

40th JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

The Descendants Project, Jocyntia Banner,
and Joycea Banner,

Civil Action: 77305

Plaintiffs,

v.

Division C

St. John the Baptist Parish, through its Chief
Executive Officer, *et al*

Defendants.

Filed: _____

Deputy Clerk: _____

PETITIONERS' OPPOSITION TO EXCEPTIONS

NOW INTO COURT, through undersigned counsel, come petitioners, The DESCENDANTS PROJECT, Jo Banner, and Joy Banner, who respectfully submit this response in opposition to the exceptions filed by Intervenor-Defendant Greenfield Louisiana, LLC, a Delaware Corporation, and joined by the Parish Defendants. Petitioners reassert and incorporate their arguments contained in their Memorandum of Law in Support of Petition for Mandamus filed on Nov. 9, 2021, and their Reply to Defendants' Exceptions, filed on December 14, 2021.

SUMMARY

As set out in detail in the Second Amended Complaint, Ordinance 90-27 was the product of, and instrumental to, an illegal scheme by the Parish President to commit extortion, money laundering, and abuse of power – a thoroughgoing violation of the public interest and trust. Defendants argue the ordinance was laundered of this serious corruption through the Parish Council as though all of the illegality which gave rise to and pervaded the ordinance and process did not matter. This must not be allowed. Numerous federal and state laws intended for the protection of the public interest were broken in the course of and as a result of the ordinance's enactment. The entire process was thoroughly and deeply tainted by the corruption and flagrant illegality so corrosive and destructive of the democratic process in St. John the Baptist Parish. The ordinance was absolutely null the moment the Parish President signed it.

Since the hearing on December 16, 2021, to address Defendants' exceptions to Petitioners' original mandamus petition, Petitioners discovered two more facts relevant to their claims that have been incorporated into the Second Amended Complaint: 1) the survey map that served as the guide for the zoning redesignations in Ordinance 90-27 was mysteriously ripped

from the Parish clerk's records, as confirmed by a note made by the Clerk of Court in 1994; and 2) Formosa commissioned another survey map in 2006 to subdivide the property which was prepared in consultation with and signed by Parish authorities. The survey map shows property that had been subject to the industrial designation in Ordinance 90-27 to be zoned residential. This suggests that even the property owner and would-be beneficiary of the illegal rezoning, as well as parish authorities, did not view the land as having the industrial zoning designation purportedly enacted under Ordinance 90-27. The 2006 survey map was also referenced in the 2020 conveyance of the property to Defendant-Intervenor Greenfield, which would have put the company on notice as to the property's questionable zoning status.

The three exceptions filed by Defendants should be denied.

First, Defendants' exception of no cause of action should be denied because Petitioners have set out in great detail the facts that rendered the ordinance an absolute nullity *ab initio* along with supporting legal authority. It simply is not the case that an ordinance may not be deemed an absolute nullity as Defendants suggest. Courts have long held and recognized that ordinances, like any laws or regulations, that are illegal, unconstitutional, or ultra vires, are absolutely null and have no legal effect. Even if the Court were to find that an ordinance, or the signing thereof, should not be described as a "juridical act," it may still find that the ordinance is absolutely null. Indeed, it could do so on its own even if Petitioners had not pled it at all, much less as extensively as they have.

Second, Defendants' exception of no right of action should be denied. Petitioners have a legitimate basis and right to challenge the ordinance because a claim of absolute nullity may be brought by any person at any time. In addition, even if the ordinance were not an absolute nullity, Louisiana courts recognize the right of a taxpayer to enjoin unlawful action by a public body.

Finally, the exception of prescription should be denied because a claim for absolute nullity never prescribes.

FACTUAL BACKGROUND

A federal jury found beyond a reasonable doubt that Lester Millet abused his position as President of St. John the Baptist Parish to push through the re-zoning ordinance of the tract of land at issue here, threatened residents with legal action if they did not sell to Formosa, the company seeking to build a rayon facility there, and then illegally profited off the sale of land he

brokered after the ordinance was passed as he promised. Second Amended Petition (“Petition”), ¶¶ 12-18. Millet was sentenced to five years in prison upon his conviction for these federal crimes of extortion, money laundering, and violation of the Travel Act. *Id.* ¶¶ 13-14.

