

No. 23-30908
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

INCLUSIVE LOUISIANA; MOUNT TRIUMPH BAPTIST CHURCH; RISE ST.
JAMES, by and through their members,

Plaintiffs - Appellants,

v.

ST. JAMES PARISH; ST. JAMES PARISH COUNCIL; ST. JAMES PARISH
PLANNING COMMISSION,

Defendants - Appellees.

On appeal from United States District Court for the Eastern District of Louisiana,
Case No. 2:23-cv-00987

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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Undersigned counsel also certifies that Inclusive Louisiana, RISE St. James, and Mount Triumph Baptist Church have no parent corporation, and that no publicly held company holds 10% or more of the stock of Inclusive Louisiana, RISE St. James, or Mount Triumph Baptist Church.

/s/Astha Sharma Pokharel
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REQUEST FOR ORAL ARGUMENT

Pursuant to 5th Cir. R. 28.2.3, Plaintiffs-Appellants respectfully suggest that oral argument would be useful to assist the court in the disposition of the complex questions in this case. In particular, because the various legal issues upon which the district court ultimately dismissed the case implicate factually intensive questions, Plaintiffs-Appellants respectfully submit the Court would benefit from the elucidation oral argument would provide.

TABLE OF CONTENTS

TABLE OF AUTHORITIES **Error! Bookmark not defined.**

JURISDICTIONAL STATEMENT vi

STATEMENT OF ISSUES PRESENTED FOR REVIEW 1

STATEMENT OF THE CASE.....3

 A. Introduction3

 B. Statement of Facts5

 1. The Beginnings of the Parish’s Discriminatory Land Use Pattern and Practice.....6

 2. The Parish Codifies the Discriminatory Pattern and Practice.....7

 3. The Parish’s Subsequent Discriminatory Land Use Actions, Protecting Majority-White Districts While Sacrificing Majority-Black Districts.....9

 4. Continuing Violations: The Parish’s Enforcement of the Discriminatory Pattern and Practice Since March 21, 2022, Within the Limitations Period for Claims I-IV10

 5. The Parish’s Land Use Decisions Since March 21, 2019 That Discriminate Against Baptist Churches13

 6. The Parish’s Land Use Decisions that Harm Ancestral Burial Grounds13

 C. Proceedings Below15

 D. The District Court’s Decision.....17

SUMMARY OF THE ARGUMENT18

ARGUMENT22

 I. STANDARD OF REVIEW22

 II. THE DISTRICT COURT ERRED IN DISMISSING CLAIMS I-IV AND VI AS UNTIMELY: CLAIMS I-IV ARE BASED ON CONTINUING VIOLATIONS CARRYING INTO THE LIMITATIONS PERIOD AND CLAIM VI IS BASED ON UNLAWFUL ACTS THAT OCCURRED WELL WITHIN THE LIMITATIONS PERIOD.....23

 A. Claims I-IV Are Timely Because They Are Based on a Longstanding Discriminatory Pattern, Practice, and Policy That Has Continued Into The One-Year Limitations Period.....24

1. The Continuing Violations Doctrine.....	24
2. Plaintiffs’ Claims I-IV Are Based on a Longstanding Pattern, Practice, and Policy Which Has Been Continuously Enforced By the Parish Through Several Acts Within the One-Year Limitations Period.....	29
3. The District Court Erred by Applying a Notice Limitation to Plaintiffs’ Claim, Which Has Been Rejected by the Supreme Court.....	35
B. Claim VI: Plaintiffs’ RLUIPA Nondiscrimination Claim Is Also Timely Because the Parish Has Made Several Discriminatory Permitting Decisions Within The RLUIPA Four-Year Limitations Period.....	38
III. THE DISTRICT COURT ERRED BY: DISMISSING CLAIMS V AND VII FOR LACK OF STANDING; FINDING THAT PLAINTIFFS MOUNT TRIUMPH AND RISE HAD NOT SUFFICIENTLY PLED PROPERTY INJURIES; AND FINDING THAT PLAINTIFFS HAD NOT SUFFICIENTLY PLED STIGMATIC HARM.....	40
A. The District Court Erred in Ruling that Plaintiffs Did Not Have Standing to Bring Claims V (RLUIPA Substantial Burden) and VII (Louisiana Constitution Art. XII).	43
1. Plaintiffs’ Religious Injuries Stem From the Current and Future Destruction of Ancestral Cemeteries Allowed by the Parish, Not From Third Parties’ Restricting Plaintiffs’ Access to Them.	44
2. Plaintiffs’ Standing Under Claim VII and Other Claims is Also Based on Injury to the Historic and Aesthetic Value of the Area.....	47
B. The District Court Erred in Finding That RISE and Mount Triumph Did Not Have Standing for Their Property-Related Injuries.	49
C. The Court Erred in Ruling That Plaintiffs Do Not Have Standing Based on Stigmatic Harm.	50

TABLE OF AUTHORITIES

<u>Cases</u>	Page(s)
<i>Allen v. Wright</i> , 468 U.S. 737 (1984).....	51
<i>Banks v. McInstosh Cnty.</i> , 2022 WL 400810 (S.D. Ga. Feb. 9, 2022).....	28
<i>Bennett v. Spear</i> , 520 U.S. 154 (1997).....	42, 43
<i>Boswell v. Claiborne Par. Det. Ctr.</i> , 629 Fed. App’x 580 (5th Cir. 2015).....	25, 26, 34, 37
<i>Cinel v. Connick</i> , 15 F.3d 1338 (5th Cir. 1994).....	12
<i>Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.</i> , 807 F.3d 1031 (9th Cir. 2015).....	46
<i>Dean v. City of Shreveport</i> , 438 F.3d 448 (5th Cir. 2006).....	51
<i>Dep’t of Com. v. New York</i> , 139 S. Ct. 2551 (2019).....	43
<i>DiCocco v. Garland</i> , 52 F.4th 588 (4th Cir. 2022).....	42
<i>Dubose v. Kansas City S. Ry. Co.</i> , 729 F.2d 1026 (5th Cir. 1984).....	41
<i>Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.</i> , 528 U.S. 167 (2000).....	45
<i>Havens Realty Corp. v. Coleman</i> , 455 U.S. 363 (1982).....	19, 25, 26
<i>Haverkamp v. Linthicum</i> , 6 F.4th 662 (5th Cir. 2021).....	22
<i>Heath v. Bd. of Supervisors for S. Univ. & Agric. & Mech. Coll.</i> , 850 F.3d 731 (5th Cir. 2017).....	25, 33, 36
<i>Heckler v. Matthews</i> , 465 U.S. 728 (1984).....	51
<i>Humphreys v. Bennett Oil Corp.</i> , 195 La. 531, 197 So. 222.....	45
<i>Jenkins v. McKeithen</i> , 395 U.S. 411 (1969).....	50
<i>Jervis v. Mitcheff</i> , 258 F. App’x 3 (7th Cir. 2007).....	34

Jones v. Lumpkin,
 2023 WL 3075063 (5th Cir. Apr. 25, 2023) 38

K.P. v. LeBlanc,
 627 F.3d 115 (5th Cir. 2010)..... 42

Katz v. Vill. of Beverly Hills,
 677 F. App'x 232 (6th Cir. 2017) 26

Kennedy v. City of Zanesville,
 505 F. Supp. 2d 456 (S.D. Ohio 2007) 27, 28

Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton,
 422 F.3d 490 (7th Cir. 2005)..... 47

Locke v. Lester,
 78 So. 2d 14 (La. App. 2 Cir. 1955)..... 45

Lowrey v. Tex. A & M Univ. Sys.,
 117 F.3d 242 (5th Cir. 1997)..... 22

Lujan v. Defs. of Wildlife,
 504 U.S. 555 (1992) 42, 48, 54

McGregor v. Louisiana State Univ. Bd. Of Supervisors,
 3 F.3d 850 (5th Cir. 1993)..... 36, 37

Moore v. Bryant,
 853 F.3d 245 (5th Cir. 2017)..... 51

NAACP v. Tindell,
 90 F.4th 419 (5th Cir. 2024) 42

Nat'l R.R. Passenger Corp. v. Morgan,
 536 U.S. 101 (2002) 20, 36

Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville,
 508 U.S. 656 (1993) 52, 54

Palmer v. Bd. of Educ. of Cmty. Unit Sch. Dist. 201-U,
 46 F.3d 682 (7th Cir. 1995)..... 28

Perez v. Laredo Junior Coll.,
 706 F.2d 731 (5th Cir. 1983)..... 37, 25

Pit River Tribe v. U.S. Forest Serv.,
 469 F.3d 768 (9th Cir. 2006)..... 46

Poster Exch., Inc. v. Nat'l Screen Serv. Corp.,
 517 F.2d 117 (5th Cir. 1975)..... 29

Pye v. United States,
 269 F.3d 459 (4th Cir. 2001)..... 46, 47

Riddle v. Dyncorp Int'l Inc.,
 666 F.3d 940 (5th Cir. 2012)..... 22

Riverie v. Mills,
 481 So. 2d 1050 (La. App. 1 Cir. 1985)..... 45

Sierra Club v. Cedar Point Oil Co. Inc.,
73 F.3d 546 (5th Cir. 1996)..... 22

Sierra v. City of Hallandale Beach,
996 F.3d 1110 (11th Cir. 2021)..... 51

Silva v. Baptist Health S. Fla., Inc.,
856 F.3d 824 (11th Cir. 2017)..... 35

State ex rel Tureau v. Bepco LP,
351 So. 3d 297 (La. 2022)..... 41

Summers v. Earth Island Inst.,
555 U.S. 488 (2009) 48

Texas Cable & Telecommunications Ass’n v. Hudson,
265 F. App’x 210 (5th Cir. 2008)..... 43

Texas v. United States,
891 F.3d 553 (5th Cir. 2018)..... 36, 37

United States v. City of Parma,
661 F.2d 562 (6th Cir. 1981)..... 26, 27

United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.,
517 U.S. 544 (1996) 42

United States v. Herrera-Ochoa,
245 F.3d 495 (5th Cir. 2001)..... 12

Vidrine v. Vidrine,
225 So. 2d 691 (La. App. 3 Cir. 1969)..... 45

Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.,
429 U.S. 252 (1977) 34

Virginia Hosp. Ass’n v. Baliles,
868 F.2d 653 (4th Cir. 1989)..... 26

Waterford Citizens’ Ass’n v. Reilly,
970 F.2d 1287 (4th Cir. 1992)..... 46

Yumilicious Franchise, L.L.C. v. Barrie,
819 F.3d 170 (5th Cir. 2016)..... 18

Statutes & Ordinances

28 U.S.C. § 1291 1

28 U.S.C. § 1331 1

28 U.S.C. § 1343 1

28 U.S.C. § 1658(a) 20, 24, 38, 40

42 U.S.C. § 1982 Passim

42 U.S.C. § 1983 Passim
 42 U.S.C. § 1988 16
 42 U.S.C. § 2000cc Passim
 28 U.S.C. § 2201 1
 28 U.S.C. § 2202 1
 LSA-C.C. Art. 3447 41
 LSA-C.C. Art. 3651 41
 St. James Par., Ordinances, § 82-25..... 7

Constitutions

U.S. Const. amend. XIII..... Passim
 U.S. Const. amend. XIV, §1 Passim
 La. Const. Art. XII, Sec. 4 Passim

Rules

Fed. R. App. P. 4(a)(1)(A) 1
 Fed. R. Civ. P. 15(a)(1)(B) 16
 Fed. R. Civ. P. 26(c)..... 17
 Fed R. Civ. P. 12(b)(1)..... 16
 Fed R. Civ. P. 12(b)(6)..... 16
 Fed R. Civ. P. 12(f) 16

Other Authorities

Proceedings of the Planning Commission, Parish of St. James, State of Louisiana,
*A Resolution Approving the Application of Koch Methanol, St. James, LLC
 Under the St. James Parish Land Use Ordinance, with Conditions (Item # 23-25)*
 (Jul 31, 2023), 12
 Official Proceedings of the Council of the Parish of St. James, State of Louisiana,
 (Sept. 27, 2023) 12
 Official Proceedings of the Council of the Parish of St. James, State of Louisiana,
*Resolution 23-212, A Resolution Approving the Application of Acadian Pipeline
 to Allow Installation of A 20-Inch Diameter Pipeline to Koch Methanol, Which
 Consists of 7,412 Feet of New Pipe from the Existing Acadian’s Pipeline, Use in
 A Residential Growth Area 5883 St. Emma Street, St. James, Louisiana (Item
 #23-27) Under the St. James Parish Land Use Ordinance, with Conditions (Oct
 11, 2023)..... 12*

JURISDICTIONAL STATEMENT

The Eastern District of Louisiana had jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1343, 2201, 2202, 42 U.S.C § 2000cc et seq., and 42 U.S.C. §§ 1982, 1983.

This Court has jurisdiction over this appeal from the district court's final judgment pursuant to 28 U.S.C. § 1291, which was entered on November 21, 2023. ROA.1035. On December 20, 2023, Plaintiffs filed a timely notice of appeal from the district court's entry of final judgment. ROA.1036. Fed. R. App. P. 4(a)(1)(A).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the district court err in dismissing Claim I (Thirteenth Amendment), Claim II (Equal Protection), Claim III (Substantive Due Process - Bodily Integrity), and Claim IV (42 U.S.C. § 1982) on statute of limitations grounds by miscasting these claims as challenging a discrete act, when Plaintiffs clearly challenge a longstanding pattern and practice of racially discriminatory land use decisions, which constitutes a continuing violation that cannot be dismissed as untimely because at least one act in this pattern and practice occurred within the limitations period?

2. Did the district court err in dismissing Claim VI (Religious Land Use and Institutionalized Persons Act ("RLUIPA") Non-discrimination) on statute of limitations grounds where the Parish has, within the governing four-year

limitations period, imposed or implemented a land use regulation in a manner that discriminates against Baptist churches in majority-Black districts in the Parish?

3. Did the district court err in dismissing Claims V (RLUIPA Substantial Burden) and VII (Louisiana Constitution Art. XII) and concluding that Plaintiffs failed to demonstrate these injuries were traceable to the Parish's conduct, where the district court failed to credit Plaintiffs' allegations and take them in the light most favorable to Plaintiffs, and where those extensive allegations plausibly show that the Parish's repeated approval of industrial facilities on sacred burial sites where Plaintiffs' ancestors are buried injured Plaintiffs' religious practice?

4. Did the district court err in dismissing Claim VII (Louisiana Constitution Art. XII) on the grounds that Plaintiffs did not show standing based on a religious injury, where Plaintiffs nevertheless allege other, independent injuries—namely harm to the historic and aesthetic value of the area—sufficient to confer standing for this Claim?

5. Did the district court err in finding that Plaintiffs Mount Triumph Baptist Church and RISE St. James did not sufficiently allege standing based on injuries to their properties, when they have pled ample facts that plausibly show that their properties or their members' properties are located in a heavily industrialized District, and that the value of those properties has diminished as a

result of the Parish’s unlawful pattern and practice of steering polluting industry into that District?

6. Did the district court err in finding that Plaintiffs did not sufficiently allege stigmatic harm standing, where Plaintiffs’ extensive allegations plausibly show the Parish has engaged in a pattern and practice of steering harmful industry into majority-Black districts, in which Plaintiffs’ members, who are Black, reside, and which plausibly demonstrates the Parish’s disregard for the health and lives of Black residents of the Parish?

STATEMENT OF THE CASE

A. Introduction

Plaintiffs, two faith- and community-based organizations and a church, challenge St. James Parish’s (“Parish”) generations-long and continually-reinforced pattern and practice of discriminatory land use decisions that has intentionally steered harmful industrial facilities exclusively into the majority-Black districts of the Parish in which Plaintiffs’ members and congregants live and own property.

This pattern and practice, rooted in slavery and its afterlife, has transformed Plaintiffs’ communities into industrial sacrifice zones. ROA.597-598 [¶¶1-4]. The Parish’s ongoing actions harm these historic Black communities and their historic, cultural, and religious sites—including cemeteries of people once enslaved in the

Parish. ROA.599-580 [¶¶5, 7-9, 12]. Despite Plaintiffs' efforts to protect their health, property, religion, environment, history, culture, and dignity, ROA.599-596 [¶¶4,7], this discrimination continues unabated through today: as recently as August 17, 2022 as alleged in the Complaint, ROA.685 [¶341], and July and October 2023 as described below, the Parish has taken several actions to continue its enforcement of this pattern and practice.

