they correctly construed and applied the relevant constitutional provisions and statutes addressing a district attorney’s role as “the regular attorney” for some (but not all) local governing authorities to the specific facts and Home Rule Charter provisions in this case. Although STPG believes this Court will reach the same result upon further scrutiny of the law and the record of this case, STPG submits that the Court also should take this opportunity to address the fundamental and inevitable ethical problems created by this statutory scheme. The trial and appellate courts mostly pretermitted discussion of the inconsistency of the statutes that purport to mandate an attorney-client relationship, regardless of apparent conflicts of interest among different branches of government, with the fundamental right of a client (be it an individual or an organization acting through one or more individuals) to choose their counsel, the Rules of Professional Conduct, and this Court’s settled jurisprudence, because it was unnecessary to the specific holdings in this case. But, the statutes

require an interpretation from this Court that harmonizes with the basic constructs and principles of the attorney-client relationship as explained in *Succession of Wallace*, 574 So. 2d 348 (La. 1991), this Court's authority to regulate the attorney-client relationship, as well as the broad constitutional powers granted Home Rule Charter governments, or they should be declared unconstitutional.

Moreover, although this Court invited the Legislature decades ago to fix some of the problems with this statutory regime – in particular, its many “internal inconsistencies created by legislative exemptions of many state and local public bodies,” the Legislature has failed to do so. *See State v. Petrovich*, 396 So. 2d 1318, 1323 (La. 1981). In fact, it has only exacerbated the problems noted by this Court with multiple amendments passed since that time, which render the statutes unconstitutional special laws. Although it is possible to apply the statutes to this particular case in a manner that results in their being upheld, they remain, as this Court has stated, “wrought” with problems. *Id.* And, because it appears that inconsistencies with and disagreements over the implementation of the statutes are becoming more commonplace around the state, the Court should resolve these problems while still affirming the lower courts' holdings in this matter.

II. STPG'S STATEMENT OF THE CASE

Contrary to the District Attorney's assertions that the Respondents and the lower court rulings are ushering in a new era and implementing drastic changes to the legal representation of Parish Government, the undisputed facts are to the contrary. Since the St. Tammany Parish Home Rule Charter (the “Charter”) became effective in 2000, the District Attorney has never acted as “the primary legal advisor to Parish” and has never been the sole or “primary attorney responsible for representing Parish Government in legal proceedings.” District Attorney's Brief, pp. 19-20. It follows that the ordinances passed in 2016 addressing the legal representation of STPG (the “Council Ordinance” and the “Administration Ordinance”) cannot and did not force him out of those supposed roles. Rather, the ordinances merely clarified the system that has been in place for years and did not change the status quo or affect the District Attorney's role in Parish Government in any material way.

The reality is that Section 4-03 of the Charter has never been implemented in a manner consistent with the District Attorney's position in this lawsuit. From the beginning, Parish Government and the District Attorney's Office recognized that the coordinate branches of government should have independent legal advisors, and they developed a system of legal representation that eventually evolved into the structure that is in place today. From the beginning, Parish Government has directed the legal representation of the Parish in civil matters, and it has never turned that function over to the District

Attorney's Office. From the beginning, Parish Government at times has requested that the District Attorney act as its legal advisor and handle civil litigation if there were no conflicts of interest and it was determined to be in the Parish's interest; this remains unchanged. This has been the consistent interpretation by the Council, the Parish President, *and* the Office of the District Attorney of the District Attorney's role in relation to Parish Government's independent authority under the Charter for many years.

As a matter of law, by virtue of St. Tammany Parish's decision to become a Home Rule Charter government and to address issues of legal representation in its Charter, St. Tammany Parish was removed from the purview of the statutory scheme relied on by the District Attorney. Although the Charter originally reserved a role for the District Attorney in the Parish Government's legal representation, it also clearly preserved to the Council and the Parish President the authority to change and reorganize the Parish's legal representation by ordinance, and to hire attorneys other than the District Attorney. The Respondents' exercising of that authority is fully consistent with the Charter and does not violate any constitutionally-protected role of the District Attorney.

A. The record demonstrates that the Council and the President have been separately advised since the Charter became effective in 2000.

In his brief, the District Attorney continues to try to manufacture an error on the part of the lower courts regarding the supposed finding that the former Assistant District Attorneys ("ADAs") who provided legal advice and representation to the respective branches of STPG were "independent" and, thus, not part of the District Attorney's Office. A review of both Judge Marion Edwards' Reasons for Judgment and the First Circuit's Opinion makes clear that both were referring to the undisputed fact that there were two sets of ADAs who provided separate legal services to the Council and Executive Branch, had offices in STPG's headquarters, and who provided their clients with independent legal advice that was not dictated by the sitting District Attorney or each other. Although the point is moot to the extent that none of the attorneys working for the Council or the Executive Branch's Legal Department are ADAs today, the record demonstrates how and why that system of "independent" sets of attorneys developed.

Indeed, since around the time the Charter became effective in 2000, the Council has had at least one ADA from the 22nd JDC's District Attorney's Office assigned to it to provide legal advice and

services separate from the executive branch of local government,¹ *a tacit recognition from the beginning that the coordinate branches of local government are not always aligned and require separate counsel.* As Parish Government grew over the years, the Council’s need for separate legal advice and services also increased, such that additional attorneys were employed to work for the Council. Years before Mr. Montgomery was elected, the practice developed that those ADAs worked exclusively for the Council, reported to the Council as their client, physically relocated into STPG’s headquarters, and were paid from Parish funds that did not impact the funds budgeted by the Parish for the District Attorney’s Office. The Council Attorneys are physically located at STPG’s headquarters in Parish offices, while the District Attorney’s Office, and all DA attorneys, are located over eight miles away at the 22nd JDC Courthouse. When Mr. Montgomery took office in January 2015, the Council employed five full-time attorneys (the “Council Attorneys”) and two legal staff members. The Council Attorneys primarily provide legal advice to the Council in its role as the legislative branch of Parish Government. The Council requires 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.²

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.³ Soon after the Charter became effective, the first Parish President, pursuant to the President’s authority under Section 4-12 of the newly-enacted Charter, immediately proposed an ordinance to reorganize Parish Administration. By that ordinance passed in 2000, the original departments set forth in the Charter were immediately re-organized or abolished, and the Office of the President was created

¹ All of the facts regarding the evolution of the “Council Attorneys” and the services they provide the Council were established in the trial court by the affidavit of Terrance H, Hand, Esq., an attorney and legal advisor to the Council, located in the appellate record (hereafter “R”) at 348-357.

