LOUISIANA SUPREME COURT

STATE OF LOUISIANA

_____

2017 -C- 1811

_____

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

VERSUS

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

WRIT APPLICATION FROM THE FIRST CIRCUIT COURT OF APPEAL,
No. 2017-CA-0136, THE HONORABLES WHIPPLE, C.J., McDONALD, AND CHUTZ, JUDGES

BRIEF ON BEHALF OF CONCERNED CITIZENS OF ST. TAMMANY PARISH, AMICUS CURIAE, IN SUPPORT OF THE GRANTED WRIT OF CERTIORARI BY WARREN MONTGOMERY IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY FOR ST. TAMMANY PARISH

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MAY IT PLEASE THE COURT:

CHRONOLOGY OF THE DISTRICT ATTORNEY'S ROLE IN ST. TAMMANY PARISH[1]

1979 - 2000

The first attempt at a Home Rule Charter for the parish began when the existing police jury established a charter commission in 1978, and a charter drafted by that committee was presented to the voters who enacted it in 1979. The change of government was a bumpy enough ride for the council to propose its abolition, which the voters approved merely three years later in 1982. At this point the parish government reverted to a police jury system.

Two things should be noted here: The 1979 charter had an express provision that allowed the parish to hire a "Parish Attorney" in lieu of using the District Attorney, but the parish government never did so. Second, as a matter of law a parish governed by a police jury is required to use the district attorney as its attorney. La. R.S. 16:2(A).

The current charter

Over fifteen years later, the parish was experiencing growing pains and once again looked at establishing a Home Rule Charter form of government. The same process was followed and the voters enacted the present charter by a vote held in 1998, which Charter became effective January 1, 2000. Of note is that this new (and present) Charter did not provide for the hiring of a "Parish Attorney" as had the prior one. With that prior experience, this was an obviously conscious decision; and when the parish operated under a police jury, just like now, the District Attorney was the attorney for the parish. Thus, the present Charter consistently maintains that well-established practice.

Section 4-03 of the Charter has remained unchanged since then, and we here quote it *exactly* as it appears in the charter together with its title:

> **Section 4-03. Legal Department.**
>
> A. The district attorney of the judicial district serving St. Tammany Parish shall serve as legal adviser to the council, president and all departments, offices and agencies and represent the Parish government in legal proceedings.

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[1] We have relied in part upon a report of the Bureau of Governmental Research ("BGR"), a non-profit, non-partisan organization of diverse professionals originally founded in 1930 "dedicated to gathering information on government and other public issues" with the purpose of "encouraging excellence in the various governments operating in the Greater New Orleans Metropolitan Area." *See* http://www.bgr.org/about/. This report, published in 2002, performed a thorough review of St. Tammany Parish government and its experience with what was then its new (and second) charter, and is publicly available at http://www.bgr.org/files/reports/St.Tammany_.pdf.

> 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.

Note the title because this is where the Defendants' much-quoted term "Legal Department" came from. The Defendants repeatedly talked about their "Legal Department" and the courts below adopted their arguments, in particular that they had established a "Legal Department" independent of the District Attorney. The reality is that *§4-03 of the Charter* both creates and expressly defines "Legal Department," and it was and is no more nor less than the office of the District Attorney. Defendants had no authority at any time to create anything to the contrary without amending this section of the Charter which had to be approved by an express vote of the citizens as required by both the La. Constitution and the St. Tammany Home Rule Charter.[2]

2000 - 2015

The Defendants represented in an argument adopted by the trial court that the "practice" since 2000 (or at least 2008 - they kept changing their arguments) had been for the "Legal Department" to be completely independent of the District Attorney. Patently false**:** What occurred was nothing more than *a courtesy* extended by the then District Attorney, Walter Reed, to the then Parish President, Kevin Davis, for the president to have an "executive counsel." And they followed the law: The first executive counsel, Robert Barnett, worked in the office of the Parish President, but he worked under the District Attorney as an assistant district attorney. Ditto for Kelly Rabalais who took over Robert Barnett's position in 2008 just before Pat Brister became Parish President.

