

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

<p>INCLUSIVE LOUISIANA; MOUNT TRIUMPH BAPTIST CHURCH; RISE ST. JAMES, by and through their members</p> <p><i>Plaintiffs,</i></p> <p>vs.</p> <p>ST. JAMES PARISH,</p> <p><i>Defendant.</i></p>	<p>Civil Action No. 2:23-cv-00987 Section J/1 Judge Carl J. Barbier Magistrate Judge Janis van Meerveld</p>
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**PLAINTIFFS' OPPOSITION TO DEFENDANT'S RE-SUBMITTED RULE 12(b)(6)
MOTION TO DISMISS CLAIMS**

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BACKGROUND

Plaintiffs' Complaint details a decades-long and consciously-reinforced discriminatory land use system implemented by St. James Parish which has its roots in slavery and its afterlife. Plaintiffs' members are descendants of people who were enslaved on the brutal sugarcane plantations that flourished in the Parish who, with others, endeavored to make a life for themselves after Emancipation, despite the new forms of land and labor exploitation following Reconstruction. Second Amended Complaint, ECF No. 104 ("Complaint" or "Compl.") ¶¶23-25, 51, 163-70, 246. The discriminatory land use system continues today: Plaintiffs' members are residents and property-owners in the majority-Black 4th and 5th Districts, where the Parish has, as a policy, pattern, and practice, steered harmful industry since the 1960s, while sparing majority-white districts. *Id.* ¶¶23-25, 90, 264, 344 (Plaintiffs), 187, 195, 199, 203, 310-553 (industrial steering). The Parish effectively codified this discriminatory system into a land use plan enacted in 2014 ("Land Use Plan"), and continues to engage in this discriminatory pattern and practice today.

As the Fifth Circuit recognized on appeal, Plaintiffs have alleged that this unequal treatment exposes Black residents in the predominantly-Black 4th and 5th Districts to deadly levels of pollutants, producing among the highest risks of cancer and respiratory hazards in the country. *Inclusive La. v. St. James Par.*, 134 F.4th 297, 301-302 (5th Cir. 2025) ("App. Ruling"). The health effects of this discriminatory land use system have been known to, but ignored by, the Parish since at least the 1980s. Compl. ¶¶206, 210-19, 226, 244, 269-70, 369-553.

And, as the Fifth Circuit recognized, in addition to the substantial dignitary, health, and property harms, App. Ruling at 310-312, Plaintiffs extensively allege that the discriminatory land use system continues to threaten Plaintiffs' members' culture, history, and religion, *id.* at 309-310, including historic communities built by freedpeople, Compl. ¶¶84, 88, 89, historic Black churches,

¶¶24, 89, 286, 670, schools, ¶¶7, 286, 447, and perhaps most shockingly, cemeteries of enslaved people, ¶¶588-678. In challenging this decades-long discriminatory system, Plaintiffs seek the only appropriate remedy: a mandate of equal treatment.

ARGUMENT

I. LEGAL STANDARD

In reviewing a 12(b)(6) motion to dismiss, a court must assess whether a complaint contains “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations omitted). A “claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* At this stage, Plaintiffs are not required to “prove [their] case.” *Lalin v. ESN Prop., LLC*, No. CV 24-2335, 2025 WL 1115607, at *3 (E.D. La. Apr. 15, 2025) (to do so “conflates a party's burden at the motion to dismiss stage with a party’s burden at summary judgment.”). Instead, courts must accept Plaintiffs’ “well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.” *Yumilicious Franchise, L.L.C. v. Barrie*, 819 F.3d 170, 174 (5th Cir. 2016).

II. CONTRADICTING THE FIFTH CIRCUIT’S RULING, THE PARISH CONTINUES TO MISCHARACTERIZE PLAINTIFFS’ CLAIMS AS CHALLENGING DISCRETE ACTS, NOT A PATTERN AND PRACTICE.

The Parish attempts to re-litigate the Fifth Circuit’s ruling. It argues, again, that this Court should treat Plaintiffs’ claims as challenging discrete acts, not a pattern and practice, such that the “only” allegations from the First Amended Complaint that “are viable for” Claims I-IV and VII are two discrete land use decisions made by the Parish on August 17, 2022. ECF No. 108-1 (“Def. Br.”) at 3. But this approach was rejected by the Fifth Circuit, so under the law of the case doctrine this Court does not have the power to entertain it. *See United States v. Suarez*, 769 F. App’x 174,

175 (5th Cir. 2019). Specifically, the Fifth Circuit ruled that those claims¹ challenge not a “discrete action by [the Parish],” but a ““longstanding pattern and practice of racially discriminatory land use decisions’ where ‘at least one act in this pattern and practice occurred within the limitations period.’” App. Ruling at 305.² In addition to the two August 2022 decisions, the Fifth Circuit listed several other decisions made *outside* the limitations period, dating back to 1966, that it ruled also formed the basis of Plaintiffs’ claims. *Id.* at 306-308. It instructed that those decisions should have been relevant to this Court as contributing to Plaintiffs’ claims, *id.* at 306, so this Court cannot ignore them. Additionally, the Parish acknowledges it has made several decisions more recently, now included in the Complaint, that are also part of the pattern and practice. *Id.* at 5.

III. CLAIM I: THIRTEENTH AMENDMENT: PLAINTIFFS SUFFICIENTLY PLEAD FACTS DEMONSTRATING THAT THE LAND USE SYSTEM IN ST. JAMES PARISH IS A BADGE OR INCIDENT OF SLAVERY.

The Parish ignores the jurisprudential developments of the past six decades governing what harms constitute “badges and incidents” of slavery prohibited by the Thirteenth Amendment in arguing that Plaintiffs failed to plead facts sufficient to state this claim. Instead, the Parish relies on a case from 1883 which helped usher in the Jim Crow era for its argument that “badges or incidents” must involve “[c]ompulsory service of the slave for the benefit of the master, restraint of his movements except by the master’s will... and such like burdens and incapacities.” Def. Br. at 7 (citing *Civil Rights (C.R.) Cases*, 109 U.S. 3, 22 (1883)). In defending their discriminatory scheme, the Parish relies on the very authority that licensed decades of racial subjugation.

¹ This Court had dismissed Claims V and VII on standing grounds, without ruling on statute of limitations, so the Fifth Circuit reversed the dismissal of those claims on standing grounds. App. Ruling at 309-312.