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.* ¶ 18. 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 ¶¶ 43-51. St. John the Baptist Parish Home Rule Charter, Article IV, Sec. C(1) and (2) (hereinafter “the Charter”).¹

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.* ¶ 43. 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.* ¶¶ 17, 52.

Just eleven days after the ordinance was passed, Formosa completed its purchase of the Wallace tract. *Id.* ¶¶ 19-21. The documents associated with this conveyance refer to a survey done by Daryl B. Patin, C.E. that was supposed to be attached as an exhibit. *Id.* ¶ 22. But four years after the instruments were filed in the official records of the Parish clerk’s office, the map was found to be missing. *Id.* ¶ 23. Then-Clerk of Court, Harold Montegut, entered a hand-written notation in the file that he “noticed the original page (maybe a map) had been ripped out of the original act book.” *Id.* ¶ 24. He added a warning that “anyone caught destroying any records, on the spot or proven later, will be charged criminally.” *Id.* This was the same map referenced in a document annexed to Ordinance 90-27 that was to guide the re-zoning designations. *Id.* ¶ 26.

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, like Petitioners and their family, 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 ¶¶ 53-76, 83-84.

¹ 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.

In 2006, however, Formosa commissioned another survey of the property to facilitate its subdivision and sale of the property. The surveyor consulted with Parish officials about zoning designations on the subdivision map. *Id.* at ¶¶ 85-94. Parish officials signed off on the map. *Id.* at ¶ 93. The map shows property which was supposedly zoned as industrial under Ordinance 90-27 to be zoned residential. *Id.* at ¶¶ 85-87. This same survey was referenced in the conveyance documents when Defendant-Intervenor Greenfield Louisiana, LLC, purchased the property in 2020. *Id.* at ¶¶ 99-102. Even Formosa, the would-be beneficiary of the corruptly enacted ordinance, subdivided and sold its property with the original R-1 designation, 16 years after Ordinance 90-27 was “passed.”

LAW AND ARGUMENT

I. Petitioners Have Stated a Cause of Action That the Ordinance Is Absolutely Null.

In addressing the exception of no cause of action, the “well-pleaded facts in the petition must be accepted as true.” *City of New Orleans v. Board of Comm’rs of Orleans Levee Dist.*, 93-0690 (La. 1994), 640 So.2d 237, 241. “[A]ny documents annexed to the petition must also be accepted as true.” *Adams v. Owens-Corning Fiberglas Corp.*, 2004-1296, p. 3 (La.App. 1 Cir. 9/23/05); 921 So.2d 972, 975, *writ denied*, 2005-2501 (La. 4/17/06); 926 So.2d 514. The burden of demonstrating that no cause of action has been stated is on the party filing the exception. *Id.* In ruling on an exception of no cause of action, the court must determine whether the law affords any relief to the claimant if he proves the factual allegations in the petition and annexed documents at trial. *Id.*

The petition must be interpreted, if possible, to maintain the cause of action instead of dismissing the petition. *Id.* Any reasonable doubt concerning the sufficiency of the petition must be resolved in favor of finding that a cause of action has been stated. *Id.* When an exception of no cause of action is based on an affirmative defense, the exception should not be sustained unless the allegations of the petition exclude every reasonable hypothesis other than the premise upon which the defense is based. *Id.* citing *West v. Ray*, 210 La. 25, 33; 26 So.2d 221, 224 (1946). “When the grounds of the objection pleaded by the peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception shall order such an amendment within the delay allowed by the court.” La. C.C.P. art. 934.

A. Illegal, Ultra Vires Ordinances Are Absolutely Null.

The United States Supreme Court has found, contrary to Defendants' suggestion,² that absolute nullity extends to ordinances. *White v. Cannon*, 73 U.S. 443, 450 (1867) (Louisiana's ordinance of secession an "absolute nullity"). Indeed, 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*). An "unconstitutional statute is no law," "is always unconstitutional," and a "judgment of the Court declaring it so is simply judicial recognition that the Legislature had transcended the provisions of the Constitution." *Flournoy v. First Nat. Bank of Shreveport*, 197 La. 1067, 1080; 3 So.2d 244, 248 (1941) citing *Norton v. Shelby County*, 118 U.S. 425 (1886).

