

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

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

VERSUS

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

\* CIVIL ACTION NO.: 2:23-cv-00987  
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\* JUDGE: WENDY B. VITTER  
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\* MAG. JUDGE JANIS VAN MEERVELD  
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**REPLY MEMORANDUM IN SUPPORT OF RE-SUBMITTED RULE 12  
MOTION TO DISMISS CLAIMS**

BY ATTORNEYS

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**REPLY MEMORANDUM IN SUPPORT OF RE-SUBMITTED  
RULE 12 MOTION TO DISMISS CLAIMS**

St. James Parish, on behalf of itself and the Parish Council and Parish Planning Commission<sup>1</sup> (“**St. James Parish**” or the “**Parish**”), replies to Plaintiffs’ Opposition to Defendants’ Re-Motion to Dismiss Claims [doc. 110] (“**Opposition**”).

**I. UNDER RULE 12(B)(6), PLAINTIFFS FAIL TO STATE A CAUSE OF ACTION.**

**A. There is No Legal Theory Supporting Plaintiffs’ Use of Pattern or Practice to Sidestep Prescription.**

Plaintiffs drastically misconstrue the Fifth Circuit’s ruling in an attempt to claim all pled actions, far earlier than the applicable prescription periods, are actionable because they are part of a “pattern or practice.” There is no support, in this case or legally, for this assertion.

The Fifth Circuit stated a pattern or practice had been pled but clearly stated that the claims remained viable based on a few timely allegations. The Fifth Circuit was clear that *only those allegations* are timely and viable. While the court may consider prior pattern or practice on a specific element, this Court cannot consider those acts to determine if a viable cause of action is present.

Plaintiffs’ attempt to argue that all past acts are timely viable actions is a hornbook application of the continuing violation doctrine. However, the Fifth Circuit clearly declined to “assess the applicability of the continuing violation doctrine.” Decision, Doc. 109-1, p. 11, n. 6. It is Plaintiffs who are attempting to litigate allegations the Fifth Circuit has already foreclosed.

Rather than addressing its claims individually as the law requires, Plaintiffs address the prescriptive period issues in broad strokes, attempting to revive prescribed claims by arguing that

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<sup>1</sup> Plaintiffs’ Opposition contends that the St. James Parish Council and St. James Parish Planning Commission are proper defendants. Plaintiffs have not cited to any provision of the St. James Home Rule Charter which makes these nominal defendants any more than mere branches and divisions of St. James Parish. They are not separate independent legal entities with the capacity to sue or be sued and should be dismissed from this case.

the recent decisions of a democratically elected parish government are a *continuation* of slavery and its artifices. This contention is patently absurd and inconsistent with the reality that the Parish and the elected officials directing its affairs have changed dramatically over the years. The Parish is not an autonomous body susceptible to continued discriminatory intent. Plaintiffs' argument would make the Parish liable for *every action* during hundreds of years of activity complained of by Plaintiffs. The law creates prescriptive periods and statutes of limitations to prevent precisely this type of untenable result.

**B. Claim I: Thirteenth Amendment**

Plaintiffs attack the 1883 *Civil Rights Cases*' interpretation of badges of slavery but ignore the fact that "courts routinely reject Thirteenth Amendment claims that do not involve forced or coerced labor." *Guesby v. Bert Nash Cmty. Mental Health Ctr., Inc.*, No. 22-2370-DDC-TJJ, 2023 WL 3040454, at \*2 (D. Kan. Apr. 21, 2023).

The cases cited by Plaintiffs as "modern" interpretations of badges or incidents of slavery distinguishably involved violence against individuals particularly racially motivated violence, regulatory schemes specifically separating out Blacks, or private employment contracts, none of which is present or pled here. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968); *Griffin v. Breckenridge*, 403 U.S. 88, 93 (1971); *Runyon v. McCrary*, 427 U.S. 160, 168 (1976).<sup>2</sup> Since then, the Supreme Court has been clear that the line of cases cited by Plaintiffs should be limited to 42 U.S.C. 1981's prohibitions regarding private contracts. *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 476 (2006) ("Section 1981 offers relief when racial discrimination blocks the creation of a contractual relationship, as well as when racial discrimination impairs an existing contractual

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<sup>2</sup> Moreover, all these cases were put into doubt by this Court. *Bhandari v. First Nat. Bank of Com.*, 829 F.2d 1343, 1351 (5th Cir. 1987), cert. granted, judgment vacated, 492 U.S. 901, 109 S. Ct. 3207, 106 L. Ed. 2d 558 (1989), and opinion reinstated, 887 F.2d 609 (5th Cir. 1989).

relationship, so long as the plaintiff has or would have rights under the existing or proposed contractual relationship.”). Given Plaintiffs’ new assertion that their claim is brought pursuant to 42 U.S.C. 1983, these cases are even more irrelevant. Moreover, Plaintiffs’ assertions that *Channer v. Hall*, 112 F.3d 214 (5th Cir. 1997) support a Thirteenth Amendment claim under 41 U.S.C 1983 are simply baseless; the case says no such thing.