² The Parish has revealed in another brief that it understands, but simply disagrees with, the Fifth Circuit’s ruling. In its Petition for Writ of Certiorari to the Supreme Court, it stated that “Plaintiffs allege that the Parish engaged in a ‘longstanding pattern and practice of racially discriminatory land use decisions,’” Petition for Writ of Certiorari, *Inclusive La. v. St. James Par.*, No. 25-195 at 18 (Aug. 14, 2025), and that “all (as in each and every one) of the Parish’s actions, whether prior to 2014, in 2014, or since 2014 to the present time, are part of” that alleged pattern and practice. *Id.* at 23.

The largely discredited decision in the *C.R. Cases* provided a key legal pillar that helped maintain white supremacy and segregation throughout the South, including in St. James Parish. There, the court ruled that racial discrimination in privately-owned public accommodations did not constitute a badge or incident of slavery. This decision, together with the court's subsequent decision upholding a Louisiana "separate but equal" statute in *Plessy v. Ferguson*, 163 U.S. 537 (1896), gave legal license to "whites only" segregation, helped Jim Crow to flourish, and emboldened the discriminatory actions of St. James Parish officials, which form in large part the basis of and provide context for Plaintiffs' claim. Compl. ¶¶141-84.

Nearly a century later the modern Supreme Court corrected course in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968) when it found that racial discrimination in real estate transactions constituted "badges" or "incidents" of slavery, observing that "[j]ust as the Black Codes, enacted after the Civil War to restrict the free exercise of those rights, were substitutes for the [slave] system," the exclusion of Black people "from white communities became a substitute for the Black Codes." *Id.* at 441-42. The Court later reiterated that badges or incidents of slavery extend "far beyond the actual imposition of slavery or involuntary servitude" when it held that private violence against perceived civil rights workers could be brought pursuant to 42 U.S.C. § 1985(3). *Griffin v. Breckenridge*, 403 U.S. 88, 103, 105 (1971). *See also, United States v. Nelson*, 277 F.3d 164, 190 (2d Cir. 2002) (upholding the constitutionality of a federal hate crimes conviction finding that "race-based private violence" was a badge or incident of slavery). The Court has also held racial discrimination in private contracting can rise to an impermissible badge or incident of slavery. *Runyon v. McCrary*, 427 U.S. 160 (1976).

Even before these pronouncements by the Supreme Court, the Fifth Circuit identified school segregation as a badge of slavery. *See United States v. Jefferson Cnty. Bd. of Educ.*, 372

F.2d 836, 867-68 (5th Cir. 1966) (Black school children were attending “inherently unequal schools and wearing the badge of slavery separation displays”). In a later case, Judge Wisdom, concurring in the judgment for Black plaintiffs challenging employment discrimination in the New Orleans Police Department, observed that the Thirteenth Amendment would have supported their Title VII claim because of the “discriminatory effect upon blacks as a class [which] can be linked with a discriminatory practice against blacks as a race under the slavery system.” *Williams v. City of New Orleans*, 729 F.2d 1554, 1577 (5th Cir. 1984). Judge Wisdom observed that “[o]ne of the cornerstones of slavery was the race-based denial of equal economic opportunities” and found that the under-representation of Black officers was a badge of slavery as it was “closely linked to the former system of slavery and the reaction of whites unwilling after Reconstruction and Redemption to accept any blacks on the police force.” *Id.* at 1579-80.

But even taking the more narrow and restrictive view of “badges” and “incidents” set out in the *Civil Rights Cases*, Plaintiffs state a Thirteenth Amendment violation. There could hardly be a clearer badge or incident of slavery than the ongoing disregard for, desecration, and destruction of the graves of the people enslaved in that system such as that caused by the Parish’s land use practices because they are “burdens and incapacities [that] were the inseparable incidents of the institution” of slavery. *C.R. Cases*, 109 U.S. at 22. This badge and incident is tethered geographically to a discrete practice undertaken during slavery and continued over time in the very place where it originated. The connection between slavery and its afterlife in St. James Parish and the practices here are infinitely more direct and “inseparable” from the institution than the nationwide discrimination by private actors the Supreme Court found too attenuated to classify as a Thirteenth Amendment violation in the *Civil Rights Cases*.

Plaintiffs' Complaint thoroughly details how the present-day discriminatory land use system in St. James Parish is closely linked and directly traceable to the system of slavery as it operated in St. James Parish, with its after-effects reverberating through the Black Codes, Reconstruction, and Jim Crow up through to today.³ Compl. ¶¶29-59 (origins of land use system, land distributions to white planters, slavery system), ¶¶70-87 (land granted to then taken from Black planters after Emancipation), ¶¶91-109, 126-62 (white supremacist violence and political repression), ¶¶32-34, 84-90, 163-70 (formation of free communities adjacent to plantations, and a nearby labor supply). Plaintiffs' members are descendants of people enslaved under this system, whose families continued to reside nearby and work for their survival on those plantations after Emancipation. *Id.* ¶¶ 23-25, 89, 166. At the same time, Parish officials in key post-Civil war positions, and in succeeding generations, belonged to or descended from plantation-owning families. *Id.* ¶¶64-65, 141-45, 162, 187, 208.

After Reconstruction, freedpeople were stripped of all political power and deprived of any ability to take part in decision-making about land use in the Parish for succeeding generations, through the relentless efforts of white lawmakers "to establish the supremacy of the white race" and "disenfranchise as many [Black voters] and as a few whites as possible." *Id.* ¶149. *See also id.* ¶¶141-80 (successive constitutional efforts to suppress Black political power and voting). The post-war political disenfranchisement was accompanied by rampant white violence and intimidation in St. James and beyond. *Id.* ¶¶126-40.

These efforts to destroy the possibility of Black political power in St. James Parish had their intended effect. *Id.* ¶¶154-57. By the time the Voting Rights Act was enacted in 1965, white

³ *See also*, Section IV (Equal Protection) *infra*, discussing historical background of land use system and its present manifestations.

political power over land use had been firmly established, and heavy industry was moving in, rendering neighboring Black residents less necessary as a form of plantation labor, and therefore more expendable. *Id.* ¶¶180-87 (industries locating in 1960s), ¶¶205-45 (growing awareness of impacts of industry and community opposition in 1980s and 1990s), ¶¶265-79 (Parish defends its non-zoning in 2000s), ¶¶280-86 (enactment of Land Use Plan).