² The Council Attorneys’ work includes (a) drafting ordinances and resolutions, (b) performing research as to the application, enforcement and effects of proposed ordinances; (c) updating and revising the Code of Ordinances; (d) representing and advising the Council on all litigation matters involving Parish Government; (e) representing and advising 23 Parish boards and 31 Parish commissions; (f) representing the Parish Zoning Commission and its members; (g) representing Parish Government serving as the Board of Review for purposes of ad valorem tax appeals; (h) representing and advising the Council on legal issues concerning the Parish Government’s utility business, Tammany Utilities Inc.; (i) coordinating and supervising outside counsel retained by the Council; (j) advising the Council on all state legislation that may affect the parish; and (k) advising the Council on personnel policies, municipal annexations, elections, franchises, economic development, servitudes, transportation, animal control, code enforcement and regulatory compliance. Hand aff., R. at 348-357.

³ The facts regarding Executive Counsel and the Legal Department were established in the trial court by the affidavits of Pat Brister and Kelly Rabalais, Esq., who has served as Executive Counsel since 2007, and the Director of the Legal Department since 2012. R. at 358-362, 379-418.

as a functioning administrative office that specifically included a “Legal Counsel” position.⁴ Thus, from the very inception of the Charter, the President has had separate Legal Counsel, although the title of the position was later changed by ordinance to “Executive Counsel” in 2012. The President’s Executive Counsel serves in the Parish’s executive branch of government and has never physically worked in the District Attorney’s Office. Notably, the District Attorney has not challenged Section 2-092.00 of the St. Tammany Parish Code of Ordinances (“Code of Ordinances”), which has included Executive Counsel as a Parish position since 2012.

In addition to the President’s Executive Counsel, when the Charter was passed in 1998, the voters approved and authorized the creation of a ***Parish Legal Department*** as part of the ***executive branch of Parish Government***. Section 4-03 of the Charter, which establishes the Legal Department as part of Parish Government, is tellingly located in Article IV of the Charter, entitled “Administration,” such that it, like all other Parish Administration “departments, offices and agencies” is “under the direction and supervision of the president.” Charter, Section 4-01. Notably, although the Charter expressly allows for the establishment of a Parish Legal Department in Section 4-03, which is the only section in the Charter where the District Attorney is mentioned, the very first reorganization ordinance proposed by the first Parish President and passed by the first Council in 2000 essentially incorporated the Legal Department into the Office of the Parish President through the President’s “Legal Counsel.”⁵ That structure, where the President’s Legal Counsel and other attorneys and legal staff worked within the Office of the President, existed from 2000 to 2012.

As Parish Government and Administration developed and expanded, so grew the need to formally organize and staff the Legal Department. Accordingly, in 2012, under Section 4-12 of the Charter, the President proposed another reorganization ordinance that, among other things, broke the Legal Department out from under her office and established it as a distinct department in Parish Administration. The attorneys and other staff in the Legal Department are physically located in Parish Government offices. The attorneys in the Legal Department (and before, while in the Office of the President) have been responsible over the years for a wide range of Parish legal matters that naturally differ from the regular work of the Council Attorneys.⁶ The attorneys in the Legal Department also

⁴ R. at 364.

⁵ 2000 Ordinance, located at R. 362.

⁶ The Legal Department, for instance, handles (a) processing and conducting land acquisitions; (b) reviewing and approving contracts; (c) handling public records requests; (d) advising Parish Administration on the Public Works

provide representation to the Parish in civil litigation matters in coordination with the Council Attorneys. Because of the broad scope of services the Legal Department provides to the President and the Parish, at the time of the hearing on the cross summary judgment motions, it employed 15 individuals, including five, full-time attorneys in addition to its Director, paralegals, administrative assistants, and risk management officers.

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 from the attorneys who advise the Council and from the District Attorney and his employees, as there are natural conflicts of interest between the three branches of government and frequent differences in opinion and policy.⁷

B. After taking office, the District Attorney challenged STPG's right to receive legal advice and services from the independent Council Attorneys and Legal Department.

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 to advise the President and the Council. Based on emails 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”), which group has filed two amicus briefs in this matter in support of the District Attorney.⁸

Act, state and federal procurement requirements, and defending against related claims; (e) advising the Administration 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 emergency and disaster related legal issues; (k) responding to bid protests and enforcement of contracts; (l) drafting legislation and monitoring State legislative sessions; and (m) managing outside counsel and litigation on matters assigned to the Legal Department. Rabalais aff., R. at 358-362.

⁷ The Council and President testified by affidavit in the trial court regarding some of the conflicts that frequently arise, including 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. Hand aff., ¶ 5, R. at 349-50; Brister aff., ¶ 6, R. at 380. The Respondents' expert, Professor Dane Ciolino opined that, 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. Affidavit of Dane Ciolino, ¶¶ 32-34, R. at 474-76.

⁸ See, e.g., Email exchange between CCST's President and the District Attorney, dated March 4, 2015, R. at 421-422. Prior to the filing of this lawsuit, that same group encouraged the District Attorney to object to ordinances proposed by the Council regarding the structure and legal representation of STPG. R. at 438, 448. The emails between CCST and the District Attorney's Office, which contain several disparaging statements by CCST about the Respondents (the District Attorney's putative clients), not only resulted in further distrust between the parties,

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 particular political constituents and in furtherance of his own apparent political ambitions and desire to control the legal representation of Parish Government. As detailed in the pleadings and affidavits below, the District Attorney has demonstrated 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. Indeed, the District Attorney's stance as to 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 vacillated and has often been adverse to the interests and wishes of the Council and the Parish President, his intended clients.