BGR's 2002 report (see footnote 1) was based not only upon a review of the Charter but also consultations with key parish officials. This report states very clearly that §4-03 says exactly what it says: The District Attorney is the mandated attorney for the parish. But it also noted that the Parish Council was represented by an *assistant district attorney* assigned to it, and that the "Executive Counsel" was an assistant district attorney *who had to "report to the district attorney*."[3] Thus, when this arrangement was established by agreement between the parish

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[2] La Constitution, Art. VI, §5(C); Charter § 7-01(C) ("Proposals to amend or repeal this charter shall be submitted for ratification to the qualified electors of the Parish")

[3] BGR report, p. 9, op. cit. Based upon its view of potential conflicts of interest, the report recommended an amendment of the charter to allow the parish government to hire a parish attorney. As noted, that was attempted in 2015 and turned down by the voters. In any event, while establishing an independent office of parish attorney *might* eliminate some potential conflicts (which Section 4-03(B) was designed to address, as BGR also noted) it would only create another set of problems.

president and the District Attorney, §4-03 of the Charter was never altered in the slightest - something that neither had the authority to do in any case.

Further, the courtesy extended by the District Attorney to the Parish President was and remained his to withdraw at any time. And there lay the rub: In July, 2014, Walter Reed, who had been District Attorney for over twenty years, announced that he was not running for re-election (he had come under federal investigation and likely indictment).[4] Suddenly, the Defendants found an urgent need to amend the Charter, and a charter review committee was established which met a few months later, in September, 2014.[5] Out of this committee came the proposed charter change (Proposition No. 5) that, if passed by the voters, would remove the District Attorney as the mandated attorney and allow the president and council to hire attorneys of their choice. Here is how it came about, which reveals *without any doubt whatsoever* that the Defendants have always understood exactly what the Charter required despite all of their pretenses to the contrary in this and all the courts below.

The minutes of the "St. Tammany Parish Charter Review Committee" are a matter of public record and attached to the minutes of that committee's October 8, 2014 meeting[6] is a document entitled, "St. Tammany Parish Charter Review - Narrative of Suggested Changes by Pat Brister," dated October 6, 2014, in which Defendant and Parish President Pat Brister states:

> Section 4-03 should be deleted in its entirety and replaced... Removing the District Attorney as the attorney for Parish Government allows the Parish the constitutional right to choose its legal counsel; the District Attorney and Parish Government are two distinct political bodies and should freely govern themselves; and the current scenario creates an inherent conflict of interest between Parish Government and the District Attorney since the parish must provide state mandated funding to the District Attorney's office. [7]

Also part of the record of the meeting is the following which is marked in handwriting as being from Councilman Steve Stefancik (a committee member who is still on the Council) under the title "Charter Review Committee Items - Why are these presented for discussion":

> 4. DA or Independent Counsel
>
> The current charter provides that the District Attorney for St. Tammany parish

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[4] See "Embattled DA Walter Reed won't seek re-election in November," http://www.nola.com/crime/index.ssf/2014/07/da_walter_reed.html. He was subsequently charged, tried and convicted of multiple counts of wrongdoing.

[5] See "St. Tammany Parish's Charter Review Committee establishes framework for study, elects chairman" http://www.nola.com/politics/index.ssf/2014/09/st_tammany_parishs_charter_rev.html "

[6] The record of the meeting is part of the public records of the St. Tammany Parish Government in plain view: see http://www.stpgov.org/files/Charter%20Review/2_minutes_-_Oct_8.pdf

[7] See page 9 of the above document of the minutes. And just how amending the Charter can create a "constitutional right," or funding of the District Attorney's office by the Parish Government creates "an inherent conflict of interest," are head scratchers.