The result of this unbroken chain of severe, and intentional, discrimination is that Plaintiffs and others residing in majority-Black parts of the Parish are exposed to some of the most harmful pollutants known, placing them in the highest category of risk in the country of cancer and other illnesses, while the Parish has aggressively protected white communities against these dangers. *Id.* ¶¶554-81. Plaintiffs' members have borne the devastating loss of loved ones to cancer and other illnesses at alarming rates, and some suffer from those illnesses themselves. *Id.* ¶¶483-87. This ongoing discrimination has also impacted Plaintiffs' ability to preserve their cultural origins in the Parish, including their ancestors' burial grounds, *id.* ¶¶588-678, and other sites with historic significance. *Id.* ¶¶24, 88, 286, 670. And, as discussed *infra* in Section IV, this ongoing discrimination has been intentional.

The Parish's reliance on *Palmer v. Thompson*, 403 U.S. 217 (1971), and *City of Memphis v. Greene*, 451 U.S. 100 (1981), is unavailing. Both cases raised important questions of ongoing racial animus endured by Black citizens, but dealt with challenges to a singular action.⁴ In *Greene*, the Court declined to invalidate a decision to close a road, despite its racially discriminatory impact, because there was insufficient evidence necessary to prevail *at trial* under 42 U.S.C. § 1982; however, with regard to the Thirteenth Amendment, the Court left open the question of "the

⁴ The Court's statement in *Palmer* that racial animus or motivation behind a legislative body's decision is irrelevant has been impliedly set aside by later Supreme Court decisions. *Hernandez v. Woodard*, 714 F. Supp. 963, 970 (N.D. Ill.1989) (citing *Washington v. Davis*, 426 U.S. 229, 244 n.11 (1976)).

sort of impact on a racial group that might be prohibited by the Amendment itself.” 451 U.S. at 128-29. Here, Plaintiffs do not challenge a single municipal decision. They challenge a thoroughgoing, continuous pattern and practice of severe discrimination that began during slavery and continued with white supremacist practices through multiple generations, making this systemic discrimination and repression possible.

Finally, Plaintiffs do not bring their claim directly under § 1 of the Thirteenth Amendment but instead pursuant to Congress’ grant of federal jurisdiction to adjudicate the “deprivation of any rights . . . secured by the Constitution” under 42 U.S.C. § 1983. *See* Compl. ¶¶15, 20. The Supreme Court has recognized that the Civil Rights Act of 1871, in which § 1983 and its “companion statutory provision” § 1985(3) were promulgated, was validly enacted pursuant to Congress’ authority under § 2 of the Thirteenth Amendment in order to give it fuller effect. *Griffin v. Breckenridge*, 403 U.S. 88, 99, 105 (1971). Thus, courts have held that Thirteenth Amendment claims are not freestanding but may *only* be brought under § 1983 or other implementing statutes. *See, e.g. Smith v. Kentucky*, 36 F.4th 671, 675 (6th Cir. 2022) (holding that there is no implied private right of action directly under the Thirteenth Amendment and claims must be brought pursuant to § 1983); *Sumpter v. Harper*, 683 F.2d 106, 108 (4th Cir. 1982) (§ 1983 is a “key enforcement vehicle” for Thirteenth and Fourteenth Amendment claims). Moreover, while in *Greene*, the Supreme Court “reserve[d] until another case the issue of whether § 1 of the Thirteenth Amendment by its own force bans ‘badges and incidents of slavery,’” 451 U.S. at 154, n. 18 (Marshall, J., dissenting), there is no question that § 2 granted Congress authority to implement legislation to fulfill the Amendment’s purpose, and that the Civil Rights Act of 1871, which included § 1983, was one such enactment. *Griffin*, 403 U.S. at 99, 105; *Smith*, 36 F.4th at 675.

The Parish cites *Channer v. Hall*, 112 F.3d 214 (5th Cir. 1997) to suggest that the Court has not established that Thirteenth Amendment violations may be brought under § 1983. Def. Br. at 9. But, as noted above, the Supreme Court has and, upon closer inspection, so has the Fifth Circuit in *Channer*.⁵ There, the plaintiff sued *federal* officials who are not subject to suit under § 1983, *Channer*, 112 F.3d at 217, while municipal actors are. The court recognized that “suits attacking the ‘badges and incidents of slavery’ must be based on a statute enacted under § 2” and cited to *Griffin*, 403 U.S. 88, which, as noted above, held that § 1983’s statute was validly enacted to implement the Thirteenth Amendment. *Channer*, 112 F.3d at 217 n. 5. Other cases cited by the Parish involved claims that were rejected because they were brought directly under the Thirteenth Amendment and not pursuant to any law authorizing judicial enforcement.⁶

IV. CLAIM II: EQUAL PROTECTION: THE COURT OF APPEALS ALREADY FOUND PLAINTIFFS SUFFICIENTLY ALLEGED UNEQUAL TREATMENT; PLAINTIFFS SUFFICIENTLY PLEAD FACTS SHOWING THAT THE RACIAL DISCRIMINATION IS INTENTIONAL.

The Fifth Circuit has already found that Plaintiffs have shown unequal treatment and resulting stigmatic injury sufficient to support their standing to maintain their Equal Protection claim. App. Ruling at 312. Noting that “when plaintiffs ground their equal protection injuries in stigmatic harm, they only have standing if they also allege discriminatory treatment,” the Fifth Circuit then observed that the Complaint “is replete with allegations of such unequal treatment.” *Id.* at 306. This holding is the law of the case, so the Parish’s cannot relitigate it.⁷

⁵ *Channer* is cited in *Murray v. Earle*, 334 F. App’x. 602, 607 (5th Cir. 2009), which oversimplified *Channer*’s language to arrive at the incorrect conclusion that there is some question about whether § 1983 provides a right of action for a Thirteenth Amendment violation. That is not what *Channer* holds.

⁶ *Sylvester v. Nilsson*, No. CIV H-23-4085, 2024 WL 1144259, at *6 (S.D. Tex. Mar. 15, 2024) and *Hazeur v. Fed. Warranty Serv. Corp.*, No. CIV.A. 99-3156, 2000 WL 365013, at *2 (E.D. La. Apr. 7, 2000) involved claims brought directly under the Thirteenth Amendment against private actors.

⁷ Further, the Parish’s sole reliance on, and misappropriation of, *Wheelahon v. City of New Orleans*, No. 19-11720, 2020 WL 1503560 (E.D. La. Mar. 30, 2020) borders on the frivolous, given the absence of a race discrimination claim in the case and the comparatively bereft allegations there.

