

SUPREME COURT

STATE OF LOUISIANA

**DUPLICATE
BRIEF**

2021-CA-00858

21 CA 858

WILLIAM MELLOR, ET AL
Plaintiffs- Appellees


VERSUS

THE PARISH OF JEFFERSON, ET AL
Defendants- Appellants

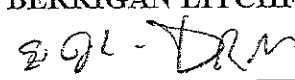
APPEAL OF JEFFERSON PARISH SCHOOL BOARD, JEFFERSON PARISH
SHERIFF JOSEPH P. LOPINTO, III, and the PARISH OF JEFFERSON from the
District Court for the 24th Judicial District Court for the Parish of Jefferson, No.
712-496, Division A, The Honorable Raymond S. Steib, Jr., presiding

ORIGINAL BRIEF ON BEHALF OF
JEFFERSON PARISH SCHOOL BOARD, JEFFERSON PARISH SHERIFF
JOSEPH P. LOPINTO, III, and the PARISH OF JEFFERSON

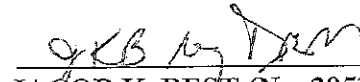
Respectfully submitted,


DANIEL R. MARTINY, LSB#9012
JAMES B. MULLALY, LSB#28296
MARTINY & ASSOCIATES, LLC
131 Airline Drive, Suite 201
Metairie, Louisiana 70001
Telephone: (504) 834-7676
Facsimile: (504) 834-5409
Email: danny@martinylaw.com

Respectfully submitted:

BERRIGAN LITCHFIELD, LLC
BY: 
E. JOHN LITCHFIELD (No. 8622)
MICHAEL J. MARSIGLIA (No. 30271)
201 St. Charles Avenue
Suite 4204 - Place St. Charles
New Orleans, LA 70170
(504) 568-0541
Email: jlitchfield@berriganlaw.net
Email: mmarsiglia@berriganlaw.net

Respectfully submitted:

BLUE WILLIAMS, LLC
BY: 
JACOB K. BEST (No. 29533)
GUICE A. GIAMBRONE, III (No. 25062)
3421 N. Causeway Boulevard
Suite 900
Metairie, LA 70002
(504) 830-4929

COUNSEL FOR APPELLANTS

Destined: 7-29-21
SUPREME COURT
OF LOUISIANA

2021 JUL 30 PM 12:37

CD
CLERK
OF COURT


INPUT BY: _____

TABLE OF AUTHORITIES

LOUISIANA CONSTITUTION

Article V Section 27 of the Constitution of the State of Louisiana 9,11
Article VI, Sec. 5(G) of the Constitution of the State of Louisiana 4,8,9
Article VII, Section 65 of the Constitution of the State of Louisiana 6
Article VIII, Section 9(A) of the Constitution of the State of Louisiana 9,11
Article XIV, Section 3(c) of the Constitution of the State of Louisiana 3

LOUISIANA REVISED STATUTES

La.C.C.P. art. 1880 4
La. R.S. 1:3 9
La.R.S. 13:5539(c) 9,11
La. R.S. 17:81 3,9,10,11
La. R.S. 17:158 10
La. R.S. 33:1324 12,13
La. R.S. 33:1325 12,13
La. R.S. 33:9020 12,13

HOME RULE CHARTER OF THE PARISH OF JEFFERSON

Home Rule Charter of the Parish of Jefferson, Section 2.01(A)(5) 3,5

JEFFERSON PARISH CODE OF ORDINANCES

Jefferson Parish Code of Ordinances §1.-2 9
Jefferson Parish Code of Ordinances §36-320 3
Jefferson Parish Code of Ordinances §36-322 4,11
Jefferson Parish Code of Ordinances §36-324(a) 4,5,8,10,11,13

LOUISIANA CASES

AFSCME, Council # 17 v. State ex. Rel. Dept. of Health & Hospitals,
2001-0422, (La.6/29/01), 789 So.2d 12638

