

40<sup>th</sup> JUDICIAL DISTRICT COURT  
PARISH OF ST. JOHN THE BAPTIST  
STATE OF LOUISIANA

---

The Descendants Project, Jocyntia Banner,  
and Joyceia Banner,

Civil Action:

*Plaintiffs,*

v.

Division

St. John the Baptist Parish, through its Chief  
Executive Officer, Parish President Jaclyn  
Hotard; St. John The Baptist Parish Council;  
St. John the Baptist Parish Planning  
Commission; St. John the Baptist Parish  
Department of Planning and Zoning, through  
its Director, Rene Pastorek,

*Defendants.*

---

Filed: \_\_\_\_\_

Deputy Clerk: \_\_\_\_\_

**MEMORANDUM OF LAW**  
**IN SUPPORT OF PETITION FOR A WRIT OF MANDAMUS**

**Introduction**

In 1990, a Parish President broke multiple laws against corruption and abused his authority when he used his official position to “push through” and later approve a rezoning ordinance as part of a corrupt and illegal scheme. This scheme involved extortion, money-laundering, and threats of legal action against neighboring residents to discourage their resistance to selling their property to a foreign corporation. As a result, the illegal rezoning ordinance he pushed through and approved was an absolute nullity and must be deemed as never having existed.

These are not just mere *allegations* of illegality and corruption. This official was tried and convicted in federal court for these actions and was sentenced to nearly five years’ imprisonment. His corruption and abuse of authority violated multiple federal, state, and parish laws enacted for the protection of the public interest and the integrity of the legislative and democratic process against corruption.

Formosa, the Taiwan-based company at the center of the controversy, backed away from the deal two years after the ordinance was passed and the ordinance lay dormant for over thirty years. The land subject to the rezoning has since been farmed for sugarcane.

Petitioners come to this Court now, more than thirty years after the ordinance was passed, to right an old wrong, because a new heavy industrial facility seeks to make use of the long dormant and illegal rezoning. Yet again, this illegal rezoning poses an imminent threat to the health, safety, general welfare, culture, property, and due process rights of the residents of Wallace, and to their history and culture.

Petitioners ask this Court to declare Ordinance 90-27 an absolute nullity and direct Defendants to remove the illegal zoning designations from all Parish maps and zoning documents and replace it with the original residential zoning designation that existed before.

### **FACTS IN VERIFIED PETITION**

#### **I. Ordinance 90-27 Was the Product of an Illegal Extortion and Money-Laundering Scheme.**

On April 25, 1996, a federal jury convicted Lester Millet Jr. of extortion, money-laundering, and violation of the Travel Act for acts he committed while President of St. John the Baptist Parish as part of a scheme to aid Formosa, a Taiwanese corporation, to locate a heavy industrial facility in Wallace. Petition for Writ of Mandamus, ¶¶ 15-21 and exhibits annexed thereto.

Millet was charged with and convicted of violations of 18 U.S.C. §§2, 1951 (extortion), 1952 (the Travel Act), and 1956 (money laundering), “resulting from the misuse of his official position as Parish President of the St. John the Baptist Parish.” *Id.* In upholding his conviction, the panel of the United States Fifth Circuit Court of Appeals recounted key facts from the trial record that led to the jury’s verdict. The facts cited by the Court of Appeal pertained to Millet’s efforts to assist Formosa in locating a rayon pulp facility on the large tract of land in Wallace at issue here (hereinafter “the Wallace tract”) and profit off of the siting of the facility through a backroom deal with a friend, and further abusing his authority as Parish President “to push through the needed rezoning” and issue “threats” of legal action against neighboring property owners to get them to convey their land to Formosa. *Id.*

Specifically, the federal Court of Appeals recounted that:

...[M]illet engaged his friend Durel Matherne, a licenced [*sic*] real estate broker who was not actively engaged in a commercial real estate business, in a scheme in which Millet would arrange for Matherne to become the exclusive broker for the sale of the Whitney. In exchange for Millet’s influence as President of St. John the Baptist Parish to secure his contract to broker the property,

Matherne was expected to share with Millet the sizeable (\$479,000) commission he earned from the sale of the Whitney.

Millet, identifying himself as a high ranking public official, then met with Walter Barnes and informed him that the Whitney Plantation could be sold to Formosa for the rayon pulp facility and insisted that Matherne be the broker for the sale. Barnes agreed to the arrangement. ***Millet then promised Formosa that if it purchased the Whitney Plantation for the rayon facility, he would use his authority to push through the needed rezoning and would ensure Formosa obtained the necessary deep water access for the facility. Millet planned to do this by “convincing”, through threats of expropriation if necessary, owners of property adjacent to the Whitney (Wallace tracts) to convey their property to Formosa.*** He also promised Formosa to assist in obtaining the necessary EPA permits.

