

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MARJORIE MARY AND
CAMERON MARY

Versus

PATRICIA BRISTER, GINA CAMPO,
KELLY RABALAIS, CHARLES "EDDIE"
WILLIAMS, AND PAUL CARROLL,
Individually and in their official capacities

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* CIVIL ACTION NO: 17-cv-04977
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* SECTION: "H"
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* JUDGE: JANE TRICHE MILAZZO
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* MAGISTRATE: MICHAEL B. NORTH
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FIRST AMENDED COMPLAINT

This is a case about a failure of government to perform one of its most basic functions: Administration of the law fairly and equally to protect all of its citizens and residents. The unfortunate victims of this failure are Marjorie Brown Mary and Cameron Mary, two residents of St. Tammany Parish, whose land, their home, is degrading into wetlands and swamp because of the defendants' collective failure to enforce the law. The defendants' actions, all taken under the color of law, unlawfully elevated the desires and convenience of one neighbor over the protection of another. They then attempted to cover up their actions through a pattern of retaliation against the Marys, abusing the governmental power entrusted to them and violating the Marys' First Amendment right to challenge governmental action in court. The Marys now file this First Amended Complaint seeking to enforce the constitutional guarantees of equal protection under law, due process under law, and the right to petition for judicial review of governmental action without fear of retaliation.

I. JURISDICTION

1. This action is brought pursuant to 42 U.S.C. §1983 and the Fourteenth Amendment of the United States Constitution. Jurisdiction is founded on 28 USC §§1331 and 1343, and the aforementioned statutory and constitutional provisions.

II. PARTIES

(Plaintiffs)

2. **MARJORIE BROWN MARY** and **CAMERON MARY** are husband and wife, who are individuals of the age of majority, and are citizens of the State of Louisiana, domiciled in the Eastern District of Louisiana.

(Defendants)

3. **PATRICIA BRISTER**, a person of full age of majority and a resident of St. Tammany Parish, State of Louisiana, in her individual and official capacity as the President of St. Tammany Parish Government. At all times described herein, **BRISTER** was responsible for hiring, training, supervision, discipline and control of executive branch staff. She was also responsible for the supervision, administration, policies, practices, customs, and operations of the Department of Engineering, a department within the executive branch of the St. Tammany Parish Government. **BRISTER** was and is a final policy maker, and at all pertinent times was acting under color of law. She is liable both directly and vicariously for the actions complained of herein.
4. **GINA CAMPO**, a person of full age of majority and a resident of St. Tammany Parish, State of Louisiana, in her individual and official capacity as Chief Administrative Officer for St. Tammany Parish Government. At all times described herein, **CAMPO** was responsible for hiring training, supervision, discipline and control of executive branch staff. She was also

responsible for the supervision, administration, policies, practices, customs, and operations of the Department of Engineering, a department within the executive branch of the St.

Tammany Parish Government. **CAMPO** was and is a final policy maker, and at all pertinent times was acting under color of law. She is liable both directly and vicariously for the actions complained of herein.

5. **KELLY RABALAIS**, a person of full age of majority and a resident of St. Tammany Parish, State of Louisiana, in her individual and official capacity as Director of Code Enforcement for St. Tammany Parish Government and also Executive Counsel of St. Tammany Parish Government. At all times described herein, **RABALAIS** was responsible for hiring training, supervision, discipline and control of Code Enforcement and Legal staff. She was also responsible for the supervision, administration, policies, practices, customs, and operations of the Department of Code Enforcement and of the STPG Legal Department. **RABALAIS** was and is a final policy maker, and at all pertinent times was acting under color of law. She is liable both directly and vicariously for the actions complained of herein.
6. **CHARLES “EDDIE” WILLIAMS**, a person of the full age of majority and a resident of St. Tammany Parish, State of Louisiana, in his individual and official capacity as Director of Department of Engineering for St. Tammany Parish Government. At all times described herein, **WILLIAMS** was responsible for hiring training, supervision, discipline and control of Department of Engineering staff. He was also responsible for the supervision, administration, policies, practices, customs, and operations of the Department of Engineering. **WILLIAMS** was a final policy maker, and at all pertinent times was acting under color of law. He is liable both directly and vicariously for the actions complained of herein.