Even without historical context, it is clear that zoning issues are not badges of slavery. Plaintiffs fail to overcome precedent *dealing with zoning issues* where the Supreme Court clearly stated that it would be inappropriate to find such claims fell under the Thirteenth Amendment. *City of Memphis v. Greene*, 451 U.S. 100, 128 (1981) (“a regulation’s adverse impact on a particular neighborhood will often have a disparate effect on an identifiable ethnic or racial group. To regard an inevitable consequence of that kind as a form of stigma so severe as to violate the Thirteenth Amendment would trivialize the great purpose of that charter of freedom.”); *Palmer v. Thompson*, 403 U.S. 217 (1971) (rejected the notion that a city council decision to close a public pool was a “badge or incident” of slavery, finding to hold such “would severely stretch its simple words and do violence to its history.”). None of the Parish’s actions involve race-based violence, forced or coerced labor, or denial of economic opportunities.

**C. Claim II: Fourteenth Amendment (Equal Protection)**

Plaintiffs argue that the Fifth Circuit’s finding that Plaintiffs pled discriminatory treatment absolves them of their legal obligation to pled discriminatory *intent*. This is false. While the Fifth Circuit acknowledged allegations of unfair *treatment*, at no point did it determine Plaintiffs had pled discriminatory *intent*, which remains lacking.

Plaintiffs assert the Parish’s zoning actions had a racially disparate impact on Plaintiffs’ health, environment, property, and religion. [Doc. 43, pp. 27-28]. Again, the allegations are not

regarding the Parish's actions but are issues Plaintiffs are attempting to bootstrap to their unhappiness with democratically occurring zoning decisions. Plaintiffs allege the implementation of buffer zones in the 2014 plan (which were removed in 2018) and the designation of Districts 4 and 5 established an intention to erase predominantly Black residential areas. [Doc. 43, p. 28]. The fact that the zoning of Districts 4 and 5 as industrial impacts Black residents of those Districts is vastly insufficient to establish the Parish had a discriminatory intent to purposefully harm Black residents. "The Supreme Court has instructed us time and again, however, that **disparate impact alone cannot suffice to state an Equal Protection violation**; otherwise, any law could be challenged on Equal Protection grounds by whomever it has negatively impacted." *Johnson v. Rodriguez*, 110 F.3d 299, 306 (5th Cir. 1997) (**emphasis added**).

Plaintiffs argue they have alleged racial intent by showing historical background, specific sequence of events, departures from normal procedure, substantive departures, and legislative history. [Doc. 110, pp. 16-17]. However, Plaintiffs do not point to historical background *of the Parish's* zoning decisions, but loop in St. James Parish's historical land development, led by private parties before any Land Use Plan was in place, citing to Emancipation and the Jim Crow era. [Doc. 110, pp. 16-17]. For a specific sequence of events, Plaintiffs allege the Parish hurriedly adopted the 2014 Land Use Plan [doc. 110, p. 17], though the plan was adopted *unanimously* by all Parish Districts' representatives, including Districts 4 and 5. Finally, Plaintiffs argue the legislative intent behind the Land Use Plan reveals "an ongoing discriminatory intent" [doc. 110, p. 19], but this general assertion is wholly unsubstantiated by Plaintiffs' pled allegations.

Plaintiffs then inappropriately try to equate the fact that the Parish Planning Commission voted to amend the Land Use Plan with three Black commissioners dissenting to an allegation that the vote was taken *with the discriminatory intent to harm Blacks in St. James Parish*. [Doc. 110,

p. 21]. A use of democratic process does not equate to a discriminatory intent merely because of the skin color of the voting officials; such an implication is absurd. Without the presence of a discriminatory purpose behind a zoning decision (which has not been pled), no constitutional violation is present. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 270 (1977).

Plaintiffs also lack any allegation that the Land Use Plan treats residents within a zoning classification differently based on race. No lack of equal protection has been pled.

**D. Claim III: Fourteenth Amendment Substantive Due Process (Bodily Integrity)**

Plaintiffs argue that their bodily integrity includes the right to be free from “state-created dangers.” [Doc. 110, p. 22]. Unlike in the cases cited by Plaintiff, the purported toxin of which Plaintiffs complain—air pollutants—is not regulated by the Parish. Again, *it is the State, not the Parish* that has authority to approve emissions. [See Doc. 104, ¶ 382, 434].