To end the Parish's discriminatory land use decision-making, Plaintiffs bring Thirteenth Amendment, Equal Protection, Substantive Due Process, 42 U.S.C. § 1982, and Louisiana Constitutional claims. ROA.731-737, 741-742. Plaintiffs also bring two claims under RLUIPA. First, Plaintiff Mount Triumph Baptist Church ("Mount Triumph") claims that the Parish has violated RLUIPA's nondiscrimination provision by imposing or implementing a land use regulation in a manner that protects Catholic churches but not Baptist churches in the Parish. ROA.738-739. Second, all Plaintiffs claim that the Parish has violated RLUIPA's substantial burden provision by approving industrial facilities which have destroyed and threaten to destroy sacred cemeteries of Plaintiffs' members' ancestors: people once enslaved in the Parish. ROA.739-741.

After enduring this decades-long harm, Plaintiffs should not be denied their day in court by a ruling that would shield ongoing invidious racial and religious discrimination.

B. Statement of Facts

Plaintiffs are three organizations with Black members and congregants who live, work, and worship in the Parish’s historically and majority-Black Fourth and Fifth districts. Plaintiff Inclusive Louisiana is a non-profit, grassroots community advocacy organization based in St. James Parish, undertaking work grounded in their Christian faith. ROA.605-606 [¶23]. Mount Triumph, “the little church with a big heart,” is a Baptist church founded in 1904 by individuals emancipated from slavery, and engages in community outreach and care for sick members of the Parish. ROA.606-607 [¶24]. RISE St. James (“RISE”) is a faith-based, grassroots organization focused on environmental justice causes. ROA.607 [¶25]. All Plaintiffs have founders and members or congregants who are descendants of people enslaved on plantations in the Parish. ROA.605-607 [¶¶23-25].

The Parish controls all land use decision-making in Plaintiffs’ districts. ROA.607-609 [¶26]. Plaintiffs allege that the Parish’s decades-long pattern and practice policy of directing industrial facilities to the majority-Black Fourth and Fifth districts, while sparing majority-white parts of the Parish from such dangerous land use decisions, constitutes a continuing, consciously-reinforced form of racial discrimination. ROA.731-737 [¶¶554, 564, 572, 579]. This pattern and practice has grave impacts on Plaintiffs’ members’ environment, health, properties, religion, historic sites, and dignity. *See, e.g.*, ROA.704-718 [¶¶433-

493]. The resulting health impacts are so devastating that the area where Plaintiffs live is now widely known as “Cancer Alley.” ROA.655 [¶211]. Fifth District residents, who in 2020 were 89% Black and in 2010 were 87% Black, rank 89th percentile statewide and 95th-100th percentile nationwide for risk of developing cancer due to exposure to toxic air pollution (“Air Toxic Cancer Risk”). ROA.704 [¶436]. Fourth District residents, who in 2020 were 52% Black and in 2010 were 61% Black, rank 95th percentile statewide and 95th-100th percentile nationwide for Air Toxic Cancer Risk. ROA.705 [¶437].

1. The Beginnings of the Parish’s Discriminatory Land Use Pattern and Practice

In 1958, heavy industry first entered St. James Parish. ROA.646 [¶181]. Since then, the Parish has sited at least twenty-four industrial facilities, at least twenty of which have been steered into the majority-Black Fourth and Fifth districts, many of which are in or near historic Black communities. ROA.598 [¶4]; ROA.686-687 [¶347]. By contrast, no facility has been allowed to locate in or near predominately white parts of the Parish in over 46 years. ROA.686 [¶347].

In 1966, for example, Parish leadership made plans to develop a \$50 million phosphoric acid complex in the Fourth District’s historic Black community of Convent. ROA.647-648 [¶¶187-188]. This facility rests on the former site of the Uncle Sam plantation and today is a radioactive acidic waste lake owned and operated by fertilizer company Mosaic, ROA.648 [¶188], and is within one mile of

Mount Triumph and two miles of historic Romeville. ROA.649 [¶190]. Mosaic operates another facility, Mosaic Faustina, in the majority-Black Fifth District. ROA.650 [¶195-196]. These facilities expose their neighbors, including congregants of Mount Triumph and founding members of Inclusive Louisiana, to high levels of toxic air emissions. ROA.650-651 [¶¶192, 196-197].

The Parish has continued siting industrial facilities on former plantations, near majority-Black churches, and in its majority-Black districts in the subsequent decades. *See* ROA.651 [¶199] (NuStar petroleum storage terminal sited on LaPlace Plantation grounds in 1968, within 600 feet of Mount Triumph); ROA.653 [¶203] (America’s Styrenics sited on Lauderdale Plantation grounds in 1971); ROA.665-710 [¶¶256-257, 462] (Occidental Chemical sited in 1981, near Inclusive Louisiana members in Romeville and less than two miles from Mosaic Uncle Sam); ROA.657 [¶220] (proposed siting of Shintech polyvinyl chloride plant in Convent, in 1996); ROA.663-665 [¶¶248-255] (Nucor Steel constructed in 2011 on the site where Shintech intended to locate, within a mile of the historic Black community of Romeville, which includes a church and cemetery).

2. The Parish Codifies the Discriminatory Pattern and Practice

On April 2, 2014, the Parish Council adopted a formal Land Use Plan (the “2014 Plan” or “Plan”), St. James Par., Ordinances, § 82-25, which merely reduced to writing this pre-existing pattern and practice, and which Plaintiffs assert is

further evidence of the Parish’s continuing racially and religiously discriminatory land use system. ROA.675 [¶291]. As discussed further below, the speedy adoption of the Plan helped the Parish keep two major industrial facilities from locating in majority-white parts of the Parish. The Plan designated overwhelming portions of the Fourth and Fifth district as “Industrial,” demonstrating the Parish’s clear intent to continue sacrificing those areas to harmful industry. ROA.671 [¶280]. It also designated residential areas in the Fourth and Fifth districts as “Existing Residential/Future Industrial,” demonstrating an intent to end these historic Black communities. ROA.672 [¶¶284-286]. Additionally, the “Future Industrial” designation limited residents’ ability to subdivide and sell their land to anybody except immediate family members. ROA.674 [¶289]. This designation was not used in any other district under the Plan. ROA.672 [¶284].

Further embodying the Parish’s historically discriminatory practice, the 2014 Plan also provided two-mile buffer zones separating industrial sites from some schools, Catholic churches, and plantations—but concentrated the protections afforded by those buffer zones in majority-white parts of the Parish. ROA.671-673 [¶¶280, 287]. The Plan did not provide buffer zone protections to several predominantly Black schools, like St. James High School, and churches, including Mount Triumph, Pleasant Hill Baptist Church, Burton Lane Church, and St. Paul Church. ROA.671 [¶281].

The Parish Council approved amendments to the Plan on May 3, 2018, which, on its face, removed the explicit two-mile buffer zone protections. ROA.676 [¶300]. Though explicit references to buffer zones were removed, all subsequent land use decisions by the Parish have treated those buffer zones as though they exist: protecting Catholic churches in majority-white districts, while sacrificing Baptist churches in majority-Black districts to industry. ROA.676-677 [¶¶300, 303]. The amended Plan also expanded industrially designated areas in the Fifth District and changed the land use designation there from “Existing Residential/Future Industrial” to “Residential Growth,” but did not alter the Fourth District’s “Existing Residential/Future Industrial” designation. ROA.677 [¶301].

3. The Parish’s Subsequent Discriminatory Land Use Actions, Protecting Majority-White Districts While Sacrificing Majority-Black Districts

While the Land Use Plan allows the Parish to continue easily directing heavy industrial facilities to the Fourth and Fifth districts, the Parish has at times chosen to ignore even the nominal constraints in the Plan when approving sites in these majority-Black districts. On March 25, 2015, the Parish Planning Commission approved an industrial development land use application for YCI Methanol in the Fifth District. ROA.700 [¶410]. This approval violated the Plan as it would be in an area designated for residential growth, not industrial development. ROA.700 [¶¶410-411]. This is in addition to the fact the facility

would be built on top of St. James High School, which was not afforded a two-mile buffer zone like schools in the majority-white parts of the Parish. *Id.*

On August 8, 2018, the Parish approved expansion of Ergon St. James Inc.'s crude oil terminal, within 500 feet of Mount Triumph in the Fifth District, in conflict with the Land Use Plan because it was approved in an area designated for agricultural, not industrial, use. ROA.701 [¶¶417-418].

Thus, the Parish has overlooked the Plan's minimal restrictions when it sought to locate heavy industry in majority-Black districts, but aggressively enforced the Plan's restrictions on heavy industry in majority-white parts of the Parish. *See* ROA.678-680 [¶¶307-315] (in 2014, Parish denied Wolverine Terminals Corp. approval to locate in majority-white District, while attempting to steer it to majority-Black District); ROA.680-683 [¶¶316-329] (in 2014, Parish aggressively enforced land use regulation against Petroplex, which sought to locate in majority-white area of the Parish, and issued a stop-work order, which ultimately ended the project); ROA.683-686 [¶¶330-341] (in 2022, Parish imposed moratorium on solar farms at request of white residents).

4. Continuing Violations: The Parish's Enforcement of the Discriminatory Pattern and Practice Since March 21, 2022, Within the Limitations Period for Claims I-IV

Since March 21, 2022, the Parish has taken several actions that reveal its continued enforcement of its discriminatory land use pattern and practice, acceding

to white residents' concerns about facilities that would not even emit air pollution while ignoring similar pleas from Black residents about facilities that would increase the toxic load on their communities.

In 2021, solar power companies proposed two solar power farms in St. James Parish's Sixth District, near the majority-white South Vacherie community. ROA.683 [¶330]. The Parish Council engaged in extended debates on the benefits and drawbacks of the solar power proposals, heeding residents' concerns about potential aesthetic effects and impacts on property values from solar development. ROA.684-685 [¶¶331-341]. On August 17, 2022, the Parish passed a resolution amending the Land Use Plan to include a moratorium on commercial solar facilities, barring their approval until the Parish-commissioned economic and environmental impact studies were completed. ROA.684-685 [¶¶334-335]. That same day, RISE members renewed their longstanding request that the Parish consider a similar moratorium on heavy industry in the Parish because of comparable concerns, which the Parish ignored. ROA.685 [¶¶338-340].

Finally, even since the filing of Plaintiffs' Amended Complaint, the Parish has approved two additional land use proposals that conflict with the Plan and will primarily impact the Fifth District: Koch Methanol and Acadian Gas Pipeline

(“Acadian Gas”).¹ On July 31, 2023, the Parish Planning Commission approved an application by Koch Methanol, which is within 2.7 miles of Mount Triumph (ROA.700 [¶410]), to expand its operations in the Fifth District within 2 miles of St. Paul Baptist Church, into an area designated as wetlands, and not for industrial use.² And on October 11, 2023, the Council approved a land use request by Acadian Gas to construct a new pipeline in the Fifth District, a portion of which would be in an area designated as “Residential Growth,” and also not intended for industrial use.³

¹ Plaintiffs ask this Court to take judicial notice of Exhibits 1, 2, and 3. These are meeting minutes and resolutions approved by the Parish and were obtained from the Parish’s website at www.stjamesla.com/agendacenter. “In deciding a 12(b)(6) motion to dismiss, a court may permissibly refer to matters of public record.” *Cinel v. Connick*, 15 F.3d 1338, 1343, n.6 (5th Cir. 1994). “An appellate court may take judicial notice of facts, even if such facts were not noticed by the trial court.” *United States v. Herrera-Ochoa*, 245 F.3d 495, 501 (5th Cir. 2001). A court can take judicial notice of any fact “not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” *Id.*

² Proceedings of the Planning Commission, Parish of St. James, State of Louisiana, *A Resolution Approving the Application of Koch Methanol, St. James, LLC Under the St. James Parish Land Use Ordinance, with Conditions* (Item # 23-25) (Jul 31, 2023), available at <https://www.stjamesla.com/AgendaCenter/ViewFile/Agenda/08282023-445> (“the ethane pipeline connection depicted in the Application . . . located [in] an area designated as Wetlands in the land use plan”) (hereinafter “Koch Methanol Planning Commission Resolution”), annexed hereto as Exhibit 1. On September 27, the Parish Council denied an appeal of that decision submitted by Plaintiffs in this case. *See* Official Proceedings of the Council of the Parish of St. James, State of Louisiana, at 3-4 (Sept. 27, 2023), available at <https://www.stjamesla.com/AgendaCenter/ViewFile/Minutes/09272023-451>, annexed hereto as Exhibit 2.

³ Official Proceedings of the Council of the Parish of St. James, State of Louisiana, *Resolution 23-212, A Resolution Approving the Application of Acadian Pipeline to Allow Installation of A 20-Inch Diameter Pipeline to Koch Methanol, Which Consists of 7,412 Feet of New Pipe from the Existing Acadian’s Pipeline, Use in A Residential Growth Area 5883 St. Emma Street, St. James, Louisiana (Item #23-27) Under the St. James Parish Land Use Ordinance, with Conditions* (Oct 11, 2023), available at

5. The Parish’s Land Use Decisions Since March 21, 2019 That Discriminate Against Baptist Churches

Relevant to the RLUIPA nondiscrimination claim, three siting decisions have impacted Baptist churches in majority-Black districts, within the applicable four-year limitations period. First, in May 2019 the Parish approved Wanhua’s land use permit, which is located one mile from historic Romeville and Pleasant Hill Baptist Church. ROA.692-694 [¶¶374-385]. Second, also in May 2019, the Parish approved Syngas’ proposal to build a methanol production plant within two miles of Burton Lane Church, and near Mount Triumph. ROA.702 [¶¶419-423]. And third, the Parish’s approval on July 31, 2023 of Koch Methanol’s application to expand its operations allowed for the construction of a pipeline within two miles of St. Paul Baptist Church. ROA.671-674 [¶¶281, 288]. As noted in the Complaint, Koch Methanol is within 2.7 miles of Mount Triumph. ROA.700 [¶410].

6. The Parish’s Land Use Decisions that Harm Ancestral Burial Grounds

The Parish’s siting decisions have also destroyed cemeteries of Plaintiffs’ enslaved ancestors, and have inhibited Plaintiffs’ ability to worship upon those cemeteries. ROA.738-741 [¶¶585-587, 607]. Portions of the backlots of many plantations doubled as unmarked burial sites for people enslaved there. ROA.713

https://www.stjamesla.com/AgendaCenter/ViewFile/Minutes/_10112023-453 (hereinafter “Acadian Pipeline Resolution”), annexed hereto as Exhibit 3.

[¶¶477-479]. Because of the Parish’s approval of industrial facilities, some of these burial sites have been desecrated or altogether destroyed by industrial construction and development, including at the sites of the Rain CII calcined coke plant and Mosaic Faustina fertilizer plant. ROA.718-721 [¶¶494-507].

Other cemeteries are under threat because of the land use approvals granted by the Parish. For instance, on January 24, 2019, the Parish Council approved a land use application permit submitted by Formosa Plastics (“Formosa”) which proposed a 2,400-acre chemical manufacturing complex located atop the former Acadia and Buena Vista Plantations. ROA.696-697 [¶¶391, 397]. In November 2019, Plaintiffs discovered that there were at least two cemeteries of enslaved people located on the proposed Formosa site, one of which already had a pipeline constructed through it. ROA.723-724 [¶¶515-522]. Formosa threatened to disinter those buried in the cemeteries if necessary to develop its facility. ROA.723-734 [¶¶518-520].

The public records revealed that Formosa knew about the existence of the cemeteries while its land use application was pending; however, that information was not disclosed to the Parish. ROA.725 [¶525]. Plaintiffs subsequently learned that there were between one and five additional cemeteries on the Formosa site that it had not yet investigated. ROA.725 [¶527]. RISE repeatedly requested the Parish to rescind the land use approval because of the withholding of this information and

the significance of these burial grounds. ROA.403-408 [¶¶509, 528-530]. The Parish declined, without even responding to the request. ROA.726 [¶¶531-532].

Similarly, the Parish approved the siting of South Louisiana Methanol's petrochemical complex, which would rest on the site of several former Plantations. ROA.727 [¶538]. In May 2019, a cultural resource survey of the area confirmed the existence of "intact, buried cultural features" and the likelihood of "additional intact remains" on the land, but no further archaeological studies have been conducted. ROA.727 [¶539].

C. Proceedings Below

Plaintiffs filed this case in the Eastern District of Louisiana on March 21, 2023 against Defendants St. James Planning Commission, St. James Parish Council, and St. James Parish ("Defendants")⁴, alleging seven claims for violation of their constitutional and civil rights under the United States and Louisiana state constitutions, as well as federal statute.