[...]

In April, 1990, the sale of the Whitney to Formosa was completed and Millet immediately demanded a \$200,000 share of the \$479,000 commission from Matherne. To effect this transfer, Millet bought an undeveloped piece of real estate (Highway 51 Property) for \$200,000 and, against the advice of Matherne's attorney and within two weeks conveyed one-half of it to Matherne for \$200,000.

In September, 1990, Matherne submitted a proposal for a contract to provide wood chips to the proposed Formosa facility. On learning of Matherne's proposal, Millet made it clear to Matherne that, even though he (Millet) had no capital to invest in the wood chip venture, he would participate with Matherne on a 50–50 basis. ***Millet intended to contribute by using his official position to secure the lucrative contract for himself and Matherne.*** Millet further made it clear that if he was not allowed to participate, he would use his position to spoil the deal for Matherne.

*Id.* (emphasis added).

On April 19, 1990, the same month that Formosa completed the purchase of the land, Millet made good on his promise to “push through the needed rezoning” when the St. John the Baptist Parish Council voted to rezone the Wallace tract, which included the Whitney Plantation and adjacent properties, in passing Ordinance 90-27, and when he subsequently approved it. *Id.* at ¶ 21.

Under the Parish’s Home Rule Charter, as Parish President, he had the power to approve or veto the ordinance and was thus a mandatory, integral part of the process of the ordinance becoming law in the Parish. *Id.* at ¶¶ 35-40. St. John the Baptist Parish Home Rule Charter,

Article IV, Sec. C(1) and (2) (hereinafter “the Charter”).<sup>1</sup> As can be seen on the ordinance, Lester Millet Jr. signed it, thereby approving the ordinance, a final step in the passage of the legislation into law. *Id.* In the process, he secured his \$200,000.00 as the kickback from his accomplice, Durel Matherne, who handled the real estate transaction that Millet had brokered between the owner of the property and Formosa. *Id.* at ¶ 20.

In 1992, Formosa abandoned its plans to construct the rayon pulp facility, but not before some nearby landowners had conveyed their property to Formosa, and others living next to the property had been faced with the prospect of having to upend their lives and leave the homes and communities their families had cultivated for generations. *Id.* at ¶¶56- 57.

In the intervening 30 years since the deal fell apart, the land has been used for agricultural purposes, primarily for farming sugarcane, and the community has grown and changed. *Id.* at ¶¶ 58-63. Several historic landmarks that exist next to the Wallace tract have been added to the National Registry of Historic Places and a world-renowned museum was established to tell the history and continuing impacts of slavery, drawing visitors from all over the world. The town of Wallace has grown, as have petitioners Jo and Joy Banner who come to this court to right a wrong that began when they were children and very nearly tore them from their extended family and the place they knew as home. *Id.*

## **II. Conflicting Zoning Maps Raise Further Questions About the Zoning Process and Status of the Wallace Tract.**

St. John the Baptist Parish has at least four zoning maps that have been held out to the general public as official even though they contain conflicting zoning designations for the Wallace Tract and violate the Parish’s own requirements for official zoning maps. As set out in ¶¶ 63-100 of the Petition, two of the maps show the entire Wallace tract as zoned for I-3/heavy industrial use with no I-1/light industrial buffer zone, one map shows the Wallace tract as R-1/residential, and another map, which is explicitly described by the Parish Assessor as not a legal document, shows the tract as I-3/heavy industrial with an I-1/light industrial buffer.

None of these maps conform to the requirements of the Parish Code for official maps in that none of them have been adopted as an ordinance, and one of them even has a disclaimer that it is not a “legal document” and is subject to change without notice. That, and the fact that these

---

<sup>1</sup> St. John the Baptist Parish Home Rule Charter and Code of Ordinances available at [https://library.municode.com/la/st.\\_john\\_the\\_baptist\\_parish/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTIESH\\_ORU](https://library.municode.com/la/st._john_the_baptist_parish/codes/code_of_ordinances?nodeId=PTICH_ARTIESH_ORU).

maps conflict with each other when it comes to the zoning designations for the Wallace Tract cast further doubt as to the transparency and reliability of the Parish's zoning process in general and the status of this tract in particular.