7. **PAUL CARROLL** a person of the full age of majority and a resident of St. Tammany Parish, State of Louisiana, in his individual and official capacity as an employee and engineer for the Department of Engineering for St. Tammany Parish Government. At all pertinent times, **CARROLL** was acting under color of law.

III. FACTUAL ALLEGATIONS

NATURE OF THE CLAIM

8. This case arises from the defendants' failure to enforce the St. Tammany Parish Net Fill Ordinance in relation to a construction project on the lot next door to the Marys' home. The Net Fill Ordinance ("NFO") was enacted in recognition of the serious drainage and flooding problems caused by unregulated construction throughout the Parish. It generally prohibits placing fill (ie. dirt or clay) in "critical drainage areas" unless the fill is approved by the Parish pursuant to a stringent set of criteria, including that there will be no loss of floodplain storage on the lot. The NFO also contains an absolute prohibition on placing fill or construction improvements on any property so as to cause adverse drainage impacts on any adjacent property. STP Code of Ordinances Ch. 7, Art. I, Sec. 7-002.00.
9. Defendants **PATRICIA BRISTER, GINA CAMPO, KELLY RABALAIS, CHARLES "EDDIE" WILLIAMS,** and **PAUL CARROLL** each individually and collectively failed to prevent violation of the NFO and have engaged in an ongoing failure to correct the violations by allowing unlawful fill to be placed and to remain on the property located at municipal address 721 Tete L'ours Drive, Mandeville, Louisiana, in the Beau Chene Subdivision (hereinafter "Lot 584"). As shown below, these violations of the ordinance and continuing failure to correct the violations have resulted in substantial damages and diminution of value to the Marys' property, which bears the municipal address 719 Tete L'ours Drive,

Mandeville, Louisiana, (hereinafter “Lot 585” or the “Mary Property”). After the plaintiffs exercised their right to a judicial remedy for these damages, the defendants also engaged in retaliatory acts against the plaintiffs, in further violation of the plaintiffs’ constitutional rights.

THE STATUS QUO ANTE

10. When the Marys purchased their home at 719 Tete L’ours Drive in the Beau Chene subdivision, surface waters drained from the Mary property and other surrounding properties to undeveloped Lot 584 via the natural drainage pattern, as Lot 584 was lower than other surrounding lots, including the Mary property.
11. On information and belief, this had been the natural drainage pattern for the properties since before the development of the Beau Chene subdivision. In fact, the Beau Chene Home Owners Association (hereinafter “BCHOA”) directed drainage waters onto Lot 584 because it was the lowest lot in the area abutting Bayou Tete L’ours, which runs across the back of both Lot 584 and the Mary property. BCHOA held (and still holds) a twenty-foot servitude running along one side of Lot 584 (between Lots 584 and 583), that was to be used for drainage.
12. The drainage waters flowing to Lot 584 from surrounding higher lots, including the Mary Property, were not contained within Beau Chene’s twenty-foot drainage servitude, but were stored in the lowest areas of Lot 584, which were towards the middle-rear of the property. These areas were “critical drainage areas” under the NFO and were designated as Flood Zones A and B on national flood maps.

13. On information and belief, BCHOA had never taken any measure of any kind to maintain or improve the servitude or to redirect the water stored on Lot 584 away from the de facto reservoir located on the interior of the property.

14. On information and belief, Lot 584 had remained undeveloped for almost 30 thirty years because a large section of the lot was essentially a low-lying wetlands.

THE SORTORS PURCHASE LOT 584 AND PLAN TO PLACE FILL

15. On September 15, 2011, Allison and Scott Sortor purchased undeveloped Lot 584 from its seventh owners, Maxie and Katherine Leblanc.