> shall serve as legal advisor and represent the parish in legal proceedings. The council may retain special counsel for specific purposes. The District Attorney provides representation to the council, the administration, and several Boards and Commissions instituted by the parish. The BGR 2002 study recommended a change as have LWV and CCST.[8]

The Defendants weren't the only ones who understood exactly what §4-03 required. The *Times-Picayune* had no trouble reporting what it said either: "The charter currently requires parish government to be represented by the district attorney's office except under specific circumstances."[9] And when the voters rejected that proposed amendment, the same newspaper had no trouble reporting exactly what that meant:

> Voters in St. Tammany Parish Saturday (Nov. 21) rejected controversial Proposition 5, calling for the elimination of the requirement that the district attorney serve as legal counsel for the parish government and Parish Council. The measure would let the parish president and council hire their own attorneys.[10]

2016 to date

So what changed? Nothing - except the Defendants' tactics. Having failed at the legal route to get what they wanted, they thereafter concocted a fictional history - a "Legal Department" completely independent of the District Attorney - and a new and absurd reading of the Charter in an attempt to do through the back door what they were required by law to do through the front. That the courts below have sanctioned this nonsense, this complete violation of the Charter, the statutes and so many other legal rules, not to speak of plain common sense, is beyond belief, and the citizens are justly outraged. CCST therefore implores this Honorable Court to reverse the judgment of the court below and remove this absurdity from the law.

ARGUMENTS

PART I: DEFENDANTS' ARGUMENTS BASED ON THE RULES OF PROFESSIONAL RESPONSIBILITY ARE PROFOUNDLY MISPLACED AND HAVE NO CONSTITUTIONAL BASIS

CCST begins with the Defendants' primary argument: That regardless of what either the Charter or the applicable Louisiana Revised Statutes say or require, they have a constitutional right to select attorneys of their choice. They have repeatedly pounded on this argument in hopes of getting around the reality that they have neither fact nor law in their favor. It is however so profoundly misplaced and would do such tremendous damage to our law, our form of government, and completely corrupt the attorney-client relationship, that it is the one argument that, respectfully,

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[8] See page 12 of the pdf document of the minutes. CCST, however, had made no such recommendation and in fact adamantly opposed the proposed Charter changes.
[9] "Our recommendations on St. Tammany charter changes: Editorial" 11/6/2015 *See* http://www.nola.com/elections/index.ssf/2015/11/st_tammany_charter.html
[10] *See* http://www.nola.com/politics/index.ssf/2015/11/st_tammany_parish_charter_prop_2.html

should be roundly, soundly and expressly rejected by this Honorable Court, particularly since it falls squarely within this Honorable Court's exclusive jurisdiction over the practice of law.

The Defendants' argument that "we're the clients and can hire and fire our attorneys as a matter of right whenever we please" is based upon a large and flagrant flaw: Defendants - more specifically, the individuals who occupy the positions of Parish President and members of the Council[11] - have confused their rights as individual citizens in their personal capacities with the obligations and limitations of the public offices to which they were elected. It is the voice of the individuals holding those offices that is being heard here, blurring the distinction between the office and the office holder. However, the "client" is the parish government, not them.

It is without doubt, and no one has argued otherwise, that Pat Brister has a right to select any attorney she wishes and cannot have an attorney thrust upon her. But not so the Parish President, who is bound by the Charter under which she was elected and which she, as did each member of the Council, swore an oath to uphold.[12] It is axiomatic to our democratic form of government that the private, personal rights of the persons who hold public office are separate and distinct from the rights and powers of the office they hold. It is that distinction which Defendants' argument tries to erase.

Neither governments nor the public officials who serve within them have any rights other than those delegated to them by the citizens.[13] It was the citizens of St. Tammany Parish who enacted the Charter by their vote, a Charter which provides that the government was and is to be represented by the District Attorney, whom the citizens also elect. **Thus:** The *citizens* who established the government *chose the lawyer,* whom they also elected, to represent *their* government and *did not* delegate that choice to their elected officials. The citizens even reaffirmed this when they rejected Defendants' proposed amendment to §4-03. As this Honorable Court has held, it is ultimately "the intent of the voting population that controls,"[14] an intent for which Defendants have shown nothing but contempt. The *citizens'* government is the client, under which the Parish President and members of the Council are officers elected to act under *and be bound by*

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[11] The vote of the Council to adopt the two ordinances which sought to amend the Charter was not unanimous, and those dissenters are not included in the opprobrium the others have earned.