The Complaint is also replete with allegations demonstrating how the Parish’s land use discrimination is intentional. While proof of racially discriminatory intent or purpose is required, a plaintiff is not required to prove the challenged action “rested solely,” or even primarily, “on racially discriminatory purposes;” only that race was “*a motivating factor.*” *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-66 (1977); *United States v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009). “Outright admissions of impermissible racial motivation are infrequent and plaintiffs often must rely upon other evidence.” *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999). The Supreme Court has adopted a set of factors to guide the determination of discriminatory intent. *Veasey v. Abbott*, 830 F.3d 216, 230-31 (5th Cir. 2016).

The Complaint includes allegations that speak to *all* of the non-exhaustive *Arlington Heights* factors, including: “(1) the historical background of the decision, (2) the specific sequence of events leading up to the decision, (3) departures from the normal procedural sequence, (4) substantive departures, and (5) legislative history . . .” *Id.* at 231. Foreseeability of discriminatory impact is another factor that can be considered consistent with the *Arlington Heights* analysis. *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 465 (1979). Cumulatively, *Arlington Heights* factors assess whether there is a consistent, historical, or recent pattern of discriminatory conduct. *See Sylvia Dev. Corp. v. Calvert Cnty.*, 48 F.3d 810, 819 (4th Cir. 1995); *N. Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204, 223 (4th Cir. 2016).

A. Factor No. 1: Historical Background.

“The historical background of the decision is one evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes.” *Arlington Heights*, 429 U.S. at 267. The Fifth Circuit noted Plaintiffs’ allegations depicting the “extensive history of chattel slavery, segregation, Jim Crow, and racialized land use practices in St. James Parish” as context

for the claims. App. Ruling at 303. As set out in Section III, *supra*, Plaintiffs describe how the land use system as it operates today resulted from the history of land use patterns set during slavery, and how the communities that exist today were founded on the edges of plantations after Emancipation when plantation owners needed a nearby supply of labor to farm the land. These developments were accompanied by pronounced racial discrimination that has existed in the Parish since slavery and long after Emancipation, through Jim Crow to today. *See Veasey*, 830 F.3d at 232 (recognizing that history “provides context and that historical discrimination (for example, in education) can have effects for many years”). Plaintiffs also describe how, when the health effects of locating industrial facilities in the Parish became glaring in the 1980s, Parish officials ignored the concerns and continued to lure heavy industry to the 4th and 5th Districts, over intense opposition from community members. Compl. ¶¶205-57, 265-79, 310-20, 369-553.

B. Factor No. 2: Specific Sequence of Events.

“The specific sequence of events leading up to the challenged decision[s] . . . may shed . . . light on the decisionmaker's purposes.” *Arlington Heights*, 429 U.S. at 267. In *Arlington Heights*, the Supreme Court emphasized that evidence of a sudden zoning change to exclude integrated housing made after a town discovered plans to erect such housing would be evidence that “discriminatory purpose was a motivating factor.” *Id.* at 266-67.

That is precisely what Plaintiffs allege here. The Parish deliberately chose to operate without a land use plan for decades so as not to hamper large landowners who benefited the most from lack of regulation, particularly using this free reign to locate industrial facilities in majority-Black districts. Compl. ¶¶181-88, 270-74. It was only when two companies made plans to locate in majority-white parts of the Parish that the Parish hurriedly enacted a Land Use Plan, which they thereafter rigidly enforced to protect white districts. *Id.* ¶¶280-83, 305-34.

C. Factor Nos. 3 and 4: Procedural and Substantive Departures.

“Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role.” *Arlington Heights*, 429 U.S. at 267. Likewise, “substantive departures too may be relevant, particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached.” *Id.*

The Parish’s track record of protecting white parts of the Parish by steering industry to the 4th and 5th Districts is shot through with such substantive and procedural departures. As the Fifth Circuit noted, App. Ruling at 307-08, Plaintiffs allege that Parish officials have overlooked major omissions about public health and safety in applications submitted by facilities seeking to locate in the 4th and 5th Districts. Compl. ¶¶408-9 (Planning Commission approves Wanhua in 2018 despite failure to include information about public establishments, parks, playgrounds, churches, schools and community centers within the Project’s two-mile impact area), ¶¶463-64 (Parish approves Syngas despite failure to include list of public places within a two-mile radius, or information about impact of air emissions, noise, lighting, traffic, effect on property values, and neighborhood). This is in contrast to the Parish’s rushed enactment and rigid and aggressive enforcement of the Land Use Plan to keep companies out of white parts of the Parish. *Id.* ¶¶321-34 (Parish used Land Use Plan to quickly revoke land use permit from Petroplex), ¶¶312-20, 385 (Parish refused to grandfather in Wolverine Terminal even though it had already leased property it sought to develop before the land use plan went into effect). The Parish’s strict treatment of Petroplex and Wolverine to protect white residents was also in stark contrast to its treatment of South Louisiana Methanol (“SLM”), which was approved around the same time in 2014 in the majority-Black 5th District. *Id.* ¶¶381-84 (in contrast to its treatment of Petroplex and Wolverine, Parish grandfathered in SLM, even though SLM had not purchased the property until after the land

use designation had changed from “future industrial” to “residential growth”). The Planning Commission and Council have also approved facilities in the 4th and 5th District in violation of its own land use regulations. *Id.* ¶¶408-09, 443-44; 463-65; 475-92; 500; 553. In one instance, even a councilmember noted such a departure when the Council moved to a vote on a carbon dioxide pipeline although there had been no public notice or hearing on it and the vote was taken against the advice of counsel. *Id.* ¶¶542-545, 547 (councilmember stating “just to be consistent, we [should] just go to a public hearing... Just to be consistent with how we normally do it”).

The Parish also refused to re-examine an approval granted to Formosa, which would nearly double the air pollutant emissions in the Parish – already among the most polluted areas in the country – even after it was notified that Formosa had made a series of misrepresentations in its application about measures it took to mitigate harm to a nearby elementary school and church in the 5th District. *Id.* ¶¶429-432. As it turned out, whatever changes Formosa claimed it made would actually exacerbate health threats by placing a plant with the most potent carcinogenic emissions *closer* to the school and church. *Id.* The Parish did not care. In fact, in April 2025, the Council passed another resolution reaffirming its support for the project. *Id.* ¶441.

