

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 CA 0136

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

VERSUS

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

Judgment Rendered: SEP 26 2017¹

* * * * *

APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 2016-11530, DIVISION "J"

HONORABLE MARION F. EDWARDS, JUDGE AD HOC¹

* * * * *

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St. Tammany Parish Government

¹ On April 19, 2016, the Louisiana Supreme Court assigned retired Judge Marion F. Edwards to serve as Judge Ad Hoc on this case, upon the request of Twenty-Second Judicial District Court Chief Judge Allison Penzato, due to the recusal of the judges of the Twenty-Second Judicial District Court from this case.

*Whipple, C.J. dissents for assigned reasons.
Clutz, J. concurs with reasons.*

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BEFORE: WHIPPLE, C.J., McDONALD, AND CHUTZ, JJ.

MCDONALD, J.

In this case, the plaintiff, Warren Montgomery, in his official capacity as District Attorney for St. Tammany Parish, filed a petition for declaratory judgment and injunctive relief, naming as defendants the St. Tammany Parish Government (STPG), by and through the St. Tammany Parish Council (the Council), and Patricia “Pat” Brister, in her official capacity as Parish President (sometimes collectively referred to as the defendants). Mr. Montgomery sought to enjoin the STPG and Ms. Brister from operating, controlling, and maintaining a (separate) civil legal department providing legal services to the Parish, which he asserted violated Louisiana law and the St. Tammany Parish Home Rule Charter. He also sought to enjoin the defendants from retaining or hiring any attorneys to provide general civil legal services, and sought a mandatory injunction ordering the defendants to provide funding to the District Attorney’s Office to carry out his duties to provide general legal services to the defendants.

The defendants answered the petition, generally denying the allegations, raising affirmative defenses, raising exceptions, and asserting a reconventional demand. The defendants maintained: that the petition failed to state a claim upon which relief could be granted; that Mr. Montgomery was prohibited from suing the STPG under the Rules of Professional Conduct; and that La. R.S. 42:261-264 and La. R.S. 16:2 would be unconstitutional if construed as forcing the STPG to accept the District Attorney and/or his office as its sole legal advisors and prohibiting STPG from structuring and organizing a legal department under the administrative control and supervision of the Parish President. The defendants raised the exceptions of prematurity, unauthorized use of summary procedure, no cause of action, and no right of action.

A hearing on the exceptions was held on May 16, 2016. Thereafter, by judgment dated July 2, 2016, the district court denied the exceptions of no cause of

action and no right of action, reserving the right to defendants to re-urge those exceptions. The exceptions of prematurity and improper use of a summary proceeding challenging the claims for preliminary injunction were granted, and a summary hearing on those claims was denied, with the claims to be decided at a trial on the merits. The exception of prematurity as to the claim for mandatory injunctive relief related to funding was granted, and that claim was dismissed without prejudice.

Thereafter, the defendants filed a joint motion for summary judgment, and Mr. Montgomery filed a motion for summary judgment. On September 12, 2016, the district court heard the cross-motions for summary judgment and defendants' re-urged exception of no cause of action. Afterward, the district court denied the exception of no cause of action filed by the defendants, denied the motion for summary judgment filed by Mr. Montgomery, granted the joint motion for summary judgment filed by the defendants, and dismissed the petition for declaratory and injunctive relief. The judgment was signed on September 18, 2016. Mr. Montgomery appealed the judgment.

MOTIONS

Concerned Citizens of St. Tammany Parish and the Louisiana District Attorneys Association both filed motions with this court for leave to file amicus curiae briefs in this case. The motions to file amicus curiae briefs are both granted.