[12] Charter, §8-04, requires "all elected officials of the Parish government" to "solemnly swear (or affirm) that I will support the... charter of this Parish..."

[13] See, e.g., J. Tate concurring in *State ex rel. Paul v. Peniston*, 235 La. 579, 591, 105 So.2d 228, 231 (1958): In a "democratic government... rights not delegated thereto by the people are reserved to the people, U. S. Constitution, Amendment X, Art. 1, Section 15, La. Constitution of 1921."

[14] *Arata v. Louisiana Stadium & Exposition Dist*., 254 La. 579, 225 So.2d 362, 372 (La. 1960), quoted recently in *Retired State Employees Association v. State*, 13–0499 (La. 6/28/13), 119 So.3d 568, 575

the Charter. The parish government is not their personal domain, and the fact that the government acts through them does not provide them with any independent right to select the attorneys without an *express* grant of such a right *in the Charter*, as required by La. R.S. 16:2(D). To the contrary, the citizens - twice now - chose *not* to grant their elected officials the discretion to choose their government's attorneys, the sole and very limited exception being "special legal counsel" hired "for a specific purpose." The Defendants' argument, accepted by the court below, that the general hiring provision of the Charter was an "opt out" from the statutory scheme despite the contrary mandate of §4-03 is nonsense. To the contrary, the Charter instead *opted in* to the statutory regime established in La. R.S. 42:261, the language of which is obviously, and quite intentionally, mirrored in Charter §4-03. It was clear error for the court below to hold otherwise.

This is law *ex vox populi*, and it is ludicrous for Defendants to plead that the citizens' designation of the attorney for their government is *lèse majesté.* Through the only means left to him, the District Attorney was forced to sue the Parish President and STPG, not to "accept" his representation, as if it were an option subject to their discretion, but to compel these public office holders to abide by the Charter which binds them. The only conflict of interest here is the phony one which the Defendants (i.e., the persons who are acting for the Defendants) have created through their abject and flagrant refusal to obey the Charter and their respective oaths thereunder.

This is also dispositive of Defendants' constitutional argument which was entirely derived from this Court's decision in *Succession of Wallace*, 574 So. 2d 348 (La. 1991). The designation of the parish *government's* attorney, applicable to all the government office holders in their *official* capacity - the only capacity relevant here - has absolutely nothing to do with the regulation of the practice of law or the rights of private citizens to select their attorneys. *Succession of Wallace, supra,* has no application here of any kind.

If as represented in their brief to the court below that they "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,"[15] their remedy is not to defy the Charter they swore to uphold, much less inviting the courts to change it by judicial fiat - which, to add more insult to injury, has been at the citizens' expense. Their remedy is to resign from their respective offices so that the citizens can elect individuals who will not betray their oaths and abide by the Charter the citizens enacted.

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[15] Appellees' Brief to court below, p. 29; also quoted in the District Attorney's Reply Brief, p. 8.

In any event, Defendants' claim that their motivation is their desire for "independent, unbiased legal advice" is yet more blustering nonsense: In choosing the District Attorney as the parish government's attorney, the citizens were *ensuring* that, to the greatest extent possible, their government officials would have truly "independent, unbiased legal advice." Attorneys who would necessarily be full time employees of the Parish President or the Council, hence doubly compromised by being beholden to them for their livelihood *and* subject to termination at will,[16] would hardly be "independent" or "unbiased," but quite the contrary. It is that control which Defendants covet and so strenuously seek, not truly independent counsel who just might give them advice they don't want to know about, opinions they might not want to hear, and who, very importantly, would be free to investigate and report any improper, unethical or illegal conduct within the government without fear of reprisal. Having the government's attorneys under the control of the District Attorney is a check and balance on the parish's executive and legislative branches, not a conflict of interest - because the *only* relevant interest here is that of the citizens who established this government, and it is *their* choice that must be respected and upheld.