16. On November 28, 2011, Stephen Ploue, a contractor, and the Sortors began communication with engineers Kelly McHugh & Associates (“Kelly McHugh”) regarding:

- Realigning “the ditch” and achieving “natural grade”;
- Getting 3-4 shots on homesite for planning foundations fill;
- “Cut & Fill for House ... **MOVE DIRT FROM BACK IF CAN ...**;
- Shoot elevations on lot;
- Cut and Fill plan, 2 hours \$300...;
- **“NO NET FILL NOT EASY”**
- **“NEIGHBOR IS A PROBLEM”**

17. On or about December 1, 2011, Kelly McHugh shot elevations on two spots on Lot 584, both at the highest point located in the front left of the property. These elevations were shot pursuant to a work order prepared for Scott Sortor dated 11/28/11, specifying, “Lot survey ONLY set construction benchmark.”

18. In or around late December 2011 and / or January 2012, employees of G & G Dozer, hired by the Sortors and BCHOA clear cut Lot 584, save a few trees located on a high ridge near the

rear of the property, and graded the lot, flattening out the topography and filling in lower elevations. On information and belief, at least two dump trucks of red clay and a plastic culvert were dropped on to the lot to create a “driveway” for the dozers. This clay was worked into the soil during grading.

19. Around this time, Cameron Mary called the St. Tammany Parish Government (hereinafter “STPG” or the “Parish”) to inquire about the grading and other work occurring on the lot. Cameron Mary was advised by employees of the Department of Engineering (hereinafter the “DOE”) that the Sortors had not submitted an application for a permit. Therefore, there was nothing for the Parish to review.

20. On February 15, 2012, the Marys contacted STPG to inquire about the amount and location of fill to be placed on the lot due to their concerns that changes in the natural drainage patterns would cause adverse drainage impacts to their property. This inquiry was prompted by both Stephen Ploue and Bill Maier, an employee of Beau Chene, telling the Marys that they would be bringing in fill next week.

21. Also on February 15, 2012, **PAUL CARROLL**, Drainage Engineer for STPG, wrote an email to co-workers in the DOE, noting that Cameron Mary, called in December to express concerns about the “grading of the lot [584].” **CARROLL** further indicated that he thought “this was the one wanting to relocate a ditch into an easement.”

PAUL CARROLL APPROVES A FILL PLAN THAT FAILS TO COMPLY WITH THE NFO

22. On February 29, 2012, Robert Harper, an employee of the DOE, inspected and photographed Lot 584 in response to the concerns raised by neighbors, including the Marys. Harper reported his findings via email to other employees of the DOE, including **PAUL CARROLL**:

The property next to 719 Tete L'ours (supposedly 721 Tete L'ours) has been cleared and a large pile of tree debris has been piled up on the front lot. The lot has **multiple drainage features**. There is a cross culvert under the street which drains into a ditch on the right side of the property. The ditch drains towards the back of the property. **Toward the middle of the property there is a sharp drop off and then a slight rise on the back of the lot. This appears to be an older drainage that runs parallel to the street.**

23. The "older drainage" running parallel to the street and "located behind the sharp drop off" on Lot 584 is the natural drainage area that held the drainage / storm water run off from the surrounding lots, including the Mary Property, prior to the construction of the Sortor Home. This area served as a reservoir for storm water and flood plain storage on Lot 584 prior to the project.
24. The Sortors hired Kelly McHugh & Associates, and the company drafted a "Cut and Fill Plan," which did not take the Net Fill Ordinance into consideration. At no time did Kelly McHugh make any attempts to ensure the Cut and Fill Plan for Lot 584 complied with the Net Fill Ordinance.
25. On March 15, 2012, Kelly McHugh submitted the Cut and Fill Plan for Lot 584 to **PAUL CARROLL**.
26. On March 19, 2012, **PAUL CARROLL** rejected the proposed Cut and Fill Plan via email to an employee of Kelly McHugh. **CARROLL** stated: "Steve, the plan submitted by your office shows a net increase of fill of 124.7 cy in the floodplain. As you are aware, floodplain storage must be maintained. Please revise the plan and calculations as necessary to show that floodplain storage is maintained."
27. Kelly McHugh did not revise the plan in response to this email. Instead, about six weeks later, a different Kelly McHugh employee emailed **CARROLL** stating that the plan was previously approved but that the builder now needed a "signed off" version.