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]."⁹ 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 role to the District Attorney. This was a transparent attempt by the District Attorney to usurp the Council's authority under the Charter and statutes to gain control over which outside counsel would be 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

but demonstrate that, as an elected official, the District Attorney has his own constituents, who believe he owes a duty of loyalty to them over the Respondents, and his own political interests to consider. Further calling into question the District Attorney's loyalty to the Respondents, at the September 12, 2016 hearing, counsel for CCST appeared and addressed objections by CCST's President to producing subpoenaed communications with the District Attorney. Counsel for CCST stated that some of the subpoenaed and withheld communications were "privileged" and that it would be a violation of his client's constitutional rights for STPG to have access to certain of the communications as it could result in the Parish Government "working improperly against the citizen." R. at 767. Although the statements themselves were nebulous, the gist was clearly that CCST's members believe the District Attorney owes to them a duty of loyalty and confidentiality with respect to communications that may be relevant to STPG, to whom the District Attorney would owe a competing duty of loyalty and confidentiality if he were truly its sole legal advisor.

⁹ R. at 355.

Attorneys. Specifically, the District Attorney demanded that the Parish immediately amend its budget to transfer all funds for its Parish Legal Department to his office and transfer all physical property, including the physical office itself, files, and employees to his control.¹⁰ 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.¹¹ Shortly thereafter and further demonstrating his ostensible lack of concern as to whether his actions interfered with the representation of the Parish in civil matters, the District Attorney unilaterally rescinded the ADA commissions of three Council Attorneys without advance notice.¹² That disrupted the Parish's representation in pending lawsuits in which those individuals were enrolled, and was done without any prior consultation with the Council, the District Attorney's purported 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.¹³ That position not only underscores why the Legal Department is necessary to perform certain legal services for the Parish, but it completely undermines the District Attorney's stated belief that the Parish is not legally entitled to maintain a Parish Legal Department separate from his office for such purposes.

C. That Proposition 5 did not pass does not affect the validity of the Council and Administration Ordinances.

Prior to the parties filing their cross motions for summary judgment, STPG passed two ordinances, which both lower courts found were authorized by the Charter, making clear the Council's and the Executive Branch's "wish to continue autonomously structuring, organizing and managing the legal staff as it has for the past ten years...."¹⁴ The Council Ordinance was introduced on July 7, 2016,

¹⁰ R. at 410; R. at 353.

¹¹ Correspondence from Terry Hand to Tony LeMon, dated December 30, 2015, R. at 356.

¹² Hand aff., ¶ 8, R. at 352.

¹³ See Brister aff., ¶ 8, R. at 381; Rabalais aff., ¶ 10, R. at 361; see also District Attorney's Correspondence, dated April 8, 2016, R. at 410.

¹⁴ Trial Court's Reasons for Judgment, at 10-11, R. at 684-85.

and the Administration Ordinance was introduced on August 4, 2016.¹⁵ The Council Ordinance confirms that the Council’s authority under Section 2-10(B) of the Charter – “to authorize the Parish Council, as the legislative branch of Parish Government, to hire employees as may be necessary to assist the council in carrying out its duties and responsibilities” – includes the authority to hire attorneys to serve as legal advisors to the Council, its staff, and boards and commissions established by the Council.¹⁶ Pursuant to the Ordinance, such attorneys are under the direction and supervision of the Council, represent the Council, boards, and commissions established by the Council in legal proceedings, and jointly represent and/or co-administer the representation of the Parish Government with attorneys appointed by the Parish President.

The Administration Ordinance, which was proposed by the Parish President pursuant to her authority under Section 4-12(B) of the Charter, clarifies the allocation of functions and responsibilities of the Legal Department and the District Attorney’s role with respect to that department. The Administration Ordinance provides that the Department is directed by the Parish President’s Executive Counsel, its staff includes attorneys who are Parish employees subject to the administrative authority of the Parish President, and those attorneys are the legal advisors to the Parish President and Parish Administration and jointly represent and/or co-administer the representation of the Parish Government with the attorneys appointed by the Council.¹⁷ The Legal Department 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 only when requested and when he has no conflict of interest. Implicitly, *this also means only if the District Attorney agrees*, as STPG recognizes that it cannot compel the District Attorney to provide it with general or civil representation, as it has opted out of the statutes that require him to serve as its “regular attorney.”

The District Attorney claims that STPG does not really believe it had the authority to pass those ordinances because of the fact that, in November 2015 (prior to the lawsuit), an amendment to the Charter that addressed Section 4-03 was proposed, but failed (along with seven other of the nine Charter amendments proposed). In fact, the unsuccessful amendment to Section 4-03 proposed changes to the Charter that had nothing to do with the District Attorney’s designation as a legal advisor, including allowing the President to appoint a director of the Legal Department and retain outside counsel in certain

¹⁵ R. at 338 and 342.

¹⁶ Section 2-035.00(c), R. at 338.

¹⁷ R. at 342.

circumstances without the necessity of the Council's approval. That would have eliminated one of the Council's legislative checks on the executive branch's power that was built into the Charter, which may well have been why it was not approved. This is, of course, speculation, just like it is speculation on the District Attorney's part that the failure of the amendment was because certain voters did not like the omission of the reference to the District Attorney. But, as counsel for the District Attorney previously and candidly acknowledged, "the court can't read anything into the failure of that because all of that reflects merely that the people perhaps didn't like the particular charter amendment that was proposed."¹⁸ Indeed, legislation that is introduced but does not become law is typically not considered competent evidence of legislative intent or the meaning of existing law. *See* La. Rev. Stat. § 24:177(D).

The District Attorney's argument also ignores that the current system was in place years before Proposition 5 failed to pass in November 2015. That the voters did not approve amending the Charter as specifically proposed in Proposition 5 did not, and could not, change the power and authority already granted to Parish Government in the Charter as it existed to employ attorneys, operate the Parish Legal Department, and reorganize the Legal Department by ordinance.