ASSIGNMENTS OF ERROR

Mr. Montgomery makes six assignments of error, asserting that the district court erred in: (1) finding that the Parish President and the Council had legal representation independent of the District Attorney's Office for over 10 years; (2) predicating its decision on La. R.S. 16:2(D), without addressing the second paragraph that provides that a Home Rule Charter Parish may retain counsel, other than the District Attorney, only as authorized in the Home Rule Charter; (3)

upholding the challenged Ordinances as authorized pursuant to the reorganization provision (Section 4-12) of the St. Tammany Parish Home Rule Charter; (4) finding that the St. Tammany Parish Home Rule Charter fulfilled the requirements of La. R.S. 16:2(D), thus allowing the STPG to retain regular counsel other than the District Attorney; (5) interpreting Section 4-03(A) of the St. Tammany Parish Home Rule Charter to allow the STPG to decide when and under what circumstances it can compel the District Attorney to represent it; and (6) failing to recognize that Section 4-03(A) of the St. Tammany Parish Home Rule Charter uses the word “shall,” which under Louisiana law is mandatory.

STANDARD OF REVIEW

Summary judgments are reviewed on appeal *de novo*. An appellate court thus asks the same questions as does the trial court in determining whether summary judgment is appropriate: whether there is any genuine issue of material fact, and whether the mover is entitled to judgment as a matter of law. **Bradley v. Prange**, 2004-1432 (La. App. 1 Cir. 12/17/04), 897 So.2d 717, 719.

The burden of proof rests with the mover. Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover’s burden on the motion does not require him to negate all essential elements of the adverse party’s claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party’s claim, action, or defense. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. La. C.C.P. art. 966D(1).

Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be determined only in light of the substantive law applicable to the case. **Mabile’s Trucking, Inc. v. Stallion**

Oilfield Servs., Ltd., 2015-0740 (La. App. 1 Cir. 1/8/16), 185 So.3d 98, 102, writ denied, 2016-0251 (La. 4/4/16), 190 So.3d 1207.

APPLICABLE LAW

Louisiana Constitution

Louisiana Constitution Article V, § 26 provides in part:

(A) Election; Qualifications; Assistants. In each judicial district a district attorney shall be elected for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years preceding election. A district attorney may select assistants as authorized by law, and other personnel.

(B) 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.

Louisiana Constitution Article VI, § 5 provides in part:

(A) Authority to Adopt; Commission. Subject to and not inconsistent with this constitution, any local governmental subdivision may draft, adopt, or amend a home rule charter in accordance with this Section. The governing authority of a local governmental subdivision may appoint a commission to prepare and propose a charter or an alternate charter, or it may call an election to elect such a commission.

* * * * *

(C) Adoption; Amendment; Repeal. A home rule charter shall be adopted, amended, or repealed when approved by a majority of the electors voting thereon at an election held for that purpose.

* * * * *

(E) Structure and Organization; Powers; Functions. 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.** [Emphasis added.]

* * * * *

(G) Parish Officials and School Boards Not Affected. No home rule charter or plan of government shall contain any provision

affecting a school board or the offices of district attorney, sheriff, assessor, clerk of a district court, or coroner, which is inconsistent with this constitution or law.

Louisiana Revised Statutes

Louisiana Revised Statute 42:261 provides:

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

Louisiana Revised Statute 16:2D 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.

St. Tammany Parish Home Rule Charter

The St. Tammany Parish Home Rule Charter establishes two branches of government, the executive branch (the Parish President) and the legislative branch (the Council). St. Tammany Parish Home Rule Charter, Section 1-02. The Council is authorized to hire, by ordinance approved by two-thirds of its membership, employees as may be necessary to assist the Council in carrying out its duties and responsibilities and those employees serve at the pleasure of the Council. St. Tammany Parish Home Rule Charter, Section 2-10B. The Parish President has general executive and administrative authority over all departments, offices and agencies of the Parish government, except as otherwise provided by the St. Tammany Parish Home Rule Charter. St. Tammany Parish Home Rule Charter, Section 3-01.

Section 4-03 of the St. Tammany Parish Home Rule Charter provides:

- A. The district attorney of the judicial district serving St. Tammany Parish shall serve as legal advisor to the council, president and all departments, offices and agencies and represent the Parish government in legal proceedings.
- B. No special legal counsel shall be retained by the Parish government except by written contract for a specific purpose approved by the favorable vote of a majority of the authorized membership of the council. Such authorization shall specify the compensation, if any, to be paid for such services.