While there are serious concerns about the Parish's conflicting maps and the fact that they are also not valid under the Parish's own zoning laws, Ordinance 90-27 was the original sin -- an absolute nullity at the time it was passed, because the Parish President acted in derogation of laws enacted for the protection of the public interest when he pushed through and then approved the rezoning ordinance while having multiple illegal financial stakes in the matter.

## **LAW AND ARGUMENT**

### **I. Ordinance 90-27 Is an Absolute Nullity.**

It has "long been the law in Louisiana that an unlawful ordinance is in reality no law and in legal contemplation is as inoperative as if it had never been passed." *McMahon v. City of New Orleans*, 2018-0842, p. 5 (La.App. 4 Cir. 9/4/19); 280 So.3d 796, 800, *writ denied*, 2019-01562 (La. 11/25/19); 283 So.3d 498, *citing Vieux Carre Property Owners and Associates, Inc. v. City of New Orleans*, 246 La. 788, 167 So.2d 367, 371 (1964) (ordinance that violated home rule charter was null and void *ab initio*). "Persons may not by their juridical acts derogate from laws enacted for the protection of the public interest. Any act in derogation of such laws is an absolute nullity."<sup>2</sup> La. Civ. Code art. 7. *See also, Davis v. Town of St. Gabriel*, 2001-0031 (La.App. 1 Cir. 2/15/02); 809 So.2d 537, 539, *writ denied*, 2002-0771 (La. 10/14/02); 827 So.2d 420, *and writ denied*, 2002-0803 (La. 10/14/02); 827 So.2d 420 (agreement in derogation of state building permit requirements was an absolute nullity and variance issued based upon that agreement was unlawful and any construction pursuant to the invalid permit would be illegal). A claim that an act or obligation is an absolute nullity never prescribes and may be invoked by any person. La. Civ. Code arts. 2030, 2032.<sup>3</sup> An absolutely null contract is deemed never to have existed. La. Civ. Code art. 2033.

---

<sup>2</sup> A juridical act is defined as "a lawful volitional act intended to have legal consequences." See La. Civ. Code art. 3471, cmt. C.

<sup>3</sup> This section of the Civil Code pertains to contracts but the rules regarding absolute nullities apply to all kinds of juridical acts. *See Ronald J. Scalise Jr., Rethinking the Doctrine of Nullity*, 74 La. L. Rev. 663, 673 (2014) ("Although the articles on nullity are placed in Title IV of Book III, which concerns Conventional Obligations or Contracts, they have a much broader ambit and applicability. Just as in Roman law, the concept of nullity in Louisiana law applies to all types of juridical acts, not just to contracts.") *See also*, La. Civ. Code arts. 1917 (rules governing contracts "applicable also to obligations that arise from sources other than contract to the extent that those rules are compatible with the nature of those obligations.").

When bad faith, fraud or gross abuse of power are imputed or shown, the proceedings of parish and municipal authorities are subject to judicial control -- even those involving legislative discretion. *McCann v. Morgan City*, 173 La. 1063, 1075; 139 So. 481, 485 (1932) (“Assuming that the municipal authorities have acted within the orbit of their lawful authority, ...courts will not sit in review of proceedings of municipal officers and departments, especially those involving legislative discretion, *in the absence of bad faith, fraud, arbitrary action, or abuse of power.*”) (emphasis added) (internal quotations and citations omitted). The Louisiana Supreme Court has held that courts will “not undertake to control the discretion of a public officer or board, *unless arbitrarily or fraudulently exercised.*” *Saint v. Irion*, 165 La. 1035, 1057; 116 So. 549, 556 (1928) (emphasis added).

The process of enacting Ordinance 90-27 was shot through with bad faith, fraud, and abuse of power that were proven beyond a reasonable doubt after a federal criminal trial. As Parish President, Lester Millet Jr.’s actions “pushing through” and then approving the rezoning ordinance while having illicit financial stakes in it -- to the tune of at least \$200,000.00 in one instance -- were in violation of federal, state, and parish laws against corruption and conflicts of interest - laws specifically enacted for the protection of the public interest. In addition to the federal laws for which he was convicted - extortion, money laundering, violation of the Travel Act -- his actions also derogated from state and parish laws prohibiting public corruption and conflicts of interest.

Fraud is a “misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other.” La. Civ. Code art. 1953. La. R.S. 14:118 prohibits public bribery, defined in relevant part, as the “acceptance of, or the offer to accept, directly or indirectly, anything of apparent present or prospective value” by, *inter alia*, a “public officer, public employee, or person in a position of public authority” “with the intent to influence his conduct in relation to his position, employment, or duty.” La. R.S. 14:118(A)(1) and (2). La. R.S. 14:120 prohibits “corrupt influencing,” defined as “the giving or offering to give anything of apparent present or prospective value to, or the accepting or offering to accept anything of apparent present or prospective value by, any person, with the intention that the recipient shall corruptly influence the conduct of,” *inter alia*, a “public officer, public employee, or person in a position of public authority.”