D. Factor No. 5: Legislative History.

“The legislative or administrative history may be highly relevant, especially where there are contemporary statements by members of the decision-making body, minutes of its meetings, or reports.” *Arlington Heights*, 429 U.S. at 268. The legislative history of the adoption of the Land Use Plan and individual permitting decisions reveals an ongoing discriminatory intent or purpose behind the Parish’s land use policy and practice.

As set out above, there are numerous detailed allegations showing that the Land Use Plan was hurriedly enacted in 2014 at the same time two heavy industrial facilities sought to locate in

majority-white parts of the Parish. Compl. ¶¶280-89. During the proceedings, the representative of the overwhelmingly white 3rd District touted the need and benefits of the Plan to “keep our young people, our young residents in the community” so they can feel “pretty secure their property is gonna be valued from here on out, for twenty years plus that we can’t put an industry next to them.” *Id.* ¶¶295. Similarly, when the Council adopted a resolution opposing the location of Wolverine in the predominantly white area of Paulina, Parish Council members recognized and thanked residents who showed up to oppose the facility. *Id.* ¶315. Parish officials then tried to redirect Wolverine to the predominantly Black community of Convent in the 4th District, which Wolverine declined as it was not “economically feasible.” *Id.* ¶¶316-17, 319. The Parish Council’s gratitude to and concern for white residents stands in sharp contrast to the thankless efforts of 4th and 5th District residents, who have shown up for years to no avail to oppose more of the Parish’s approvals of harmful industrial facilities in their communities. *Id.* ¶¶380-81, 388-90, 396-400, 405-07, 413-16, 436-41, 454-55, 465-66, 479-82, 489, 509-10, 525, 529, 538-541, 544.

The obvious contrast can also be seen in the Parish’s amendment of the Land Use Plan in August 2022 to enact a moratorium on solar farms at the request of residents in the majority-white part of the Parish to carefully study the economic and environmental impacts of such facilities. *Id.* ¶¶335-42, 340. In contrast, on September 13, 2019, Plaintiffs’ members Sharon Lavigne and Gail LeBoeuf sent a letter officially requesting that the Council consider the possibility of a moratorium on heavy industry, *id.* ¶343, reflecting longstanding demands of Black residents, ¶¶415-16, but the Council never addressed these constituent demands in any way. *Id.* ¶345. At the Council meeting passing the solar moratorium resolution, Plaintiffs’ member Sharon Lavigne again said: “We need a moratorium on petrochemical facilities because this is Cancer Alley and people are dying. How many more have to die because of you all?” *Id.* ¶346. The Parish Council again ignored this appeal.

The different treatment became even more pronounced after the solar moratorium was lifted. The Land Use Plan was amended to allow for solar farms, and the first solar farm that sought to locate near the majority white part of the Parish was rejected, even though the company had promised to forego any “tax abatement of any sort,” which would have amounted to \$69 million in the first nine years. *Id.* ¶350; *Compare id.* ¶¶252-257, 386, 404, 425, 449, 496 (significant tax *exemptions* for companies locating in the 4th and 5th Districts). One commission member observed how seriously the commission deliberated over this decision. *Id.* ¶353 (noting it “is the item with the most energy and effort put into it, by far”). In recommending against the project, the Commission found it would be “unsightly,” would “likely cost the Parish in the long run,” and that it occupied valuable farmland close to residential corridors. *Id.* ¶351. When the Commission’s recommendation to reject the project went before the Parish Council, the Council voted to reject the project over the dissent of three Black councilmembers, two of whom denounced the unequal treatment they witnessed. *Id.* ¶360, 365 (addressing the concern about farmland and noting “When Koch bought it, when Formosa bought it, when the other people bought the farmland, it was okay... But if you all want to be fair, where were you all then when that farmland was being sold, when those people were being displaced?”); *Id.* ¶367 (“but if it was further west, around the predominantly Black community, I think it would’ve been no problem”).

E. Additional / Optional Factor No. 6: Foreseeability.

The Supreme Court has held that, “[a]dherence to a particular policy or practice, with full knowledge of the predictable effects of such adherence” is relevant to an inference of discriminatory intent. *Penick*, 443 U.S. at 465 (internal quotation and citation omitted). *See also*, *Brown*, 561 F.3d at 433. As discussed in Section V(B) *infra*, the Parish has long been on notice

about the risks of heavy industry, particularly in what came to be known in the 1980s as “Cancer Alley.” Nevertheless, it has adhered to its discriminatory land use policies and practices.

V. CLAIM III: PLAINTIFFS SUFFICIENTLY PLEAD VIOLATIONS OF THE RIGHTS TO BODILY INTEGRITY AND FREEDOM FROM STATE-CREATED DANGER.

The Substantive Due Process Clause protects Plaintiffs’ right to bodily integrity and prohibits intrusions into the body of nonconsenting persons, *Sterling v. City of Jackson, Mississippi*, No. 24-60370, 2025 WL 3205505, at *6 (5th Cir. Nov. 17, 2025); *Riggins v. Nevada*, 504 U.S. 127, 133-35 (1992); *Rochin v. California*, 342 U.S. 165, 172 (1952). This includes the intrusion of harmful contaminants. *Sterling*, 2025 WL 3205505, at *7 (plaintiffs had fundamental right to be free from government knowingly and intentionally introducing harmful contaminants into water supply); *Guertin v. Michigan*, 912 F.3d 907, 918-22 (6th Cir. 2019) (same). Officials violate this right “when their conduct is ‘arbitrary, or conscience shocking[.]’” *Hitt v. McLane*, 854 Fed. App’x. 591, 596 (5th Cir. 2021) (internal citations omitted); *see also Stukenberg ex rel. M.D. v. Abbott*, 907 F.3d 237, 251 (5th Cir. 2018). Actions may shock the conscience if they are (1) “intended to injure in some way unjustifiable by any government interest” or (2) “resulted from deliberate indifference,” which requires plaintiffs to allege that a state actor “consciously disregard[ed] a known and excessive risk to the victim’s health and safety.” *Id.* at 251-52 (internal quotations omitted); *see also Farmer v. Brennan*, 511 U.S. 825, 837 (1970).

The Substantive Due Process Clause also protects Plaintiffs’ right to be free from state-created dangers, a doctrine which applies here as Plaintiffs seek protection from harms “made possible by state action.” Compl. ¶571. This requires Plaintiffs to show that: (1) the state actor acted affirmatively to enhance a danger to the plaintiff; (2) the “acts created or enhanced a danger

specific to the plaintiff[s],” (3) “the act or acts caused the plaintiff[s]’ harm,” and (4) “the state actor’s conduct . . . shocks the conscience.” *Sterling*, 2025 WL 3205505, at *16.

