

**MARCH 31, 2023**

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Local Activists File Sweeping Environmental Justice Lawsuit against St. James Parish, Louisiana

On March 21, 2023, activists in St. James Parish, Louisiana filed an environmental justice lawsuit against their local government, claiming that the Parish's land use system directed industry into primarily Black communities and away from primarily white communities in the Parish, allegedly resulting in disparate racial impacts from pollution, adverse health impacts and the inability of the descendants of slaves to access their ancestors' unmarked graves. *Inclusive Louisiana, et al. v. St. James Parish, et al.*, 2:23-cv-00987 (E.D. La.). In what might become a template for other environmental justice lawsuits, the complaint chronicles centuries of the Parish's racial history and makes wide-ranging and novel constitutional and statutory claims based on that history.

The plaintiffs challenge the Parish's land use policies, practices, and customs that they allege allowed for the continued approval of heavy industry in the Parish's predominantly Black 4th and 5th Districts without the construction of any new facilities in predominantly white areas in the last 46 years. They claim the Parish ignored years of residents' pleas to stop building heavy industry in these overburdened areas, while imposing a moratorium on "clean" solar farms in majority-white districts in 2019 to allow time to study their economic and environmental impacts.

Moreover, the plaintiffs link the current land use system to historical practices dating back to before the Louisiana Purchase, and continuing through slavery, Reconstruction, Jim Crow, and the current day. The complaint chronicles the history of slavery, the failure of Reconstruction-era programs for former slaves to obtain plantation land owned by Confederate supporters, and the eventual location of former slaves and their descendants on small pieces of property near the Parish's plantations, where they continued to labor. At the same time, the complaint alleges, Louisiana's political system evolved to vest local governments like St. James Parish with authority over land use decisions.



The complaint alleges that, beginning in the 1950's, plantation owners began to sell their land to companies to build heavy industrial facilities in close proximity to these small pieces of property owned by the descendants of slaves, now the residents of the 4th and 5th Districts, all with the Parish's active support.

On the basis of this history, the complaint alleges that the Parish's land use system violates various federal and state constitutional provisions and statutes, including:

- The 13th Amendment;
- The 14th Amendment's Equal Protection and Substantive Due Process protections (citing a right to bodily safety and integrity);
- 42 USC § 1982, which the complaint alleges guarantees the right to inherit, purchase, lease, sell, hold, and convey property;
- 43 USC §2000cc(a), which the complaint alleges prohibits construction that destroys or prevents access to the unmarked graves of enslaved people, on the grounds that such construction is a substantial burden on the exercise of religion;
- 43 USC §2000cc(b)(2)), claiming that prohibiting heavy industry near predominantly white Catholic churches but allowing such construction near predominantly Black Baptist churches unlawfully discriminates on the basis of religion; and,
- Article XII, Sec. 4 of the Louisiana Constitution, alleging that construction that destroys or prevents access to the unmarked graves of enslaved people prevents their descendants from preserving and fostering their cultural origins.

Plaintiffs seek various forms of injunctive relief, enjoining the local government from siting more industrial facilities in the 4th and 5th Districts; appointing an independent monitor to enforce and measure compliance with monitoring and reporting obligations; creation of a community board to advise on additional remediation measures; and ordering a study to identify unmarked cemeteries.

The complaint's use of hundreds of years of racial history to support novel constitutional and statutory claims will no doubt be litigated on motions to dismiss and for summary judgment that will present questions of first impression for the Eastern District of Louisiana.

KEY TAKE-AWAYS FOR INDUSTRIES

While the complaint names only St. James Parish and related government entities, it has implications for a wide range of commercial activity and industries operating in environmental justice communities. If granted, the injunctive relief sought in the complaint would impact facilities operating in St. James and might serve as a model for similar lawsuits in other communities, particularly in states where environmental regulators and attorneys general are less active in pursuing environmental justice issues.

In addition, the requested relief contemplates engagement between the Parish, impacted local residents, and unnamed "stakeholders," which almost certainly includes local industry. At times in the past, well-meaning companies engaged with the communities in which they operated in part through engagement with elected officials, and supported these communities by funding local-government projects. But that paradigm may no longer suffice when the community and its local government are not aligned. Throughout the complaint, plaintiffs cite numerous examples of community members from environmental justice communities pleading unsuccessfully with their local government for relief from perceived negative health impacts allegedly caused by nearby facilities. Claiming to have been ignored by the Parish, the plaintiffs are now asking the court to order air monitoring, a moratorium on new construction, and other remedial measures.



Given the legal and practical complexities of operating in environmental justice communities, companies would do well to seek legal assistance in identifying and assessing environmental justice considerations in their operations and business plans, and should consider proactive measures to try to mitigate those considerations before a lawsuit like the St. James complaint brings additional scrutiny to the company's permits and operations.

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