

AT MR DAVID PERALTA'S REQUEST, THE COURT HAS ORDERED

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

THIS PLEADING TO BE PLACED IN THE PUBLIC RECORDED AND
NO. 05-15-0176 DIVISION: "7"
GRAND JURY NO. M001672

REMOVED FROM BEING FILED UNDER SEAL
STATE OF LOUISIANA
CERTIFIED TRUE COPY

VERSUS

DAVID PERALTA

MAY 20 2015

DEPUTY CLERK OF COURT

FILED: _____

DEPUTY CLERK: _____

~~*** FILED UNDER SEAL AS PER GRAND JURY RULE ***~~

**MOTION TO QUASH 6 MAY 2015 GRAND JURY INDICTMENT
FOR VIOLATION OF DAVID PERALTA'S RIGHT TO TESTIFY FULLY
AND FOR PROSECUTORIAL MISCONDUCT BY THE LOUISIANA ATTORNEY
GENERAL BEFORE AND INCORPORATED MEMORANDUM IN SUPPORT**

NOW INTO COURT, through undersigned counsel, comes DAVID PERALTA who moves the Court to QUASH the 19th JDC Grand Jury indictment of 6 May 2015, by the Louisiana Assistant Attorney General Matthew Derbes, and Mr. Peralta avers that:

- (1) AGA Matthew Derbes would not allow Mr. Peralta to complete his testimony and stopped him while testifying to which Mr. Peralta said "I am not finished testifying;
- (2) AGA Matthew Derbes would not give Mr. Peralta access to the public documents or to Mr. Peralta's own computer or the materials on its hard drives which information was being referred to during Mr. Peralta's questioning;
- (3) AGA Matthew Derbes said TWICE in front of the Grand Jury that he would have Mr. Peralta and his attorney arrested if Mr. Peralta did not get down from the witness stand, did not stop testifying, and did not leave the Grand Jury Room immediately.

Each action by the Louisiana Attorney General is a continuing violation of Mr. Peralta's constitutional and civil rights, such as requires the Court to QUASH the indictment and offenses filed on Wednesday, 6 May 2015. Counsel for Mr. David Peralta will amend his 42 U.S.C. § 1983 action against Louisiana Attorney General James D. "Buddy" Caldwell and his assistants and his office in the United States District Courts for the Eastern District of Louisiana [See: EDLA / No. 15-cv-1385]. As Mr. Caldwell and his assistants continue their violation of Mr. Peralta's rights and act



outside the scope of their authority as agents of the State of Louisiana the indictment filed is a nullity under federal and state law.

The Attorney General's Office has again taken actions for political purposes outside the scope of their official capacities such as to make the 19th JDC indictment an "absolute nullity" and to subject them to sanctions for contempt under revised code article La. C.Cr.P. art. 434.

Louisiana Code of Criminal Procedure art. 434 specifically states that: *Such persons may disclose testimony given before the grand jury, at any time when permitted by the court, to show that a witness committed perjury in his testimony before the grand jury.* Not only was Mr. Peralta (and counsel) threatened with arrest if Mr. Peralta continued to testify, but he was not allowed to complete his testimony as that testimony was probative of the facts underlying the Attorney General's accusation as well as his office's political maneuvering on behalf of friends of the Attorney General and his office.

Mr. Peralta moves the Court to QUASH the 19th JDC indictment issued on 6 May 2015, as the Louisiana Attorney General James D. Buddy Caldwell and his office continue to violate Mr. Peralta's rights which are protected under Article I Section 2 of the Louisiana Constitution (Due Process), Article I Section 3 of the Louisiana Constitution (Right to Individual Dignity), and the 5th and the 14th Amendments to the United States Constitution. See La. C. Cr. P. art. 680; La. const. art. I §2; La. const. art. I §3; U.S. const. amend. V; U.S. const. amend. XIV.

And again, in an equally egregious manner, the Louisiana Attorney General and his office and clearly violated Louisiana's procedural laws governing grand juries, as clearly set out and confirmed by the Louisiana Legislature in the official comments to these laws.