Board of Directors v. All Taxpayers,
929 So.2d 743 (La. App. 2005) 8,13

Board of Directors of the Louisiana Recovery District v. All Taxpayers,
529 So.2d 384 (La.1988).....8

Hite v. Larpenter, 2004-1821,
(La.App. 1st Cir.9/23/05), 923 So.2d 140..... 8

McMahon v. City of New Orleans,
2018-0842 (La.App. 4 Cir. 9/4/19); 280 So.3d 7969,10,11

Orleans Parish School Board v. Quatrevaux,
2013-1635 (La. App. 4 11/7/13) 154 So. 3d 612 5

LOUISIANA ATTORNEY GENERAL OPINIONS

In re Mr. Allen L. Smith, Jr.,
Op. Att'y Gen. No. 09-0165 (July 30, 2009) 10,11

OTHER

Model Rules of Professional Conduction Rule 3.3(a)(2)10

28 LAC Pt CXXXVII, §307(E) 11

STATEMENT OF THE CASE

A. STATEMENT OF THE PROCEDURAL POSTURE

The instant matter is a Class Action Petition for Damages and Declaratory Judgment wherein Plaintiffs allege “Parish of Jefferson Code of Ordinances [...] §36-320 *et seq.* the School Bus Safety Enforcement Program (hereinafter "SBSEP"), is illegal and unconstitutional on its face and as applied, and was void *ab initio* and an *ultra vires* act [...]”.¹

The district court previously dismissed all of Plaintiffs’ claims against Jefferson Parish pursuant to a Judgment on Jefferson Parish’s Motion for Summary Judgment entered July 29, 2016. Plaintiffs subsequently amended their Petition for Damages and, on July 7, 2020, filed their Fifth Supplemental and Amending Class Action Petition for Damages and Declaratory Judgment re-naming Jefferson Parish as a Defendant herein and alleging *inter alia* the SBSEP “impermissibly violates the Home Rule Charter of the Parish of Jefferson, Section 2.01(A)(5)(a), by illegally transferring and/or diminishing the police powers of the Jefferson Parish Sheriff (hereinafter “JPSO”) insofar as it authorizes the Jefferson Parish School Board (hereinafter “JPSB”) rather than the JPSO to administer the SBSEP and notify alleged violators.”²

Plaintiffs further alleged in their Fifth Supplemental and Amending Petition that the SBSEP “impermissibly violates the Home Rule Charter of the Parish of Jefferson, Section 2.01(A)(5)(b), by illegally granting the JPSB police powers to enforce a parish traffic ordinance that the school board does not possess under LSA-R.S. §17:81, the general laws with respect to Parish School Boards, nor under Article XIV, Section 3(c) of the Constitution of the State of Louisiana as of 1921.”³

Subsequent to the filing of Plaintiffs’ Fifth Supplemental and Amending Petition, Plaintiffs and Jefferson Parish agreed that Plaintiffs re-named Jefferson Parish as a Defendant herein solely for the purposes of adjudicating the legality of the SBSEP. Plaintiffs are not seeking recovery of any money judgment against Jefferson Parish.

Plaintiffs and Jefferson Parish submitted a Consent Judgment confirming that fact to the Court and therein confirmed that the instant Motion for Summary Judgment “seeks

¹ 1 R.8-11.

² 2 R.347.

³ 2 R.347-348.

the return of monies collected by, and in the possession of, the Jefferson Parish School Board, the Jefferson Parish Sheriff and ONGO Live, Inc⁴, **only** [...and...] the Parish of Jefferson, pursuant to and in conformity with La.C.C.P. art. 1880, now appears in the case as a nominal Defendant only for the purposes of adjudicating the validity of [the SBSEP]”.⁵The sole question before the district court, then, was to decide the legality of the SBSEP.