28. Despite his previous rejection of the McHugh plan, on May 2, 2012, **CARROLL** approved the “Cut and Fill Plan” dated March 13, 2012, without any modifications. This plan did not conform to the Net Fill Ordinance because, among other deficiencies, it provided for 124.7 cubic yards of net fill in a critical drainage area and a resulting loss of floodplain storage. This plan also contained no attempt to show that there would be no adverse drainage impact on the surrounding properties, and failed to conform to other requirements of the NFO.
29. The approved Cut and Fill Plan also failed to show that the fill and excavation activities were permitted by the U.S. Army Corps of Engineers. Because part of Lot 584 was wetlands, such permitting is required under Section 7-001.00 (B)(3) of the Net Fill Ordinance (“Jurisdictional Wetlands”). Defendants had, and continue to have, no discretion to overlook this provision.
30. The March 13, 2012 approved plan states: “Cut 86.2 cu. yd, Fill to El. 10.5 210 cu. yd., Net Fill 124.7 cu. yd. Fill Placed at Elevation Above 10.5’ Not Calculated.” The approved Cut and Fill Plan does not reflect an allowance for any fill at all outside of the footprint of the house or outside of the footprint of the proposed driveway, except in certain limited portions of the drainage servitude parallel to the footprint of the house.

THE BUILDER BRINGS IN MOUNTAINS OF UNLAWFUL FILL. THE DEFENDANTS ARE ADVISED.

31. At no time did **PAUL CARROLL** or any employee of the STPG Department of Engineering approve a Fill Plan that showed the placement of fill behind the Sortor house or beyond the footprint of the driveway or in the “side yard” of the house nearest to the Mary Property.
32. Enormous amounts of fill were dumped on the lot as observed by the Marys and other witnesses.

33. On Wednesday, October 17, 2012, the Marys and other property owners in the areas called STPG Code Enforcement to report the enormous amounts of fill that were being placed on the lot. The Parish indicated that it would investigate.
34. The same day, October 17, 2012, DOE employee David Zechenelly visited the site in response to multiple complaints about the Lot 584 project. Zechenelly took photographs of enormous quantities of red clay that had been dumped on the lot. He circulated these pictures to other DOE employees, including **WILLIAMS** and **CARROLL**, and advised that the preliminary drainage inspection needed to be delayed because he needed to discuss the situation with **WILLIAMS**.
35. On October 18, 2012, Parish employee Elizabeth Smythe sent an email to **GINA CAMPO**, **CHARLES WILLIAMS**, Amy Dawes, and **PAUL CARROLL**, at 1:01 pm, indicating that Engineering visited the site the day before and found several potential problems, including:
1. Boundary encroachment,
 2. Fill Violation
 3. Wetland Violation

She further indicated that **PAUL CARROLL** and Sabrina Schenk were out on vacation for the week, and that she, David Zechenelly, and **CHARLES WILLIAMS** would assess the situation after lunch.