A. The Parish Introduced Lethal Chemicals into Plaintiffs’ Bodies Without Their Consent and Create a Danger to Plaintiffs.

In claims that are similar to those of plaintiffs in *Sterling v. Jackson*, where the Fifth Circuit reversed the district court’s dismissal of bodily integrity and state-created danger claims brought by residents of Jackson who had been exposed by the city to toxic water, Plaintiffs here allege that the Parish has knowingly and intentionally introduced toxic air pollutants, Compl. ¶¶9, 563-587, into Plaintiffs without their consent and despite persistent appeals, ¶¶5, 8, 346, 380, 389-90, 396-400, 406-407, 410, 414-15, 431-32, 436, 439-40, 456, 466. In so doing, the Parish has interfered with their bodily integrity. *See Sterling*, 2025 WL 3205505, at *14 (city violated right to bodily integrity when it knowingly introduced contaminated water into people’s homes and misrepresented its safety); *See also Guertin*, 912 F.3d at 919 (a substantial interference with liberty exists “when the foreign substance can have serious, even fatal, side effects, despite some therapeutic benefits”) (internal quotations omitted).

This is also sufficient to satisfy the first three elements of a state-created danger claim, *Sterling*, 2025 WL 3205505 at *16, for Plaintiffs and others belonging to their class: Black residents of the majority-Black 4th and 5th districts. App. Ruling at 302-03; Dist. Ct. Ruling at 495 (noting Defendant’s concession regarding damaging health and disease risks).

B. The Parish Exhibited Conscience-Shocking Deliberate Indifference.

The existence of deliberate indifference is usually a factual determination, *Scanlan v. Texas A&M Univ.*, 343 F.3d 533, 539 (5th Cir. 2003), and for purposes of a 12(b)(6) motion, Plaintiffs have sufficiently pled it.

The Parish has had notice of the deadly impacts of steering polluting industry into the majority-Black 4th and 5th districts since at least the 1980s. Compl. ¶¶206, 209-12, 215-18, 226, 261, 264. Nonetheless, the Parish has “consciously disregarded” this “excessive risk to Plaintiffs’ health and safety.” *Sterling*, 2025 WL 3205505, at *10. The Parish “created this dangerous condition” and knew the danger, nevertheless it “put [its] head[] in the sand and pretended the peril did not exist.” *Scanlan*, 343 F.3d at 538. When the deadliness of the polluting industry was first raised, then-Parish president dismissed this data and blamed these health impacts on the lifestyle choices of Black residents. Compl. ¶244. For decades since, Plaintiffs and other residents of the Parish have been alerting the Parish to these disproportionate harms every time a new industrial facility is proposed in their community. *Id.* ¶¶8, 346, 380, 390, 407, 410, 431, 436, 439.

That the risks of siting decisions were obviously known is made plain – and unconscionable – by the Parish’s decisions to protect white residents from proximity to harmful facilities, *id.* ¶¶312-334, at the same time the Parish granted every single request by polluting industry to locate their facilities in majority-Black districts, ¶¶4-5, 369-553. And these approvals came despite repeated warnings from Black residents that industry applications were defective and inaccurately described relevant health risks. *Id.* ¶¶8, 409, 429-31, 463-64.

The Court should reject the Parish’s suggestion that it apply rational basis review, Def. Br. at 16, because this permissive test only applies to “substantive due process claims that do not implicate a fundamental right,” *Reyes v. N. Tex. Tollway Auth.*, 861 F.3d 558, 561 (5th Cir. 2017), and none of the cases the Parish cites are based on violations of a fundamental right.⁸ In any case, conduct that shocks the conscience cannot survive rational basis review. *Brennan v. Stewart*, 834

⁸ *Petroplex Int’l v. St. James Par.*, 158 F. Supp. 3d 537, 542 (E.D. La. 2016), involved a challenge to a land use designation – the clear province of rational basis – not a claim that the land use plan was evidence of a systemic violation of a fundamental right to bodily integrity.

F.2d 1248, 1256 (5th Cir. 1988). *See also Sterling*, 2025 WL 3205505, at *11 (“we cannot think of (and the City has not asserted) any governmental interest in furnishing toxic water and lying about the toxicity with knowledge of the long-term health effects that residents faced.”)

VI. CLAIM IV: 42 U.S.C. § 1982: PLAINTIFFS SUFFICIENTLY PLEAD DISCRIMINATORY INTENT FOR THEIR INJURIES.

Plaintiffs make factual allegations regarding intentional discrimination and property injuries sufficient to support a § 1982 claim. To begin, Plaintiffs’ preceding argument under Equal Protection, also demonstrates the requisite intent required to support a § 1982 claim. *See Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Par.*, 648 F. Supp. 2d 805, 819 (E.D. La. 2009) (concluding that the Parish’s intent was racially discriminatory for purposes of Plaintiffs’ § 1982 claim under the *Arlington Heights* analysis).

In addition, both this Court and the Fifth Circuit agreed with Plaintiffs, albeit on standing and statute of limitations grounds, that they had timely and plausibly alleged the kinds of property harms that give rise to an injury cognizable under § 1982, and that those harms could be traced to the Parish’s discriminatory conduct. *Inclusive La. v. St. James Par.*, 702 F. Supp. 3d 478, 492-95 (E.D. La. 2023) (“Dist. Ct. Ruling”); App. Ruling at 310-11. Crucially, this Court held that Plaintiffs “alleged a significant connection between their decreased property values and Defendants’ alleged conduct.” Dist. Ct. Ruling at 493. It also agreed that the “land use system places limitations on the ability of some members of [Plaintiffs] to sell, hold, and convey their property.” *Id.* at 494; *see also*, Compl. ¶¶294, 306-307 (describing restrictions on subdividing and selling residential property that only apply to majority-Black Fourth district); *Watts v. Joggers Run Prop. Owners Ass’n, Inc.*, 133 F.4th 1032, 1045–46 (11th Cir. 2025) (collecting cases holding that § 1982 protects an individual’s equal right to “use” property). The Fifth Circuit similarly held that all Plaintiffs “pleaded cognizable property injuries that are traceable to the conduct of the Parish

and redressable by the various forms of relief they seek from the court.” App. Ruling at 311. Because this Court and the Fifth Circuit have already decided that Plaintiffs have plausibly alleged an injury for § 1982 purposes connected to intentional discrimination by the Parish, Plaintiffs meet their 12(b)(6) burden. *Ashcroft v. Iqbal*, 556 U.S. 662, 669 (2009).