PART II: THE NUMEROUS OBVIOUS AND EGREGIOUS ERRORS OF THE JUDGMENTS BELOW

1. IT WAS ERROR FOR THE COURTS BELOW TO INTERPRET CHARTER §4-03 WHEN IT IS CLEAR AND UNAMBIGUOUS

Both Civil Code Art. 9 and this Honorable Court have made it perfectly clear that when a provision of law is "clear and explicit... it is not subject to construction and should be applied according to the most usual signification in which the words used are generally understood." *State Through Dept. of Highways v. Bradford*, 141 So.2d 378, 386, 242 La. 1095 (La., 1961).[17] This Court has recently reaffirmed this fundamental principle of law:

> When a law is clear and unambiguous and its application does not lead to absurd consequences, the law must be applied as written, and no further interpretation may be made in search of the legislative intent. La. C.C. art. 9; La. R.S. 1:4. Unequivocal provisions are not subject to judicial construction and should be applied by giving the words their generally prevailing meaning. La. C.C. art. 11; La. R.S. 1:3...
>
> *Duckworth v. La. Farm Bureau Mutual Ins. Co.*, 11-2835 (La., 11/2/2012); 125 So.3d 1057, 1064

Charter §4-03 is and always was quite clear to everyone. That it says something different

[16] As the First Circuit Court of Appeal expressly found in *Mederos* v. *St. Tammany Parish Government,* 15-1602 (La. App. 1 Cir. 7/11/16); 199 So. 3d 30, wherein it interpreted this same Charter.

[17] See also P. Raymond Lamonica, Jerry G. Jones, *Legislative Law and Procedure, 2d* (Vol. 20, Louisiana Civil Law Treatise Series), (Thomson Reuters, New York), §7:5

is but a pretense promoted by the Defendants. It was therefore error for the courts below to interpret it, especially in a manner different from what it says.

2. THE LANGUAGE OF CHARTER §4-03 EXCLUDES ALL OTHER ALTERNATIVES TO THE DISTRICT ATTORNEY BEING THE ATTORNEY FOR THE PARISH GOVERNMENT

The court below went further into Never-Never Land when it adopted the Defendants' argument that Charter §4-03 does not say that the District Attorney is the "sole" or "exclusive" attorney:[18] Read as it is written, the *only* attorney in the "Legal Department" is the District Attorney - who is therefore, as a matter of logic, the sole and exclusive attorney. This is plain English that requires no further embellishment: "sole" or "exclusive" are unnecessary, extraneous words the absence of which is irrelevant.

Further, the application of the legal maxim inclusio unius est exclusio alterius (the inclusion of one is the exclusion of all other alternatives) renders the same result. In *DeLarge v. Department of Finance*, 94-1684 (La.App. 4 Cir. 3/27/96), 672 So.2d 1025, a public Commission's rules allowed "cash outs" in only three circumstances. In trying to support a cash out in an otherwise unauthorized circumstances, the plaintiff argued that since the word "only" did not appear in the rules, the rules did not expressly prohibit cash outs in other situations - essentially the same argument made by the Defendants here. The court applied the inclusio unius rule and rejected that argument:

> The mere fact that it was found necessary to have a rule, Rule VIII, Section 1.7, to allow cash outs in specified situations, implies that the cash outs are not permissible in the absence of a rule authorizing them.
>
> *Id*., 672 So.2d at 1029

This maxim has been applied to the interpretation of La. C.C.P. art. 1226 so as not to expand the permissible types of service on registered agents beyond what was expressly stated in that article. *Washington v. Premiere Auto., LLC*, 03-1614 (La. App. 4 Cir., 3/17/2004), 872 So.2d 1187, 1189-90; see also, *Kallauner v. One Source Const., LLC*, 08-0883 (La. App. 4 Cir., 10/8/2008), 995 So.2d 59, 61-62. This Honorable Court has likewise applied the maxim in interpreting statutory law. *Hill v. Commission on Ethics for Public Employees*, 453 So.2d 558, 562 (La. 1984):

> ...This is the singular prohibited activity; there is no specific prohibition in the statutes against being a cosmetologist or owning a salon. Thus, the law must be interpreted under the legal maxim inclusio unius est exclusio alterius. In other words, by barring only beauty school owners from serving on the Board of Cosmetology, the legislature by implication allowed cosmetologists and the

[18] Court of Appeal opinion, p. 13

owners of beauty salons to serve.