Specifically, Plaintiffs allege that the Parish's pattern and practice of discriminatory land use acts as a badge or incident of slavery in violation of the Thirteenth Amendment (U.S. Const. amend XIII), ROA.731-733 [¶¶552-561];

⁴ In its ruling on Defendants' motion to dismiss, the district court dismissed both the St. James Parish Council and St. James Parish Planning Commission from the present action, reasoning that neither the Council nor Commission had capacity to sue or be sued. ROA.1019. Plaintiffs do not appeal this decision.

violates the Equal Protection Clause of the Fourteenth Amendment (U.S. Const. amend. XIV, § 1), ROA.733-735 [¶¶562-569]; violates Plaintiffs' right to bodily safety and integrity under the Fourteenth Amendment (U.S. Const. amend. XIV, § 1), ROA.735-736 [¶¶570-576], in violation of 42 U.S.C. § 1983; discriminatorily harms Plaintiffs' property rights in violation of 42 U.S.C. § 1982, ROA.736-737 [¶¶577-583]; places a substantial burden on the exercise of religion in violation of RLUIPA, ROA.738-739 [¶¶584-590]; violates RLUIPA's mandate of non-discrimination, ROA.739-741 [¶¶591-604]; and last, violates Plaintiffs' right, under La. Const. Art. XII, Sec. 4, to preserve, foster, and promote their historic and cultural origins. ROA.741-742 [¶¶605-612]. Plaintiffs seek declaratory and injunctive relief for these claims. ROA.742-746 [¶¶A-G].

On July 7, 2023, Plaintiffs filed their First Amended Complaint (“Complaint”) as of right under Fed. R. Civ. P. 15(a)(1)(B). ROA.276. On July 19, Defendants submitted a motion to strike allegations and dismiss claims pursuant to Fed R. Civ. P. 12(f), 12(b)(1), and 12(b)(6) and for an award of fees and costs pursuant 42 U.S.C. §1988 claims. ROA.752. Plaintiffs submitted their opposition to Defendants' motions on August 14, 2023, ROA.881, to which Defendants replied on August 21, 2023.⁵ ROA.934.

⁵ On August 29, 2023, district court Judge Wendy B. Vitter recused herself from this matter following discovery that her husband was of counsel at the law firm which represented

Defendants then filed a motion for stay of discovery and/or the issuance of a protective order pursuant to Fed. R. Civ. P. 26(c) on November 8, 2023. ROA.973, 975. Oral argument on that motion was set for December 13, 2023. ROA.987. Before oral argument could be heard, the district court denied Defendants' motion to strike pursuant and granted their motion to dismiss. ROA.1033.

D. The District Court's Decision

On November 16, 2023, while the district court acknowledged that Plaintiffs had standing for some claims based on “continuing harm and threatened future harm” (ROA.1013), it dismissed all of Plaintiffs' claims with prejudice. It dismissed Claims I-IV and VI under 12(b)(6), and Claims V and VII under 12(b)(1). First, the court addressed Claims I-IV (Thirteenth Amendment, Equal Protection, Bodily Integrity, and 42 U.S.C. §1982) and erroneously ruled that those claims were untimely because they were not predicated on a pattern and practice—or a continuing violation—as alleged and argued by Plaintiffs but rather on a discrete act. ROA.1030, 1032. It reasoned that, although Plaintiffs' claims “may appear to include continuing violations[,]” they were “at their core . . . based on one discrete action by Defendants: the adoption in 2014 of the Land Use Plan.” ROA.1029. As such, it concluded that “Plaintiffs' claims accrued when the Parish

the Parish in developing the 2014 Land Use Plan. ROA.964-965. District court Judge Carl J. Barbier then began presiding over the matter. ROA.973.

adopted the Land Use Plan and Plaintiffs learned of the changes: in 2014.”

ROA.1030. It applied the same erroneous reasoning to dismiss Claim VI (RLUIPA Nondiscrimination) as untimely. ROA.1031-1032.

The district court erroneously dismissed the remaining two claims—Claims V (RLUIPA Substantial Burden) and VII (Louisiana Constitution Art. XII)—on the basis that Plaintiffs had not sufficiently alleged religious injury standing, reasoning that the destruction of cemeteries where Plaintiffs’ ancestors are buried is not fairly traceable to the Parish. ROA.1020. The court did not consider other standing grounds for these claims.

The court made two additional erroneous rulings, but did not dismiss any Plaintiffs or claims based on those errors. First, it ruled that while Inclusive Louisiana showed standing based on property injuries, neither Mount Triumph nor RISE had such an injury, which remains germane to Plaintiffs’ claims. ROA.1009. Second, it ruled that no Plaintiff had sufficiently alleged stigmatic harm standing as a result of unequal treatment by the Parish. ROA.1005.

SUMMARY OF THE ARGUMENT

In dismissing Plaintiffs’ well-pled claims of racial and religious discrimination, the district court failed to view the Complaint’s allegations in a light most favorable to plaintiffs. *Yumilicious Franchise, L.L.C. v. Barrie*, 819 F.3d 170, 174 (5th Cir. 2016). The court misconstrued Plaintiffs’ pattern-and-practice

claims in a ruling that shields invidious and ongoing discrimination against legal challenge—a result the Supreme Court has refused to allow. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380-81 (1982). The court also overlooked detailed factual allegations as to Plaintiffs’ standing to dismiss their claims under RLUIPA (Substantial Burden) and the Louisiana Constitution, and to deny that other harms provide additional bases of standing supporting all of their claims.

1. The Court should reverse the district court’s dismissal of Plaintiffs’ Thirteenth Amendment, Equal Protection, 42 U.S. Code § 1982, and Substantive Due Process claims on statute-of-limitation grounds. These claims challenge the Parish’s pattern, practice, and policy of discriminatory land use decisions, which constitute a continuing violation, and which continue into the one-year limitations period. *Havens Realty Corp.*, 455 U.S. at 380-81. The district court miscast Plaintiffs’ theory of liability as one that challenged only a discrete act rather than a long-standing pattern and practice, attaching outsized significance to the Parish’s enactment of the Land Use Plan in 2014. ROA.1029. While the Plan is relevant as evidence of the Parish’s long-standing discriminatory pattern and practice, it is not the sole basis of any of these claims and harms.

The court’s subsequent errors flowed from this flawed characterization: it dismissed these claims, ruling that they were untimely because they were not brought within a year of Plaintiffs being on notice of the enactment of the Land

Use Plan. ROA.1029-1031. But the Supreme Court has been clear that no such notice restriction applies when a plaintiff challenges a continuing violation predicated on a pattern and practice. *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002). Where, as here, Plaintiffs have identified a long-standing pattern and practice and have plausibly alleged that the pattern extends to acts within the limitations period—here through two acts on August 17, 2022, and two more acts since the filing of Plaintiffs' Amended Complaint—the statute of limitations cannot bar Plaintiffs' claims.

2. The Court should reverse the district court's dismissal of Mount Triumph's nondiscrimination claim under RLUIPA, 42 U.S.C. § 2000cc(b)(2), as barred by the applicable four-year limitations period. 28 U.S.C. § 1658(a). This claim challenges the imposition or implementation of a land use regulation in a manner that discriminates against predominantly Black Baptist churches, including Mount Triumph, by applying industrial buffer zones to protect Catholic churches in the majority-white parts of the Parish, but not Baptist churches in the majority-Black parts of the parish. The court incorrectly applied the same flawed statute of limitations analysis to this claim as it did to Plaintiffs' other claims, tying them to the date of passage of the Land Use Plan, ROA.1031-1032. This was error as Plaintiffs clearly allege two land use decisions made by the Parish after March 21, 2019 that were in violation of the RLUIPA nondiscrimination provision, i.e.

decisions that implemented a land use regulation in a discriminatory manner, and the Parish has made one additional land use decision that violates the RLUIPA nondiscrimination provision since the filing of Plaintiffs' Complaint.

3. The Court should also reverse the district court's dismissal of Plaintiffs' claims under RLUIPA's substantial burden provision, 42 U.S.C. § 2000cc(a), and Art. XII, Sec. 4 of the Louisiana Constitution, as it applied a flawed and cramped standing analysis. These claims challenge the Parish's approval of industrial facilities upon sites of historic, cultural, and religious significance to Plaintiffs, including sacred cemeteries of their enslaved ancestors. The district court incorrectly ruled that the religious injury to Plaintiffs was not traceable to the Parish because independent, private parties restricted access to the cemeteries. ROA.1014-1015. But Plaintiffs' claim is not based on access restrictions; it is rather a challenge to the Parish's decision, as a regulating authority, to permit the construction of industrial facilities upon the cemeteries, which have destroyed and threaten to continue to destroy them; this is sufficient to satisfy the relatively modest burden to show traceability at the pleading stage.

4. Further, the court failed to assess whether other injuries to Plaintiffs—including harms to the historic and aesthetic value of the area—were sufficient to confer standing for Plaintiffs' Louisiana Constitution Art. XII claim. Had it

assessed this injury, it would have had to conclude that it independently conferred standing for this claim.

5. Finally, the district court summarily and incorrectly ruled that two out of three Plaintiffs did not have standing based on property injury, and that all Plaintiffs did not have standing based on stigmatic harm injury. ROA.1004-1005, 1008-1009. These rulings were in error and should be reversed, although they did not result in the dismissal of any Plaintiffs or claims.

ARGUMENT

I. STANDARD OF REVIEW

Appellate courts review 12(b)(6) dismissals on statute of limitations grounds *de novo*. See *Riddle v. Dyncorp Int'l Inc.*, 666 F.3d 940, 942 (5th Cir. 2012). Appellate courts also review Rule 12(b)(1) dismissals for lack of standing *de novo*. *Sierra Club v. Cedar Point Oil Co. Inc.*, 73 F.3d 546, 555 (5th Cir. 1996). In ruling on a motion to dismiss, courts accept plaintiffs' "well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *Barrie*, 819 F.3d at 174. See also *Haverkamp v. Linthicum*, 6 F.4th 662, 668–69 (5th Cir. 2021) ("[A]ll reasonable inferences must be made in the plaintiff's favor."). Motions to dismiss "[are] viewed with disfavor and [are] rarely granted." *Lowrey v. Tex. A & M Univ. Sys.*, 117 F.3d 242, 247 (5th Cir. 1997) (internal quotations omitted).

II. THE DISTRICT COURT ERRED IN DISMISSING CLAIMS I-IV AND VI AS UNTIMELY: CLAIMS I-IV ARE BASED ON CONTINUING VIOLATIONS CARRYING INTO THE LIMITATIONS PERIOD AND CLAIM VI IS BASED ON UNLAWFUL ACTS THAT OCCURRED WELL WITHIN THE LIMITATIONS PERIOD.

In dismissing Claims I (Thirteenth Amendment), II (Equal Protection), III (Bodily Integrity), and IV (42 U.S.C. § 1982), on statute of limitations grounds, the district court erroneously concluded that the claims were “at their core . . . based on one discrete action by the Defendants: the adoption in 2014 of the Land Use Plan.” ROA.1029. This is a significant mischaracterization of those claims, which do not challenge any isolated, discrete act such as the Plan by itself. Rather, they challenge the Parish’s unlawful pattern, practice, and policy of discriminatory steering that began long before the Plan was adopted (ROA.731-36 [¶¶554, 564, 572, 579]), and that has continued into the limitations period, which began on March 21, 2022 for those claims, as revealed by two specific discriminatory actions by the Parish on August 17, 2022 (ROA.683-685, ¶¶330-341), and two additional actions in 2023 since the filing of Plaintiffs’ Amended Complaint (*supra* note 1-3). The court’s error is magnified by its recognition that Plaintiffs’ claims were based on actions that “appear to include continuing violations,” ROA.1029, and its separate conclusion that Plaintiffs’ had standing to bring these claims for what it described as “a continuing and threatened future injury.” ROA.1013.

Put another way, the court's fundamental error was to single out one moment on a much longer timeline of wrongful actions and to tie all of Plaintiffs' harms to that singular event. But this moment—the 2014 Plan—while obviously relevant to the broader historical pattern and practice, is not itself necessary to Plaintiffs' claims; it is simply further evidence of a longstanding pattern and practice to which the Parish has been committed. The continued enforcement of that pattern and practice through actions that occurred well into the limitations period renders Plaintiffs' claims timely.

Likewise, the court's ruling dismissing Plaintiffs' Claim VI (RLUIPA Nondiscrimination) untimely was erroneous as Plaintiffs brought this claim well within the four-year limitations period applicable to such claims pursuant to 28 U.S.C. §1658(a). The statute of limitations for this claim began on March 21, 2019, after which time the Parish undertook at least two land use decisions (both in May 2019) under the Land Use Plan, that violate RLUIPA's nondiscrimination provision, and one additional decision since the filing of Plaintiffs' Complaint.

A. Claims I-IV Are Timely Because They Are Based on a Longstanding Discriminatory Pattern, Practice, and Policy That Has Continued Into The One-Year Limitations Period.

1. The Continuing Violations Doctrine

Under the continuing violations doctrine, courts should not dismiss a claim on statute of limitations grounds if it is premised, as Plaintiffs' claims are, on a

historical pattern and practice of unlawful conduct, even if the conduct began prior to the limitations period, “as long as . . . at least one act which comprises the . . . claim is still timely.” *Heath v. Bd. of Supervisors for S. Univ. & Agric. & Mech. Coll.*, 850 F.3d 731, 736 (5th Cir. 2017), *as revised* (Mar. 13, 2017) (citation omitted). The critical question under the continuing violations doctrine is whether a claim is based on an “unlawful practice” that “manifested in a number of incidents,” *Havens Realty Corp.*, 455 U.S. at 381, rather than being based on “discrete acts,” *Heath*, 850 F.3d at 740. If the claim is based on a pattern and practice, or in other words if it is based “on the cumulative effect of a thousand cuts,” *id.* at 737 (citation omitted), then the continuing violations doctrine applies. The Fifth Circuit has applied the continuing violations doctrine to § 1983 claims. *See, e.g., Perez v. Laredo Junior Coll.*, 706 F.2d 731, 734 (5th Cir. 1983) (§ 1983 equal protection claim); *Boswell v. Claiborne Par. Det. Ctr.*, 629 Fed. App’x 580, 583 (5th Cir. 2015) (§ 1983 medical care-related claim).

The Fifth Circuit has held that if the “violation occurs as a result of a continuing policy, itself illegal, then the statute does not foreclose an action aimed at . . . enforcement of the policy within the limitations period.” *Perez*, 706 F.2d at 734. This reflects the law in other circuits, where courts have held that a defendant cannot be insulated from liability simply because it began an unconstitutional policy, practice, or pattern before the limitations period, if it has enforced it within

the limitations period. *See Katz v. Vill. of Beverly Hills*, 677 F. App'x 232, 236 (6th Cir. 2017) (“A plaintiff can establish a continuing violation if he or she shows a longstanding and demonstrable policy of discrimination.”) (internal quotations omitted); *Virginia Hosp. Ass’n v. Baliles*, 868 F.2d 653, 663 (4th Cir. 1989) (“[t]he continued enforcement of an unconstitutional statute cannot be insulated by the statute of limitations”) (citation omitted), *aff’d sub nom. Wilder v. Virginia Hosp. Ass’n*, 496 U.S. 498, (1990).

Indeed, Plaintiffs’ claims are akin to challenges to unconstitutional patterns and practices that courts routinely review as continuing violations, some of which the district court identified but failed to compare with Plaintiffs’ case. ROA.1023 (describing *United States v. City of Parma* and *Boswell v. Claiborne Par. Det. Ctr.*).

For example, in *Havens Realty Corp.*, the plaintiffs alleged that defendants were engaging in a “continuing pattern, practice, and policy of unlawful racial steering” which “has deprived them of the benefits of interracial association arising from living in an integrated neighborhood[,]” in violation of the Fair Housing Act. 455 U.S. at 381. Four out of five relevant incidents of discrimination occurred prior to the limitations period. *Id.* at 368. The Supreme Court held that the plaintiffs’ claims were timely because they were “based not solely on isolated incidents . . . but a continuing violation manifested in a number of incidents—

including at least one . . . that is asserted to have occurred within the [limitations] period.” *Id* at 381.

Similarly, in *United States v. City of Parma*, the Sixth Circuit held that the continuing violations doctrine applied to discriminatory housing claims against the City for a series of actions that were a part of a pattern and practice that resulted in a “virtually all-white community.” 661 F.2d 562, 567, 575 (6th Cir. 1981). The City argued, as the Parish did in this case, that the claims were time-barred because plaintiffs alleged that the City discriminatorily passed a zoning ordinance and rejected a building permit prior to the limitations period. *Id*. But unlike the district court in this case, the Sixth Circuit found those two land use decisions were just one “part of ‘a pattern or practice of resistance to the full enjoyment’ of rights” under the Fair Housing Act, and plaintiffs’ claims were timely. *Id.* at 576.