VII. CLAIM V: PLAINTIFFS SUFFICIENTLY PLEAD VIOLATIONS OF RLUIPA’S SUBSTANTIAL BURDEN PROVISION.

Plaintiffs allege that the Parish has implemented a land use system that sites industrial facilities upon cemeteries of their enslaved ancestors, which under the Religious Land Use and Institutional Persons Act (“RLUIPA”), substantially burdens “their religious exercise because it precludes their ability to locate, recover, access, consecrate, commemorate, and visit ancestral cemeteries known to exist in the Parish.” App. Ruling at 309.

The Parish argues that the only land use decisions viable for this claim are those related to Syngas and Wanhua. Def. Br. at 4. But it is plain that Plaintiffs challenge (1) the implementation of the Land Use Plan, (2) the January 2019 decision on Formosa, which was “reaffirmed” by the Council in 2025, and (3) the April 2014 decision on SLM. Compl. ¶¶714, 441.⁹

The Parish argues that the Plaintiffs have not alleged, as required by RLUIPA, 42 U.S.C. § 2000cc-5(5), “an ownership, leasehold, easement, servitude, or other property interest” in the Syngas or Wanhua properties. Def. Br. at 22. But Plaintiffs have sufficiently alleged a property interest in the properties that are actually at issue – the Formosa and SLM properties.

⁹ This claim is timely. As argued in prior briefing, ECF No. 43 at 12-13, RLUIPA has a four-year limitations period, but the discovery rule tolls this period when “a plaintiff is not aware of and has no reasonable opportunity to discover the critical facts of his injury and its cause.” *Dubose v. Kan. City S. Ry. Co.*, 729 F.2d 1026, 1030 (5th Cir. 1984). Plaintiffs only discovered the existence of the cemeteries in the Formosa property in November 2019, after they uncovered emails revealing that Formosa concealed its knowledge about these cemeteries from descendant communities while awaiting approval of its land use application. Compl. ¶637. Plaintiffs only discovered the existence of the burial sites in the SLM property thereafter. *Id.* ¶666. Additionally, on April 2, 2025, the Parish “reaffirmed” its land use approval of Formosa, which contributed to this RLUIPA violation. *Id.* ¶441.

Under Louisiana law, “once real estate is set apart and used for a final resting place of the dead, the owner cannot thereafter make another use of it,” and as such although descendants “do not own, in a strict legal sense, an interest in the cemetery, they do have a species of interest or form of title therein.” *Humphreys v. Bennett Oil Corp.*, 195 La. 531, 549 (La. 1940) (internal quotations omitted). “[W]hen a plot of ground is set apart and used for cemetery purposes . . . descendants and near relatives of those interred therein are entitled to . . . injunctive relief to protect the graves and their burial and visitation rights related thereto.” *Vidrine v. Vidrine*, 225 So. 2d 691, 696 (La. App. 3 Cir. 1986), *writ refused*, 254 La. 853, 227 So. 2d 594 (La. 1969); *see Charrier v. Bell*, 496 So. 2d 601, 604 (La. App. 1 Cir. /1986), *writ denied*, 498 So. 2d 753 (La. 1986). This constitutes a property interest under RLUIPA. 42 U.S.C. § 2000cc–5(5).¹⁰

The Parish does not deny descendant communities by law have a property interest in land that is dedicated for cemetery purposes but argues that the cemeteries described by Plaintiffs have not been so dedicated. Def. Br. at 22. But Plaintiffs amply plead dedication. Plaintiffs have identified at least five cemeteries that were explicitly marked on maps from the 1870s as being set aside for burial purposes, and which have been desecrated, or threaten to be, by actions approved by the Parish, Compl. ¶¶618, 622, 627-28, 634, 636, including on the Formosa property, ¶¶634, 636. And Plaintiffs have identified other land that was likely set aside as a cemetery which is threatened by the Parish’s actions, including on SLM property. *Id.* ¶¶648, 666. Plaintiffs have alleged that plantation owners were legally required to set aside land for burying the people they enslaved, *id.* ¶595, that graves were often marked by trees to identify them for loved ones and descendant communities, and preserved by laborers and farmers, ¶¶602-603. It is virtually certain

¹⁰ The Louisiana Attorney General has recognized this as comparable to the “rights of a dominant servitude holder over a servient estate” that extend to “descendants and friends.” La. Atty. Gen. Op. No. 08-0186 at 1-2, available at <http://www.lcb.state.la.us/ago/ago08-0186.pdf>.

that there is a cemetery in every plantation in St. James Parish. *Id.* ¶600. This is sufficient for the Court to draw a plausible inference that the land has been dedicated.

VIII. CLAIM VI: PLAINTIFFS SUFFICIENTLY PLEAD VIOLATIONS OF RLUIPA’S NONDISCRIMINATION PROVISION.

The Parish refers to Claim VI (RLUIPA Discrimination), which is brought only by Plaintiff Mount Triumph Baptist Church, in a sub-heading in its motion to dismiss, Def. Br. at 21, but it does not raise any arguments to support its dismissal. This is because it has no argument: Mount Triumph alleges that through its land use decisions, “the Parish permits heavy industry development near Baptist and majority-Black churches,” including Mount Triumph, “but not Catholic and majority-White churches,” App. Ruling at 303, to which it applies an industrial buffer zone. This suffices to plead a discrimination claim.

IX. CLAIM VII: PLAINTIFFS SUFFICIENTLY PLEAD AN INFRINGEMENT OF THEIR RIGHT TO PRESERVE, FOSTER, AND PROMOTE THEIR HISTORIC AND CULTURAL ORIGINS.

This case warrants the protections enacted through Art. XII, Sec. 4, of the Louisiana Constitution of 1974, which recognizes the “right of the people to preserve, foster, and promote their respective historic linguistic and cultural origins.” In urging this claim, Plaintiffs ask that the Parish cease its land use practices that have enabled the destruction of their members’ cultural origins, including ancestral burials. Compl. ¶¶498, 503-04, 519-20, 612.