The matter went to hearing on February 1, 2021.⁶ On February 25, 2021, the district court entered judgment in favor of Plaintiffs, declaring that the SBSEP violated Art. 6, Sec. 5(G) of the Louisiana Constitution.⁷

As set forth below, the district court clearly erred. The SBSEP appropriately created a mechanism whereby the JPSB and the JPSO, within the spheres of the separate authority granted to them by Louisiana law, could legally identify violators, fine violators, and enforce the SBSEP.

B. STATEMENT OF THE FACTS

The operative provisions of the SBSEP (and the provisions about which Plaintiffs complain) appear at Jefferson Parish Code of Ordinances §36-324(a) and provide as follows: “The Jefferson Parish School Board, or its agent, is responsible for the administration of the system and for notification of the violation. The Jefferson Parish Sheriff’s Office shall be responsible for the collection of the initial fines paid by the vehicle owner.” It is also important to note that the Jefferson Parish Council, in passing the SBSEP, included a statement confirming why they passed the SBSEP and what conditions existed that led the Council to pass the ordinance (Jefferson Parish Code of Ordinances §36-322):

The parish council finds and determines that a vehicle that overtakes or meets a stopped school bus [...] **damages the public by endangering students and operators alike**, by decreasing the efficiency of traffic control and traffic flow efforts, and by increasing the number of serious accidents to which public safety agencies must respond at the expense of the taxpayers.

(emphasis supplied).

⁴ On January 13, 2020, the district court entered Judgment in favor of Kathy Lee Torregano and the law firm of Berrigan Litchfield, LLC for withdrawing from representation of defendant ONGO Live, Inc. (1 R. 237).

⁵ 2 R.387.

⁶ 2 R.477.

⁷ 2 R.477-485.

The plain language of the SBSEP statutorily charges JPSB with the administration (and specifically not enforcement) of the SBSEP. Consequently, to comply with the ordinance and all other provisions of Louisiana law, the JPSB entered into the following two agreements to operationalize the SBSEP: 1) “Agreement [...] for Exclusive Professional Services for the ONGO School Bus Safety Program” (between JPSB and ONGO Live, Inc.); and 2) a “Cooperative Endeavor Agreement” (between JPSB and JPSO).⁸ The Agreement for Exclusive Professional Services with ONGO Live, Inc. (“ONGO”), provides as follows at section 3.3.5:

The Jefferson Parish Sheriff **SHALL** review the Violations Data to determine whether a Notice of Violation shall be issued with respect to each Potential Violation captured within such Violation Data, and transmit each such determination in the form of an Electronic Signature/Approval to ONGO using the software or other applications or procedures provided by ONGO on the ONGO System for such purpose, and ONGO HEREBY ACKNOWLEDGES AND AGREES THAT **THE DECISION TO ISSUE A NOTICE OF VIOLATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE JEFFERSON PARISH SHERIFF'S OFFICE** AND SHALL BE MADE IN SUCH SHERIFF'S EMPLOYEE'S SOLE DISCRETION (A "VIOLATION DECISION") AND IN NO EVENT SHALL ONGO HAVE THE ABILITY OR AUTHORIZATION TO MAKE A NOTICE OF VIOLATION DECISION;⁹

The Cooperative Endeavor Agreement between JPSB and JPSO provides that it shall be JPSO's responsibility to

“Review, approve or reject violations of Overtaking and Passing School Buses based on evidence made available to the Sheriff by ONGO Live, Inc.”¹⁰

ONGO provided the equipment and technology to document violations of the SBSEP, but the attached agreements (and the SBSEP itself) confirms that it was JPSO's “sole, unilateral and exclusive” prerogative to issue a notice of violation.¹¹ The framework for the operationalization of the SBSEP, therefore, is consistent with Jefferson Parish Code of Ordinances §36-324(a) and is organized in such a way that JPSB contracted with ONGO to identify potential violations and collect evidence thereof (IE: administer aspects of the SBSEP) and JPSO thereafter enforces the SBSEP. This

⁸ In support of its Judgment, the trial court cited *Orleans Parish School Board v. Quatrevaux*, 2013-1635 (La. App. 4 11/7/13) 154 So. 3d 612. This case is distinguishable from the present matter because the School Board in that *Quatrevaux* resisted and moved to quash a subpoena that OIG issued. Conversely, the JPSB and the JPSO both voluntarily entered into agreements to operationalize the SBSEP because it was within their authority to do so voluntarily and good for the citizens of Jefferson Parish. Neither the JPSB nor the JPSO have ever taken the position they do not have to follow the ordinance.