As another example, a number of district courts have applied the continuing violations doctrine to claims alleging discrimination in the provision of municipal services. In *Kennedy v. City of Zanesville*, plaintiffs brought discrimination claims alleging a pattern and practice of denial of public water services to an African-American neighborhood. 505 F. Supp. 2d 456, 463 (S.D. Ohio 2007). Although the claims were only filed decades after defendants began this pattern and practice, the court held that they were based on a continuing violation and timely because they were “not alleging one request and denial, but rather a pattern of requests and

denials, all while Defendants treated white residents differently.” *Id.* at 491. *See also Banks v. McInstosh Cnty.*, No. 2:16-CV-53, 2022 WL 400810, at *6-11 (S.D. Ga. Feb. 9, 2022) (doctrine applied to plaintiffs’ discrimination claims against the County for inferior municipal services, although discriminatory treatment began before limitations period).

As a final example, in *Palmer v. Bd. of Educ. of Cmty. Unit Sch. Dist. 201-U*, plaintiffs brought a § 1983 claim alleging that the school system had discriminatorily closed a school in a majority-Black village, University Park, and decided to bus Black students to majority-white communities. 46 F.3d 682, 683 (7th Cir. 1995). Plaintiffs—a class of Black parents and schoolchildren living in University Park—filed the suit after the limitations period. *Id.* Defendants sought to dismiss the claims as untimely. The Seventh Circuit framed the question as “whether the suits that produced *Brown v. Board of Education* . . . should have been dismissed as untimely rather than decided on the merits.” *Id.* at 683. It answered: “the fact that [a defendant] has been violating the Constitution for a generation does not permit it to commit fresh violations.” *Id.* at 686. It concluded,

if . . . the school board’s explanation for closing [the school] is a pretext for discrimination, then each year’s decision to leave the building shuttered is a new violation—as is each assignment plan that compels black pupils to board busses for a distant junior high school that they would not be required to attend if the population of University Park had a lighter complexion.

Id.

Like each of these examples, Plaintiffs in this case challenge a discriminatory pattern and practice that began decades ago and continues through to today. ROA.731-736 [¶¶554, 564, 572, 579]. It is true that the Parish codified this practice in a Land Use Plan, but that cannot shield it from liability, given that the codification was merely a part of a prior and subsequent pattern and practice. Otherwise, any government entity seeking to continue an unconstitutional pattern or practice would simply codify it into legislation, and if not challenged within a year, it could be enforced indefinitely. This would “improperly transform the limitations statute from one of repose to one of continued immunity” *Poster Exch., Inc. v. Nat’l Screen Serv. Corp.*, 517 F.2d 117, 127–28 (5th Cir. 1975).

2. Plaintiffs’ Claims I-IV Are Based on a Longstanding Pattern, Practice, and Policy Which Has Been Continuously Enforced By the Parish Through Several Acts Within the One-Year Limitations Period.

Plaintiffs’ Thirteenth Amendment claim is based on an unlawful pattern and practice. ROA.598 [¶4]; ROA.686 [¶347]; ROA.732 [¶556]. And as the district court noted, Plaintiffs’ Equal Protection and Substantive Due Process claims (Claims II and III), as well as their claim brought under 42 U.S.C. § 1982 (Claim IV), are based on the same actions by the Parish as those pled with respect to their Thirteenth Amendment claim. ROA.1030-1031. This discriminatory pattern and practice has *cumulatively* caused health, environmental, property, aesthetic, religious, and stigmatic injuries to Plaintiffs. Indeed, the district court recognized

that Plaintiffs' claims were based on actions that "appear to include continuing violations . . . : similar decisions and actions allowing industrial development in specific locations, occurring relatively frequently, perpetrated by the same Defendants, without intervening acts by Defendants to sever the continuing nature of the acts." ROA.1029.

Yet the court made an illogical and erroneous leap from these findings to conclude that Plaintiffs' claims were "at their core . . . based on one discrete action by the Defendants: the adoption in 2014 of the Land Use Plan." *Id.* The court did not explain why it attached such significance to this moment in time when it dismissed those claims as barred by the one-year limitation period applicable to § 1983 claims, as the Land Use Plan is only one example of many acts that constitute the discriminatory pattern and practice of which Plaintiffs complain. Many of the discriminatory acts Plaintiffs alleged occurred before the Plan's enactment. ROA.646-666 [¶¶181-259] (describing polluting industry steered into Fourth and Fifth districts prior to 2014). And, critically, Plaintiffs have alleged at least two decisions within the limitations period that were made independent of the Land Use Plan, but still form part of the discriminatory pattern and practice: (i) the decision on August 17, 2022, to reject Plaintiffs' request for a moratorium on polluting industry in their majority-Black communities, and (ii) the simultaneous

grant of white residents' request for a moratorium on solar industry. ROA.683-686 [¶¶330-341]. Neither request was made under, or contemplated by, the Plan.

Additionally, since the filing of Plaintiffs' Amended Complaint, the Parish has made at least two industrial land use decisions in the majority-Black Fifth District in areas that conflict with the plan, revealing that the Parish's discriminatory pattern and practice has not been confined even to that codified in the Plan. Because these actions continue the historical pattern of discriminatory land-use decisions, they further extend the limitations period.⁶ On July 31, 2023, three weeks after Plaintiffs filed their Amended Complaint, the Planning Commission approved Koch Methanol's land use application for industrial expansion into a wetlands area where industrial uses are not allowed.⁷ And on October 11, 2023, the Parish Council approved a land use request by Acadian Gas to construct a new pipeline in the Fifth District, including in an area designated as "residential growth."⁸ In fact, these two decisions are part of a pattern since enactment of the Land Use Plan in which the Parish has exceeded the Plan's bounds to approve facilities seeking to locate in the majority-Black Fourth and Fifth districts. *See, e.g.*, ROA.700 [¶¶410-413] (2015 approval by Planning

⁶ As noted above, Plaintiffs ask this court to take judicial notice of Exhibits 1, 2, and 3. *See supra* notes 1-3.

⁷ *See supra* note 2, Koch Methanol Planning Commission Resolution (Ex. 1).

⁸ *See supra* note 3, Acadian Pipeline Parish Council Resolution (Ex. 3).

Commission, instead of Council, of Yuhuang Chemical in an area designated for residential growth, where industrial use is not allowed); ROA.701 [¶¶417-418] (2018 approval of Ergon expansion in an area designated for agricultural use, where industrial use is not allowed).⁹

This reveals that while the Land Use Plan is *relevant* to Plaintiffs’ claims as additional evidence of discrimination, it is not *necessary*, nor their sole basis: because the Parish’s discriminatory pattern and practice extends beyond even that permitted by the Land Use Plan, Plaintiffs’ claims would not be resolved by its invalidation alone. The district court even acknowledged that Plaintiffs’ case does not turn on the validity of the Plan as such. ROA.1009-1010 (“Plaintiffs note that any remedy imposed by this court need not be limited to invalidating the plan Plaintiffs seek numerous forms of injunctive and declaratory relief”). Instead, a resolution of Plaintiffs’ claim requires, for example, a declaration that the Parish’s “policies, practices, and/or customs pertaining to the discriminatory land use system and, in particular, the discriminatory siting of industrial facilities, violates the [United States and Louisiana Constitutions, and RLUIPA],” ROA.742 [¶A], and an injunction prohibiting “all policies, pattern and practices, and/or

⁹ This is in contrast to the Parish’s strict and aggressive adherence to and enforcement of the requirements of the Land Use Plan for facilities that have sought to locate near majority-white parts of the Parish. ROA.678-686 [¶¶305-341].

customs pertaining to the racially and religiously discriminatory land use system.”

ROA.743 [¶D(ii)].

Contrary to what the district court reasoned, each of the acts that Plaintiffs allege not only “continu[ed the] effect” of any prior act (ROA.1029), they are new acts that produced additional health, environmental, aesthetic, religious, and stigmatic harms that cumulatively form the basis of Plaintiffs’ claims. This is comparable to the employment law context: an employee may bring a claim that a discrete act was itself unlawful, for example for being retaliatory (where the continuing violations doctrine would not apply), and/or they may bring a claim that the act contributed, cumulatively with other acts, towards a hostile work environment which is separately unlawful (where the continuing violations doctrine would apply). *See, e.g., Heath*, 850 F.3d at 739, 741 (while some of the alleged acts that gave rise to plaintiffs’ Title VII and § 1983 hostile work environment claims were the same as those that gave rise to the Title VII retaliation claims, the former claims were timely as a continuing violation, while the latter claims were time-barred as discrete acts).

Moreover, the history of the Parish’s actions is relevant to assessing the substantive merits of Plaintiffs’ claims. For example, “historical background,” including “legislative or administrative history,” is relevant to a court’s assessment of whether a government policy is unconstitutionally discriminatory against a

protected class in violation of the equal protection clause. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267-68 (1977). It would undermine the law’s anti-discrimination protections to require Plaintiffs to wait to compile a historical record of discriminatory official actions, only to then dismiss the claim as untimely. Similarly, courts, including the Fifth Circuit, have applied the continuing violations doctrine to claims that require plaintiffs to show a history of deliberate indifference—as is required for claims based on violations of the Substantive Due Process Clause. *See, e.g., Boswell*, 629 Fed. App’x at 583 (doctrine applied to incarcerated plaintiff’s § 1983 claim that prison continued to fail “to provide needed and requested medical attention” for hernia); *Jervis v. Mitcheff*, 258 F. App’x 3, 5–6 (7th Cir. 2007) (“Deliberate indifference to a serious medical need is a continuing violation that accrues when the defendant has notice of the untreated condition and ends only when treatment is provided or the inmate is released”); *Silva v. Baptist Health S. Fla., Inc.*, 856 F.3d 824, 841-42 n.16 (11th Cir. 2017) (plaintiffs’ hospital visits prior to the limitations period may be considered where evidence of past discrimination is relied upon to establish current deliberate indifference; and when plaintiffs challenge under the ADA the defendant hospital’s policies, which are part of an ongoing violation that continued into the limitations period).

3. The District Court Erred by Applying a Notice Limitation to Plaintiffs' Claim, Which Has Been Rejected by the Supreme Court.

After misconstruing Plaintiffs' claim as being based on a discrete act rather than a pattern and practice, the district court improperly determined that it should apply a notice limitation to Plaintiffs' claims. ROA.1030. But this limitation does not apply to continuing violations based on a pattern and practice. The court listed nineteen of the numerous acts that Plaintiffs allege constituted part of the discriminatory pattern and practice, and concluded first that "Plaintiffs' claims accrued when the Parish adopted the Land Use Plan and Plaintiffs learned of the changes: in 2014" and then, contradicting itself, that "zoning events that occurred prior to the 2014 plan, while related to Defendants' subsequent decisions, are discrete actions that put Plaintiffs on notice to protect their rights, thereby starting the clock on prescription[.]" ROA.1029-1030. It remains unclear to Plaintiffs which of the nineteen acts listed by the court would have started the clock on Plaintiffs' *pattern and practice* claim, which is what is at issue here: was it a 1966 decision to site one of the first polluting facilities in a historically and predominantly Black community in the Fourth District? Or a later decision in 1981 to site another facility in that same community? Or a 2022 decision to refuse to impose a moratorium on polluting industry in that community?

That is precisely why this “notice” requirement has been rejected in evaluating claims, like Plaintiffs’, that are continuing violations. *Morgan*, 536 U.S. at 117 (“we do not hold, as have some of the Circuits, that the plaintiff may not base a suit on individual acts that occurred outside the statute of limitations unless it would have been unreasonable to expect the plaintiff to sue before the statute ran on such conduct.”). Indeed, the Fifth Circuit has recognized that “*Morgan* overruled our prior cases to the extent they held that the continuing violation doctrine does not apply when [a plaintiff] was or should have been aware earlier of a duty to assert her rights.” *Heath*, 850 F.3d at 739.

The district court based its conclusion that “Plaintiffs’ § 1983 claims accrued when Plaintiffs became aware they suffered an injury or had sufficient information to know they were injured,” (ROA.1025-1026), partially on this Court’s decisions in *Texas v. United States*, 891 F.3d 553 (5th Cir. 2018) and *McGregor v. Louisiana State Univ. Bd. Of Supervisors*, 3 F.3d 850 (5th Cir. 1993) (ROA.1024-1025). Neither of those cases applies here. *Texas* was a challenge, under the Waste Act, to the U.S. Department of Energy and other federal agencies’ failure to accept Texas’s nuclear waste by 1998, as required by the statute, and their subsequent failure to create a nuclear waste site in Nevada by 2012. This Court reasoned that the sole exception to the Waste Act’s limitations period was—as written explicitly into the statute—if a party showed “that it was subjectively unaware of the

complained-of actions and that its lack of knowledge was objectively reasonable in the circumstances.” *Texas*, 891 F.3d at 562. Additionally, this Court reasoned that “by its plain language, the Waste Act speaks of failures to act as discrete events, not as ongoing, durational conditions.” *Id.* at 563–64. Thus, the doctrine of continuing violations was categorically unavailable for claims arising under the Waste Act. In contrast, here, the continuing violations doctrine is necessarily available for patterns and practices that violate § 1983. *Perez*, 706 F.2d at 734 (doctrine applied to § 1983 equal protection claim); *Boswell*, 629 Fed. App’x at 583 (doctrine applied to incarcerated plaintiff’s § 1983 medical care-related claim).

McGregor v. Louisiana State Univ. Bd. of Sup’rs is similarly inapplicable. There, the plaintiff alleged that the law school he attended violated due process when it did not inform him of his right to appeal two decisions related to his time at the law school, which he alleged was part of a pattern and practice of due process failures; but a critical failure of his claim was that the last relevant act had occurred prior to the limitations period. 3 F.3d 850, 863, 867 (5th Cir. 1993). In contrast, Plaintiffs here have alleged acts that are part of the unconstitutional pattern and practice that fall within the limitations period: the Parish’s two land use decisions on August 17, 2022 (ROA.683-686 [¶¶330-341]), and, as described above, the two approvals that occurred in July-October 2023, since the filing of Plaintiffs’ Amended Complaint. *Supra* Part II(A)(2); *supra* notes 1-3.

B. Claim VI: Plaintiffs' RLUIPA Nondiscrimination Claim Is Also Timely Because the Parish Has Made Several Discriminatory Permitting Decisions Within The RLUIPA Four-Year Limitations Period.

The district court also erred when it dismissed Mount Triumph's RLUIPA nondiscrimination claim on a similarly flawed statute of limitations analysis. RLUIPA claims, pursuant to 28 U.S.C. § 1658(a), have a four-year statute of limitations. *Jones v. Lumpkin*, No. 21-20106, 2023 WL 3075063, at *2 n.2 (5th Cir. Apr. 25, 2023). Since the start of the RLUIPA limitations period, March 21, 2019, the Parish has made several land use decisions that form the basis of Mount Triumph's RLUIPA nondiscrimination claim.

Under the RLUIPA nondiscrimination provision, “[n]o government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.” 42 U.S.C. § 2000cc(b)(2). In Claim VI, Mount Triumph asserts that the Parish's imposition and implementation of the Land Use Plan unlawfully discriminates against Baptist churches in majority-Black districts. 42 U.S.C. § 2000cc(b)(2). Specifically, the Parish has applied industry buffer zones to protect Catholic churches located in majority-white areas of the Parish, and not to Baptist churches in majority-Black areas. ROA.739-741 [¶¶591-604]. The Plan enacted in 2014 included explicit buffer zones to shield only Catholic churches in majority-white districts from polluting industry. ROA.671 [¶¶280-281]. Although the facially discriminatory

buffer zones were omitted in the 2018 revisions, the Parish has continued to use those buffer zones by approving industrial facilities within two miles of majority-Black, Baptist churches, including Mount Triumph, while not doing the same for Catholic churches in majority-white districts. ROA.692-694 [¶¶375-385] (Wanhua); ROA.696-697 [¶¶393-397] (Formosa); ROA.701 [¶417] (Ergon); ROA.702 [¶¶422-423] (Syngas); ROA.740 [¶¶594-598].

Since March 21, 2019, the Parish has granted land use approvals that violate RLUIPA's nondiscrimination provision, which clearly render Plaintiffs' claim timely. First, On March 25, 2019, the Planning Commission approved Syngas Energy Holding, LLC's proposal to construct a methanol production facility in St. James Parish. ROA.702 [¶419]. Syngas is located within two miles of Burton Lane Church, a Baptist church in the Fifth District, and it is located near Mount Triumph. ROA.702 [¶423].