CARROLL'S COVER UP BEGINS

36. The same day, October 18, 2012, a St. Tammany Parish employee forwarded to **PAUL CARROLL** a lengthy and detailed complaint from Colleen Chadbourne, owner of 718 Tete L'ours, regarding drainage and the Lot 584 project.
37. Despite supposedly being on vacation, **PAUL CARROLL** met contractor Stephen Ploue on the site sometime before 4:40 pm that same day. **PAUL CARROLL** drafted an email response to Colleen Chadbourne, copying **WILLIAMS** and other superiors, stating that he would conduct the preliminary drainage inspection himself to allow the footings to be inspected. **CARROLL** also stated that any "excess fill" would need to be hauled off site before the slab is poured. Despite these assurances, none of the excess fill was ever removed from the lot.
38. On information and belief, **CARROLL** became aware during these inspections that he had approved a Cut and Fill Plan that violated the NFO by permitting fill in a Critical Drainage Area. However, he chose to ignore and cover up this mistake rather than to correct it.
39. The next morning, October 19, 2012, at 9:00 a.m., **WILLIAMS** reported to **GINA CAMPO** and Irma Russell of Code Enforcement that **PAUL CARROLL** had conducted a "site investigation" and that no violations were found.

MULTIPLE REPORTS OF A FILL VIOLATION ARE IGNORED

40. However, enormous amounts of fill continued to be dumped on multiple occasions from the beginning of the project until the very end and spread on every inch of the lot. At various points throughout the project, the Defendants were made aware of these conditions by the Marys and other neighbors of Lot 584, including by sending photographs of the fill being placed on the lot.

41. When soil borings were collected in June 2017 from the back area of the Sortor lot, thirty-five inches of red clay fill material was observed. This observation is consistent with a comparison of the current elevation in the Lot with a laser-assisted (LIDAR) survey of the Lot completed in 2006. At another soil boring site on the Sortor property, twenty four inches of red clay fill material was observed, which was again consistent with a comparison between the current elevation and the 2006 LIDAR elevation. Comparing the 2006 LIDAR elevation data with elevations shot in June 2017 shows that there was a total of 1,220.9 cubic yards of net fill placed on the Lot. Six hundred thirty five cubic yards of fill was placed at an elevation below 10.5', or in the flood plain. Two hundred seventy nine cubic yards of net fill was placed behind the house.
42. As this significant amount of fill was brought in, the Marys and other neighbors called various departments on many occasions to express concerns regarding the amount of fill being placed on Lot 584 and requesting an investigation to determine compliance with the Net Fill Ordinance.
43. On each occasion a concern was raised, the concern was eventually routed to **PAUL CARROLL**. In every instance, **CARROLL** indicated that there were no violations of any nature on the project and assured the Marys that there would be no adverse impact to the Marys' property.
44. STPG officials and employees made inquiries with the STPG Department of Engineering as to whether the Sortor project was in compliance with the Net Fill Ordinance. Each was assured by **PAUL CARROLL** that he personally inspected the project and determined that there were no violations.

CARROLL CONTINUES HIS ATTEMPTS TO COVER UP HIS “MISTAKE”

45. Based on these complaints and inquiries from neighbors and others within the government, **PAUL CARROLL** was aware of the violation of the Net Fill Ordinance on Lot 584 no later than October or November 2012, prior to the slab for the house being poured. However, attempting to cover up that he had approved a Cut and Fill Plan that did not comply with the ordinance, **CARROLL** continued to insist to the plaintiffs and others that there were no violations on the lot.
46. On March 15, 2013, the Marys filed suit in state court against the Lot 584 owners and the builder based on the plainly excessive amount of fill that was being dumped on the lot. No government defendants were named in the plaintiffs’ suit at this time because **CARROLL** had insisted that the project was complying with the NFO, and the plaintiffs were unaware of evidence showing that **CARROLL** or any other defendant knew otherwise.
47. Sometime in March 2013, the builder submitted a revised Cut and Fill Plan. In response to this revised plan, and again attempting to cover up his own complicity in the on-going NFO violation, **CARROLL** wrote an email on March 27, 2013, to the builder and employees at Kelly McHugh:

As you may be aware, **a mistake was made by a former employee in allowing any loss of floodplain storage on this lot when reviewing the application.** The original plan shows 124.7 cy net fill. As previously discussed with Stephen Chandler, any revised plan should not show more net fill than originally approved. The new plan shows a net increase of 198.7 cy. Please revise the plan accordingly or follow the previously approved plan.