Section 4-12 of the St. Tammany Parish Home Rule Charter provides:

- A. The president may propose to the council the creation, change, alteration, consolidation or abolition of Parish departments, offices and agencies and the reallocation of the functions, powers, duties and responsibilities of such departments, offices or agencies, including those provided for in this charter.
- B. Upon receipt of the president's proposed plan of reorganization, the presiding officer of the council shall cause to be introduced an ordinance to implement the proposed reorganization plan. The ordinance shall follow the same procedure as provided in the section on "Ordinances in General" of this charter.
- C. The reorganization plan submitted by the president shall become effective if the council fails to act on the proposed reorganization within ninety (90) days of its submission to the council.

After this lawsuit was filed, two new Ordinances (5638 and 5644) were passed and became effective before the hearing on the cross motions for summary judgment. Ordinance Calendar No. 5638 provides that the Council deemed it necessary "to have its own Council Attorneys to insure the nature, scope and sanctity of the attorney-client relationship which is so critical to the effective operation of Parish Government and to safeguard the public fisc."

Ordinance Calendar No. 5644 provides:

- 8. The Legal Department. 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 the 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).

REASONS FOR JUDGMENT

In its reasons for judgment, the district court found in part:

[T]he above ordinances [Ordinance Calendar Nos. 5638 and 5644] are determinative of this matter. The Defendants wish to continue autonomously structuring, organizing and managing the legal staff as it has for the past ten years. Parish officials do not wish to relinquish their right to choose who represents or advises them in legal matters, and rely solely and exclusively on the District Attorney's office. The ordinances make that clear. The substance and passage of the ordinances are within authority granted to Defendants under the Charter and applicable law and are binding.

On a more practical note, there is obvious concern about the ability of the District Attorney's office and parish government officials to work together as a cohesive force for the betterment of the people of St. Tammany Parish after this lawsuit if the Parish were forced to accept the District Attorney as sole legal representative. With the filing of this action, the District Attorney has taken on an adversarial position to the Parish Council and the Parish President that presents a conflict of interest, not only in this current action but quite possibly in future actions. Disharmony and distrust would likely be the natural consequence of these proceedings putting a burden on both parties that would only make governing the Parish more difficult, and would not serve the citizens of St. Tammany Parish well.

Mr. Montgomery as the Plaintiff would bear the burden of proof at a trial on the merits. To prevail, he must show that the St. Tammany Parish government is operating a legal department that is in contravention of law and the Charter, and further that it [sic] the parish government is preventing him from performing his duties and exercising his power as the duly elected District Attorney. Given the ability of a local government to opt out of the statutory scheme set forth in La. R.S. 42:261 as provided for in [La.] R.S. 16:2, the rights and powers set forth in the Home Rule Charter, and the two pertinent ordinances passed within the power and authority of the Council, the Court finds that Mr. Montgomery will be unable to meet that burden.

ASSIGNMENT OF ERROR NO. 1

In this assignment of error, Mr. Montgomery asserts that the district court erred in finding that the Parish President and the Council had legal representation independent of the District Attorney's Office for over 10 years. He maintains undisputed facts in the record demonstrate that, with a few recent exceptions, the attorneys who provided those services were Assistant District Attorneys, duly sworn, with official commissions on file with the Louisiana Secretary of State, and thus, they were part of the District Attorney's Office and were subject to the supervision of the District Attorney.