⁹ 2 R.406-407 Ex.

¹⁰ 2 R.428.Ex.

¹¹ 2 R.407-408 Ex.

ASSIGNMENT OF ERROR

1. The district court's judgment declaring the Parish of Jefferson School Bus Safety Enforcement Program unconstitutional was in error.

ARGUMENT

It is well established that “[u]nless the fundamental rights of a person are involved, legislative acts are presumed to be valid.” *Board of Directors v. All Taxpayers*, 929 So.2d 743, 750 (La. App. 2005), citing *Board of Directors of the Louisiana Recovery District v. All Taxpayers*, 529 So.2d 384, 387 (La.1988). “This presumption is especially forceful in the case of statutes enacted to promote a public purpose... The party attacking such a statute has the burden of showing clearly that the legislation is invalid or unconstitutional, and any doubt as to the legislation's constitutionality must be resolved in its favor. This is a heavy burden.” *Id.* “It is not sufficient to show that a statute's constitutionality is fairly debatable; it must be shown clearly and convincingly that it was the constitutional aim to deny the legislature the power to enact the statute.” *All Taxpayers*, 929 So.2d at 750, citing *Hite v. Larpenter*, 2004-1821, p. 4 (La.App. 1st Cir.9/23/05), 923 So.2d 140, 145. “Thus, to successfully challenge a legislative act as unconstitutional, the challenger must establish that no circumstances exist under which the act would be valid.” *All Taxpayers*, 929 So.2d at 750, citing *AFSCME, Council # 17 v. State ex. Rel. Dept. of Health & Hospitals*, 2001-0422, p. 8 (La.6/29/01), 789 So.2d 1263, 1269 (emphasis added).

In finding that the SBSEP was unconstitutional, the district court reasoned and held thusly:

Sec. 36-324 of SBSEP specifically mandates that the Jefferson Parish School Board, or its agent, is responsible for the administration of the SBSEP system and for notification of the violation. Jefferson Parish argues that SBSEP charges the Jefferson Parish School Board only with the administration, but not the enforcement, of SBSEP (which enforcement Jefferson Parish contends is left to the Jefferson Parish Sheriff's Office). However, the plain wording of the statute, along with Jefferson Parish's own admissions, charges an independent arm of the State that is not subject to Jefferson Parish's control under Jefferson Parish's Home Rule Charter, namely the JPSB, with various duties in administering Jefferson Parish's ordinance. This mandate to the JPSB violates the Louisiana Constitution, Art. 6, Sec. 5(G). Independent offices of the State of Louisiana, including the Jefferson Parish School Board, are beyond the control of Home Rule Charter governments including Jefferson Parish. Jefferson Parish, under its Home Rule Charter, cannot mandate that an independent arm of the State, in this case the Jefferson Parish School Board, assume Jefferson Parish's administrative or enforcement-related obligations under SBSEP...

Jefferson Parish Ordinance §36-324, SBSEP, unconstitutionally charged the administration of the SBSEP Ordinance to an independent arm of the State over which Jefferson Parish had no control pursuant to its Home Rule Charter. Therefore, the Court finds that SBSEP is unconstitutional

insofar as it violates LSA-Const. art. 6, Sec. 5(G), and grants Plaintiffs' Motion for Summary Judgment.

R.483, 484-485.

The foregoing ignores the record, the applicable law, namely *McMahon v. City of New Orleans*, 2018-0842 (La.App. 4 Cir. 9/4/19); 280 So.3d 796, and the most relevant part of Art. 6, Sec. 5(G) of the Louisiana Constitution.