Second, on May 20, 2019, the Planning Commission approved a land use permit from Wanhua Chemical U.S. Operations. ROA.694 [¶385]. The proposed site was in the Fourth District in the town of Convent, located just one mile from Pleasant Hill Baptist Church ROA.692 [¶375].

And third, the Parish's approval on July 31, 2023 of Koch Methanol's application to expand its operations allowed for the construction of a pipeline within two miles of St. Paul Baptist Church. ROA.671-674 [¶¶281, 288]. As noted

in the Complaint, Koch Methanol is within 2.7 miles of Mount Triumph. ROA.700 [¶410].

III. THE DISTRICT COURT ERRED BY: DISMISSING CLAIMS V AND VII FOR LACK OF STANDING; FINDING THAT PLAINTIFFS MOUNT TRIUMPH AND RISE HAD NOT SUFFICIENTLY PLED PROPERTY INJURIES; AND FINDING THAT PLAINTIFFS HAD NOT SUFFICIENTLY PLED STIGMATIC HARM.

While the district court ruled that Plaintiffs had standing for some claims based on a “continuing injury or threatened future injury” (ROA.1013), it dismissed Claims V (RLUIPA Substantial Burden) and VII (La. Constitution), ruling that Plaintiffs had not sufficiently alleged standing for those claims. In so doing, the court made several reversible errors.

First, the Court dismissed Claims V and VII, which are related to religious, cultural, and aesthetic injuries from the Parish’s actions allowing for the desecration of ancestral burial grounds as well as other sites of cultural and historic significance to Plaintiffs, on a conclusory finding that Plaintiffs cannot demonstrate sufficient causation.¹⁰ ROA.1015. But the court’s summary

¹⁰ The district court dismissed RLUIPA Claim V (Substantial Burden) before discussing statute of limitations but could not have dismissed this claim on those grounds. RLUIPA claims have a four-year limitations period, 28 U.S.C. §1658(a), so the claim must have accrued on or after March 21, 2019. The discovery rule tolls the limitations period “whenever a plaintiff is not aware of and has no reasonable opportunity to discover the critical facts of his injury and its cause.” *Dubose v. Kansas City S. Ry. Co.*, 729 F.2d 1026, 1030 (5th Cir. 1984). Plaintiffs discovered that the Parish’s actions threatened to destroy the cemeteries on the Formosa site in and after November 2019 (ROA.723 [¶516]; ROA.725 [¶527]), and only discovered that the Parish’s actions had destroyed or threaten to destroy other cemeteries after that date (ROA.719-

traceability analysis erroneously elevated the otherwise low bar to an improperly heightened proximate cause requirement, ignoring numerous facts showing that the Parish's actions have plausibly caused religious harms to Plaintiffs. It also ignored independent injuries to Plaintiffs that would support standing for Claim VII (Louisiana Constitution): injury to the historic, cultural, and aesthetic value of the area.

Second, even though some of the Plaintiffs' injuries were sufficient to support standing for Claims I-IV and RLUIPA Claim VI, the court erroneously rejected an additional and independent basis to support those claims for two Plaintiffs, namely the property injury to RISE and Mount Triumph. ROA.1008-1009. Third, the court summarily rejected Plaintiffs' stigmatic injury as another

720 [¶¶498, 503]; ROA.727 [¶529]). Accordingly, Plaintiffs' claim accrued, at the earliest, in November 2019 and is not time-barred.

The district court also did not dismiss Claim VII under Louisiana Constitution XII Sec. 4 on statute of limitations grounds, nor could it have. It, too, is based on a continuing violation and at least two acts that comprise the violation occurred after March 21, 2022. In any case, Plaintiffs' state constitution claim does not have a prescriptive period under state law. Through that claim, Plaintiffs seek to vindicate their rights to "preserve, foster, and promote their respective historic . . . cultural origins," and seek only declaratory and injunctive relief. ROA.74 [¶607]. The Louisiana Supreme Court has noted that no prescriptive period exists when an action seeks only injunctive relief and is "tailored to serve the best interest of the public and ensures that any relief granted shall be issued in favor of the state." *State ex rel Tureau v. Bepco LP*, 351 So. 3d 297, 306 (La. 2022). If Plaintiffs prevail, the benefits of relief will accrue to the state and its citizens. As a claim seeking solely injunctive relief to enforce the Louisiana Constitution's provision for the protection of cultural origins, Plaintiffs' action fits within the *Tureau* exception. Plaintiffs' claim is most akin to a petitory action under state law, which is "brought by a person who claims the ownership of, but who does not have the right to possess, immovable property or a real right therein . . ." LSA-C.C. Art. 3651. Petitory actions have no liberative prescription period. *See* LSA-C.C. Art. 3447 comment (b)."

additional and independent basis for standing, which is relevant to all of Plaintiffs’ claims. ROA.1004-1005.

To establish standing, a plaintiff must show (1) injury-in-fact, (2) causation or traceability, and (3) redressability. *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, 551 (1996). To establish causation, “the injury has to be fairly traceable to the challenged action of the defendant” *NAACP v. Tindell*, 90 F.4th 419, 422 (5th Cir. 2024) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)).

The bar to prove traceability at the pleading stage is “relatively modest.” *Bennett v. Spear*, 520 U.S. 154, 171 (1997); *see also DiCocco v. Garland*, 52 F.4th 588, 592 (4th Cir. 2022) (proving causation is “lower than the . . . showing required to prevail in a tort suit.”). This requirement is satisfied where defendants “significantly contribute[] to Plaintiffs’ alleged injuries,” even if there are other contributors, because “[t]racing an injury is not the same as seeking its proximate cause” *K.P. v. LeBlanc*, 627 F.3d 115, 123 (5th Cir. 2010) (citing *Bennett*, 520 U.S. at 168-69). In other words, Plaintiffs need not show that the Parish’s “actions are the very last step in the chain of causation.” *Bennett*, 520 U.S. at 169. Where a third party’s actions contribute to the injury at issue, “causation and redressability ordinarily hinge on the response of the regulated (or regulable) third party to the government action or inaction[.]” *Lujan*, 504 U.S. at 562. Causation is satisfied

when the injury results from “the predictable effect of Government action on the decisions of third parties,” *Dep’t of Com. v. New York*, 588 U.S. —, 139 S. Ct. 2551, 2566 (2019), or if an injury is “produced by determinative or coercive effect upon the action of someone else.” *Bennett*, 520 U.S. at 169.

Plaintiffs may allege their members’ injuries “generally”—they are not required to identify specific members’ injuries for standing at the Rule 12(b)(1) stage. *See Texas Cable & Telecommunications Ass’n v. Hudson*, 265 F. App’x 210, 216 (5th Cir. 2008).

A. The District Court Erred in Ruling that Plaintiffs Did Not Have Standing to Bring Claims V (RLUIPA Substantial Burden) and VII (Louisiana Constitution Art. XII).

In a number of their claims, Plaintiffs allege that the Parish’s pattern, practice, and policy of approving heavy industry upon the cemeteries of enslaved people has injured Plaintiffs, who, as descendants of people once enslaved in the area, have deep religious and historic connections to, as well as a property interest in, these cemeteries. ROA.605-607, 738-742 [¶¶23-25, 586-587, 607-609]. The district court dismissed Claims V and VII, ruling that Plaintiffs had not shown that their religious injuries that formed the basis of these claims were traceable to the Parish. This ruling was erroneous for two reasons. First, the district court incorrectly assumed Plaintiffs’ religious injuries stemmed exclusively from restrictions on access (ROA.1013-1014) which the court determined was

controlled by independent third parties, when in fact Plaintiffs' claim is based on the Parish's permitting of facilities that have, or will, destroy these cemeteries (ROA.728-729 [¶¶542-546]) (describing Plaintiffs' members' fear that cemeteries will be destroyed). And second, religious injuries are not the sole basis of Claim VII – Plaintiffs' historic and aesthetic injuries are also a basis for the Claim.

1. Plaintiffs' Religious Injuries Stem From the Current and Future Destruction of Ancestral Cemeteries Allowed by the Parish, Not From Third Parties' Restricting Plaintiffs' Access to Them.

The district court incorrectly interpreted Plaintiffs' religious injury as being solely based on a restriction to *access* to the cemeteries of their enslaved ancestors, reasoning that “[i]n this case, private parties not made defendants in this case control whether Plaintiffs may access the cemeteries.” ROA.1015. It accordingly held that “the religious injury Plaintiffs claim is the result of independent action by a third party not before the court, and thus the injury is not fairly traceable to Defendants' conduct.” *Id.* But Plaintiffs' assertion is that by allowing for the construction of industrial facilities upon these cemeteries in the first place, the Parish has permitted their destruction and desecration, which itself is an injury (ROA.720-740 [¶¶, 501, 535-539, 542-546, 580, 598]), and which also hinders their ability to pray upon these cemeteries, which is a separate injury. ROA.725-740 [¶¶527, 538, 599].

These injuries are cognizable as a matter of law. The Louisiana Supreme Court has long held that:

Regardless of the laws and rules relating to the ownership and control of real property, when a plot of ground is set apart for cemetery purposes, and burials are made in the land, the ground changes its character in the minds and feelings of the community. It assumes a sacred quality that overrides conveyancers' precedents and requires freedom from profanation . . .

Humphreys v. Bennett Oil Corp., 195 La. 531, 551, 197 So. 222, 229

(1940) (citations omitted). Once dedicated, Louisiana law is clear that plaintiffs have standing to bring actions in damages for profanation of the cemetery, *id.* at 229, and for injunctive and declaratory relief against encroachment, *Locke v. Lester*, 78 So. 2d 14 (La. App. 2 Cir. 1955); *Riverie v. Mills*, 481 So. 2d 1050, 1051-52 (La. App. 1 Cir. 1985), and relatives, descendants, and friends have rights to access, visit, and care for the cemeteries. *Vidrine v. Vidrine*, 225 So. 2d 691, 696 (La. App. 3 Cir. 1969), *writ refused*, 254 La. 853, 227 So. 2d 594 (1969).

This reflects federal law, which recognizes that the threatened destruction of a historic site by proposed construction is sufficient injury to individuals who have a connection—religious, historic, or aesthetic—to that site. *See, e.g., Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 183 (2000) (“environmental plaintiffs adequately allege injury when they aver that they use the affected area and are persons ‘for whom the aesthetic and recreational values of the

area will be lessened' by the challenged activity.'") (internal quotations omitted); *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 779 (9th Cir. 2006) (plaintiffs satisfied injury requirement for National Environmental Policy Act claim where they alleged that they used affected area for cultural and religious ceremonies); *Waterford Citizens' Ass'n v. Reilly*, 970 F.2d 1287, 1289 (4th Cir. 1992) (plaintiffs satisfied injury requirement where they alleged that construction of proposed sewer system would damage historic buildings and landscape); *Pye v. United States*, 269 F.3d 459, 468 (4th Cir. 2001) (adjacent property owners had cognizable injury where future development enabled by Army Corps of Engineers' permit for road improvement could indirectly result in destruction of historic sites, including African-American cemetery). Thus, both the actual or threatened destruction, as well as the inability to visit the cemeteries, are concrete injuries to Plaintiffs.

Further, these injuries are traceable to the Parish. Courts have found traceability where a plaintiff sues a regulating authority for permitting third parties to take actions that injure plaintiffs. *See, e.g., Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 807 F.3d 1031, 1044 (9th Cir. 2015) (although injury to plaintiffs' interest in endangered fish would be caused by third parties pumping groundwater, traceability and redressability were satisfied because the defendant (U.S. Fish and Wildlife Service) had authority to regulate third parties' actions); *Pye*, 269 F.3d at 462 (standing satisfied, although injury to plaintiffs' interest in

historic area (including cemeteries) would be caused by a county’s improvement of a road it owned, where defendant issued permit to county for road construction); *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 501 (7th Cir. 2005) (Native American tribe had standing to challenge U.S. Secretary of Interior’s approval of compact between Wisconsin and third party tribe to operate a casino “because, but for [Secretary’s] approval, the compact would have no effect.”).

Without the Parish’s approval, third parties cannot construct industrial facilities in the Parish. *See, e.g.*, ROA.646 [¶179] (the Parish has authority under Louisiana Constitution to “adopt regulations for land use, zoning, and historic preservation”). The Parish does and has approved the construction of industry that has destroyed cemeteries (ROA.718-720 [¶¶494, 498, 503-504]), or that threatens to destroy cemeteries, including Formosa and likely South Louisiana Methanol. ROA.721-727 [¶¶508-539]. Indeed, Formosa has suggested it may remove two cemeteries to build its facility approved by the Parish. ROA.723-724 [¶¶518-520].

2. Plaintiffs’ Standing Under Claim VII and Other Claims is Also Based on Injury to the Historic and Aesthetic Value of the Area.

The district court erroneously considered religious injury as the sole basis for standing for Plaintiffs’ Louisiana Constitutional Claim (Claim VII).

ROA.1014-1015. Plaintiffs also alleged that the Parish’s land use pattern and practice caused historic, cultural, and aesthetic injuries by authorizing the destruction of their churches, schools, homes, neighborhoods, and ancestors’ burial sites. ROA.741-742 [¶¶606-612]. For example, Plaintiffs alleged that the Parish’s land use pattern and practice has harmed, and threatens to harm, “other sites with enormous historic and cultural value to Black communities like churches, schools, homes, and neighborhoods.” ROA.742 [¶609]. This includes Baptist churches in the majority-Black Fourth and Fifth districts, including the historic Mount Triumph and Pleasant Hill Baptist Church (ROA.663 [¶250]; ROA.728 [¶543]); as well as the historic Black communities of Romeville (ROA.728 [¶543]), Freetown (ROA.622-702 [¶¶84-90, 202, 349, 366, 417, 424]); Welcome (ROA.688-721 [¶¶349, 363, 424, 505]), and Convent (ROA.643-669 [¶¶164, 187, 222-225, 274]).

These are cognizable injuries. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009) (“[I]f [harm to the environment] affects the recreational or even the mere esthetic interests of the plaintiff, that will suffice [to show standing].”); *Lujan*, 504 U.S. at 562–63 (“the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing.”). The district court failed to assess whether these injuries conferred standing for Claim VII.

B. The District Court Erred in Finding That RISE and Mount Triumph Did Not Have Standing for Their Property-Related Injuries.

The district court agreed that Plaintiff Inclusive Louisiana has shown sufficient property injury based on the allegations that the Parish’s discriminatory siting of heavy industry “affected [Inclusive members’] property values”—which the court correctly found met standing’s traceability requirement. ROA.666 [¶259] (Plaintiffs’ factual allegations regarding Inclusive); ROA.1008 (finding Inclusive’s injuries traceable to Defendants). Curiously, and absent any meaningful explanation, *see* ROA.1008-1009, the court failed to extend that logic to nearly identically alleged property injuries suffered by Plaintiffs RISE and Mount Triumph, holding instead that these Plaintiffs’ demonstrable property injuries were not traceable to the Parish’s pattern and practice of steering heavy industry into the districts in which these Plaintiffs’ members reside and operate. *See, e.g.*, ROA.685, 701, 732 [¶¶338-339, 417, 559] (alleging specific injuries to RISE founder Sharon Lavigne and Mount Triumph).

The court’s differential assessment of causation as between Plaintiff Inclusive and Plaintiffs RISE and Mount Triumph is irreconcilable given the similarity of their allegations and reflects an erroneously dismissive interpretation of Plaintiffs’ allegations which plausibly demonstrate traceability. Like the allegations related to Inclusive, *see* ROA.666 [¶259] (“The location of [industrial] facilities has affected [Inclusive members’] property values . . . [such that they]

cannot afford to relocate.”), the Complaint alleges that the Parish’s discriminatory industrial steering “surrounded” Mount Triumph with petrochemical industry, ROA.702 [¶423], and that the discriminatory land use pattern and practice has “resulted in diminution in the value of property owned by . . . congregants.” ROA.731 [¶559]. *See also* ROA.737 [¶579] (pattern and practice has “lowered [plaintiffs’] property values.”). Similarly, the Complaint alleges that RISE founder Sharon Lavigne experienced diminution in her property value because of the Parish’s unlawful land use regime. ROA.685 [¶¶338-339] (in a letter to the Council, Sharon Lavigne and Gail LeBoeuf “pointed out the compelling and urgent reasons regarding the need for a moratorium – including the . . . depreciation of *their* property values.”).

Accepting these allegations as true, Plaintiffs’ injuries are traceable to the Parish. The district court was not at liberty to weigh the strength of Plaintiffs’ allegations. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969) (the “allegations of the complaint are taken as admitted” when reviewing a motion to dismiss).