However, the affidavit of Kelly Rabalais, Executive Counsel to the St. Tammany Parish President and Director of the St. Tammany Parish Legal Department since 2007, which was submitted in support of the defendants' motion for summary judgment, established that she was Commissioned as an ADA, but had never been employed by the District Attorney's Office. Ms. Rabalais testified that: she is an employee of STPG and her salary is approved by the Council as part of the STPG annual budget process; the Legal Department, under Ms. Rabalais's direction pursuant to authority granted by the Parish President, is responsible for providing the Parish President, Parish Administration and all Departments with legal advice and service related to Parish business; the Legal Department includes the Department of Risk Management and employs fifteen individuals, including six attorneys; and that the salaries paid to those employees are approved by the

Council as part of the STPG's annual budget, completely distinct from the District Attorney's Office's operating budget.

We find that the record establishes that there is no genuine issue of material fact that the defendants had legal representation that was independent of the District Attorney's Office since 2007. This assignment of error has no merit.

ASSIGNMENTS OF ERROR NOS. 2, 3, 4, 5 AND 6

In these assignments of error, Mr. Montgomery asserts that the district court erred in: predicating its decision on La. R.S. 16:2(D), without addressing the second paragraph that provides that a Home Rule Charter Parish may retain counsel, other than the District Attorney, only as authorized in the Home Rule Charter; upholding the challenged Ordinances as authorized pursuant to the reorganization provision (Section 4-12) of the St. Tammany Parish Home Rule Charter, which effectively authorized the amendment of a Home Rule Charter by adoption of an ordinance, without a vote of the people, in violation of Louisiana Constitution Article VI, § 5(C); finding that the St. Tammany Parish Home Rule Charter fulfilled the requirements of La. R.S. 16:2(D), thus allowing the Parish to retain regular counsel other than the District Attorney; interpreting Section 4-03(A) of the St. Tammany Parish Home Rule Charter to allow the Parish to decide when and under what circumstances it can compel the District Attorney to represent it; and by failing to recognize that Section 4-03(A) of the St. Tammany Parish Home Rule Charter uses the word "shall," which under Louisiana law is mandatory.

Louisiana Revised Statute 42:261 provides in part that the district attorneys of the several judicial districts other than the Parish of Orleans shall be the regular attorneys and counsel for the parish governing authorities within their respective districts and of every state board or commission domiciled therein, except as provided by Subsection C of La. R.S. 42:261 (regarding Terrebonne Parish) **or as otherwise provided by law.**

The language of La. R.S. 16:2(D) is clear in providing that where a Home Rule 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. The St. Tammany Parish Home Rule Charter provides that the Council is authorized to hire, by ordinance approved by two-thirds of its membership, employees as may be necessary to assist the Council in carrying out its duties and responsibilities and those employees serve at the pleasure of the Council, and that the Parish President has general executive and administrative authority over all departments, officers and agencies of the Parish government, except as otherwise provided by the St. Tammany Parish Home Rule Charter. This provision does not carve out an exception from hiring attorneys.

Ordinance Calendar No. 5638 provides that the Council deemed it necessary “to have its own Council Attorneys to insure the nature, scope and sanctity of the attorney-client relationship which is so critical to the effective operation of Parish Government and to safeguard the public fisc.”

Ordinance Calendar No. 5644 provides for the Parish President to appoint executive counsel to be director of the legal department and its respective staff members, including attorneys. The Executive Counsel directs the Legal Department and its respective staff members, including attorneys; serves as legal adviser to the President, parish employees and all departments comprising Parish Administration; provides representation for the Parish President and Parish Administration in conjunction with Parish Government in legal proceedings; and co-administers with Council Attorneys all legal proceedings and litigation involving Parish Government and jointly represents the Parish Government with Council Attorneys in such proceedings.

In **Devall v. Depaula**, 96-1067 (La. App. 1 Cir. 5/9/97), 694 So.2d 1137, the Mayor of Hammond proposed, and the City Council adopted, an ordinance that

changed the Police Chief's role with respect to the Police Department, and reallocated certain functions of the Police Chief to a newly-created administrative position of Public Safety Director. The Police Chief filed suit for injunctive relief prohibiting the implementation of the reorganization plan.