Id., 453 So.2d at 562 (footnote omitted)

Conversely here, by expressly designating the District Attorney as the attorney for the parish government (especially using the mandatory word "shall"), the hiring of any other attorneys, other than in the narrow exception of hiring an attorney for a "specific purpose," is prohibited.

3. A GENERAL PROVISION OF LAW CANNOT TRUMP A SPECIAL PROVISION

It was also a continuation of the above errors when the court below looked to a general provision of the Charter that allows the hiring of "employees as may be necessary" for authority to hire attorneys. In fact, the court below had it completely backwards when it held that the general hiring provision "does not carve out an exception from hiring attorneys."[19] To the contrary, attorneys are carved out from the general hiring provision by §4-03 *and* the revised statutes (see below). It is very well established that where two laws conflict, the law more specifically directed to the matter at issue must prevail over the general law.[20] Section 4-03 expressly controls the issue of attorneys for the parish government, excluding them from the general hiring provision.

Further, as correctly noted in the dissenting opinion below, read together La. R.S. 42:261 and La. R.S. 16: 2(D) mandate that the district attorney is the "regular attorney," unless the home rule charter provides for the hiring of a parish attorney or special attorney. In other words, there must be an *express* provision in the charter for the hiring of an attorney for the parish in order to exclude the district attorney. The general hiring provisions of the charter here thus cannot, as a matter of law, be used to hire attorneys.

4. CUSTOM AND PRACTICE CANNOT ALTER ENACTED LAW

This has been the hidden reason for the Defendants' repeated insistence that they operated a "legal department" completely independent of the District Attorney: To establish a "custom" that can be applied as law. But they never came out and said exactly that for good reason: Custom cannot trump law to the contrary. Article 1 of our Civil Code provides that the "sources of law are legislation and custom," but Article 3 is quite clear on which one rules over the other:

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[19] Court of Appeal opinion, p. 12

[20] *State Through Div. of Admin. v. McInnis Bros. Constr.*, 97-0742 (La.10/21/97); 701 So.2d 937; *Chelette v. Valentine*, 98-1822 (La. App. 3 Cir., 6/23/1999), 747 So.2d 69; *writ denied*, (La. 12/10/1999); *Smason v. Celtic Life Ins. Co*., 615 So.2d 1079, 1087 (La. App. 4 Cir.1993), writ denied 618 So.2d 416 (La.1993); *State v. One 1990 Sierra Classic Truck*, 94-0639 (La. App. 4 Cir. 11/30/94), 646 So.2d 492, 494, *writ denied*, 94-3171 (La.2/17/95), 650 So.2d 254; *State in Interest of T.J.T*., 97-0335 (La. App. 4 Cir. 4/9/97), 692 So.2d 1385

> Custom results from practice repeated for a long time and generally accepted as having acquired the force of law. *Custom may not abrogate legislation*.
>
> (emphasis supplied)

It was therefore error for the court below to hold that "the defendants had legal representation that was independent of the District Attorney's Office since 2007."[21] It's not only factually false - assistant district attorneys as a matter of law and logic cannot be independent of the District Attorney's office, an absolutely absurd proposition - it's completely irrelevant. It's also contrary to prior jurisprudence from the same court of appeal:

An identical argument made in a remarkably similar context was considered and rejected by the First Circuit in *Baton Rouge Union of Police, Local 237, I.U.P.A., AFL-CIO v. City of Baton Rouge*, 96 1976 (La. App. 1 Cir. 6/20/97), 696 So.2d 642, 643:

> Defendants also contend that the Metro Council has historically solicited the chancellor of the local university campus to submit nominations and that this custom has the force of law. Civil Code article 1 provides that legislation and practice are the two sources of law, but article 3 is clear that custom may not abrogate legislation. The custom of soliciting nominations from the chancellor of the local campus, which we find was a violation of [La. R.S.] 33:2476, cannot abrogate legislation that clearly intended the nominations be made by the system president.