C. The Court Erred in Ruling That Plaintiffs Do Not Have Standing Based on Stigmatic Harm.

In addition to health, environmental, property, and religious injuries, as an additional basis for standing for Claims I (Thirteenth Amendment), II (Equal Protection), IV (§ 1982), and VI (RLUIPA Nondiscrimination) Plaintiffs alleged that they faced stigmatic harm as a result of their unequal treatment by the Parish.

The district court erred in finding that Plaintiffs’ allegations of unequal treatment were “broad[.]” and that, as a result, Plaintiffs failed to meet their burden to satisfy stigmatic harm standing. ROA.1005.

The Supreme Court has held that

discrimination itself, by perpetuating ‘archaic and stereotypic notions’ or by stigmatizing members of the disfavored group as ‘innately inferior’ ... can cause serious noneconomic injuries to those persons who are denied equal treatment solely because of their membership in the disfavored group.

Heckler v. Matthews, 465 U.S. 728, 729 (1984). *See also Dean v. City of Shreveport*, 438 F.3d 448, 454 (5th Cir. 2006) (“Classifications based on race carry a danger of stigmatic harm ... [and] may in fact promote notions of racial inferiority and lead to a politics of racial hostility.”) (internal quotations omitted). This Court has clarified that this type of injury “accords a basis for standing only to ‘those persons who are personally denied equal treatment’ by the challenged discriminatory conduct[.]” *Moore v. Bryant*, 853 F.3d 245, 249 (5th Cir. 2017) (quoting *Allen v. Wright*, 468 U.S. 737, 755 (1984)). In other words, “to plead stigmatic-injury standing, [a] [p]laintiff must plead that he was personally subjected to discriminatory treatment.” *Id.* at 249. *See also, Sierra v. City of Hallandale Beach*, 996 F.3d 1110, 1114-15 (11th Cir. 2021) (finding that a deaf plaintiff adequately alleged stigmatic injury due to city’s discriminatory treatment of deaf individuals in publishing videos without closed captions); *De Leon v.*

Perry, 975 F. Supp. 2d 632, 646 (W.D. Tex. 2014) (finding that plaintiffs, a gay couple and a lesbian couple, who alleged they suffered “state sanctioned discrimination, stigma, and humiliation” caused by the state’s law banning same-sex marriage, and that they are “considered inferior and unworthy” sufficiently alleged stigmatic injury). Plaintiffs have amply alleged that they themselves have been personally subjected to discriminatory treatment at the hands of the Parish, and that this has resulted in the very kind of stigmatic harm the Supreme Court, and this Circuit, has found actionable.

First, as an additional basis for Claims I through IV, Plaintiffs claim that the Parish’s unequal treatment has (1) caused them stigmatic injury by steering polluting industry into the majority-Black Fourth and Fifth districts and away from majority-white districts, classifying those districts as less deserving of protection, and (2) “impos[ed a] barrier” which has prevented Plaintiffs from obtaining the same protection against polluting industry afforded to white residents. *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993) (when an imposed barrier “makes it more difficult for members of one group to obtain a benefit than it is for members of another group the denial of equal treatment resulting from the imposition of the barrier” is the “injury in fact”). *See* ROA.699 [¶408] (founder of Plaintiff RISE: “But it seems like you all like to push everything in the 5th District. Why? Because of the minorities and

because of the blacks. . . .”). Plaintiffs and/or their members themselves have suffered from this unequal treatment because they are Black residents of the Fourth and Fifth districts where heavy industry has been steered despite their requests to the Parish, ROA.685-703 [¶¶341-432], and they have suffered the consequences to their health, environment, property, and religious, historic, and cultural sites. *See, e.g.*, ROA.650-663 [¶¶192-200, 250]; ROA.704-711 [¶¶433-466]; ROA.718-729 [¶¶494, 508, 540-546]. *See also supra* Part III(A), (B).

This decades-long unequal treatment has perpetuated notions of racial inferiority, and caused Plaintiffs stigmatic harm. *See* ROA.601 [¶11] (Plaintiffs’ founders, in a letter to St. James Parish Council, stated: “[I]t is painful to see a land use map that so clearly signals the disregard of *our* lives and communities . . .”), ROA.605 [¶19] (Pastor Harry Joseph of Mount Triumph asked in a council meeting, “Why does it always have to be us?”); ROA.694-695 [¶387] (Inclusive Louisiana founding member Barbara Washington stated to the Parish at a public hearing: “We come here to you all, pleading with you all, asking you all to stop letting industry locate near residential areas But every time we come here and voice our opinions, y’all turn a deaf ear to us; you harden your hearts.”); ROA.703 [¶432] (RISE founder Sharon Lavigne says to the Parish, “I am asking you to stop the genocide.”).

Second, as an additional basis for Claim IV (§ 1982), Plaintiff Inclusive Louisiana has alleged that the Parish has caused its members stigmatic injury by explicitly codifying in the Land Use Plan certain restrictions on the subdivision of properties in the majority-Black Fourth District, not placed on properties anywhere else in the Parish. ROA.674-675 [¶¶289-291]; ROA.737 [¶580]. Inclusive Louisiana’s members are “personal[ly] and individual[ly]” harmed, *Lujan*, 504 U.S. at 560, n. 1; *see also Ne. Fla. Chapter of Associated Gen. Contractors of Am.*, 508 U.S. at 666, as some of them own property in the Fourth District and thus, as a result of the Parish’s pattern and practice of land use discrimination, are currently limited in selling, holding, and conveying their property. ROA.737 [¶¶579-580].

Third, and as an additional basis for Claim VI (RLUIPA Nondiscrimination), Mount Triumph alleges that the Parish has caused it stigmatic injury by excluding Baptist churches in the Fourth and Fifth districts from industrial buffer zones, while placing such buffers around Catholic churches in majority-white parts of the Parish. ROA.671-677 [¶¶280-288, 300, 303]. Mount Triumph has experienced this unequal treatment itself because it is a Baptist Church located in the Fifth District which has been specifically denied protections afforded to Catholic churches. *See Ne. Fla. Chapter of Associated Gen. Contractors of Am.*, 508 U.S. at 666. *See, e.g.*, ROA.701 [¶417] (Ergon, crude oil terminal and tank farm, approved by Parish within 500 feet of Mount Triumph on

August 8, 2018); ROA.702 [¶¶419-423] (Syngas, methanol production plant, approved by Parish within 2 miles of Burton Lane Baptist Church and near Mount Triumph in March 25, 2019). Pastor Joseph of Mount Triumph has also alleged the stigmatic harm resulting from this unequal treatment. ROA.691 [¶¶371-372] (asking, during a meeting on the Bayou Bridge Pipeline project: “Why does it always have to be us? They don’t want to hear what people are saying: that this community has been thrown under the bus too many times We are burying so many people dying of cancer in this district. People are suffering.”).

CONCLUSION

The judgment of the district court should be reversed, and the case should be remanded for further proceedings.

Dated: March 21, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 12,960 words, excluding the parts exempted by Rule 32(f); and (2) the typeface and type style requirements of Rule 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface (14-point Times New Roman for text and 12-point Times New Roman for footnotes) using Microsoft Word (the same program used for the word count).

/s/Astha Sharma Pokharel
Astha Sharma Pokharel

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on March 21, 2024, this brief was served via the Court's CM/ECF Document Filing System upon all registered CM/ECF users in this appeal.

/s/Astha Sharma Pokharel
Astha Sharma Pokharel

EXHIBIT 1

**ST. JAMES PARISH GOVERNMENT
PLANNING COMMISSION
REGULAR MEETING AGENDA
MONDAY, AUGUST 28, 2023**

Regular Meeting- 6:00 p.m.

I. ROLL CALL

II. PLEDGE

III. MINUTES OF PREVIOUS MEETINGS

1. Monday, July 31, 2023, Regular Meeting Minutes

IV. CORRESPONDENCE

1. None

V. PRESENTATION/PUBLIC HEARING

1. None

VI. RESUBDIVISION OF PLOT – OLD BUSINESS

1. None

VII. RESUBDIVISION OF PLOT – NEW BUSINESS

1. Plot # 23-26

Plot Name: Corey and Kelly Bourgeois

Request: Requesting simplified subdivision approval to subdivide Lot E-1 into Lot E-1A and Lot E-1B

Section-Township-Range: Section 14, T-13-S, R-17-E

Number of Lots: 2

Lot Size: Lot E-1A-5 acres and Lot E-1B-5 acres

Land Use Designation: Residential Growth

Status: Letter of No Objection from LaDH and the Deliverance of CAD File

Owner/Developer: Beau Bourgeois

VIII. OTHER ORDINANCE MATTERS

1. None

IX. LAND USE – PUBLIC HEARING

1. None

X. LAND USE-OLD BUSINESS

1. None

XI. LAND USE-NEW BUSINESS

1. Item #: 23-27 (Information only item; action deferred to September meeting)

Item Name: Acadian Gas Pipeline System Land Use Request

Request: Requesting approval to use install a 20-inch diameter pipeline to Koch Methanol, which consists of the construction of approximately 7,412 feet of new 20-inch diameter pipeline from Acadian's existing Chico-C Compressor Station northwestward to the Koch Methanol plant. The project is located on the West Bank of St. James Parish within and southeast of the Koch Methanol plant. A portion of the project would be located in a Residential Growth area designated in the Land Use Plan, and the proposed project is not an allowable use under that

designation unless it is considered for a recommendation by the planning commission and approved by the Parish Council under Section 82-25(e) of the St. James Parish Code of Ordinances. A portion of the project is within the property boundary of Koch Methanol, which is designated as an Industrial use area, for which a pipeline is an allowable use, subject to the approval of the Planning Commission under Section 82-25(f) of the St. James Parish Code of Ordinances.

Proposed Land Use: Industrial Use

Land Use Designation: Residential and Industrial Use

Owner/Developer: Acadian Gas Pipeline System

XII. EXECUTIVE SESSION

1. None

XIII. OTHER

1. None

XIV. ADJOURNMENT

PROCEEDINGS OF THE PLANNING COMMISSION, PARISH OF ST. JAMES, STATE OF LOUISIANA, TAKEN AT A REGULAR MEETING ON MONDAY, JULY 31, 2023.

The Planning Commission of the Parish of St. James, State of Louisiana, met in regular session at the Courthouse in Convent, Louisiana on Monday, July 31, 2023, at 6:00 p.m.

PRESENT: Dean Millet, Mike Krumholt, Arthur Matherne, Ralph Becnel, Jon Hotard, Danny St. Pierre, Glenn Millet, and Sue Bier (Non-Voting)

ABSENT: Anthony Boudreaux, and Johnny Lawrence

ALSO, IN ATTENDANCE: Rick Webre, Vic Franckiewicz and Amber Shepard

MINUTES

1. A. Matherne motioned to approve the June 26, 2023, regular meeting minutes and was seconded by D. Millet. Roll call vote: D. Millet- yes, M. Krumholt- yes, A. Boudreaux- absent, J. Lawrence- absent, A. Matherne- yes, R. Becnel- yes, J. Hotard- yes, D. St. Pierre- yes, G. Millet-yes. All in favor. Motion carried.

CORRESPONDENCE

1. None

PRESENTATION AND PUBLIC HEARING

1. Presentation – Koch Methanol St. James, LLC (KMe) – the KMe Optimization Project and the Oxygen Back Up Supply Project, presented by KMe representatives Josh Wiggins (Plant Manager), Kevan Reardon (EH&S and Security Leader) and HaLeigh Engler (Environmental Engineering Lead): Public Comment from Craig Poche in favor of the project. Following the presentation and public comment, Koch representatives responded to questions from the commissioners.

RESUBDIVISION OF PLOT - OLD BUSINESS

1. None

RESUBDIVISION OF PLOT NEW BUSINESS

1. None

OTHER ORDINANCE MATTERS

1. None

LAND USE OLD BUSINESS

1. None

LAND USE NEW BUSINESS

1. **Koch Methanol St. James, LLC (KMe) Land Use Request Item # 23-25)** Represented by representatives of Koch identified in the public hearing section above. Requesting approval to use the current site at 5181 Wildcat Street, St. James, LA 70086: to upgrade existing equipment and install new equipment to improve facility's efficiency and reliability and to increase its production rate (Item #23-25). The project would be constructed within the facility footprint previously approved by the planning commission through several prior land use applications, except for a pipeline segment of up to approximately 1,000 feet connecting to an existing third-party ethane pipeline. The majority of the project would be located in an Industrial use area designated in the Land Use Plan, and the proposed pipeline and associated access road would be in an area designated as Wetlands, which are intended to remain unoccupied, except for unique situations requiring a location in the water, subject to permitting under the Coastal Zone Resource Management Program. As preliminary determination, the pipeline connection is a unique situation requiring a wetlands location because the existing ethane pipeline to which the new connection will be made is already located in wetlands. Accordingly, the approval authority for the project as a whole, within areas designated as Industrial and Wetlands, rests with the

planning commission under Section 82-25(f) of the St. James Parish Code of Ordinances. property is in an area designated as Industrial in the Land Use Plan.

At the request of Chairman Millet, land use counsel Vic Franckiewicz briefed the commission about how the land use ordinance applied to Koch’s project. He outlined the decision-making criteria specified in the ordinance. He also addressed the location of the ethane pipeline connection depicted in the Application, which is located an area designated as Wetlands in the land use plan. Wetlands are intended to remain unoccupied, except for unique situations requiring a location in the water, subject to permitting under the Coastal Zone Resource Management Program. Here, the pipeline connection is such a unique situation requiring a location in a Wetlands area because the existing ethane pipeline to which the connection will be made is already located there. Mr. Franckiewicz explained that the circumstances here make the pipeline an allowable use under ordinance Section 82-25(c)(11).

Commissioner St. Pierre moved, and Commissioner Matherne seconded, to adopt the following resolution regarding the land use application of Koch Methanol St. James, LLC (Item #23-25):

A RESOLUTION APPROVING THE APPLICATION OF KOCH METHANOL ST. JAMES, LLC UNDER THE ST. JAMES PARISH LAND USE ORDINANCE, WITH CONDITIONS

WHEREAS, Koch Methanol St. James, LLC (“Koch”) applied for approval to increase the capacity of its existing methanol plant through an Optimization Project, and to implement an Oxygen Backup Supply Project, all located predominantly in an area designated in the Land Use Plan for Industrial Use and to a limited extent in an area designated as Wetlands, identified as Item #23-25 (the “Application”); and

WHEREAS, public notice of the Application was published in accordance with Section 82-25(g) of the St. James Parish Code of Ordinances and public comments on the proposal were solicited; and

WHEREAS, the commission took up the matter at its meeting of July 31, 2023, when it received and considered a presentation by Koch about the Application, along with one citizen comment in favor of the project and none against, and questions posed by the commission members were responded to by Koch representatives; and

WHEREAS, the commission also received an explanation from its counsel as to how the land use ordinance applied to the application, and the decision-making criteria therein. Counsel also addressed the allowability of the ethane pipeline connection depicted in the Application being located an area designated as Wetlands in the land use plan, such pipeline connection being a unique situation requiring a location in a Wetlands area because the existing ethane pipeline to which the connection will be made is already located in the Wetlands area, in accordance with ordinance Section 82-25(c)(11). The commission concurs that the pipeline connection is an allowable land use in the Wetlands in this circumstance.

NOW, THEREFORE, BE IT RESOLVED under ordinance Section 82-25(f), that the planning commission hereby approves the Application, subject to the conditions stated below.

- A. Extent of Approval and Future Changes within the Facility Footprint:** This approval is limited to the facility as presented in the Application, along with reasonable facility and equipment modifications, additions, and production enhancements, subject to the following limitations:
 - 1. The footprint of the facilities and equipment shall not extend beyond that depicted in the Application, provided that access ways or servitudes for roads or infrastructure may be located outside of the footprint to the extent necessary to connect to existing roads or infrastructure.
 - 2. The facilities and equipment must comply with all requirements of the Louisiana Department of Environmental Quality and all other public entities having regulatory jurisdiction.
 - 3. Any modified or additional facilities or equipment not identified in the application must be functionally similar to or integrated with the facilities and equipment expressly described in the Application.
- B. Start Date Limitation.** Construction must commence within 24 months after the last public entity regulatory approval is issued, or within 24 months after the termination of any administrative or judicial appeal process that may follow from the issuance of any required permit, whichever is later. For the purposes of this limitation, construction is defined as: permanent on-site fabrication, erection, or installation of the proposed facility (such as preloading, pile driving, installing structural supports and foundations, laying underground pipework or utilities, or constructing permanent structures) that is continuously pursued with reasonable diligence to complete the proposed facility

within a reasonable time. Construction delays caused by natural disaster or labor disputes, and periods between operational phases of construction shall not be construed as interrupting construction that is otherwise continuously pursued.