The official comments by the Louisiana Legislature gives notice that the article and related jurisprudence:

Official Revision Comment

- (e) THE STATUTORY OBLIGATION OF SECRECY DOES NOT PRECLUDE REVELATION OF TESTIMONY TO SHOW THAT A PERSON'S CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED. In *State v. Smalling*, 240 La. 887, 906, 125 So.2d 399, 405 (1960), the court said: "THE INDICTMENT . . . IS THE FOUNDATION OF THE CRIMINAL CASE, AND IF IT IS GROUNDED, IN WHOLE OR IN PART, ON EVIDENCE SECURED IN

VIOLATION OF A CONSTITUTIONAL RIGHT, IT IS AN ABSOLUTE NULLITY." Although the court in that case did not deal with the rule of secrecy required by statute (former Revised Statute 15:215), **IT NECESSARILY FOLLOWS THAT A REVELATION OF TESTIMONY MAY BE REQUIRED IN ORDER TO DETERMINE IF A PERSON'S CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED IN THE GRAND JURY ROOM.** The recent case of *Malloy v. Hogan*, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964), makes the Fifth Amendment privilege against self-incrimination applicable to state proceedings. In view of the nebulous extent of such constitutional rights, **AND THE FACT THAT SUCH RIGHTS CAN NEVER BE ABROGATED BY STATE STATUTE,** it was not deemed necessary or advisable to attempt the formulation of an exception to conform with the *Smalling* decision.

THE FEDERAL AND STATE LAW REQUIRE THAT THE INDICTMENTS BE QUASHED

Article 1 § 2 of the Louisiana Constitution provides that "no person shall be deprived of life, liberty, or property, except by due process of law." The Louisiana Supreme Court has defined the essence of due process as "protection from arbitrary and unreasonable action." *Plaquemines*, 379 So.2d at 1377. Furthermore, due process itself requires impartiality. See *Id.* Additionally, Article I Section 3 of the Louisiana Constitution commands that: "No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations."

The United States Supreme Court made clear in *United States v. Berger* -- echoed almost immediately by our Supreme Court in *State v. Tate*, -- that a prosecutor's responsibility was to seek justice, not convictions:

"[The prosecutor's] interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. . . ."

It is as much his duty to refrain from improper methods calculated to produce a wrongful

conviction as it is to use every legitimate means to bring about a just one. . . . *United States v. Berger*, 295 U.S. at 88 (emphasis added).

The Louisiana Constitution of 1974 embraces the same principle when it states, in Section I of Article I (The Origin and Purpose of Government):

All Government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights and promote the happiness and general welfare of the people.

La. Const. Art. I, sec. 1. In reference to the prosecutor's responsibilities towards fairness, our Supreme Court has plainly said:

The district attorney is a quasi judicial officer. He represents the State, and the State demands no victims. It seeks justice only, equal and impartial justice, and it is as much the duty of the district attorney to see that no innocent man suffers as it is to see that no guilty man escapes. *Plaquemines Parish Commission Council v. Perez, Jr.*, 379 So. 2d 1373, 1376-1377 (La. 1980) citing *State v. Tate*, 185 La. 1006, 171 So. 108 (1936).

The Louisiana Attorney General and his assistants, on 6 May 2015, so violated Mr. Peralta's rights such as to require the Court to QUASH the indictment and offenses charged as they were obtained outside the scope of Louisiana law and thereby denied Mr. Peralta of his rights under United States and the Louisiana Constitutions.

CONCLUSION & PRAYER

PRAYER

Mr. David Peralta and counsel pray that the indictment obtained on 6 May 2015 from the 19th JDC Grand Jury in Baton Rouge, Louisiana, be QUASHED, as:

- (1) AGA Matthew Derbes would not allow Mr. Peralta to complete his testimony and stopped him while testifying to which Mr. Peralta said "I am not finished testifying;
- (2) AGA Matthew Derbes would not give Mr. Peralta access to the public documents or to Mr. Peralta's own computer or the materials on its hard drives which information was being referred to during Mr. Peralta's questioning;

(3) AGA Matthew Derbes said TWICE in front of the Grand Jury that he would have Mr. Peralta and his attorney arrested if Mr. Peralta did not get down from the witness stand, did not stop testifying, and did not leave the Grand Jury Room immediately.

The conduct of the Attorney General and his assistants is such that the 6 May 2015 indictment should be QUASHED without further consideration.

In the alternative, the Court should set this Motion to QUASH the 6 May 2015 indictments, should be set for hearing immediately and heard at that time.

LET THIS ALSO SERVE AS FORMAL NOTICE THAT IN LIGHT OF WHAT WAS DONE BY THE ATTORNEY GENERAL, MR. PERALTA DOES NOT ACQUIESCE AS TO THE VALIDITY OF THE 6 MAY 2015 INDICTMENT AND THE OFFENSES FILED THEREIN.