PAUL CARROLL was in fact the “former employee” who approved the plan by “mistake.” Based on this email, **CARROLL** had knowledge that the Cut and Fill Plan he approved violated the NFO. However, instead of enforcing the NFO at this time—which would have

protected the Marys' and other neighbors' properties by requiring the builder to remove the unlawful fill—**CARROLL** impermissibly chose to ignore the ongoing violation to the benefit of the builder. **CARROLL** ultimately approved a revised Cut and Fill Plan that did not require the removal of fill to restore the lost floodplain storage on Lot 584.

OTHER DEFENDANTS FAIL TO CORRECT CARROLL'S "MISTAKE"

48. **CHARLES WILLIAMS, PATRICIA BRISTER** and other employees of the STPG Executive Branch also knew that a fill violation existed on the property dating back to November 14, 2012, or, at the latest, as of June 19, 2013.
49. On June 19, 2013, and in response to multiple requests for information regarding the site, **CARROLL** sent an email to **CHARLES WILLIAMS** and others purporting to explain the history of the site. Still attempting to cover up his complicity in the on-going NFO violation on Lot 584, **CARROLL** again claimed that a former employee had approved the original March 2012 Cut and Fill Plan.
50. **CARROLL's** June 19th email goes on to state that he had knowingly permitted a violation of the NFO to occur on the site:

Robin Wiley (former employee) approved the original fill plan. She didn't realize that this was a critical drainage area. There was a small net gain in fill on the plan she originally approved. **While this wasn't consistent with the no net fill ordinance,** it was, by itself, not something that would measurably alter the drainage for the adjacent neighbors. . . .

I didn't discover this until the builder had already installed the fill and form boards making it too late to be practical to correct. On 3-28-13 I approved a revision to the fill plan based on only allowing the same net increase in fill as the original plan had. . . .

51. **CARROLL's** email stating that he had chosen to permit a violation of the NFO to persist on Lot 584 was provided to defendant **BRISTER** and others.

52. **WILLIAMS** and the other defendants knew or should have known that the former employee described in **CARROLL**'s email was not authorized to approve Cut and Fill Plans. Despite this knowledge, **WILLIAMS** and the other defendants failed to take any action to discover why **CARROLL** was attempting to blame his "mistake" on someone else.
53. Despite knowledge that an NFO violation existed on the site, STPG officials issued an Occupancy Permit the next day, June 20, 2013, certifying that members of the Department of Engineering, including **PAUL CARROLL**, conducted a final drainage inspection and verified compliance with the standards set forth by the Net Fill Ordinance.
54. In fact, the Lot 584 construction had not complied with the NFO, as all defendants well knew. Not only was the Cut and Fill Plan approved by "mistake" when it should not have been, but the Lot 584 project brought in enormous quantities of unlawful fill that were never approved in any Cut and Fill Plan. This unlawful fill was placed in the lot at locations where no fill was ever approved.
55. Furthermore, prior to an Occupancy Permit being issued, the NFO requires an official "as built" survey to be performed by a licensed engineer to verify compliance. **CARROLL** did not require an official "as built" survey for this project, which would have revealed violations of the NFO.

THE ONGOING DAMAGE

56. Violations of the Net Fill Ordinance existed on Lot 584 at the time of the issuance of the Occupancy Permit and continue to exist to this day. These violations, which substantially transformed the pre-existing drainage patterns on the site, have caused an on-going and progressive transformation of the Marys' property. The loss of floodplain storage and other violations on Lot 584 have blocked the Marys' drainage across the lot and caused other

adverse drainage impacts on their property. The end result is that the Mary Property is steadily being transformed from enjoyable land and yard space into un-useable wetlands. The encroachment of the wetlands started on the side of the Mary Property closest to Lot 584 and has steadily spread across the Marys' land, leading to the death of mature trees and the growth of wetland grasses. This ongoing encroachment has caused the Mary Property to lose at least \$70,000 in value since 2012. The encroachment continues to this day.