A cornerstone of the state ethics laws, La. R.S. 42:1118, provides that:

No public servant shall solicit or receive any thing of economic value, directly or indirectly, for, or to be used by him or a member of his immediate family<sup>4</sup> principally to aid in, (1) the accomplishment of the passage or defeat of any matter affecting his agency by the legislature, if his agency is a state agency, or by the governing authority, if his agency is an agency of a political subdivision, or (2) the influencing, directly or indirectly, of the passage or defeat of any matter affecting his agency by the legislature, if his agency is a state agency, or by the governing authority, if his agency is an agency of a political subdivision.

Millet's actions also derogated from the Parish's Home Rule Charter. Art.

III(B)(3)(b)(iii) of the charter requires the Parish President to "see that all laws, provisions of this Charter and acts of the council subject to enforcement by him, or officers subject to his direction or supervision, are faithfully executed." Art. VII(B)(1) of the charter requires that "no officer, official, or employee, or board or commission member of the parish shall directly or indirectly solicit or receive any privilege, rebate, reduced rate, or any other thing of value from any person, firm, or corporation doing business with the parish."

Millet was not just attempting to push through the rezoning from the sidelines of the Parish Council, which is the legislative body of the Parish. As president, he was head of the executive branch of parish government and under the Charter wielded veto power as one of the checks and balances built into the system of parish governance. *See Davis v. Town of St. Gabriel*, 809 So.2d at 547 (observing that town council is legislative body, zoning ordinance is a law, requiring public hearings, notice, and the check and balance of a mayoral veto). Millet played a mandatory, critical role in the actual enactment of the ordinance. When he signed the ordinance, approving it per the requirements of the charter, he completed the final step and ensured the ordinance's passage into law.

In the same month that Millet ensured passage of the rezoning ordinance, Formosa purchased the property being rezoned and Millet secured for himself \$200,000.00 as a kickback from his accomplice Durel Matherne, who handled the real estate transaction brokered by Millet, which he then laundered through a separate land transaction. Millet further attempted to capitalize off the rezoning scheme and Formosa's plans to locate there by forcing himself upon Matherne's plans to supply wood chips to the Formosa facility -- making it clear to Matherne

---

<sup>4</sup> Pursuant to L.A. R.S. 42:1102(13), "Immediate family" as the term relates to a public servant means his children, the spouses of his children, his brothers and their spouses, his sisters and their spouses, his parents, his spouse, and the parents of his spouse."

that he would participate on a 50-50 basis even though he had no capital to invest. Rather, Millet's contribution to this part of the scheme would be to again use "his official position to secure the lucrative contract for himself and Matherne; or derail it if Matherne refused him."

## **II. The Mandamus Is Warranted Under These Extraordinary Circumstances.**

"A writ of mandamus may be issued in all cases where the law provides no relief by ordinary means or where the delay involved in obtaining ordinary relief may cause injustice... ." La. Code of Civ. Proc. art. 3862. It is a "well-established principle in the jurisprudence of this state" that "mandamus is an extraordinary remedy and may be resorted to only under extraordinary circumstances." *W. Carroll Nat. Bank of Oak Grove v. W. Carroll Par. Sch. Bd.*, 136 So.2d 699, 701-02 (La. Ct. App.1961).

The circumstances of this case are extraordinary. Millet's corruption was so pervasive and extreme that it thoroughly infected the Parish's process for rezoning the Wallace tract from the outset and ultimately led to his criminal conviction. Millet was involved in every aspect of ensuring Formosa's ability to locate on Wallace tract and worked to take advantage of the project for his own personal gain from the very beginning. He saw an opportunity to enrich himself and did that on the backs of parish residents living next to the property at issue. He brokered the sale of the property to Formosa, through his accomplice Durel Matherne; he solicited and received a \$200,000 kickback for the sale of that property; he carried through on his promise to Formosa that he would push through the needed rezoning of the land, including approving the ordinance for passage into law after the Council voted to adopt it; and then he worked to financially benefit further through forcing himself into Matherne's plans to get a supply contract with Formosa.