Respectfully submitted,

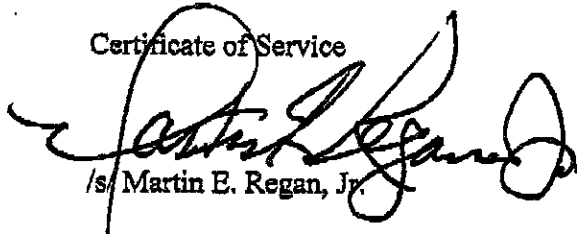
Regan & Sandhu Law Firm



/s/ Martin E. Regan, Jr.


Martin E. Regan, Jr.
Attorney at Law
Regan & Sandhu Law Firm, LLC
LSB No. 11153
2125 St. Charles Avenue
New Orleans, LA 70130
Telephone: (504) 522-7260
Facsimile: (504) 522-7507
Attorneys for Petitioner

Certificate of Service



/s/ Martin E. Regan, Jr.

Having filed this pleading using the with the Clerk of Court, on 8 May 2015, we have also served the Office of the Louisiana Attorney General and the District Attorney for the 19th JDC by electronic transmission.

FILED
EAST-BATON ROUGE PARISH, LA
2015 MAY -8 AM 8:38

DEPUTY CLERK OF COURT

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NO. 05-15-017
GRAND JURY NO. M001672

DIVISION: "7"

STATE OF LOUISIANA

VERSUS

DAVID PERALTA

FILED: _____

DEPUTY CLERK: _____

ORDER

For the reasons set forth in the motion and the constitutional issues raised,

The Motion to QUASH the 6 May 2015 Indictments issued by the Louisiana


Attorney General through the 19th JDC Grand Jury, shall be set for a contradictory

hearing on the _____ day of _____, 2015 beginning at _____ AM / PM

and continuing until completed.

Ordered on this _____ day of May 2015. Baton Rouge, Louisiana

Judge

FILED
EAST BATON ROUGE PARISH, LA
2015 MAY -8 AM 8:38

DEPUTY CLERK OF COURT

INDICTMENT

**STATE OF LOUISIANA
19th JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE**

STATE OF LOUISIANA

NO. _____ SECTION 7

VERSUS

DAVID E. PERALTA
4408 NEWPORT DRIVE
MERE AUX, LA
DOB: 11/06/1953

Filed May 6, 2015
Sharon [Signature]

A TRUE BILL
[Signature]
BY: *Eleanor S. Pihitti* FOREPERSON

FILED
EAST BATON ROUGE PARISH
2015 MAY -6 PM 2:
[Signature]
DEPUTY CLERK OF COURT

FACTUAL BACKGROUND

Defendant David Peralta was elected St. Bernard Parish President on Nov. 9, 2011, and served as Parish President at all times pertinent to this indictment. As an elected public official, defendant was required to file an annual Campaign Finance Report, a document filed in the public record with the Louisiana Board of Ethics in Baton Rouge, Louisiana. The Campaign Finance Report requires that all campaign finance expenditures be accurately disclosed, and page three of the form specifically states: *NOTICE...The personal use of campaign funds is prohibited. The use of campaign funds must be related to a political campaign or the holding of a public office or party position.*

During the time periods listed in the counts listed below, defendant withdrew cash from his campaign account using an ATM card at various casinos, including Harrah's of New Orleans, Hollywood Casino, the Silver Slipper, and Grand Casino Biloxi, and gambled with that money. Defendant either fraudulently reported those ATM withdrawals as campaign dinners/meetings that never occurred, or intentionally failed to report them altogether in an effort to conceal these illicit campaign expenditures that supported his gambling habit.

OFFENSES

On the 6th day of May, 2015, the Grand Jury for the Parish of East Baton Rouge, State of Louisiana, charges that in the Parish, District and State-aforesaid,

David Peralta

Committed the following offenses:

COUNT 1

On or about December 27, 2013 at 10:52 a.m., the defendant committed the crime of **Filing False Public Records**, as defined by Louisiana Revised Statute title 14:133, in that he filed a false public document with the Louisiana Board of Ethics, which contained a false statement or false representation of a material fact when he failed to report ATM withdrawals at casinos to be used for gambling purposes. Those ATM transactions included withdrawals from his campaign finance account at Regions' Bank;

COUNT 2

On or about September 22, 2014, defendant committed the crime of **Filing False Public Records**, as defined by Louisiana Revised Statute title 14:133, in that he filed a false public document with the Louisiana Board of Ethics, which contained a false statement or false representation of a material fact when he failed to report ATM withdrawals at casinos to be used for gambling purposes. Those ATM transactions included withdrawals from his campaign finance account at Regions' Bank. The defendant also falsified other expenditures on the report for the year 2013;