Louisiana courts have found ordinances enacted by parish and city governments in violation of their own laws to be absolute nullities. *See e.g., Gurley v. City of New Orleans*, 41 La. Ann. 75; 5 So. 659, 661 (1889) (describing city ordinance and contract in violation of a prohibitory law as absolutely null), *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), *NW St. Tammany Civic Ass'n v. St. Tammany Parish*, 2011-0461, 2011 WL 5410169 (La. App. 1 Cir. Nov. 9, 2011) (noting ruling in earlier proceeding that district court had ruled conditional use permit void *ab initio*).

B. Fraud, Corruption, Ultra Vires Action, Abuse of Power, and Abuse of Discretion Are Accorded Special Treatment Because of the Threat to the Democratic Process.

While the cases above pertain to ordinances or actions taken by parish or municipal authorities in violation of their governing law and in some ways are procedural in nature, allegations of fraud, corruption, or bad faith in the proceedings or enactments are accorded special consideration by the courts. *See McCann v. Morgan City*, 173 La. 1063, 1075; 139 So.

² Memorandum in Support of Greenfield's Peremptory Exceptions ("Defendant Br."), at n. 1.

481, 485 (1932). *See also*, *Saint v. Irion*, 165 La. 1035, 1057; 116 So. 549, 556 (1928) (courts will “not undertake to control the discretion of a public officer or board, unless arbitrarily or fraudulently exercised”), *Truitt v. W. Feliciana Par. Gov’t*, 2019-0808, p. 5 (La.App. 1 Cir. 2/21/20); 299 So.3d 100, 103–04 (“[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.”) (emphasis added).

“[F]raud vitiates all things.” *Broussard v. Doucet*, 236 La. 217, 223; 107 So.2d 448, 451 (1958) (holding an act of exchange was void *ab initio* when obtained in violation of a prohibitory law). The law “furnishes a remedy against fraud, when exposed, whatever guise it may assume.” *Bd. of Comm’rs of Orleans Levee Dist. v. Shushan*, 197 La. 598, 613; 2 So.2d 35 (1941). “Fraud or bad faith with respect either to context or manner of arriving at a decision in an administrative zoning matter, is sufficient ground for judicial reversal of the decision.” 8A McQuillin Mun. Corp. § 25:417 (3d ed.) (internal citations omitted). *See also*, Ronald J. Scalise Jr., Rethinking the Doctrine of Nullity, 74 La. L. Rev. 663, 718 (2014) (“the violation of the public fraud statute should also result in the violative act being considered an absolute nullity”).

The U.S. Supreme Court long ago spoke to the need, as a matter of public policy, to ensure democratic processes, and the public, are protected against corruption, fraud, and undue influence. In a case examining an agreement to surreptitiously influence a legislative process (which was ultimately unsuccessful), the Court reiterated that agreements “to use personal or any secret or sinister influence on legislators, is void by the policy of the law.” *Marshall v. Baltimore & O. R. Co.*, 57 U.S. 314, 336 (1853). The Court added: “It is an undoubted principle of the common law, that it will not lend its aid to enforce a contract to do an act that is illegal; or which is inconsistent with sound morals or public policy; or which tends to corrupt or contaminate, by improper influences, the integrity of our social or political institutions.” *Id.*

Applying those same principles and concerns to laws or ordinances which have been contaminated by such agreements, the Georgia Supreme Court, which follows the same approach as Louisiana courts in terms of deference accorded to legislative discretion in zoning matters, emphasized the “utmost importance” of the “integrity of the process of public deliberation” *Wyman v. Popham*, 252 Ga. 247, 248; 312 S.E.2d 795, 797 (1984). As a result, the courts there, as in Louisiana, will depart from their usual deference to zoning decisions when fraud and corruption are alleged. Accordingly, courts there, as in Louisiana, “will not impose upon those

claiming fraud or corruption in the promulgation and administration of zoning ordinances any standard other than that of the preponderance of the evidence.” *Id. See also*, La. Civ. Code art. 1957 (“Fraud need only be proved by a preponderance of the evidence and may be established by circumstantial evidence.”).