See also *Thompson Tree & Spraying Service , Inc. v. White-Spunner Constr., Inc.*, 10-1187 (La. App. 3 Cir. 6/1/11), 68 So.3d 1142; *writ denied*, 11-1417 (La. 9/30/2011); 71 So.3d 290 ("There are two sources of law in Louisiana: legislation and custom, with legislation superceding custom in every instance.")

It was patent error for the court below to give legal weight to an alleged practice that was contrary to a clear provision in the Charter.

5. ORDINANCES WHICH CONTRADICT PROVISIONS OF THE CHARTER ARE NULL AND VOID *AB INITIO*

The Applicant has correctly pointed out that the Charter cannot be amended by the passage of an ordinance but only by a vote of the citizens, as required by our state constitution. The two ordinances which the court below erroneously found applicable should instead have been struck down as void *ab initio* because a charter is a type of constitution and its provisions trump any ordinances to the contrary.

The powers of a local government are limited by the state constitution or "its own home rule charter." *Campaign for a Living Wage v. New Orleans*, 02-0991 (La., 9/4/2002); 825 So.2d 1098, 1103. Many states have laws on local charters that are virtually the same as Louisiana's

and they recognize the same fundamental principles. These principles have also been very well established for over a century. *Hall v. City Of Macon*, 147 Ga. 704, 95 S.E. 248 (Ga., 1918), relying upon treatises on municipal corporations and ordinances that were first published in the Nineteenth Century, held as follows:

> The charter of the city is the organic law of the corporation, and "bears the same general relation to the ordinances thereof that the Constitution of the state bears to its statutes." 2 Dill. Mun. Cor. (5th Ed.) 904, § 575; McQuil. Mun. Ord. 21, § 15.
>
> *Hall v. City Of Macon*, *supra*, 95 S.E. at 249

It has been held that a charter is

> ...of course, the equivalent of a local constitution. It is the supreme organic law of the city, subject only to conflicting provisions in the federal and state constitutions and to preemptive state law.
>
> *Creighton v. City of Santa Monica,* 207 Cal. Rptr. 78, 88; 160 Cal.App.3d 1011, 1017 (1984).

Similarly, in *Central Power & Light Co. v. City of San Juan*, 962 S.W.2d 602, 612 (Tex. App.-Corpus Christi, 1998, writ dism'd w.o.j.), the court held:

> When a charter is adopted, that instrument becomes the fundamental law of the municipality in the same manner that the constitution is the fundamental law of the state...
>
> While broad discretion in many instances is permitted the municipal governing body in the exercise of its powers and authority, it must respect the express provisions of the charter in instances where they are applicable. ..
>
> (numerous citations omitted)

See also *Sierra Club v. Austin Indep. Sch. Dist*., 489 S.W.2d 325, 333 (Tex. Civ. App.--Austin 1972), *reversed on other grounds*, 495 S.W.2d 878 (Tex.1973):

> Limitations placed in the State Constitution are binding upon the Legislature..., and in like manner limitations placed in the charter are binding on the city council of a home rule city.

Likewise, limitations in the Parish Charter are binding on the Parish President and Council, and just as a statute passed by the legislature that is contrary to the state constitution is null and void as unconstitutional, so too are the two ordinances which are in direct contravention of §4-03.

CONCLUSION

The judgment of the court below was erroneous in practically every aspect: Its citations of fact were both in error and irrelevant to the legal issues, it ignored numerous applicable laws, and what it did cite it got not only completely wrong but if allowed to stand would do untold

damage to the laws of this state and the very manner in which we are governed. Concerned Citizens of St. Tammany implores this Honorable Court to reverse the judgment below and declare that the Charter of the Parish of St. Tammany requires that the District Attorney be the sole attorney for the parish government save for the very narrow circumstances set forth in §4-03(B). In particular, Defendants' arguments under the Rules of Professional Responsibility should be addressed and expressly rejected so that it is crystal clear that when a public office is required to use the office of a government attorney, that designation is binding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Amicus Curiae Brief has been served upon all counsel of record by hand delivery, facsimile transmission, and/or by depositing same in the U.S. mails, postage prepaid, this 22 day of February, 2018.

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L. KEVIN COLEMAN