D. Although the lower courts correctly pretermitted ruling on STPG's constitutional challenges to the statutes, those challenges remain relevant.

The parties moved for cross-summary judgment on August 26, 2016. STPG asked for dismissal of the District Attorney's claims and for a judgment on its Amended Reconventional Demand.¹⁹ Judge Edwards granted STPG's motion based on the language of the statutes, the Charter, and the two ordinances. He properly did not rule on STPG's alternative constitutional challenges as it was unnecessary to the resolution of the case.²⁰ Similarly, the First Circuit did not need to reach the constitutional or ethical issues raised by STPG to affirm the judgment below. But contrary to Chief Judge Whipple's dissent, the ethical arguments raised in the trial court were not simply hypothetical situations, but in fact were based on the evidence presented in this case.²¹ Moreover, although the District Attorney wants this Court to ignore the constitutional arguments, they remain relevant as the

¹⁸ Transcript of May 16, 2016 hearing on the Respondents' exceptions. R. at 731.

¹⁹ R. at 307.

²⁰ "A court should not reach or determine constitutional issues unless, in the context of a particular case, the resolution of such issues is necessary to decide the case." *ANR Pipeline Co. v. Louisiana Tax Comm'n*, 2005-1142 (La. App. 1 Cir. 9/7/05); 923 So. 2d 81, 99 (citations omitted).

²¹ Dissent, p. 3.

statutes are required to be read in a manner that renders them constitutional.²² And, of course, this Court has plenary power to address any of the constitutional issues properly raised below. *See, e.g., State v. All Property and Cas. Ins. Carriers Authorized and Licensed To Do Business in State*, 2006-2030, p. 4 (La. 8/25/06); 937 So. 2d 313, 318 (exercising supervisory jurisdiction and plenary power to address, in an expedited manner, the constitutionality of certain acts upheld as constitutional by the trial court).²³

III. LAW AND ARGUMENT

A. The constitutional and statutory framework relied upon by the District Attorney specifically allows a Home Rule Charter government, like STPG, to opt out.

Article V, § 26(B) of the Constitution states that, in addition to prosecuting all criminal matters on behalf of the State in his or her judicial district, a district attorney “shall perform other duties provided by law.” Those “other duties provided by law” include representing local governing authorities, boards, agencies, and commissions, as set forth in La. Rev. Stat. §§ 16:2 and 42:261. Pursuant to those statutes, district attorneys, “*except ... as otherwise provided by law ...* 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....” La. Rev. Stat. §42:261(A)(emphasis added).²⁴ Section 16:2(D), however, “otherwise provide[s] by law,” 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.

²² The District Attorney suggests that the constitutional arguments should not be considered for any purpose because STPG did not “cross appeal.” DA’s Brief, p. 13. But STPG “may assert, in support of the judgment, any argument supported by the record, although [they have] not appealed [or] answered the appeal....” La. Code Civ. Proc. art. 2133(B).

²³ STPG’s constitutional challenges were raised in its original and amended Reconventional Demand, proper notice was provided to the Attorney General, and the Attorney General’s office appeared and filed a brief in support of the constitutionality of the statutes in the trial court. R. at 645.

²⁴ The District Attorney also points to language in § 42:261(D)(1), which makes it unlawful for a governing authority to pay compensation to an attorney to represent it generally, as bolstering his position that STPG does not have the legal authority to employ its own attorneys to represent it generally. DA’s Brief, p. 10. But that provision is also subject to the “except ... as otherwise provided by law” language, and there has never been any dispute that all of § 42:261 is subject to the “opt out” provisions in §16:2(D), not just Subsection (A).

By virtue of those statutes, when a Home Rule Charter government “opts out,” by providing in its charter for the employment of its own counsel, the district attorney is relieved of his statutory obligation to act as the “regular attorney” for the governing body. Moreover, Art. VI, § 5(G), which provides that a home rule charter shall not contain any provision “affecting” the district attorney “which is inconsistent with the Constitution or law,” is not violated when a home rule charter government, like STPG, opts out of the statutory scheme because (1) the Constitution reserved to the Legislature the ability to define the “other duties” of the district attorneys, and (2) the Legislature provided that those “other duties” do not include being the regular attorney in civil matters for home rule local governments that have provided for the employment of their own lawyer. Section 16:2(D) is, therefore, fatal to the District Attorney’s assertion that the statutes and Constitution mandate that he be the sole general legal advisor to Respondents.

B. The District Attorney reads § 16:2(D) far too restrictively.

The District Attorney appears to have capitulated on his repeated argument that §16:2(D) requires a home rule charter to expressly provide for the retention of a “parish attorney” for an opt-out to be effective.²⁵ Yet, he still contends that the statute requires a home rule charter essentially to mirror the other statutory language and asserts that the Charter here is lacking because it does not specifically state that STPG “may employ” a “regular attorney,” “other counsel,” or a “parish attorney” to represent it “generally.” *See, e.g.*, DA’s Brief, pp. 12-13, 15. But § 16:2(D) does not require any magic language that must be repeated in a home rule charter. Rather, it describes three *situations* in which the district attorney is relieved from having to act as the “regular attorney for the local governing authority, which is when a home rule charter provides for the employment of: “[1] a parish attorney *or* [2] a special attorney *or* [3] counsel....” La. Rev. Stat. § 16:2(D) (emphasis added). In any one of those three situations, the local government will be deemed to have opted out. To read § 16:2(D) otherwise ignores the Legislature’s use of the word “or” and incorporates requirements that do not exist.

The District Attorney is correct that STPG relies on Section 4-03 of the Charter as satisfying § 16:2(D), but misconstrues (or chooses to ignore) the reasoning, which is not because Section 4-03(B) provides a mechanism for retaining “special counsel.” It is more fundamental than that. Section 4-03 establishes (or at a minimum authorizes the establishment of) a *Parish* Legal Department as part of the *Parish* Administration. By virtue of the Legal Department’s inclusion in Article IV, the Charter

²⁵ The District Attorney has made that argument at every step of this litigation, including in his writ application, until the filing of this Brief. *See, e.g.*, Writ Application, p. 11.