COUNT 3

On February 12, 2015, the defendant committed the crime of **Filing False Public Records** as defined by Louisiana Revised Statute title 14:133 in that he filed a false public document with the Louisiana Board of Ethics, which contained a false statement or false representation of a material fact when he failed to report ATM withdrawals at casinos to be used for gambling purposes. Those ATM transactions included withdrawals from his campaign finance account at Regions' Bank. The defendant also falsified other expenditures on the report for the year 2014;

COUNT 4

On May 6, 2015, under oath before the East Baton Rouge Parish Grand Jury, defendant testified falsely regarding the nature of his campaign expenditures in the year 2012. This testimony constitutes **PERJURY**, as defined by Louisiana Revised Statute 14:123, in that it is a materially false statement made knowingly and intentionally by Peralta in violation of La. R.S. 14:123(A) and (C)(4).

COUNT 5

On May 6, 2015 under oath before the East Baton Rouge Parish Grand Jury, defendant testified falsely regarding the nature of his campaign expenditures in the year 2013. This testimony constitutes **PERJURY**, as defined by Louisiana Revised Statute 14:123, in that it is a materially false statement made knowingly and intentionally by Peralta in violation of La. R.S. 14:123(A) and (C)(4).

COUNT 6

On May 6, 2015 under oath before the East Baton Rouge Parish Grand Jury, defendant testified falsely regarding the nature of his campaign expenditures in the year 2014. This testimony constitutes **PERJURY**, as defined by Louisiana Revised Statute 14:123, in that it is a materially false statement made knowingly and intentionally by Peralta in violation of La. R.S. 14:123(A) and (C)(4).

contrary to the law of the State of Louisiana and against the peace and dignity of the same;

FILED
EAST BATON ROUGE PARISH, LA

2015 MAY -6 PM 2:39

[Signature]
DEPUTY CLERK OF COURT

JAMES D. "BUDDY" CALDWELL,
ATTORNEY GENERAL

[Signature]
PUBLIC CORRUPTION UNIT

DAVID CALDWELL #26832

BUTCH WILSON

MATTHEW DERBES [#28019]

ASSISTANT ATTORNEYS GENERAL

STATE OF LOUISIANA

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NO. 05-15-0176
GRAND JURY NO. M001672

DIVISION: "7"

STATE OF LOUISIANA
VERSUS
DAVID PERALTA

FILED: _____

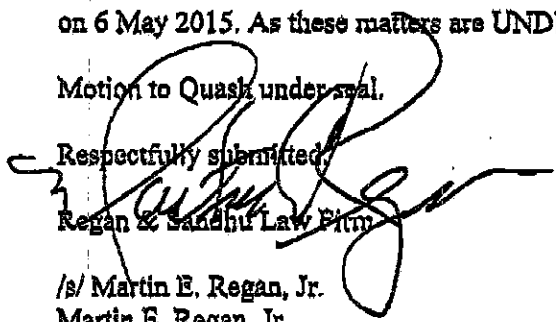
DEPUTY CLERK: _____

MOTION FOR LEAVE TO FILE THE FOLLOWING UNDER SEAL:
MOTION TO QUASH 6 MAY 2015 GRAND JURY INDICTMENT

NOW INTO COURT, through undersigned counsel, comes DAVID PERALTA who moves the Court for LEAVE TO FILE UNDER SEAL, Mr. Peralta's Motion to QUASH the 19th JDC Grand Jury indictment of 6 May 2015.

Mr. Peralta and counsel have prepared a Motion to Quash the Grand Jury Indictments filed on 6 May 2015. As these matters are UNDER SEAL, they request leave of the Court to file their Motion to Quash under seal.

Respectfully submitted,


Regan & Sandhu Law Firm

/s/ Martin E. Regan, Jr.
Martin E. Regan, Jr.
Attorney at Law
Regan & Sandhu Law Firm, LLC
LSB No. 11153
2125 St. Charles Avenue
New Orleans, LA 70130
Telephone: (504) 522-7260
Facsimile: (504) 522-7507
Attorneys for Petitioner


Certificate of Service

/s/ Martin E. Regan, Jr.
Having filed this pleading using the with the Clerk of Court, on 8 May 2015, we have also served the Office of the Louisiana Attorney General and the District Attorney for the 19th JDC by electronic transmission.

ORDER

For the reasons set forth in the Motion,

Mr Peralta and counsel are granted leave to file their Motion to Quash UNDER SEAL.

Ordered this 8th Day of May, 2015.

Baton Rouge, Louisiana

JUDGE

FILED
EAST BATON ROUGE PARISH, LA.
2015 MAY -8 AM 9:06
DEPUTY CLERK OF COURT

EBR2911603