The district court in **Devall** ruled that the Home Rule Charter of the City of Hammond gave the Mayor the power to propose changes to the organization of the city government and gave the City Council the power to implement the changes without the necessity of a time-consuming and expensive public referendum each time such action was contemplated. This court affirmed that ruling. **Devall**, 694 So.2d at 1141-1142.

In this case, as in **Devall**, the Parish President and Council have reorganized the local government pursuant to the Home Rule Charter. The St. Tammany Parish Home Rule Charter, Section 4-12, gives the Council and the President the power to create, change, alter, consolidate, or abolish Parish departments, including to reallocate functions, powers, duties, and responsibilities of positions in such departments. St. Tammany Parish Home Rule Charter Section 4-03, providing that the district attorney shall serve as legal advisor to the council, president and all departments, offices and agencies and represent the Parish government in legal proceedings, must be read and construed within the context of the entirety of the Home Rule Charter and the powers granted to the STPG, including Section 4-12, which provides for reorganization of the parish government.

Further, while Section 4-03(A) of the St. Tammany Parish Home Rule Charter states that the District Attorney "shall" serve as legal advisor, and "shall" is mandatory pursuant La. R.S. 1:3, the St. Tammany Parish Home Rule Charter does not state that the District Attorney is the "sole" or "exclusive" general legal advisor to the STPG. Likewise, the St. Tammany Parish Home Rule Charter does not have any express limitation on the Council's or Parish President's right to employ their

own counsel to provide general legal advice and services. The limitation is upon the hiring of counsel that is special or “outside” counsel, which can only be hired through a written contract approved by a majority of the council.

While Mr. Montgomery asserts that the ruling of the district court allows the STPG to decide when and under what circumstances it can compel the District Attorney to represent it, we find that the fact that the STPG maintains a separate Legal Department to advise it on civil legal matters does not mean that the District Attorney has been compelled to do anything.

We find no genuine issue of material fact that Mr. Montgomery will be unable to meet his burden to show that the defendants are operating a civil legal department that is in violation of the law, or to show that that the defendants are preventing him from performing his duties as district attorney. These assignments of error have no merit.

CONCLUSION

For the foregoing reasons, the September 18, 2016 district court judgment granting the motion for summary judgment filed by the St. Tammany Parish Council and Patricia “Pat” Brister, in her official capacity as Parish President, and dismissing the petition for declaratory and injunctive relief filed by Warren Montgomery, in his official capacity as District Attorney of St. Tammany Parish, is affirmed. The cost of this appeal in the amount of \$3,307.81 is assessed against Warren Montgomery, in his official capacity as District Attorney of St. Tammany Parish. Concerned Citizens of St. Tammany Parish and the Louisiana District Attorneys Association’s motions for leave to file amicus curiae briefs are granted.

**MOTIONS TO FILE AMICUS CURIAE BRIEFS GRANTED;
JUDGMENT AFFIRMED.**

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

STATE OF LOUISIANA

COURT OF APPEAL

VERSUS



FIRST CIRCUIT

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

NUMBER 2017 CA 0136

WHIPPLE, C.J., dissenting.

The majority concludes that there is no genuine issue of fact that plaintiff herein, the district attorney of St. Tammany Parish, will be unable to show that the defendants are operating a civil legal department that is in violation of the law, or to show that the defendants are preventing him from performing his duties as district attorney. I respectfully disagree.¹

While I agree that the parish president and council may reorganize the local government pursuant to the authority granted to them by Section 4-12 of the Home Rule Charter, this authority may not be used to effectively usurp the powers and duties of the district attorney as set forth by legislation.

Louisiana Constitution article V, §26 provides that in addition to acting as the criminal prosecutor for their district, district attorneys shall also perform other duties provided by law. Accordingly, LSA-R.S. 42:261 sets forth additional duties of district attorneys, clearly stating that district attorneys shall be the “regular attorney” for the parish governing authorities within their judicial district. The only exception to this statutory duty is when a **home rule charter** provides for the employment of a parish attorney or special attorney. LSA-R.S 16:2D.