LSA-CONST. Art. VI, Sec. 5(G) specifically provides that "[n]o home rule charter or plan of government shall contain any provision affecting a school board or the offices of the district attorney, sheriff, assessor, clerk of court, or coroner, **which is inconsistent with this constitution or law.**" (emphasis added).

In this case, the record makes plain that the SBSEP is perfectly consistent with the Constitution and laws of the state.

I. THE DIVISION OF RESPONSIBILITY BETWEEN THE JPSB AND THE JPSO IS LEGALLY PROPER UNDER THE CONSTITUTION AND LAWS OF LOUISIANA.

First, and foremost, the division of responsibility between JPSB and JPSO embodied in the SBSEP is entirely consistent with the School Board's statutory and constitutional mandate as set forth in La.R.S. 71:81, La.R.S. 71:185, and La. Const. Ann. art. VIII, §9(A) and the Sheriff's statutory and constitutional mandate as set forth in La.R.S. 13:5539(C) and La. Const. Ann. art. V, §27.

The district court conceded that the Sheriff was charged with enforcing the ordinance, the language of which is unambiguous and provides that the Sheriff "shall" be responsible for enforcement. The district court was correct. It is black letter law that when interpreting statutes or ordinances "[w]ords and phrases shall be read with their context and shall be construed according to the common and approved usage of the language... The word 'shall' is mandatory and the word 'may' is permissive. La. R.S. 1:3; Jefferson Parish Code of Ordinances §1.-2. There is no question, therefore, that the JPSB was not charged with enforcement duties. Nonetheless, the district court strayed from clear precedent, ignored *McMahon*, and held that the delegation of administrative functions to the JPSB (as below, this was done by agreement and not mandate) violated the Constitution. This was clear error.

Both *McMahon v. City of New Orleans*, 2018-0842 (La.App. 4 Cir. 9/4/19); 280 So.3d 796,¹⁵ and *In re Mr. Allen L. Smith, Jr.*, Op. Att'y Gen. No. 09-0165 (July 30,

¹⁵ *Writ denied*, 2019-01562 (La. 11/25/19); 283 So.3d 498.

2009), indisputably stand for the proposition that the JPSB may administer the SBSEP so long as it does not usurp the Sheriff's power for **enforcing** the SBSEP. Jefferson Parish Code of Ordinances §36-324(a) could not be more clear -- the JPSB administers the SBSEP and JPSO enforces it.

Furthermore, the decisions in *McMahon v. City of New Orleans* and *In re Mr. Allen L. Smith, Jr.*, are fundamentally premised on the fact that a Parish *may* permissibly delegate **administrative** responsibility for a traffic camera system to itself or any political entity authorized to engage in such activities (such as a school board when the traffic camera system pertains to transporting students to or from school). Plaintiffs argued, and the district court seemingly agreed, that the JPSB is not authorized to administer the SBSEP, but the fatal flaw in this argument is that La.R.S. 17:158 explicitly requires JPSB to provide school bus transportation service to students in the district:

[E]ach city, parish, and other local public school board **shall** provide free transportation for any student attending a school of suitable grade approved by the State Board of Elementary and Secondary Education within the jurisdictional boundaries of the local board if the student resides more than one mile from such school.¹⁶

To empower Louisiana school boards to accomplish their objectives, La.R.S. 17:81(C) also permits JPSB "to make such rules and regulations for its own government, not inconsistent with law or with the regulations of the State Board of Elementary and Secondary Education, as it may deem proper." Regulations of the State Board of Elementary and Secondary Education ("BESE") explicitly **require** JPSB to "ensure a safe environment by addressing real and potential challenges to the physical and emotional safety and security of students and staff that interfere with teaching and learning" and that includes "develop[ing] and monitor[ing] a comprehensive safety and