The Louisiana Supreme Court, in holding “technical objections to the pleadings should not avail” “when fraud is distinctly and clearly alleged,” advised that “the widest latitude should be extended” to those seeking relief “since they are necessarily, to a considerable degree, uninformed of the precise relation existing among the persons charged with wrongdoing” and very often “are compelled to proceed in the dark.” *Bd. of Comm'rs of Orleans Levee Dist. v. Shushan*, 2 So.2d at 40–41 (remanding case for consideration of Board’s action to annul contract on grounds of fraud). *See also*, *Duffy v. Peneguy*, Sup.1920, 148 La. 407, 87 So. 25 (gravity drainage district’s decision is not subject to court review except upon allegations of fraud or of such an abuse of discretion as would be equivalent of fraud, which must be pleaded); *Chiro v. Fourth Jefferson Drainage Dist.*, 159 La. 471 (1925) (Unless public board's discretion is unreasonably, arbitrarily, or fraudulently exercised, courts will not undertake to control it or to substitute their discretion.).

Even the U.S. Supreme Court made this point in reference to local law in Louisiana. In 1916, the Court reversed the Louisiana Supreme Court when it held that a law creating a drainage district “solely with the view of deriving revenues” from an island would be an arbitrary abuse of power. *Myles Salt Co. v. Bd. of Comm'rs of Iberia & St. Mary Drainage Dist.*, 239 U.S. 478, 484 (1916). The Court also disagreed with the Louisiana Supreme Court’s assessment that no fraud had been alleged in the matter.

Here, we are not dealing with mere suspicions or allegations of fraud, but a situation where the instigator and signer of the ordinance was convicted for his corruption – corruption that was dependent upon Ordinance 90-27. Intervenor suggests that the Parish President’s extensive corruption of the process, for which he was found guilty beyond a reasonable doubt, has no bearing on the legality of the ordinance. As set out in the Petition, the Parish President set out to entice Formosa to the property in question, assured the company he would “push through” the needed rezoning, and threaten nearby residents with expropriation to pressure them to sell their property. Petitioners point to the extensive and fierce opposition to the rezoning because it

shows that this rezoning would not have sailed easily through the Parish’s process for enacting ordinances, and that it required some “pushing through” by Millet. Petition, ¶¶ 12-53.

Intervenors also suggest that the Parish Council could have enacted the ordinance without Millet signing and ratifying it. But that is not what happened here. What did happen is that Millet brought the deal and the need to rezone to the Parish; advocated for it at each step of the way over intense opposition from the community; and signed it into law when it came to him for approval per the Home Rule Charter. *Id.* No one can say what would have happened if a parish president had vetoed the ordinance; and whether that might have changed the minds or calculus of members of the council.

The fact that the land has been used for farming sugarcane in the intervening decades, combined with a series of conflicting maps and zoning designations for this particular property only adds to the questions and uncertainties surrounding this tract of land. Intervenor references an “official zoning map” but does not indicate to which map they are referring. Moreover, since the filing of the original mandamus petition in this action, Petitioners found yet another map – this time made by a surveyor in 2006 with approval of Parish authorities which shows land that would have been covered by the industrial designation of Ordinance 90-27 was instead zoned residential sixteen years later. The 2006 map suggests even Formosa and parish administrators may not have given credence to Ordinance 90-27. *Id.* ¶¶ 85-95.

Defendants also suggest that the ordinance should not be considered a “juridical act” under La. Civ. Code art. 7. They conflate “juridical act” with “contract” at La. Civ. Code art. 2030 even though both types of instruments have separate provisions in the Civil Code describing what makes such instruments absolutely null. *See also*, Ronald J. Scalise, Rethinking the Doctrine of Nullity, 74 La. L. Rev. 663, 673 (2014) (“Just as in Roman law, the concept of nullity in Louisiana law applies to all types of juridical acts, not just to contracts.”).

