

THE LOUISIANA DEPARTMENT OF JUSTICE, ET AL : NUMBER 652,283 SECTION 27  
 VS. : 19TH JUDICIAL DISTRICT COURT  
 : PARISH OF EAST BATON ROUGE  
 JOHN BEL EDWARDS, ET AL : STATE OF LOUISIANA

**RULING ON PLAINTIFFS' PETITION FOR PERMANENT INJUNCTION AND DECLARATORY JUDGMENT AND PLAINTIFF IN RECONVENTIONS' PETITION FOR PERMANENT INJUNCTION AND DECLARATORY JUDGMENT**

This matter came before this court on November 29, 2016 for hearing on the plaintiffs' The Louisiana Department of Justice and Jeff Landry in his capacity as the Attorney General for the State of Louisiana's petition for injunctive relief and declaratory judgment; intervenors petition for intervention joining and asserting the claims of plaintiff; Governor John Bel Edwards' reconventional demand for injunctive relief and declaratory judgment and The Louisiana Department of Justice and Jeff Landry in his capacity as the Attorney General for the State of Louisiana's Exceptions of Res Judicata, No Cause of Action and Prematurity to Governor John Bel Edwards' reconventional demand. After the hearing, the court took the matters under advisement for further review of the law and the evidence submitted to the court during the hearing.

The disputes framed in the petitions to this court challenge the legal authority of constitutionally created elected state officers within the executive branch of Louisiana state government and whether the activities complained of by each are within the lawful parameters of authority established by constitutional and statutory law - not policy.

**PLAINTIFFS' (AG's) PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF:**

The plaintiffs' petition seeks to enjoin the defendant, John Bel Edwards, in his official capacity as Governor for the State of Louisiana, from adopting, requiring or enforcing any action towards the implementation of Governor's Executive Order JBE 16-11 and to declare that JBE 16-11 is null and void as an ultra vires act of the Governor in violation of state law and the Louisiana and United States Constitutions. Specifically, the petitioner argues that Executive Order JBE 16-11 conflicts with existing law; violates the separation of power established by La. Const. Article II, §1 and §2 and Article III, §1; creates a newly created protected class of persons not

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recognized by current law; violates the Commerce Clause of the United States Constitution; violates certain First Amendment rights and privacy interest rights established by the Louisiana and United States Constitutions.

The defendant, Governor John Bel Edwards, has responded to the plaintiffs' claims asserting that Executive Order JBE 16-11 does not create new law; does not conflict with current law; but rather it is a lawfully issued policy directive relating to the issuance of state contracts and state employment.

The court after consideration of the law, evidence and arguments of counsel grants the plaintiffs' prayer for permanent injunctive and declaratory relief, enjoining the mandatory adoption and implementation of Executive Order JBE 16-11 and declaring that Executive Order JBE 16-11 constitutes an unlawful ultra-vires act because, regardless of the defendant's intent, the effect of its adoption and implementation, creates new and/or expands upon existing Louisiana Law as opposed to directing the faithful execution of the existing laws of this state pursuant to the authority granted unto the office of the Governor to issue executive orders. The court declares that Executive Order JBE 16-11 is a violation of the Louisiana Constitution's separation of powers doctrine and an unlawful usurp of the constitutional authority vested only in the legislative branch of government.

Louisiana Constitution Article IV, §5(a) declares the office of the Governor as the "*Chief Executive Officer*" of the State of Louisiana and he/she shall see that the laws of this state are faithfully executed and Louisiana Revised Statute 49:215 provides that the sole purpose for the issuance of an executive order is to provide the office of the Governor with a mechanism to "*faithfully execute the laws of the State of Louisiana.*" Based upon the evidence presented and the law, it is this court's ruling that Executive Order JBE 16-11 extends beyond the lawful parameters of executive order authority and its adoption and implementation is found to be either a creation of new law and/or an expansion of existing state law. In either case this is a violation of the separation of powers doctrine of the Louisiana Constitution and is an infringement upon the constitutional authority vested solely upon the Legislature of the State of Louisiana.

The court denies the petitioner's claims that Executive Order JBE 16-11 violates the Commerce Clause of the United States Constitution and that Executive Order JBE 16-11 violates certain first amendment rights and privacy interest rights of the Louisiana and/or United States Constitutions.

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**DEFENDANT IN RECONVENTION (AG's) EXCEPTIONS OF RES JUDICATA, NO CAUSE OF ACTION AND PREMATURITY:**

The court, after consideration of the law, evidence submitted on the exception of res judicata, and arguments of counsel denies the exception of res judicata. Further, the court, after consideration of the law, memoranda, and arguments of counsel on the exceptions of no cause of action and prematurity denies these exceptions except as otherwise noted in this ruling.