It cannot be ignored that Plaintiffs failed to bring the *McMahon* decision to the lower courts attention in their original Motion for Partial Summary Judgment. Counsel for the JPSB discovered *McMahon* when preparing its opposition. Not only is counsel for the Plaintiffs in this case, Joseph McMahon, the named plaintiff in said case, but the issues discussed (and the pleadings themselves) are nearly identical. The JPSB brought this case to the lower courts attention in its opposition as indisputable support (as argued here) for its position that it may administer the SBSEP. When confronted with the *McMahon* decision, Plaintiffs counsel doubled down on its omission stating "The JPSB's misguided reliance on the decision of *McMahon v. City of New Orleans* further reinforces that the SBSEP has always been an illegal ordinance given the JPSB's illegal and unauthorized involvement in its administration. (See Plaintiffs' Reply Brief, at 2 R. 325).

If, as Plaintiffs suggest, the *McMahon* decision "reinforces that the SBSEP has always been an illegal ordinance," then why would Plaintiffs not have included it in support of their original motion for summary judgment?

The failure to include the *McMahon* decision in its original Motion and its further dismissal of its relevance supports the JPSB's requested sanctions pursuant to La. C.C.P. Art. 863 and Model Rules of Professional Conduct Rule 3.3(a)(2) at the lower Court. The sanctions request, however, was not addressed by the Court.

¹⁶ La.R.S. 17:158(A)(1) (emphasis supplied).

security plan.”¹⁷ The proposition that any school board is authorized and empowered to take such steps as it deems necessary to protect the safety and well-being of school children should go without saying. Plaintiffs’ assertion that JPSB is not authorized to administer programs to accomplish that goal is insupportable.

The Jefferson Parish Council documented and codified the impetus for passing the SBSEP at Jefferson Parish Code of Ordinances §36-322:

The parish council finds and determines that a vehicle that overtakes or meets a stopped school bus [...] **damages the public by endangering students and operators alike**, by decreasing the efficiency of traffic control and traffic flow efforts, and by increasing the number of serious accidents to which public safety agencies must respond at the expense of the taxpayers.

(emphasis supplied). There is no question, as the Court found in *McMahon v. City of New Orleans*, 2018-0842 (La.App. 4 Cir. 9/4/19); 280 So.3d 796,¹⁸ (and as the Louisiana Attorney General opined in *In re Mr. Allen L. Smith, Jr.*, Op. Att’y Gen. No. 09-0165 (July 30, 2009)), that the Parish Sheriff is the only party empowered by Louisiana law to preserve the peace and apprehend public offenders.¹⁹

Consistent with these rulings, Jefferson Parish Code of Ordinances §36-324(a), does just that. It explicitly charges the Jefferson Parish Sheriff with enforcing the SBSEP. In cooperation with the JPSO, the JPSB is statutorily empowered to administer safety programs for the benefit of the students it transports to and from school and any suggestion to the contrary should be rejected. The division of responsibility between JPSB and JPSO embodied in the SBSEP is entirely consistent with the School Board’s statutory and constitutional mandate as set forth in La.R.S. 71:81, La.R.S. 71:185, and La. Const. Ann. art. VIII, §9(A) and the Sheriff’s statutory and constitutional mandate as set forth in La.R.S. 13:5539(C) and La. Const. Ann. art. V, §27.

The SBSEP could not be more clear that it delegates responsibility for enforcing the program to the JPSO, and administering the program to JPSB. Both are entirely “consistent” with the constitution and laws of the state.

Therefore, the judgment of the district court should be reversed.

¹⁷ 28 LAC Pt CXXXVII, §307(E) (Performance Expectation 3; Element C “Protecting the Welfare and Safety of Students and Staff”).

¹⁸ *Writ denied*, 2019-01562 (La. 11/25/19); 283 So.3d 498.

¹⁹ La.R.S. 13:5539(C) (“Each sheriff shall [...] preserve the peace and apprehend public offenders”) and La. Const. Ann. art. V, §27 (the sheriff “shall be the chief law enforcement officer in the parish”).