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). 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).

The Charter thus does provide for the hiring of counsel *and* special counsel and addresses the Parish's legal representation, such that it falls squarely within at least two of the situations described in § 16:2(D). Indeed, as counsel for the District Attorney acknowledged at the hearing on the parties' cross motions for summary judgment, the inclusion of Section 4-03 in the Charter evidences that the Parish gave itself the ability "to deal with how legal services will be provided to the various departments, agencies in parish government."²⁶ By virtue of Section 4-03, in the context of its placement in the Charter, and the Council's broad power to hire any necessary employees, the Charter allows STPG to opt out of the statutory scheme and relieve the District Attorney of his obligations thereunder.

C. The District Attorney's reliance on Section 4-03 is misplaced.

The District Attorney asserts that, rather than provide for STPG's ability to opt out of the statutory scheme, Section 4-03 of the Charter confers on him the absolute and irrevocable right to act as the sole general legal advisor to Parish Government. 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.²⁷ 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

²⁶ Transcript of 9/12/16 hearing, R. at 784.

²⁷ The relevant part of Section 4.03(A) states: "The district attorney of the judicial district serving St. Tammany Parish shall serve as legal adviser to the council, president and all departments, . . ." Charter, §4.03. The District Attorney states that Section 4-03 should be read in *pari materia* with La. Rev. Stat. §§ 16:2(D) and 42:261(A), such that the word "the" should be read into Section 4-03(A) where it does not appear: "The district attorney of the judicial district serving St. Tammany Parish shall serve as **[the]** legal adviser to the council, president and all departments, . . ." *See, e.g.*, DA's Brief, p. 11 n.17. The District Attorney cites no support for reading Section 4-03(A) in *pari materia* with the statutes, likely because the Charter and statutes are not "laws on the same subject" passed by the same legislative body that should be interpreted in reference to one another; rather, Section 4-03 was prepared by the St. Tammany Parish Home Rule Charter Commission, passed by the voters of St. Tammany Parish, and carves Parish Government out of the statutory scheme that was enacted by the Legislature. The Charter does not adopt the revised statutes and must be interpreted within its own four corners.

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 (Section 4-03(B)), but the parties agree that that provision is not in dispute.

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

Moreover, as the District Attorney correctly states, his office is not subject to local control, as his is a state office existing in the judicial branch of government. Respondents have never taken the position that the District Attorney is compelled by Section 4-03 of the Charter to provide legal services to the Parish against his will.²⁸ Section 4-03 (both as passed and as recodified through the Administration Ordinance) inherently contemplates that there would be a mutual agreement between Parish Government and the Office of the District Attorney regarding the nature and scope of any services provided by the District Attorney. This is not only permissible, but exactly the way things worked for over a decade.

D. The Council and Administration Ordinances are consistent with the Charter.

Both the Council and Administration Ordinances are presumed “to be valid and constitutional unless competent evidence is adduced which demonstrates that the ordinance is so clearly arbitrary and capricious as to be unreasonable and oppressive.” *Collins v. Chenel*, 416 So. 2d 945, 947 (La. 1982). The District Attorney did not meet his burden to show that the ordinances violate the subject statutes or the Constitution. Rather, relying on Section 4-03 of the Charter, he argues that the Charter reflects the “will of the people” who have selected him as the Parish Government’s only general counsel, and STPG is powerless to change his alleged role or hire their own attorneys without an amendment to the Charter.

²⁸ This is a strained argument posing a hypothetical situation at best, as STPG has never tried to compel the District Attorney to perform general legal services for it pursuant to the Charter. *See, e.g.*, First Circuit Op., p. 14.

There is no factual or legal support for the District Attorney's assertion that the Charter was intended to mandate that he always act as the sole general attorney to Parish Government or that his office's role with respect to the Parish's civil legal representation can only be changed by amending the Charter. Quite to the contrary, through Section 4-12 (Administration Reorganization), the voters who approved the Charter specifically reserved to the Council and the President the power to create, change, alter, consolidate, or abolish Parish departments, including to reallocate the functions, powers, duties and responsibilities of positions in such departments.²⁹ This does not, as the District Attorney complains, render Section 4-03 superfluous or the reference to the District Attorney meaningless. Rather, Section 4-03 established an initial presumptive framework for the Parish's legal representation in civil matters, but the structure and organization of the Legal Department and the District Attorney's role in the representation of the Parish was designed from the very beginning to be subject to change as deemed necessary and in the Parish's interest by the Council and Parish President. Indeed, the very first reorganization ordinance passed in 2000 placed the Parish's Legal Counsel and staff within the Office of the Parish President, which ordinance was never challenged. This demonstrates that Section 4-03 was not passed in a vacuum and must be understood and construed in the context of the entirety of the Charter and the powers granted to Parish Government.

As the appellate court found, STPG's construction of the Charter is supported by *DeVall v. Depaula*, 1996-1067 (La. App. 1 Cir. 5/9/97); 694 So. 2d 1137. The court in that case found that the City of Hammond Charter gave the power to its chief executive officer (the Mayor) to propose to the legislative body (the Council) a plan to reorganize departments outlined in the Charter as part of the executive branch of City Government, and the Council could implement such a reorganization without a charter amendment. *Id.* at 1141-42. Much like in this case, the Mayor proposed to change the Police Chief's role with respect to the Police Department, which was set forth in the Charter, and to reallocate certain of the Police Chief's functions to a newly-created administrative position. *Id.* at 1139-40. The Court concluded that the Charter gave the Mayor the power to propose the change and the Council the power to implement it by ordinance pursuant to the reorganization powers "without the necessity of a time consuming and expensive public referendum each time such action was contemplated." *Id.* at 1142. That is precisely what the voters in St. Tammany Parish also did when they approved Section 4-

²⁹ Specifically, Section 4-12(A) (Administration Reorganization) provides that "[t]he 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." Emphasis added.