Whether or not the ordinance can or should be described as a “juridical act,” this Court, reviewing the extensive pleadings of fact, may find that the ordinance is absolutely null. As a general matter, the Court can always rule as to legality or illegality of a law or ordinance. In the realm of absolutely null, La. Civ. Code art. 2030 makes this explicit. Indeed, the court would be obliged to recognize the absolute nullity on its own even if Petitioners had not pled it at all. As early as 1894, the Louisiana Supreme Court observed that in reference to agreements with an unlawful purpose, “It is trite in our jurisprudence that contentions originating in unlawful

purposes are not to be brought into courts of justice” and it is thus “obligatory on the courts to take notice, irrespective of the pleadings...”. *Fabacher v. Bryant*, 46 La. Ann. 820, 826; 15 So. 181, 183 (1894).

C. The Petition Pled Laws Enacted for the Protection of the Public Interest from Which the Ordinance Derogates.

Defendants erroneously suggest that the Petition does not plead any laws enacted for the protection of the public interest that were violated by the ordinance and Millet’s actions. Yet the petition clearly pled several such laws. In addition to laws for which Millet was convicted (extortion, money laundering, and violation of the Travel Act), the petition also pled that the ordinance and his actions derogated from La. R.S. 14:120 (corrupt influencing) and La. R.S. 42:1118 (influencing action by legislature or governing body), Petition ¶ 205; Art. III(B)(3)(b)(iii) of the Home Rule Charter (faithful execution of all laws), *Id.* ¶ 206; Art. VII(B)(1) of the Charter (conflict of interest). The ordinance and Millet’s actions derogated from other laws as well, of which this Court can take notice, including La. R.S. 14:134.2 (abuse of office)³ and La. R.S. 14:134 (malfeasance in office).⁴ These acts, and some of the offenses, are also fraudulent in nature, i.e. a “misrepresentation or 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.

The comments to the revision to La. Civ. Code art. 7 note that the words “laws enacted for the preservation of the public interest” have the same meaning as “laws for the preservation of public order” and “prohibitory law.” La. Civ. Code art. 7, cmt. d.

The above offenses are prohibitory laws, enacted specifically to protect these democratic processes from the kind of corruption and illegality that gave rise to and surrounded Ordinance 90-27.

³ According to La. Rev. Stat. Ann. § 14:134.3:

No public officer or public employee shall knowingly and intentionally use the authority of his office or position, directly or indirectly, to compel or coerce any person to provide the public officer, public employee or any other person with anything of apparent present or prospective value when the public officer or employee is not entitled by the nature of his office to the services sought or the object of his demand.

⁴ According to La. Rev. Stat. Ann. § 14:134:

- A. Malfeasance in office is committed when any public officer or public employee shall:
- (1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or
 - (2) Intentionally perform any such duty in an unlawful manner; or
 - (3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

D. The Ordinance Is Not a Contract.

Defendants are correct that Petitioners do not allege that Ordinance 90-27 is a contract. As explained in Petitioners' Memorandum of Law in Support of their original mandamus petition,⁵ the petition references articles 2030 and 2032 in Book III of the Louisiana Civil Code pertaining to contracts because they state principles and rules that apply to absolute nullities in general – as does article 7, pertaining to juridical acts. One commentator has observed, that “[a]lthough 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.” Ronald J. Scalise, *Rethinking the Doctrine of Nullity*, 74 La. L. Rev. 663, 673 (2014).

Moreover, “[i]n addition to the idea that the concept of nullity applies well beyond the limited realm of contract law—despite its placement in the Civil Code—it is important to note that the general law of nullity applies not only to acts expressly declared null but also to acts the contravention of which may not specifically be designated as a nullity by legislation.” *Id.* at 674. According to Scalise, referencing La. Civ. Code art. 7, the inquiry in trying to determine whether a particular action is a nullity should be: “Has the act violated a prohibitory law or a law established for the public interest? If so, the act is an absolute nullity, even if the law itself does not so formally direct it.” *Id.* at 675.

The petition has pled at length that the ordinance was in derogation of a series of prohibitory laws enacted for the protection of the public interest.