II. THE SBSEP AS THE CODIFICATION OF THE COOPERATIVE ENDEAVOR AGREEMENT IS CONSISTENT WITH THE LOUISIANA CONSTITUTION.

The SBSEP is consistent with Article VII, Section 14(C) of the Louisiana Constitution and La. R.S. 33:9020, *et seq.* because the SBSEP was the codification of cooperative endeavor agreements by and between all of the parties. La. CONST. Art. VIII(C) expressly provides that: "For a public purpose, the state and its political subdivisions or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual." That is precisely what was done in this case.

Therefore, the judgment of the district court should be reversed.

III. THE SBSEP IS PERMISSIBLE AND CONSISTENT WITH LA. R.S. 33:1324.

The SBSEP is consistent with La. R.S. 33:1324, which provides that:

[a]ny parish, municipality or political subdivision of the state, or any combination thereof, may make agreements between or among themselves to engage jointly in the...exercise of any power, provided that at least one of the participants to the agreement is authorized under a provision of general or special law to perform such activity or exercise such power as may be necessary for completion of the undertaking. Such arrangements may provide for the joint use of funds, facilities, personnel or property or any combination thereof necessary to accomplish the purposes of the agreement, and such agreements may include but are not limited to activities concerning: (1) Police, fire and health protection...

Further, "[a]ll arrangements concluded under the authority of R.S. 33:1324 shall be reduced to writing. For this purpose it shall suffice for each party to the agreement, acting through its governing body, to accept the agreement by the passage of an ordinance or resolution setting out the terms of the agreement." La. R.S. 33:1325. That is, again, precisely what was done in this case. Therefore, it is clear that the SBSEP was permissible and Consistent with La. R.S. 33:1324

The district court judgment should be reversed.

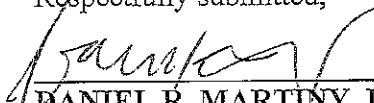
CONCLUSION

Plaintiffs had the burden of "establish[ing] that no circumstances exist under which the [SBSEP] would be valid." *All Taxpayers*, 929 So.2d at 750. Plaintiffs failed to meet their burden and the district court's judgment is erroneous. There is no evidence to suggest that either the JPSB or JPSO exercised any authority not properly granted to them under Louisiana law and the Louisiana Constitution. Louisiana school boards are constitutionally and statutorily charged with transporting students to and from school and

with providing for students' safety and well-being while doing so. Louisiana sheriffs are constitutionally and statutorily charged with preserving the public peace and order, apprehending all disturbers thereof, preventing crime and apprehending criminals, protecting the rights of persons and property, and enforcing the laws. The SBSEP appropriately empowered both the JPSB and the JPSO to perform their legal duties. Furthermore, the SBSEP is consistent with Article VII, Section 14(C) of the Louisiana Constitution and La. R.S. 33:9020, *et seq.*, as well as La. R.S. 33:1324 and La. R.S. 33:1325.

Accordingly, for the reasons argued above, the district court's Judgment "that Jefferson Parish Ordinance §36-324, SBSEP, unconstitutionally charged the administration of the SBSEP Ordinance to an independent arm of the State over which Jefferson Parish had no control pursuant to its Home Rule Charter" was in error and should be reversed.

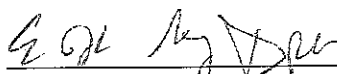
Respectfully submitted,



DANIEL R. MARTINY, LSB#9012
JAMES B. MULLALY, LSB#28296
MARTINY & ASSOCIATES, LLC
131 Airline Drive, Suite 201
Metairie, Louisiana 70001
Telephone: (504) 834-7676
Email: danny@martinylaw.com

Respectfully submitted:


BERRIGAN LITCHFIELD, LLC

BY: 

E. JOHN LITCHFIELD (No. 8622)
MICHAEL J. MARSIGLIA (No. 30271)
201 St. Charles Avenue
Suite 4204 - Place St. Charles
New Orleans, LA 70170
(504) 568-0541
Email: jlitchfield@berriganlaw.net
Email: mmarsiglia@berriganlaw.net