12 as part of the Charter. *See also Randolph v. Alexandria Civil Serv. Comm'n*, 2004-1620 (La. App. 3 Cir. 4/6/05); 899 So. 2d 857 (holding that an ordinance creating two civil service departments in the executive branch of city government was not an invalid attempt to amend the city charter, which established a civil service commission, but was an authorized exercise of local government power under the charter, where the charter anticipated the possibility of future changes to the civil service commission when it was approved by the voters); *Yenni v. Parish Council*, 1993-0722 (La. App. 4 Cir. 9/30/93); 625 So. 2d 301, 305-06 (finding that a properly-passed ordinance eliminating two parish departments was authorized and valid where the home rule charter specifically granted the parish council the power to “abolish or consolidate any parish department” with the exception of four specific departments, none of which were at issue).

The District Attorney attempts to distinguish *DeVall* on the basis that the Hammond Police Chief was an appointed local official, and not an official whose duties and responsibilities are set forth in statutes and the Constitution. DA’s Brief, pp. 17-18. In other words, according to the District Attorney, the local governing authority’s ability to reorganize the City Administration and the Police Chief’s placement and role therein was not curtailed by constitutional or statutory prohibitions. This argument would be helpful only if Parish Government was attempting to reallocate or change the District Attorney’s constitutionally-mandated role as criminal prosecutor under the guise of its Charter powers; but it is not. Further, if you accept the District Attorney’s argument, it is a violation of the constitution to even include mandatory obligations for his office because the Home Rule Charter cannot alter the constitutional obligations of the district attorney. Therefore, the Parish Government is simply changing the District Attorney’s role in the Legal Department created under its own Charter, not his role under the Constitution or state law. There is no statutory prohibition against Parish Government redefining the District Attorney’s role in the *civil representation* of the Parish through a reorganization ordinance. Once the Parish decided it would address its own civil legal representation by including a Parish Legal Department in the Charter, it was free to change and reallocate the duties and functions of that department through a properly-passed ordinance pursuant to Section 4-12.

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

Louisiana law does not recognize any right by an attorney to force an unwanted representation on a putative client. Likewise, an attorney may not represent a client if the representation would violate the Rules of Professional Conduct, which have the force and effect of law. *See Succession of Wallace*,

574 So. 2d at 350. As this 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. *Id.* at 350. The Court explained that it has “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 original jurisdiction of attorney disciplinary proceedings.” *Id.* As a result of the Court’s 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....” *Id.* Indeed, the Court will strike down statutes that impede or frustrate its authority. *Id.*

In fact, the Court did just that in *Succession of Wallace* and 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. 574 So. 2d at 359-60. The Court found that the statute was unconstitutional to the extent it conflicted with the Rules of Professional Conduct. *Id.* at 360. 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.”).

Id. at 351. Louisiana Rules of Professional Conduct 1.16(a)(3) was also crucial to the Court, as it gives “the client the absolute right to fire a lawyer in whom he has lost faith or confidence.” *Id.* at 355. Under Rule 1.16, an attorney cannot “force his continued representation of a client who wishes to discharge him....” *Id.* at 351.

The overarching themes of these rules and the Court’s discussion 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 the District Attorney’s claims in this lawsuit and arguments made by the District Attorney and amici curiae that the Legislature has essentially

supplanted, or at least altered, the Rules of Professional Conduct and created a “special” attorney-client relationship between the district attorneys and the local governing authorities in our state through enactment of the statutes at issue that are not subject to the same fundamental rules.

For instance, in the trial court, the District Attorney asserted that, as a government lawyer “appointed” by the people of St. Tammany Parish, his duties and rights are defined by the statutes and the Charter (as opposed to strictly by the Rules of Professional Conduct and this Court), and those laws do not permit STPG to discharge him without cause.³⁰ The District Attorney posited, therefore, that only some group of voters has the right to discharge him without cause through an amendment to the Charter. This theme is echoed throughout CCST’s amicus briefs, in which it is urged that the statutes and the Charter mandate STPG’s use of the District Attorney regardless of the Rules of Professional Conduct, because it is what the citizens want. Similarly, in the amicus brief filed by the District Attorney of Lafourche Parish in support of the District Attorney’s writ application, it is asserted that there is a “special attorney-client relationship” that is “imposed by law” and is governed by those statutes that created it.³¹

³⁰ See District Attorney’s Memorandum in Support of Motion for Summary Judgment, R. 553, at 572-73. The District Attorney’s argument was premised on the assertion that Rule of Professional Conduct 1.13 (Organization as Client) applies to his representation of STPG and that the ABA Comments to Model Rule 1.13 state that the duties of lawyers employed by the government may be defined by statutes and regulation. He further asserted that, because the District Attorney was “appointed” to act as STPG’s lawyer by virtue of the Charter, pursuant to ABA Comments to Model Rule 1.16 (Declining or Terminating Representation), whether STPG has the right to discharge him depends on “applicable law,” which are the statutes that do “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.” R. at 573.

Setting aside that this Court deliberately did *not* adopt the comments to the ABA Model Rules, to the extent Rule 1.13 applies to an attorney representing a local government, it is clear that the attorney must represent the organizational client “*acting through its duly authorized constituents.*” La. R. Prof. Cond. 1.13(a) (emphasis added). That is, if the Parish is deemed to be the District Attorney’s organizational client under Rule 1.13, the District Attorney represents that client *acting through the Council and the Parish President*, the Parish’s duly-authorized and elected constituents. As the Parish Government’s attorney, the District Attorney would take his directions and instructions from the Council and the Parish President and would not be free to bypass the Council and the President in an attempt to divine the public’s interest with respect to his role in the representation of Parish Government or other matters. Further, as Professor Ciolino opined, Rule 1.13’s application is not obvious, and the determination of who is the organizational “client” is more complicated than simply pointing to the Parish Government. Ciolino aff., ¶ 33, R. at 474-75. Because the two branches of government are separate and distinct from one another and each has its own duly authorized constituents through which it acts, the Council and the Office of the President should be considered distinct organizational clients under Rule 1.13. *Id.*

Commentators have also noted that it is impossible for a government lawyer to represent the “public interest” or “the community at large,” as the community itself is always divided:

The government lawyer who uses the public interest approach when policy colleagues are in conflict usurps the function of the client to provide her with instructions. Inevitably, the lawyer who decides for herself which conflicting point of view to represent decides what the public interest is. Such a lawyer is not a lawyer representing a client but a lawyer representing herself.