- C. The facility must comply with ordinance Sections 30-52 through 30-59 (“Emergency Response and Mitigation of Regulated and Unregulated Material Incidents”).
- D. The portion of the project in areas designated as Wetlands in the land use plan shall be subject to any permits required under the St. James Parish Code of Ordinances, Chapter 18, Article V, Coastal Zone Resource Management Program.

BE IT FURTHER RESOLVED that the planning commission finds that approval is appropriate under ordinance Section 82-25, with specific reference to the factors described in Section 82-25(h) because: the impacts of the proposed use are common to industrial plants and would not be substantially different from the impacts of other allowable uses industrial areas; the project would retain existing jobs while providing new job opportunities, and would expand the tax base with the value of additional facilities. Such benefits outweigh the relatively modest physical and environmental impacts without impairing the parish’s ability to attract other beneficial development by virtue of the project’s location in an industrial area and its distance from potentially impacted uses.

BE IT FURTHER RESOLVED that the planning commission has considered the need for a buffer zone under ordinance Sections 82-25(i)(2) and 82-25(j), and that the commission finds that the proposed facility does not require additional buffer areas because: the use is substantially contained within the footprint of the existing methanol plant; it is located within and adjacent to industrial areas; the risk analysis for the project indicates that the impacts of failure scenarios would be limited to the existing industrial site or immediately adjacent industrial facilities without impacting residential areas; it is distant from other potentially impacted uses; and its impacts during normal operations are limited.

Roll call vote: D. Millet- yes, M. Krumholt-yes, A. Boudreaux- absent, J. Lawrence- absent, A. Matherne- yes, R. Becnel- yes, J. Hotard- absent, D. St. Pierre- yes, G. Millet-yes. All in favor. Motion carried.

OTHER BUSINESS

- 1. None

EXECUTIVE SESSION

- 1. None

ADJOURNMENT

A.Matherne motioned to adjourn and was seconded by D. St. Pierre. All in favor. Motion Carried. Meeting adjourned at 6:49 p.m.

s/ _____
Glenn Millet, Chairman

s/ _____
Michael Krumholt, Secretary

EXHIBIT 2

**OFFICIAL PROCEEDINGS OF THE
COUNCIL OF THE PARISH OF ST. JAMES, STATE OF LOUISIANA
TAKEN AT A REGULAR MEETING HELD ON SEPTEMBER 27, 2023**

The Council of the Parish of St. James, State of Louisiana, met in regular session in the Council Chambers of the Parish Courthouse Annex in Vacherie, Louisiana on Wednesday, September 27, 2023, at 6:00 p.m.

On roll call, the following were recorded present: Council Members Alvin St. Pierre, Jason Amato, Ryan Louque, Mason Bland, Clyde Cooper, Donald Nash, and Chairwoman Etienne-Steib.

Those also in attendance were Linda Hubbell, Council Secretary; Peter Dufresne, Parish President; Felix Boughton, Finance Director; Ryan Larousse, Assistant Operations Director; Darnell Jones, DHR Field Operations Manager; Eric Deroche, Emergency Preparedness Director, and Adam Koenig, Legal Advisor. Victor Franckiewicz, Special Counsel was also in attendance.

The Honorable, Vondra Etienne-Steib, duly convened the Council of the Parish of St. James, State of Louisiana, and stated that the Council was ready for the transaction of business.

Councilman Amato offered the invocation and Councilman Bland led the Pledge of Allegiance.

MINUTES

On a motion offered by Councilman Bland and seconded by Councilman Nash, the minutes of the September 13, 2023 public hearing were approved as distributed, and the reading of these minutes dispensed with.

On a motion offered by Councilman Bland and seconded by Councilman Louque, the minutes of the September 13, 2023 regular meeting were approved as distributed, and the reading of these minutes dispensed with.

PRESIDENT'S REPORT

President Dufresne presented this report to the Council:

- Thank you, Madam Chair. Good evening, everyone.
- I'd like to start off by congratulating our Miss St. James Parish Queen Kami Hymel for being crowned the 80th Louisiana Queen Sugar. Kami is also a member of the St. James Parish Economic Development Board and I know she will represent St. James Parish and the sugar cane industry well.
- I'd like to offer my condolences to the family of Helen Scott. Ms. Helen was the oldest resident in St. James Parish at 105 years old. Her funeral is tomorrow at Golden Grove Baptist Church. The motorcade is tomorrow at 12:30, starting at the Gramercy Town Hall.
- At this time, we are actively monitoring the saltwater intrusion occurring in the lower Mississippi. This is caused by a lack of rain up north, weakening the flow of the River. Both GOHSEP and the Army Corp forecast indicate that saltwater intrusion may or may not reach Jefferson Parish by the end of October, which is as far as the forecast goes. There's no way of determining if this will impact St. James Parish, and as of now we are thing that it will not.
- Late this afternoon, the State Fire Marshall announced that starting this Friday at 5:00p.m., parishes will have the option to opt out of the statewide burn ban. Our fire departments, emergency preparedness department, and other officials are discussing the impacts to St. James Parish and will be making a decision soon about the burn ban in St. James Parish.
- I coordinated with Entergy to host a community meeting this past Monday for community members to meet with Entergy and hear directly about recent outages and planned infrastructure improvements. Residents were able to express their frustrations, and Entergy took notes and is committed to making infrastructure improvements.
- There's a balance of \$60,000 in the 2023 Road Rehab Budget, which will be used for crack sealing in David Plantation.
- On Monday we resumed work clearing waterway debris from major drainage canals on the West Bank now that water levels are higher.
- Operations, DHR, and I will be meeting with DDG tomorrow to review designs for the Senior Center, located in Vacherie. This project is moving along and will be a reality in the nearby future.
- The West Bank Reception Hall generator was tested and is ready to operate in the event of a natural disaster.
- Substantial completion will be filed this week for the Romeville gas loop. This allows for redundancy in case of emergency situations.
- All residents residing in a state RV or state supplied shelter will be mandated to sign up for disaster case management starting on October 1st, if they aren't already signed up. The state has contacted residents to let them know.
- The St. James Parish Retired Teachers Association hosted the District 2 Louisiana Retired Teachers Association (LRTA) meeting last week. 180 teachers visited from St. James Parish, Assumption, Jefferson, Lafourche, St. Charles, St. John, and Terrebonne.
- I'd like to congratulate Salad Station on their very successful grand opening. It's always good to see new businesses popping up in St. James Parish.
- Last Thursday we hosted our very first Chamber Perks event with the River Region Chamber of Commerce at the new Recreation Center. The Chamber said it was their best attended event this year, and it was great to see so many of our local businesses networking and learning about local opportunities for businesses.
- The Tourist Commission held their quarterly meeting at Boat Club last week. Two of our local businesses spoke, The Ferry Landing Two Vintage and Makers Market and PJ's Coffee. I shared with attendees about our new multipurpose building and senior center coming soon to Vacherie, as well as many tourist attractions we have right here in St. James Parish. I also shared with the group the progress is still moving forward on the river boat dock at the old Vacherie ferry landing, that will be done by the American Cruise Ship terminal, and we are looking forward to more tourists in St. James Parish.

- Cypress Grove Montessori School held a ribbon cutting for the new track, which was donated by Shell. The track is a wonderful addition to the school, and the children were very excited about using it.
- The Quarter 4 Meeting sponsored by the River Region Chamber of Commerce will be at the West Bank Reception Hall.
- On October 10-15th, we will be hosting our annual Pumpkin Patch. Fieldtrips will be held during the week, with a fall fest and market day on the 14th and 15th. Our Pumpkin Patch 5k Fun Run registration opened today, which will be taking place on Saturday the 14th. We have also secured 1000 solar eclipse sunglasses, so participants can enjoy watching the solar eclipse that's taking place on the 14th right at the Pumpkin Patch. Please encourage your residents to come out and enjoy the festivities.
- Biddy Basketball Registration opened this week, please encourage local children in your district to participate. We have a great program and our teams have won the national championships multiple times.
- God bless each of you and your families tonight and God Bless St. James Parish. This concludes my report.

PUBLIC COMMENT - None

PRESENTATIONS

Latorya Howard, with Indulge Smokehouse addressed the Council regarding a variance for an alcohol license which is across the street from the daycare center. Ms. Howard said she was told to put the request for the State license on hold until after this meeting.

At this time, Chairwoman Etienne-Steib requested Ms. Mitt, with Angelique's Baking Co. to the podium so that legal advisor, Adam Koenig, could address both since it was the same concern. Mr. Koenig indicated that the Parish Ordinance prohibits the license to be granted within 300 feet from a facility that is mentioned, the daycare. He said the Parish ordinance mimics the State Statute that prohibits business within 300 feet from several different facilities. Ms. Mitt said she has communications from the State they will be going by the parish ordinance. She said door to door they are more than 300 feet, it's the property line that cuts it short. Councilman Bland said the Council will need more information from the ATC before they could make a decision. President Dufresne said he spoke with an ATF agent and was informed that they would take into consideration, not a guarantee, if the Parish Council would agree to grant a variance. Councilman Bland said a possible revision to the ordinance may be necessary.

Mr. Gary Fulton and Peter Cazeaux, with the Louisiana Department of Environmental Quality presented an overview of the air monitor device for the Welcome area on the West Bank. He said they have received their grant from the EPA and are proceeding with purchasing the equipment. He listed what the air monitoring station will monitor for, he showed a map of the potential location, which should be centrally located, easily accessible, secure, minimal charge for rent, power and communications, and minimal structures. He showed a picture of what the device looks like both on the inside and outside. He indicated that the data will be posted on LDEQ's website. He answered Councilman Bland's question about the duration saying it will be there for 3 years and after that time they will seek additional funding or remove the station. Councilman Cooper inquired about the data on the reports. Mr. Fulton said they will be monitoring the data full-time and personnel will be dispatched if necessary. Councilman Nash inquired if the Parish would be receiving the data. Mr. Fulton said the data will be available on the website. Councilman Louque inquired if the monitor would affect the permit side. Mr. Cazeaux said he didn't know and would get back. Mr. Fulton answered Councilman St. Pierre's question about data history being stored. Mr. Fulton indicated it will be stored on the website. Councilman Cooper commended LDEQ for putting the device in the area and he thanked Representative Carter and everyone who had a part to have monitor placed in the community.

APPOINTMENTS TO BOARDS AND COMMISSIONS

Councilman St. Pierre offered and moved for adoption **RESOLUTION 23-195, A RESOLUTION REAPPOINTING SHELTON SMITH TO THE GRAMERCY RECREATION BOARD OF COMMISSIONERS**. Councilman Bland offered a second, and the resolution was unanimously adopted.

RESOLUTION 23-196, A RESOLUTION APPOINTING ROXANNE JACKSON CHILDS TO THE BOARD OF COMMISSIONERS, ST. JAMES PARISH HOSPITAL SERVICE DISTRICT, was offered and moved for adoption by Councilman Amato. Councilman Bland offered a second, and the resolution was unanimously adopted.

OLD BUSINESS

Update of drainage study from Forrestal Street to Pool Lane – began clearing Coteau and Clock Canals on Monday. Councilman Nash said he will request funding for a study to strengthen the levee.

Update of West Bank Multi-Purpose Complex – will be meeting with Duplantis Design Group tomorrow finalize the drawing for the senior center and multi-purpose recreational facility.

NEW BUSINESS

The first item under new business was the hearing and consideration of the appeal of Koch Methanol land use application approval, Planning Commission Item No. 23-25. On behalf of Tulane Environmental Law Clinic, representing Beverly Alexander, RISE St. James, Inclusive Louisiana, and the Mr. Triumph Baptist Church, student attorneys, Andrea White and Charlotte Phillips presented their appeal. Mr. Josh Wiggins, Plant Manager of Koch Methanol St. James, presented information regarding their projects. Kimberly Terrell, Environmental Law Clinic provided the rebuttal.

The following provided comments opposing the Koch Methanol Project:

Lisa Jordan, 6329 Freret St., Ste 130, New Orleans, LA 70118

Pippin Frisbie-Calder, 1723 Ursulines Avenue, New Orleans, LA 70116

Clara Potter, 6329 Freret St. New Orleans, LA

Adam Dohsenwend, 3733 W. Lakeshore Drive. Baton Rouge, LA 70808

Scott Eustis, 935 Gravier St. Ste 700, New Orleans, LA 70112
Shamell Lavigne, 8581 Hwy 18, St. James, LA 70086
Anne Rolfes, 3216 Canal St. Louisiana Bucket Brigade, New Orleans.
Gail LeBoeuf, 758 N. Ezidore Ave., Gramercy, LA 70052
Myrtle Felton, 8222 Pleasant Hill St., Convent, LA 70723
Barbara Washington, 8191 Pleasant Hill St., Romeville, LA (provided a written comment in her absence)
Kimberly Terrell, 6329 Freret Street, New Orleans, LA

The following provided comments in favor of the Koch Methanol Project:

George Nassar, 5390 Canatella St. Convent, LA
Lee Granier, 22701 Oak Street, Vacherie, LA
Randall Isles, 18065 Terraceside Drive, Prairieville, LA 70769
Wesley Chenier, 19819 Hwy 644, Vacherie, LA
Jacob Errington, 5666 LA 44, Convent, LA 70723
Sherry Bell, 19917 Hwy 544, Vacherie, LA

The following Council Members provided comments:

Alvin St. Pierre, Jr., Donald Nash, Mason Bland, and Clyde Cooper.

At this time Councilman Bland offered a motion to reject the appeal and was seconded by Councilman Nash. After a unanimous vote, the motion carried.

RESOLUTION 23-197, A RESOLUTION TO APPROVE DISBURSEMENT OF PAYROLL FOR THE SEPTEMBER 29, 2023 PAYROLL, was offered and moved for adoption by Councilman St. Pierre and seconded by Councilman Amato. After a unanimous vote, the resolution was adopted.

RESOLUTION 23-198, A RESOLUTION TO APPROVE DISBURSEMENT OF FUNDS TO PAY PENDING CURRENT INVOICES AND PAYABLES, was offered and moved for adoption by Councilman Nash and seconded by Councilman Bland. After a unanimous vote, the resolution was adopted.

RESOLUTION 23-199, RESOLUTION AUTHORIZING THE PARISH PRESIDENT TO SIGN A CONTRACT WITH GOHSEP FOR WILDFIRE SUPPORT GIVEN TO BEAUREGARD PARISH, was offered and moved for adoption by Councilman St. Pierre and seconded by Councilman Bland. After a unanimous vote, the resolution was adopted.

RESOLUTION 23-200, A RESOLUTION ACCEPTING THE BID OF BUNKER GEAR SPECIALISTS FOR THERMAL IMAGERS, was offered and moved for adoption by Councilman Amato. Councilman Nash offered a second, and the resolution was unanimously adopted.

RESOLUTION 23-201, A RESOLUTION AUTHORIZING THE ST. JAMES PARISH PRESIDENT TO SIGN AND EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH DESIRE LINE, LLC FOR PROGRAM MANAGEMENT SERVICES, was offered and moved for adoption by Councilman Nash and was seconded by Councilman Amato. After a vote showing St. Pierre, Amato, Cooper and Nash in favor, and Louque, Etienne-Steib, and Bland against, the resolution was adopted.

RESOLUTION 23-202, A RESOLUTION AUTHORIZING THE ST. JAMES PARISH PRESIDENT TO SIGN AND EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH DESIRE LINE, LLC FOR COMMUNITY PLANS, CODE AMENDMENTS, AND CAPITAL IMPROVEMENT PLAN SERVICES, was offered and moved for adoption by Councilman Nash and was seconded by Councilman St. Pierre. After a vote showing St. Pierre, Amato, Cooper, and Nash in favor, and Louque, Bland, and Etienne-Steib against, the resolution was adopted.

RESOLUTION 23-203, A RESOLUTION ACCEPTING CHANGE ORDER #2 FROM TBT CONTRACTING INC. OF LA FOR THE VACHERIE LIBRARY ADDITION PROJECT, was offered and moved for adoption by Councilman St. Pierre and was seconded by Councilman Louque. After a unanimous vote, the resolution was adopted.