Respectfully submitted:

BLUE WILLIAMS, LLC

BY: 

JACOB K. BEST (No. 29533)
GUICE A. GIAMBRONE, III (No. 25062)
3421 N. Causeway Boulevard
Suite 900
Metairie, LA 70002
(504) 830-4929

VERIFICATION AND CERTIFICATE OF SERVICE

STATE OF LOUISIANA
PARISH OF JEFFERSON

BEFORE ME, the undersigned authority duly commissioned in and for the State and Parish aforesaid, on this 29th day of July 2021, personally came and appeared:

Daniel R. Mardiny

who, after being duly sworn, deposed and stated:

That s/he is counsel of record for Appellant, Sheriff Lopinto;

That s/he has reviewed the allegations in the foregoing writ application and, on information and belief, the allegations therein are true and correct; and

That s/he has delivered a copy of the writ application by hand or by placing same in the U.S. mail, properly addressed and first-class postage prepaid, to:

JOSEPH R. MCMAHON, III
110 Ridgelake Drive
Metairie, LA 70001
(504) 828-6225
(504) 828-6201 (fax)
Attorney for Plaintiffs



AFFILANT

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 29th DAY OF JULY 2021.



NOTARY PUBLIC
MY COMMISSION IS FOR LIFE

Jeffrey Mardiny 35412
Printed Name Bar Number

MARTINY & ASSOCIATES, LLC

ATTORNEYS & COUNSELORS AT LAW

131 AIRLINE DRIVE • SUITE 201 • METAIRIE, LOUISIANA 70001

TELEPHONE: (504) 834-7676

FACSIMILE: (504) 834-5409

DANIEL R. MARTINY
danny@martinylaw.com

JEFFREY D. MARTINY
jeff@martinylaw.com

July 29, 2021

Clerk of Court
Louisiana Supreme Court
400 Royal Street
New Orleans, LA 70130

21 CA 858

**RE: William Mellor, et al v. The Parish of Jefferson
2021-CA-00858**

Honorable Clerk:

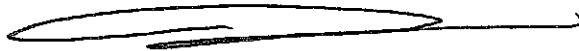
Enclosed please find the corrected original and 16 copies of the Original Brief on behalf of Jefferson Parish School Board, Jefferson Parish Sheriff Joseph P. Lopinto, III, and the Parish of Jefferson, the Appellants in the above-referenced matter. Please file the original into the record and return a stamped copy in the enclosed, self-addressed envelope.

We ask that you please withdraw the Brief that was in the incorrect format mailed in a separate envelope on this same date.

Thank you for your assistance in this regard.

With best wishes, I remain,

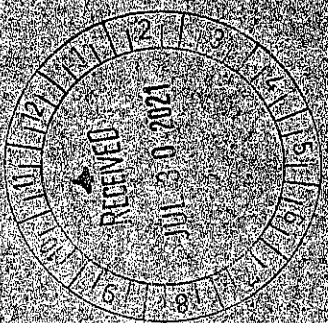
Very truly yours,



Jeffrey D. Martiny

JDM/jh
Enclosures

cc: Joseph McMahon (w/encl.) *Via email*



MARTINY & ASSOCIATES, LLC
ATTORNEYS & COUNSELORS AT LAW
131 AIRLINE DRIVE - SUITE 201 - METAIRIE, LA 70001

TO: Clerk of Court
Louisiana Supreme Court
400 Royal Street
New Orleans, LA 70130

21 CA 858

UNITED STATES POSTAL SERVICE.

Retail

US POSTAGE PAID
Origin: 70031
07/29/21
2160620001-02


\$9.55

P

PRIORITY MAIL 1-DAY®
3 lb 8.30 Oz
1020

EXPECTED DELIVERY DAY: 07/30/21 **C039**

SHIP TO: 400 ROYAL ST
New Orleans LA 70130-8145

USPS TRACKING® #

9505 5132 6933 1210 5993 05