William Josephson & Russell Pearce, *To Whom Does the Government Lawyer Owe the Duty of Loyalty When Clients Are in Conflict?*, 29 HOW. L.J. 539, 564 (1986).

³¹ See, e.g., Lafourche DA’s Amicus Brief, at pp. 5-6.

There is no support or precedent for the position that the statutes and/or the Charter displace Rule 1.16 and the Court's holding in *Succession of Wallace* that "the client [has] the absolute right to fire a lawyer in whom he has lost faith or confidence." 575 So. 2d at 355. To the contrary, this Court specifically explained that Louisiana statutes "must yield to the rule[s]" regarding attorney conduct and ethics when they are inconsistent and interfere with the Supreme Court's regulation of the practice of law. *Id.* The Court has also consistently held that district attorneys are subject to the Rules of Professional Conduct and its authority over the practice of law in this State. *See In re Caillouet*, 2001-2461 (La. 11/9/01); 800 So. 2d 367; *In re Toups*, 2000-0634 (La. 11/28/00); 773 So. 2d 709. Moreover, the Rules of Professional Conduct and this Court unquestionably recognize that an attorney's paramount duty is to his or her client and that the client has the right to terminate the relationship in a situation where the attorney's loyalty is divided. *See Scheffler v. Adams & Reese, LLP*, 2006-1774 (La. 2/22/07); 950 So. 2d 641, 651–52. "Indeed, this principle of undivided loyalty is firmly embedded in the Rules of Professional Conduct" and the duty of loyalty "imposes an affirmative obligation upon a lawyer to exercise independent professional judgment and to render candid advice to his or her client, thereby underscoring the importance of avoiding any divided loyalties that might cloud that independent judgment." *Id.*

The lower courts correctly interpreted the statutes and the Charter in a manner consistent with these fundamental principles, which resulted in the finding that the Parish Government falls within the statutory exception and the District Attorney is relieved from any obligations under the statutes.

F. As a factual matter, the District Attorney's claims had to be dismissed as there are multiple ethical problems that also prohibit the representation.

The record also unquestionably supports that the District Attorney's representation of the Respondents is ethically precluded, as it was demonstrated 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 Respondents would be materially limited by his loyalty to his political constituents and his own political interests, and (3) the Respondents do not trust the District Attorney or desire to have him serve as their general counsel.

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.³² 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.

As demonstrated below, 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.³³ In such situations, the Council and the President’s office will negotiate with one another to reach compromises and common ground.³⁴ To the extent legal advice is desired or necessary on such issues, where there is direct adversity, a single attorney representing both branches, as the District Attorney asserts is required, would be prohibited by the Rules of Professional Conduct.³⁵ *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,³⁶ 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 who serves constituents in two different 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.³⁷

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

³² *See* Ciolino aff., ¶¶ 33-34, R. at 474-76.

³³ Hand aff., ¶ 5, R. at 349-50; Brister aff., ¶ 6, R. at 380; Rabalais aff., ¶ 9, R. at 360-61.

³⁴ *Id.*

³⁵ Ciolino aff., ¶¶ 32-34, R. at 474-76.

³⁶ Brister aff., ¶ 6, R. at 380; Hand aff., ¶ 5, R. at 349-50.

³⁷ Hand aff., ¶ 6(c), R. at 351. *See also id.*, ¶ 6(d).

by the lawyer's responsibilities to ... a third person or by a personal interest of the lawyer."³⁸ As previously noted, communications between the District Attorney, on one side, and certain of his constituents, on the other, show the District Attorney's political alignment with that group on issues pertinent to this very lawsuit, as well as a perceived lack of loyalty to his putative clients.³⁹

Finally, it is undisputed that the Respondents 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.⁴⁰ Pursuant to this Court's opinion in *Succession of Wallace*, that alone required dismissal of the District Attorney's claims.

G. Solely in the alternative, the statutes and Section 4-03(A) of the Charter are unconstitutional.

Solely to the extent the Court finds that the statutes and Charter mandate the District Attorney's representation of STPG in these circumstances, the Court should address STPG's constitutional challenges to La. Rev. Stat. §§ 16:2 and 42:261 and Section 4-03(A) of the Charter.

1. The statutes and Section 4-03(A) would be unconstitutional pursuant to 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 Respondents can be forced to accept the District Attorney as their general legal adviser over their wishes and when conflicts of interest exist, those laws unconstitutionally interfere with this Court's regulation of the practice of law and the attorney-client relationship and are wholly contrary to the Rules of Professional Conduct that govern attorneys. This Court has specifically stated that it will strike down statutes that impede or frustrate its authority over the conduct of attorneys and the practice of law, and it should do so here. *Succession of Wallace*, 574 So. 2d at 350.

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

Article 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 limits the Legislature's ability to limit, restrict or interfere with a home

³⁸ La. R. Prof. C. 1.7(a)(2).

³⁹ R. at 421-36.

⁴⁰ *Brister aff.*, ¶ 12, R. at 380.

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 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 Charter evidences St. Tammany 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, STPG 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 only to the Constitution and any applicable general law. Charter, Section 1-05.

As a Home Rule Charter government with such broad authority in place, STPG 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. *Autin*, 648 So. 2d at 355-56. That control includes the assignment, allocation or distribution of purposes, work, authority and capacity among its offices and departments. *Id.* at 356. Statutes, like those purporting to require the District Attorney to be STPG'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." *Autin* at 356-57 (citing *City of New Orleans v. Bd. of Comm'rs of the Orleans Levee Bd.*, 1993-0690 (La. 7/5/94); 640 So. 2d 237, 252).