**PLAINTIFF IN RECONVENTION'S (GOV's) PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF**

The plaintiff in reconvention's petition seeks to have this court declare that the office of the Governor is the superior constitutional officer to the office of Attorney General and that, in the event of a dispute among these constitutionally created state officers of the executive branch of government relating to any legal matter involving the State of Louisiana, the office of the Governor's position shall prevail; declaring that the office of the Attorney General has no role in supervising or approving actions of attorneys representing state agencies, boards or commissions, except as otherwise provide for by La. Const. Article IV §8; declare that the office of the Attorney General has no role in the retention of private counsel other than for the defense of the state and state entities in tort or contract claims, pursuant to specific statutory law or the hiring of private counsel by state boards and commissions; that the role of the office of the Attorney General in the retention of private counsel does not extend to reviewing of private counsel to assert claims on behalf of the state or state entities, or to the retention of private counsel to advise any state entity other than a board or commission and that the office of Attorney General's role in the retention of private counsel for the defense of the state and state entities is limited to insuring that private counsel meet the qualifications promulgated by La. R.S. 49:258; and the plaintiff in reconvention further seeks a mandatory permanent injunctions mandating that the defendant in reconvention, Jeff Landry, in his official capacity as Louisiana Attorney General, abstain from his unlawful interference with the appointment and management of private counsel for state agencies, boards and commissions and his refusal to approve contracts with private counsel and to declare that his role in the appointment of private counsel to the state's agencies, boards and commission is limited to the review and approval of qualifications and fees.

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The defendant in reconvention responds arguing that the office of the Attorney General is the primary supervisor and appointing authority for outside legal counsel for the state and all state agencies, boards and commissions.

The court after consideration of the law, evidence and arguments of counsel grants in part and denies in part plaintiff in reconvention's prayer for injunctive and declaratory relief.

Louisiana Constitution Article IV, §8 creates the Department of Justice and that it is to be headed by an elected Attorney General who shall be the chief legal officer of the State of Louisiana. This constitutional provision grants unto the office of attorney general broad powers and authority over the state's legal affairs and interest including the authority to appoint assistant attorneys general that serve at his/her pleasure. This grant of constitutional authority is refined by numerous legislative acts.

In this matter, the office of the Governor challenges the boundary of power vested in the office of Attorney General when it comes to appointing and supervising private legal counsel to state agencies, boards and commissions and who, between them, has the last say when it comes to disputes over the legal affairs of this state.

LSA – R.S. 49:258 articulates the procedure for the procurement of private legal counsel for state agencies. This law gives state agencies the right to employ private legal counsel. This statute indicates that state agencies may hire whomever they desire. However, the law also requires that the appointment of private legal counsel to state agencies shall be made by the attorney general with the concurrence of the Commissioner of Administration. Accordingly, while it is true that the law allows state agencies to employ private legal counsel, the retaining of private legal counsel by them is subject to approval by the office of the Attorney General and the concurrence of the Commissioner of Administration.

LSA – R.S. 42:261 also affords state agencies, boards and commissions the right to employ private legal counsel as well, but again, this statute requires that the employment of said private legal counsel shall be made only upon the written approval of the governor and attorney general and their approval shall be given in their discretion. Therefore, it appears the law permits the Attorney General's involvement in the appointment of private legal counsel to state agencies, boards and commissions.

After considering the law and the evidence, the court denies the plaintiff in reconventions request for declaratory relief and request to enjoin the office of the Attorney General from

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interfering with the appointment of private counsel for state agencies, boards and commissions. It is this court's finding that the specific legislative authority promulgated in La. R.S. 42:262 and La. R.S. 49:258 provides that the office of the attorney general is vested with the authority to use his/her discretion in approving contracts for private legal counsel to state agencies, boards and/or commissions.

After consideration of the law and evidence, the court grants the plaintiff in reconvention's request for injunctive and declaratory relief enjoining and declaring that once private legal counsel has been lawfully appointed to represent the interest of a state agency, board or commission, the office of the Attorney General may not supersede the actions of private legal counsel representing state agencies, boards or commissions, except for cause as specifically provided for by La. Const. Article IV §8.

After consideration of the law and evidence, the court grants the plaintiff in reconvention's request for injunctive and declaratory relief enjoining and declaring that once private legal counsel has been lawfully appointed to represent the interest of a state agency, board or commission, the office of the Attorney General's authority does not extend to the review of the retention of private legal counsel to assert claims on behalf of the state or state entities or to the retention of private counsel to advise any state entity other than a board or commission, except for cause as specifically provided for by La. Const. Article IV §8, and pursuant to La. R.S. 49:257, La. R.S. 49:258, and La. R.S. 42:262.

After review of the pertinent provisions of the Louisiana Constitution, it appears the drafters of the Louisiana Constitution intended for the office of the Governor to be superior to that of the office of the Attorney General within the executive branch of Louisiana state government. Accordingly, the court declares that pursuant to the Louisiana State Constitution, the office of the Governor is constitutionally superior to that of the office of the Attorney General within the executive branch of Louisiana state government. However, whether the dictates of the office of the Governor are superior to that of the Office of the Attorney General when a dispute between them exists over any and all legal matters involving the interest of the State of Louisiana is currently not ripe for adjudication by this court. There is no evidence of a justiciable controversy concerning which constitutionally created officer of this state should prevail if a dispute were to arise between them relating to a legal matter concerning the legal interest of the State of Louisiana. In this court's view, addressing this perceived "what if" controversy would result in

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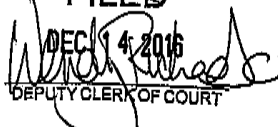
the issuance of an advisory opinion as opposed to a declaration of rights and obligations of the parties to this matter.

The court orders that the parties submit a judgment consistent with this ruling in accordance with Uniform District Court Rule 9.5. Each party is to bear their own respective cost of this proceeding.

Signed this 14<sup>th</sup> day of December, 2016.



TODD W. HERNANDEZ, JUDGE  
19th Judicial District Court  
Parish of East Baton Rouge  
State of Louisiana

FILED  
DEC 14 2016  
  
DEPUTY CLERK OF COURT