First, as is their right, Plaintiffs seek to “preserve” their ancestral burial grounds so that they can commune and worship there. *Id.* ¶¶654-61, 667-677. The Parish incorrectly asserts that “Plaintiffs lack a property right on which to base this claim,” Def. Br. at 20, an argument fully refuted in Section VII, *supra*, discussing the property interest descendants have in cemeteries. The cases the Parish relies upon for this proposition are inapposite because they involve disposition of public confederate monuments in public spaces. *See McGraw v. City of New Orleans*, 2016-0446

(La. App. 4 Cir. 3/29/17), 215 So. 3d 319, 331; *Monumental Task Force, Inc. v. Foxx*, 157 F. Supp. 3d 573 (E.D. La. 2016). In those cases, the plaintiffs had no “vested property right in the monuments” and could not establish “irreparable harm in violation of federal and state constitutional provisions should the monuments be damaged by their removal, transportation, or storage.” *McGraw*, 215 So. 3d at 332-33; *See Monumental Task Force*, 157 F.3d at 598. In contrast, Plaintiffs here have a legally recognized property interest in these burial grounds and their interest in preserving the sanctity of cemeteries is profound. *See supra* Section VII.

The Parish also suggests that Plaintiffs cannot claim this right because the impetus for the Constitutional provision was to preserve the Acadian language and culture, and “nearly every case” discussing this provision “focuses on language rights,” Def. Br. at 20, though it does not cite any such cases. More fundamentally, the interpretation the Parish proposes is itself discriminatory as it would violate the basic constitutional requirements of equal protection and non-discrimination.¹¹ With regard to other sites with historical and cultural value, the Parish’s argument that Plaintiffs have not alleged property interest ignores the allegations demonstrating that interest and that the Parish’s discriminatory land use system has had harmful impacts on sites of their communities’ cultural origins. Compl. ¶¶89-90 (ancestor’s post-Emancipation purchase of property still in family of Inclusive member); ¶¶190, 246-59 (land use decisions impacting Romeville where Inclusive member’s home and ancestral property is located); ¶¶24, 281, 349, 366, 375, 410-18, 465 (impacts on Mount Triumph, founded 119 years ago).

The Parish also suggests again that this claim is untimely because the allegations concerning the destruction and desecration of burial sites exceed the one-year limitations period it argues applies for claims under this provision. But the Parish overlooks that a) this is an injunctive

¹¹ U.S. Const. Amend. XIV and La. Const. Art. I, Sec. 3.

claim seeking to prevent future harm arising out of a discriminatory pattern and practice; and b) its refusal to take up Plaintiffs' request for a moratorium on petrochemical facilities that would have resulted in a cessation of the threat to these sites did occur within the limitations period, as did more recent land use decisions included in the Second Amended Complaint. *See, e.g.* Compl. ¶¶441, 467, 519, 523. Finally, that state and federal laws also provide for regulation of cemeteries does not defeat this claim as the Parish suggests (Def. Br. at 20), because the Fifth Circuit has ruled that the injuries alleged under this claim are traceable to the Parish.¹² App. Ruling at 309-10.

X. PLAINTIFFS NEED NOT EXHAUST ADMINISTRATIVE REMEDIES.

The Parish re-urges its exhaustion argument rejected by this Court, which reasoned that Plaintiffs' entitlement to relief under the Declaratory Judgment Act does not depend on whether they sought to invalidate specific permit decisions through state court review, as such relief turns solely on the merits of Plaintiffs' underlying federal and constitutional claims. Dist. Ct. Ruling at 499. Exhaustion is thus inapplicable here. The Parish did not appeal that ruling.

Even were this exhaustion argument properly before the Court, Plaintiffs were not required to exhaust administrative remedies under local zoning codes. For almost a century, courts have held that plaintiffs can bring constitutional challenges to local land use laws without first exhausting local administrative procedures. *See Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 386 (1926) (rejecting exhaustion requirement for suit challenging zoning ordinance under 14th Amendment); *Moore v. City of E. Cleveland*, 431 U.S. 494, 498 n.5 (1977) (rejecting exhaustion

¹² The Parish has constitutional authority over land use, zoning, and historic preservation, La. Const. 1974 Art. IV, Sec. 17, and the statutory responsibility to promote the general welfare of its citizens, in addition to their health and safety. La. Stat. Ann. § 33:107. Contrary to the Parish's suggestion, Def. Br. at 20, Plaintiffs *do* allege the Parish violated state, as well as federal, laws regarding the preservation of burial sites, including the Louisiana Constitution and RLUIPA.

requirement when challenging the constitutionality of those ordinances); *Bossier City Med. Suite, Inc v. City of Bossier City*, 483 F. Supp. 633, 641 (W.D. La. 1980) (same).

Furthermore, the Parish's reliance on *Woodford v. Ngo*, 548 U.S. 81 (2006) is misplaced as it addresses a statute with an explicit exhaustion requirement. The federal statutes under which Plaintiffs bring their claims contain no congressionally expressed exhaustion requirement, and courts have routinely held that exhaustion is not mandatory in this context. *See Patsy v. Bd. of Regents of Fla.*, 457 U.S. 496, 507 (1982) (exhaustion not required for § 1983 claims); *Romano v. Greenstein*, 721 F.3d 373, 376 (5th Cir. 2013) (same); *Oliver v. Foster*, 524 F. Supp. 927, 929 (S. D. Tex. 1981) (exhaustion not required in § 1982 challenge); *Murphy v. Zoning Comm'n of Town of New Milford*, 148 F. Supp. 2d 173, 184 (D. Conn. 2001) (exhaustion not required for RLUIPA claims); *Dilaura v. Ann Arbor Charter Tp.*, 30 Fed. App'x. 501, 507 (6th Cir. 2002) (RLUIPA claims challenging a final land use decision via § 1983 do not require exhaustion).

Recourse under the local ordinance, which allows a judicial appeal within 30 days of final decisions by the Council, Def. Br. at 24,¹³ would be inadequate to address claims of systemic constitutional violations under the federal constitution and RLUIPA. *See, Moore*, 431 U.S. at 498; *McCarthy v. Madigan*, 503 U.S. 140, 147-148 (1992); *see also Garner v. United States Dep't of Labor*, 221 F.3d 822, 825 (5th Cir. 2000) (recognizing exceptions to the exhaustion requirement when "claimant advances a constitutional challenge unsuitable for determination in an administrative proceeding, or when the unexhausted remedy is plainly inadequate").

CONCLUSION

For the foregoing reasons, this Court should deny Defendant's motion to dismiss.

¹³ To the extent the Parish seeks to impose the Parish ordinance's 30-day appeal window on Plaintiffs' constitutional claims, it is foreclosed by binding precedent in this case. App. Ruling. at 308.

Date: December 2, 2025

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