¹I agree with the majority’s decision to grant the Concerned Citizens of St. Tammany and the Louisiana District Attorneys Association’s motions to file an amicus curiae brief.

The St. Tammany Parish Home Rule Charter does not specifically state that the district attorney is the “regular attorney” for the Parish; however, in my view, this is not determinative. Reading LSA-R.S. 42:261 and LSA-R.S. 16:2D *in pari materia*, as we must, the district attorney is the “regular attorney,” unless the home rule charter provides for the hiring of a parish attorney or special attorney. Herein, the St. Tammany Parish **Home Rule Charter** does not provide for the hiring of a parish attorney or special attorney in lieu of the district attorney.² Thus, in my view, since the Home Rule Charter does not provide otherwise, the district attorney for St. Tammany Parish has the statutory duty, and obligation, as well as the legal authority, to act as the “regular attorney” for the parish governing authorities within his judicial district.

Moreover, while there is no statutory prohibition against the creation of a parish legal department or the hiring of additional attorneys by **ordinance**, such ordinance(s) shall not infringe upon the statutory powers, *i.e.*, duties, granted to a district attorney to act as the “regular attorney.” An ordinance that is inconsistent with a state statute and its underlying policy is unconstitutional and without any force and effect. National Food Stores of Louisiana, Inc. v. Cefalu, 280 So. 2d 903, 907-908 (La. 1973) (“It is fundamental that a municipality cannot adopt ordinances which infringe the spirit of state law, or are repugnant to the general policy of the state.”); Cf. Savage v. Prator, 2004-2904 (La. 1/19/06) 921 So. 2d 51, 54-58. The subject ordinances do exactly this.

In particular, the second paragraph of Ordinance Number 5644, establishing “The Legal Department,” states that the district attorney is to serve “**upon the request**” of the parish government. Pursuant to this language, the district attorney is to serve as the attorney for the parish governing authorities only when requested

² Section 4-03B of the Home Rule Charter provides that special legal counsel may be retained for a “specific purpose”; however, this provision is not relevant under the facts and arguments made in the instant appeal.

to do so. This directly conflicts with the district attorney's clear statutory right and duty, pursuant to LSA-R.S. 42:261, to serve as the "**regular attorney**" for the parish governing authorities. Thus, in my view, plaintiff has demonstrated that the defendants are operating a legal department under the ordinance that is in violation of law, and moreover, defendants are preventing him from performing his statutorily established duties as the district attorney.

Last, as to the "ethical arguments" raised by defendants, these are hypothetical special situations that are best addressed as they arise. Additionally, there is nothing prohibiting the defendants from retaining special legal counsel in such specific situations; indeed, Section 4-03B of the Home Rule Charter expressly authorizes the hiring of special counsel for "a specific purpose." Moreover, I see no need to address the merits of the defendants' argument that their representation by the district attorney will conflict with the Rules of Professional Conduct, as the Supreme Court has exclusive jurisdiction to determine the merits of such argument. See Succession of Wallace, 574 So. 2d 348, 350 (La. 1991) ("This court has plenary power to define and regulate all facets of the practice of law, [...] including the attorney-client relationship.")

For these reasons, I respectfully dissent and would vacate the decision rendered by the judge herein.

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

**FIRST CIRCUIT


COURT OF APPEAL**

VERSUS

STATE OF LOUISIANA

**ST. TAMMANY PARISH
GOVERNMENT, ET AL**

NO. 2017 CA 0136

 CHUTZ, J., concurring.

Under the Home Rule Charter adopted by the citizens of St. Tammany Parish, Ordinance Calendar No. 5638 and Ordinance Calendar No. 5644 were legally enacted. See St. Tammany Parish Charter Sections 1-05, 2-10, 4-01, and 4-12. Therefore, plaintiff cannot sustain his burden of proof of entitlement to the declaratory and injunctive relief he seeks, and the trial court correctly granted defendants' motion for summary judgment, dismissing plaintiff's claims against defendants. Accordingly, I concur in the result reached in the lead opinion.