Defendants also mistakenly suggest that if contract law applies, then the ordinance should be deemed a relative nullity, which, unlike an absolute nullity, has a definite prescriptive period. Defendants overlook the key distinction between absolute nullities, which never prescribe, and relative nullities, which do. Absolute nullities are those which derogate from the “force of law made for the preservation of public order or good morals” versus those established for the “interest of individuals.” *See, e.g., Vaughan v. Christine*, 3 La. Ann. 328, 329 (1848).

As set out above, the Petition extensively alleges how Millet's actions and the ordinance violated laws made for the preservation of public order, or, in words of more recent vintage, the protection of the public interest.

⁵ Petitioners' Memorandum of Law in Support of Petition for Mandamus, at n. 3.

II. Exception 2: Petitioners Have a Right of Action to Bring the Claim that Ordinance 90-27 is an Absolute Nullity.

Petitioners have a clear right of action. “Absolute nullity may be invoked by any person or may be declared by the court on its own initiative.” La. Civ. Code art. 2030. Following the dictates of the civil code, courts have allowed third parties to bring challenges to parish and municipal re-zoning decisions and ordinances when claiming they are absolutely null. *See, e.g., NW St. Tammany Civic Ass'n v. Parish*, No. 2008-14871, 2008 WL 7984953 (La. Dist. Ct. Oct. 03, 2008), annexed hereto; *NW St. Tammany Civic Ass'n v. St. Tammany Parish*, 2011-0461, 2011 WL 5410169 (La. App. 1 Cir. Nov. 9, 2011), annexed hereto; *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; *Allen v. St. Tammany Par. Police Jury*, 96-0938, 690 So. 2d 150, 154 (La. App. 1 Cir. 2/14/97), *writ denied*, 97-0599 (La. 4/18/97), 692 So. 2d 455; *Neighbors First for Bywater v. City of New Orleans/New Orleans City Council*, 2017-0256 (La. App. 4 Cir. 12/13/17).

Apart from direct standing to bring a claim for absolute nullity, “Louisiana jurisprudence recognizes the right of a taxpayer to enjoin *unlawful* action by a public body.” *E. Baton Rouge Par. Sch. Bd. v. State Through Bd. of Trustees of the State Employees Grp. Ben. Program*, 96-1793 (La. App. 1 Cir. 9/19/97, 4–5); 700 So.2d 945, 949, *writ denied sub nom. E. Baton Rouge Sch. Bd. v. State through Bd. of Trustees of State Employers Grp. Benefit Program*, 97-3116 (La. 2/13/98); 709 So.2d 758 (citing *Stewart v. Stanley*, 199 La. 146, 5 So.2d 531 (1941)). A taxpayer “may resort to judicial authority to restrain public servants from transcending their lawful powers or violating their legal duties in any unauthorized mode which would increase the burden of taxation or otherwise unjustly affect the taxpayer or his property.” *Id.* A taxpayer has standing even if their interest “may be small and insusceptible of accurate determination.” *Id.*

This is exactly what Petitioners have pled – that their public servants transcended their lawful powers, violated their legal duties, in ways that unjustly affected them and their property. In addition to demonstrating how the Parish President’s actions gave rise to an absolutely null ordinance, Petitioners also detail their interest as residents and owners of a business on property adjacent to the land that was illegally rezoned. Petition, ¶¶ 2-4, 58-68, 81-82, 153, 170-183.

III. Exception 3: Petitioners’ Claim Does Not Prescribe.

The Louisiana Supreme Court has observed that absolute nullities in derogation of laws enacted for the protection of the public interest are never susceptible of ratification and never

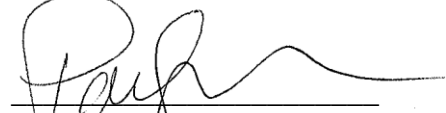
prescribe. See e.g., *Whitney Nat. Bank of New Orleans v. Schwob*, 203 La. 175, 179; 13 So.2d 782, 783 (1943). This same rule is reiterated in art. 2033 of the Civil Code pertaining to contracts. Petitioners have stated a valid claim that Ordinance 90-27 is an absolute nullity, which never prescribes.

Conclusion

For the above reasons, Petitioners respectfully submit that the Exceptions should be denied.

Dated: April 20, 2022

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all known counsel of record by electronic mail.

Woodside, New York, this 20th day of April, 2022


Pamela C. Spees