INTRODUCTION OF PROPOSED ORDINANCE, AN ORDINANCE AMENDING SECTIONS 82-25(E), 82-25(H) AND 30-53(D) OF THE ST. JAMES PARISH CODE OF ORDINANCES; ENACTING NEW SECTION 82-26 PROVIDE SOLAR ENERGY FARM FACILITY STANDARDS FOR DEVELOPMENT; AND REPEALING SECTION 82-25(O) REGARDING LIMITATIONS ON COMMERCIAL SOLAR FACILITIES, was introduced on a motion offered by Councilman Amato and seconded by Councilman St. Pierre. After a vote showing St. Pierre, Amato, Louque, Bland, Cooper, and Etienne-Steib in favor, and Nash against, the ordinance was accepted and ordered filed with the Secretary for public inspection and publication of Notice of Public Hearing, which was scheduled for 6:00 p.m., on Wednesday, October 11, 2023, in the Council Chambers of the Parish Courthouse in Convent and on Wednesday, October 25, 2023 in the Council Chambers of the Parish Courthouse Annex in Vacherie.

DIRECTOR'S REPORT – None

COUNCIL MEMBER'S REPORT

COUNCILMAN NASH – Councilman Nash had no comments.

COUNCILMAN COOPER – Councilman Cooper requested a letter of condolence for the family of Mr. Landry Dennis. He thanked the residents of 5th District and St. James Parish, Koch Methanol, Tulane Law, Rise, Inclusive and the other groups involved with the decision that was needed for Koch Methanol.

COUNCILMAN BLAND – Councilman Bland had no comments.

COUNCILMAN LOUQUE – Councilman Louque had no comments.

COUNCILMAN AMATO – Councilman Amato reminded everyone that early voting begins on Saturday. He said Ms. Childs will make a wonderful addition to the Hospital Board, and he requested a thank you letter be sent to Ms. Bailey for her service on the Hospital Board.

COUNCILMAN ST. PIERRE – Councilman St. Pierre had no comments.

CHAIRWOMAN ETIENNE-STEIB – Chairwoman Etienne-Stieb had no comments.

ADJOURNMENT

After determining there was no additional business to come before the council, on a motion offered by Councilman St. Pierre and seconded by Councilman Bland and carried, the meeting adjourned at 8:37 p.m.

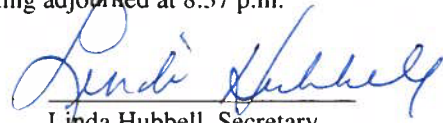

Linda Hubbell, Secretary

EXHIBIT 3

**OFFICIAL PROCEEDINGS OF THE
COUNCIL OF THE PARISH OF ST. JAMES, STATE OF LOUISIANA
TAKEN AT A REGULAR MEETING HELD ON OCTOBER 11, 2023**

The Council of the Parish of St. James, State of Louisiana, met in regular session in the Council Chambers of the Parish Courthouse in Convent, Louisiana on Wednesday, October 11, 2023, at 6:55 p.m., following the public hearings.

On roll call, the following were recorded present: Council Members Jason Amato, Mason Bland, Clyde Cooper, Donald Nash, and Chairwoman Etienne-Steib. Councilmen Alvin St. Pierre and Ryan Louque were absent.

Those also in attendance were Courtney Tomlinson, Deputy Council Secretary; Peter Dufresne, Parish President; Felix Boughton, Finance Director; Rick Webre, Operations Director; Ingrid Bergeron, DHR Director; Eric Deroche, Emergency Preparedness Director, and Adam Koenig, Legal Advisor. Mr. Vic Franckiewicz, Special Counsel, was also in attendance.

The Honorable, Vondra Etienne-Steib, duly convened the Council of the Parish of St. James, State of Louisiana, and stated that the Council was ready for the transaction of business.

Councilman Amato offered the invocation and Councilman Bland led the Pledge of Allegiance.

MINUTES

On a motion offered by Councilman Nash and seconded by Councilman Bland, the minutes of the September 27, 2023 regular meeting were approved as distributed, and the reading of these minutes dispensed with.

FINANCE DEPARTMENT'S MONTHLY REPORT

The Statement of Revenues and Expenditures for August 2023 was approved on a motion offered by Councilman Bland and seconded by Councilman Amato.

PRESIDENT'S REPORT

President Dufresne presented this report to the Council:

- First off, I'd like to wish a happy birthday to our Council Chair Ms. Vondra, her birthday was on Thursday.
- A large portion of Gramercy and Lutchter experienced an emergency Entergy outage last week. This was not due to any fault on the parish or Entergy, unfortunately the substation was vandalized and emergency repairs had to be made. While the outage did last longer than originally anticipated, I would like to thank Entergy for addressing the issue and working to communicate with customers.
- Operations, DHR, and I met with DDG to review designs for the Senior Center in Vacherie. The current focus is on civil engineering, such as sewer and water, for both structures. Schematic design is ongoing and nearing completion for the senior center. Renderings for both structures are available by the entrance.
- The Romeville natural gas loop is now completed, allowing for redundancy and increasing our ability to provide uninterrupted services in emergency situations.
- Contractors have had to pause work at the Blind River Boat Launch due to high water.
- We have drafted an Inter-Governmental Agreement for maintenance and administrative services at Gramercy Park, which is under review by the Gramercy Recreation Board. This will be reviewed by the Council at the next meeting.
- We have heard from the majority of residents in the Angelle Gas Loop area in response to the survey we sent out, and the majority of residents were in favor of the project. We will be proceeding with accepting bids on the project.
- The Louisiana Watershed Initiative Phase One is funding an extension to the major drainage trunk line south of Angelle Loop. Surveying is ongoing, and a completed design is expected within 60 days.
- The DHR building recently constructed in Lutchter is now substantially complete, there are a few minor punch list items to finalize and furniture is being installed. Once fully completed, we will send out an invitation to the grand opening of the new facility. This new building will provide easier access to residents for the critical services the Department of Human Resources provides.
- The District 4 restrooms are currently under construction, with mechanical, electrical and concrete block walls in place. We gave notice to proceed on August 28th, and we anticipate it being done before the end of the year.
- While the Highway 20 road widening project is a State DOTD project, this administration has been actively advocating for this much needed project. I am happy to share that construction started on October 2nd for the Highway 20 widening project, with clearing and grubbing of vegetation within the state right of way.
- Our operations department just relocated to Highway 3127 and are currently clearing hurricane generated debris out of the Clock Canal, they will then move down bayou Lassigne.
- The FEMA project worksheet has finally been obligated for the Gramercy Recreation District for damages from Hurricane Ida. We are working with the District to move the project forward.
- This week is fire prevention week, our fire department will be visiting schools tomorrow, Friday, and next week due to fall break. This is a great outreach program to help educate children at an early age on how to prevent fires.
- The state has allowed each parish to decide if the burn ban should remain. At this time, the burn ban is still in place for St. James Parish, however the department of agriculture and forestry commissioner has allowed agricultural burning. We are hopeful that with the amount of rain received today the ban will be lifted soon.
- The Sheriff's Office hosted their Senior Citizens Crime Expo last week. I was invited to share with attendees about progress in St. James Parish and recent infrastructure upgrades. The event was well attended, and it was great to see so many of our seniors accessing crucial safety information.
- I signed a proclamation declaring the week of October 1-7 as 4-H Week. As a previous 4-Her myself, I have personally experienced the growth and opportunities this organization provides our youth.

- The River Region Chamber of Commerce held their 4th Quarter General Membership Meeting on Monday. The Region 4 Small Business Association Administrator Ted James spoke, and it was a privilege to hear from him about small business development in our region.
- On Thursday – October 19th from 9:00 am – 4:00 pm, we will be hosting a blood drive at the Convent Community Center. One donation can save up to three lives – please come out and donate if you are eligible to.
- Tomorrow is the DHR Fall Harvest Festival from 10am-1pm at the Westbank Reception Hall, and the event is football themed. I'd like to invite the council to attend and be sure to represent your team with a jersey or football attire.
- On October 18th from 10am-1pm the Department of Human Resources is hosting their 50 Shades of Pink Wellness Program at the Westbank Reception Hall. Attendees are invited to wear pink and participate in the fashion show.
- This week we are hosting our annual Pumpkin Patch. Fieldtrips are being held during the week, with a fall fest and market day on the 14th and 15th. Our Pumpkin Patch 5k fun run registration is still open, and so is the pumpkin painting contest. We have also secured 1000 solar eclipse glasses, so participants can enjoy watching the solar eclipse that's taking place on the 14th right from the Pumpkin Patch. Please encourage all residents to come out and enjoy the festivities.
- Biddy Basketball Registration is open, please encourage local children in your district to participate. We have a great program and our teams have won the national championships multiple times.
- God bless each of you and your families tonight, and God bless St James Parish. This concludes my report.

PUBLIC COMMENT

- Shamell Lavigne, 8581 Hwy 18, St. James, spoke in opposition of Koch Methanol's ITEP Participation.
- Shamell Lavigne, 8581 Hwy 18, St. James, spoke in opposition of Acadian Pipeline's Land Use Application.
- Gail LeBoeuf, 758 N. Ezidore, Ave, Gramercy, spoke in favor of Koch Methanol's ITEP Participation, if 80/20.
- Gail LeBoeuf, 758 N. Ezidore, Ave, Gramercy, spoke in opposition of Acadian Pipeline's Land Use Application.
- Kevan Reardon, 5101 Wildcat St. St. James, spoke in favor of Acadian Pipeline's Land Use Application.
- Barbara Washington, 8191 Pleasant Hill St, Romeville, spoke in opposition of Koch Methanol's ITEP Participation.
- Beverly Alexander, 7177 Edwards St., St. James, spoke in opposition of Koch Methanol's ITEP Participation.
- Tim Robertson, 8724 Jefferson Hwy, Baton Rouge, clarified some of the items address by previous speakers.

PRESENTATIONS - None

APPOINTMENTS TO BOARDS AND COMMISSIONS

RESOLUTION 23-204, A RESOLUTION APPOINTING DEVIN SCHEXNAYDER AS THE DISTRICT 4 REPRESENTATIVE TO THE KEEP ST. JAMES PARISH BEAUTIFUL BOARD, was offered and moved for adoption by Councilman Bland. Councilman Amato offered a second and the resolution was unanimously adopted.

OLD BUSINESS

Update of drainage study from Forrestal Street to Pool Lane – working on the servitude for the channel east of Pool Lane.

Update of West Bank Multi-Purpose Complex – nearing the final design stages of the Senior Center and are continuing work on the Multipurpose building, renderings are available.

NEW BUSINESS

RESOLUTION 23-205, A RESOLUTION TO APPROVE DISBURSEMENT OF PAYROLL FOR THE OCTOBER 13, 2023 PAYROLL, was offered and moved for adoption by Councilman Amato and seconded by Councilman Nash. After a unanimous vote, with St. Pierre and Louque absent, the resolution was adopted.

RESOLUTION 23-206, A RESOLUTION TO APPROVE DISBURSEMENT OF FUNDS TO PAY PENDING CURRENT INVOICES AND PAYABLES, was offered and moved for adoption by Councilman Nash and seconded by Councilman Bland. After a unanimous vote, with St. Pierre and Louque absent, the resolution was adopted.

After Mr. Steve Nosacka provided a few details of the exemption and Councilman Cooper clarified some things that were said, in reference to character, **RESOLUTION 23-207, RESOLUTION OF THE ST. JAMES PARISH COUNCIL APPROVING KOCH METHANOL ST. JAMES, LLC FOR PARTICIPATION IN THE INDUSTRIAL TAX EXEMPTION PROGRAM**, was offered and moved for adoption by Councilman Bland and seconded by Councilman Nash. After a unanimous vote, with St. Pierre and Louque absent, the resolution was adopted.

RESOLUTION 23-208, A RESOLUTION AUTHORIZING THE PARISH PRESIDENT'S OFFICE TO ADVERTISE FOR AND ACCEPT BIDS FOR THE DISTRICT 4 COMMUNITY CENTER KITCHEN RENOVATION PROJECT, was offered and moved for adoption by Councilman Bland. Councilman Amato offered a second, and the resolution was unanimously adopted.

RESOLUTION 23-209, A RESOLUTION SETTING THE HOURS FOR "TRICK-OR-TREAT" ON HALLOWEEN NIGHT FROM 6:00 P.M. TO 8:00 P.M., was offered and moved for adoption by Councilman Amato. Councilman Cooper offered a second, and the resolution was unanimously adopted.

RESOLUTION 23-210, A RESOLUTION AMENDING THE CONTRACT BETWEEN THE GOVERNOR'S OFFICE OF ELDERLY AFFAIRS AND ST. JAMES PARISH GOVERNMENT, DEPARTMENT OF HUMAN RESOURCES, was offered and moved for adoption by Councilman Amato and was seconded by Councilman Bland. After a unanimous vote, with St. Pierre and Louque absent, the resolution was adopted.

RESOLUTION 23-211, A RESOLUTION APPROVING THE AREA AGENCY ON AGING DISASTER PLAN TO BE SUBMITTED TO THE GOVERNOR'S OFFICE OF ELDERLY AFFAIRS FOR JULY 1, 2023 TO JUNE 30, 2024 PROGRAM YEAR, was offered and moved for adoption by Councilman Nash and seconded by Councilman Bland. After a unanimous vote, with St. Pierre and Louque absent, the resolution was adopted.

RESOLUTION 23-212, A RESOLUTION APPROVING THE APPLICATION OF ACADIAN PIPELINE TO ALLOW INSTALLATION OF A 20-INCH DIAMETER PIPELINE TO KOCH METHANOL, WHICH CONSISTS OF 7,412 FEET OF NEW PIPE FROM THE EXISTING ACADIAN'S PIPELINE, USE IN A RESIDENTIAL GROWTH AREA 5882 ST. EMMA STREET, ST. JAMES, LOUISIANA 70086 (ITEM #23-27) UNDER THE ST. JAMES PARISH LAND USE ORDINANCE, WITH CONDITIONS, was offered and moved for adoption by Councilman Cooper and was seconded by Councilman Amato. After a unanimous vote, with St. Pierre and Louque absent, the resolution was adopted.

DIRECTOR'S REPORT

Councilman Bland inquired with Ms. Bergeron about the letters to residents regarding temporary homes. Ms. Bergeron said the letter looks good to move forward. Found out, on a call with GOHSEP, there are about 43 residents still in the system, not sure if in a RV on their property or in some type of State sheltering and are working with that list. Councilman Cooper inquired with Ms. Bergeron regarding an update from the Housing Authority.

FELIX BOUGHTON – a budget adoption schedule will be distributed at the next meeting.

RICK WEBRE – confident that the Hwy 3127 widening and the levee projects be included on the Bond Commission's agenda. Operations received a permit from LDEQ, we are now a waste tire transporter. The North Rosary application has been submitted to the Statewide Flood Control and will go into the next session. Will keep everyone informed about what will be submitted for Capital Outlay projects.

COUNCIL MEMBER'S REPORT

COUNCILMAN ST. PIERRE – Councilman St. Pierre was absent.

COUNCILMAN AMATO – Councilman Amato expressed appreciation for work done on the Acadian ditch mitigation project. Indicated that Sara Bourgeois will make a presentation at the next meeting on the Parish Security Camera Study. Requested an update on the funds for school warning lights at St. Peter Chanel and Paulina Elementary. He reminded everyone that Saturday is election day.

COUNCILMAN LOUQUE – Councilman Louque was absent.

COUNCILMAN BLAND – Councilman Bland said he agrees that council meetings being should be recorded or are live on Facebook and said he thinks that is something that the Parish should invest in or look into. He dittoed Councilman Amato's remark regarding Saturday being election, adding that the polls open from 7:00 a.m. to 8:00 p.m., and he wished good luck to those running.


COUNCILMAN COOPER – Councilman Cooper requested a condolence letter to the family of Samuel Jones. He thanked Rise for their concerns for protecting the residents of the 5th District. He also reminded everyone that Saturday is election day. He said what every fight or challenge you are in, do it with the right motive, and do it respectfully.

COUNCILMAN NASH – Councilman Nash inquired how much debris was removed from Coteau Canal. Mr. Webre said several hundred cubic yards. He said they cleaned from the boat launch to the bridge, up Clock Canal up to where it was too shallow. They then relocated to Hwy 3127 and will work back south on Clock Canal, then Lassene to the parish line. He said, in reference to Ordinance 23-11, his stand against the panels is based on no economic benefit for the public and that it will only benefit the private landowners. He said if the private landowners will be the only ones that will seek benefits then he feels St. James Parish needs to look at some type of other resource for solar panels.

CHAIRWOMAN ETIENNE-STEIB – Chairwoman Etienne-Stieb wished good luck to all candidates.

ADJOURNMENT

After determining there was no additional business to come before the council, on a motion offered by Councilman Nash and seconded by Councilman Bland and carried, the meeting adjourned at 8:04 p.m.


Courtney Tomlinson, Deputy Secretary