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. *Autin*, 648 So. 2d at 357-358. The Court found that the statute effected the parish's "administrative authority over its own boards and commissions, by blatantly changing and affecting the distribution of the [parish's] powers and functions," and was, thus, unconstitutional. *Id.*

Here, the statutes relied upon by the District Attorney, if applied as he urges, would also interfere with STPG's power and authority under the Charter to structure and organize its Legal Department in the manner it deems appropriate and to retain counsel that the Council deems necessary to STPG'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 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 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." *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). 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." *Id.*⁴¹

Regarding the statutes relied on by the District Attorney, this Court has specifically discussed the special nature of this statutory regime and described it as "wrought with internal inconsistencies created by legislative exemptions of many state and local public bodies from the statutes' parameters." *Petrovich*, 396 So. 2d at 1323. In *Petrovich*, a group of parish commissioners were charged by criminal

⁴¹ The Louisiana Constitution defines "general law" as "a law of statewide concern enacted by the legislature which is uniformly applicable to all persons or to all political subdivisions in the state or which is uniformly applicable to all persons or to all political subdivisions within the same class." Art. VI, § 44(5).

indictments with violating the provisions of these statutes relating to the hiring of special counsel to represent the parish governing authority. This Court declared La. Rev. Stat. § 42:264, which provided the criminal penalties for violating the procedure set forth in § 42:263 for retaining special counsel, unconstitutional because it violated the commissioner’s right to equal protection of the laws. *Id.*⁴² Further, since these are special laws they cannot be used to deny the parish government its rights under Article VI § 5.

Specifically, the Court found that the statutes at issue (§§ 42:261 – 42:264) created unreasonable, arbitrary, and irrational classifications of similarly-situated public entities due to the statutes’ exemptions of various public bodies from the penal provisions that were contained in § 42:264. *Petrovich*, 396 So. 2d at 1323. Because the statutes arbitrarily exempted six levee districts from their provisions for no discernable reason, the Court held that § 42:264 was unconstitutional and quashed the indictments to the defendants. *Id.* Although the Court struck down only 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 those particular statutes, as well as § 16:2, many times after the *Petrovich* case (nine times in the case of § 42:261 and five times in the case of § 16:2), but instead of “removing any constitutional infirmities,” the Legislature exacerbated the problem by exempting additional public bodies and parishes from the provisions.⁴³ Currently, seven specific parish governments (some of which are not home rule charter governments and, as such, cannot invoke the opt-out provision in § 16:2(D)), and many other local and state agencies and boards, are exempted from the statutes as follows:

⁴² Although the Court in *Petrovich* concluded that the statutes violated the Equal Protection Clause, this Court subsequently held that only a “person” (as opposed to a political subdivision) is protected by Article I of the Louisiana Constitution. *Morial*, 785 So. 2d at 13.

⁴³ *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). Of note is that Senate Bill No. 128 is being introduced at the 2018 Regular Session, which would add Acadia Parish to the list of exempted parishes. Acadia is a police jury government, and, thus, obviously does not have a home rule charter pursuant to which it could argue it has opted out of the scheme. If the Senate Bill passes, the Legislature will have accomplished for Acadia what it otherwise cannot for itself under the framework of the statutes. At the same time, the District Attorney argues that STPG should be denied the right to employ its own counsel notwithstanding the provisions of its home rule charter giving it that power and authority.

La. R.S.	Applies to:	Exempted entities (including but not limited to):
16:2	Police juries, parish and city school boards, levee boards, hospital and asylum boards, education boards, Lafourche Parish, and every elected or appointed state boards or commissions.	Parishes of Orleans, St. Charles, St. John the Baptist, Ouachita, Morehouse, Calcasieu, Vermilion, State boards and commissions in Baton Rouge and East Baton rouge, city and parish school boards, and § 16:2(D) home rule charter governments. ⁴⁴
42:261(A)	Parish governing authorities, parish and city school boards, and every elected or appointed board or commission.	Parishes of Orleans, St. Charles, Ouachita, Morehouse, Calcasieu, Vermilion, Terrebonne, state boards and commissions Baton Rouge, all boards in charge or in control of state institutions, Louisiana Board of Chiropractic Examiners, East Baton Rouge Recreation and Park Commission, any hospital service district created by or pursuant to state law, Natchitoches Parish School Board, Louisiana Student Financial Assistance Commission, every parish and city school board.
42:263 ⁴⁵	Parish school boards, city school boards, or other local or state board.	Cane River Levee and Drainage District, Campti-Clarence Levee District, Natchitoches Levee and Drainage District, Red River Levee and Drainage District, Fifth Louisiana Levee District, Nineteenth Louisiana Levee District, and the Black Lake Bayou Recreation and Water Conservation District of Red River Parish.

As a result of this patchwork of legislation, 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, apparently at the whim of the Legislature. The statutes are, accordingly, unconstitutional special laws.

IV. CONCLUSION

The very statutes relied on by the District Attorney recognize that the Respondents have the right to choose their own counsel by virtue of the St. Tammany Home Rule Charter. And the Charter, when read in its entirety, clearly preserved to the Council and the Parish President the authority to reallocate any functions of the District Attorney with respect to the Parish’s civil representation by a valid ordinance. This is consistent with Louisiana law governing the attorney-client relationship and the conduct of attorneys, as well as the broad powers granted home rule charter parishes under the Constitution. This Court should affirm.

⁴⁴ The parishes of Ouachita, Morehouse, Calcasieu, and Vermillion are police jury governments, such that they do not have a home rule charter and cannot possibly fall within the exception of §16:2(D). The Legislature has essentially permitted those parish governing authorities to opt out through special legislation. This not only highlights the unconstitutional special nature of these statutes, but completely undermines the District Attorney’s argument that his purported entitlement to be STPG’s legal counsel is mandated by the constitution.

⁴⁵ It was the exemptions in § 42:263 that the *Petrovich* Court specifically addressed, explaining that “[a]n examination of these statutes reveals no valid state purpose for singling out levee boards, city school boards and other local boards....” 396 So. 2d at 1323.

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CERTIFICATE OF SERVICE

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