This case is also unusual in that there is an underlying criminal conviction of the parish president. These are not mere suspicions or allegations of corruption. He was investigated, prosecuted, and found guilty beyond a reasonable doubt of extortion, money laundering, violation of the Travel Act in connection with his efforts to help Formosa locate on the Wallace tract. Ensuring that the property could be rezoned to allow for heavy industrial use, as the United States Fifth Circuit Court of Appeal pointed out, was a necessary part of that scheme to further enrich himself. As a result, the ordinance was in derogation of laws enacted to protect the public interest and was an absolute nullity the moment Millet signed it into "law."

Mandamus is the appropriate vehicle to enforce compliance by a local government with its own ordinances. *Folsom Rd. Civic Ass'n v. Par. of St. Tammany Through St. Tammany Par.*



*Council*, 425 So.2d 1318, 1320 (La. App. 1 Cir. 1983). The writ of mandamus “lies only to compel the performance of duties that are purely ministerial in character *or to correct an arbitrary or capricious abuse of discretion by public boards or officials*. Such a writ will issue only when there is a clear and specific legal right to be enforced *or a duty which ought to be, and can be, performed.*” *W. Carroll Nat. Bank of Oak Grove, supra* at 702. (emphasis added).

“[W]hen there is room for two opinions, an action is not arbitrary or capricious when exercised *honestly* and upon due consideration, even though it may be believed an erroneous conclusion has been reached.” *Truitt v. W. Feliciana Par. Gov’t*, 2019-0808, p. 5 (La.App. 1 Cir. 2/21/20); 299 So.3d 100, 103–04. (emphasis added) (remanding for judicial review of parish’s zoning map amendment because petitioners sufficiently alleged parish and commission acted arbitrarily and capriciously in failing to follow requirements of the code of ordinances).<sup>5</sup> *See also, Four States Realty Co., Inc. v. City of Baton Rouge*, 309 So.2d 659, 673-74 (La.1974) (invalidating city ordinance because city council’s rezoning of property was “unjustified spot zoning” and was arbitrary, capricious and an abuse of discretion).

Petitioners are not asking this Court to consider the wisdom or substance Ordinance 90-27 or substitute its discretion for that of the Parish Council when it comes to zoning and land use in the parish. Rather, Petitioners are asking this Court to consider the process by which the ordinance was adopted, which was thoroughly and completely poisoned with fraud, gross abuse of power, and bad faith, in violation of the Parish’s own laws, as well as federal and state laws prohibiting corruption and conflicts of interest.

The mandamus is also warranted given that delay involved in obtaining ordinary relief would cause injustice. *See* La. Civ. Code. art. 3862. Thirty-one years after the passage of the ordinance, a new heavy industrial facility is seeking to construct on the property, and has already been allowed to undertake ground disturbing activities on the land where petitioners believe people enslaved on the plantations that once existed there may be buried. The company is

---

<sup>5</sup> La. R.S. 33:4721 also provides that

[f]or the purpose of promoting health, safety, morals, or the general welfare of the community, the governing authority of all municipalities may regulate and restrict ... the location and use of the buildings, structures, and land for trade, industry, residence, or other purposes; provided that zoning ordinances enacted by the governing authority of municipalities or the acts of the zoning commission, board of adjustment as herein provided for, or zoning administrator *shall be subject to judicial review on the grounds of abuse of discretion, unreasonable exercise of the police powers, an excessive use of the power herein granted, or the denial of the right of due process ....* (emphasis added)

engaged in efforts to obtain necessary environmental permits from federal and state agencies.

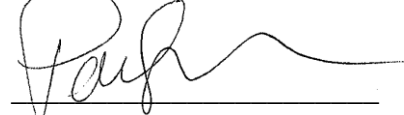
This matter is pressing and delay may cause harm and further injustice.

### CONCLUSION

WHEREFORE, Petitioner respectfully requests that this Court enter a declaratory judgment that Ordinance 90-27 is an absolute nullity and order St. John the Baptist Parish to remove the zoning designations originating with ordinance from all maps and zoning documents, and replace it with the original R-1, residential zoning.

Dated: November 9, 2021

Respectfully submitted,



PAMELA C. SPEES  
La. Bar Roll No. 29679  
Center for Constitutional Rights  
666 Broadway, 7th Floor  
New York, NY 10012  
Tel & Fax (212) 614-6431  
[pspees@ccrjustice.org](mailto:pspees@ccrjustice.org)

William P. Quigley  
La. Bar Roll No. 7769  
Professor Emeritus  
Loyola University College of Law  
7214 St. Charles Avenue  
New Orleans, LA 70118  
Tel. (504) 710-3074  
Fax (504) 861-5440  
[quigley77@gmail.com](mailto:quigley77@gmail.com)

*Attorneys for Petitioner*