As demonstrated in the Complaint, even an entity that has obtained a land use permit from the Parish cannot emit air emissions without a permit from the proper state and federal entities.

Plaintiffs also fail to acknowledge that a prior decision of this Court found St. James Parish’s Land Use Plan was based on a rational objective. *Petroplex Int’l v. St. James Par.*, 158 F. Supp. 3d 537, 542 (E.D. La. 2016) (dismissing with prejudice claim for federal substantive due process). On this basis alone, dismissal here is similarly warranted.

**E. Claim IV: 42 U.S.C. § 1982 - Property Rights of Black Citizens**

While Plaintiffs defend their assertion of harm to property values, they fail to address the lack of allegations to establish different treatment. Plaintiffs have not alleged that Blacks are being treated differently than whites in any particular district. Plaintiffs have put forth no factual allegations that the Parish has denied Black residents the right “to hold and acquire property on an

equal basis with white persons” and impaired their property interests “because of their race.” *City of Memphis*, 451 U.S. at 122. Without such, this claim has not been pled and must be dismissed.

**F. Claim V/VI: RLUIPA**

As before, Plaintiffs inappropriately attempt to use prescribed allegations to prop up their claim. These allegations must be disregarded for the sake of determining if a viable claim has been pled.

Plaintiffs do not qualify as “claimants” under RLUIPA because they have no ownership, easement, servitude, or other property interest in the land on which alleged unmarked cemeteries may exist. Plaintiffs’ arguments even confirm that the property at issue is the “Formosa and SLM properties,” not property of Plaintiffs. [Doc. 110, pp. 26].

Rather, Plaintiffs attempt to assert a property interest over Formosa and SLM’s land based on an assertion that the alleged burials were listed on maps from the 1870s. [Doc. 110, p. 27]. This does not meet the legal requirement of a dedicated cemetery. The cases cited by Plaintiffs speak solely to the situation where a plot has been set apart for cemetery purposes, *i.e.*, when a plot has been “dedicated” for cemetery purposes. *Humphreys*, 197 So. at 226 (La. 1940) (citing Webster).

Property may be dedicated to public use. *Mayor, Aldermen and Inhabitants of City of New Orleans v. U.S.*, 35 U.S. 662 (1836). Though it is held that no particular form or ceremony is necessary in the dedication of land to public use, it is settled in this state and at common law that the vital principle underlying dedication is the *intention* to dedicate, and, so far as the owner is concerned, the dedication is made when such intent on his part is *unequivocally* manifested. *Humphreys*, 197 So. at 226 (La. 1940); *City of Cincinnati v. White’s Lessee*, 31 U.S. 431, 432 (1832). Once complete, the dedication is in the nature of an irrevocable covenant running with the land. *Id.* Absent evidence showing that prior owners of the Formosa or SLM properties

unequivocally dedicated parts of the property as a cemetery—which has not be pled—the Plaintiffs are **not** granted with any property rights.

Plaintiffs’ argument that this Court should “draw a plausible inference” that property on former plantations was formally dedicated as a cemetery under Louisiana’s law, absent any facts to support that conclusion, falls short. Absent allegations that the alleged unmarked burials were formally dedicated for cemetery purposes (which is not true), Plaintiffs have not pled any legal property rights to support a RLUIPA claim.

Finally, Plaintiffs attempt to assert its Discrimination claim is also viable. But it suffers from the same deficiency. Plaintiffs have not pled discrimination against Plaintiffs’ property to support a RLUIPA claim.

**G. Claim VII: Preservation of Cultural Origins.**

Plaintiffs again argue their right to preserve, foster, and promote their historic and cultural origins by preserving and protecting ancestral burial grounds. [Doc. 110, p. 28]. They dismiss the fact that state law explicitly describes their intended behavior as trespassing on private property. Plaintiffs not only lack any valid property rights to the alleged burial sites, but are requesting rights to use property over which the Parish has no control.

Plaintiffs also allege the Parish harmed their communities. These paragraphs discuss the fact that private property around these areas was allowed to be used for industry, but there is no allegation of any action on Plaintiffs’ property depriving them of their ability to use property. The location of industry on private property around these areas does not establish actions by the Parish that inhibit Plaintiffs’ ability to preserve their cultural origins.

**II. CONCLUSION**

Therefore, St. James Parish requests that its motion be granted and this litigation be dismissed before any further public funds are expended on litigation for these meritless claims, and an award of costs and fees be issued.

RESPECTFULLY SUBMITTED,

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