THE DEFENDANTS RETALIATE AGAINST THE MARYS

57. The Net Fill Ordinance is penal in nature due to the importance of maintaining water storage in St. Tammany Parish and protecting adjacent properties from damage caused by filling in Critical Drainage Areas. All of the defendants have an ongoing duty to comply with the Net Fill Ordinance for the specific benefit of adjacent property owners. The statute does not provide any method to forgive or ignore any violation.
58. However, none of the defendants have taken any steps to correct **CARROLL's** mistake and require Lot 584 to comply with the Net Fill Ordinance.
59. Rather, defendants have actively sought to conceal the violation of the Net Fill Ordinance and retaliate against the Marys for their efforts to seek a judicial remedy for the violation and damage to their property.
60. On June 16, 2013, Barry G. Matte initiated a Department of Code Enforcement investigation into the fill violation. The file was closed based exclusively on **PAUL CARROLL's** naked and unsupported assertion that no violations existed and that the site had been inspected by himself and **CHARLES WILLIAMS**. **CARROLL** failed to disclose that there was, in fact, a violation of the NFO existing on the site, as was disclosed in his email of March 27, 2013.

Without submitting any data or information to support his assertions, **CARROLL** instructed Mr. Matte to close the Code Enforcement investigation.

61. The Marys were unaware that any Code Enforcement investigation had been opened and closed regarding Lot 584 in 2013.
62. During the course of the state court litigation filed in March 2013, the Marys issued a number of requests for documents, including a subpoena duces tecum to then non-party St. Tammany Parish Government. The STPG's response to this subpoena failed to include **CARROLL's** emails from March 19, 2012, March 27, 2013, and June 19, 2013.
63. The plaintiffs discovered the March 27, 2013, email from another source during the course of the state court litigation. Upon learning of this email, the plaintiffs exercised their First Amendment right to seek a judicial remedy by naming St. Tammany Parish Government as a defendant in the state court action. Subsequently, the plaintiffs served discovery on the STPG and only then were provided the other two emails.
64. On September 17, 2017, the Marys filed a complaint with St. Tammany Parish Code Enforcement regarding Lot 584. This complaint was supported by expert reports establishing the continuing violations of the Net Fill Ordinance. The Marys hoped to mitigate through Code Enforcement the ongoing damage to their property caused by the unlawful fill still present on Lot 584.
65. The Marys sought enforcement by Code Enforcement of the provisions in the NFO requiring that unlawful fill be removed from a property:

[A]ny violation hereof shall also be subject to an action for abatement and removal of any offending fill work and / or ground surface alteration. Further when the Department of Engineering has approved any application or drainage plan that contains materially false or erroneous information, the applicant shall be responsible for all costs and expenses associated with the correction of said application and

plan, and the correction of any adverse consequences resulting therefore, including the fees of an engineering consultant to review and revise said plan.

66. As residents of St. Tammany Parish, the plaintiffs' have a right to avail themselves of the procedures the St. Tammany Parish Government has established for residents to report code violations and obtain the protection of the laws.

67. However, rather than permitting Code Enforcement to investigate and enforce the NFO, defendants **BRISTER**, **CAMPO**, and **RABALAIS** blocked the plaintiffs' complaint and caused Code Enforcement employees not to respond to the Marys' request for an investigation.

68. The sole basis for these defendants blocking the plaintiffs' complaint to Code Enforcement was that the plaintiffs had exercised their right to seek a judicial remedy against the Parish in the state court litigation.

69. Indeed, STPG filed a motion in the state court litigation seeking to enjoin the plaintiffs from proceeding with the Code Enforcement complaint. The state court judge summarily denied STPG's motion. Despite this judicial finding that the plaintiffs cannot be prohibited from seeking enforcement of Parish ordinances through proper channels, defendants **BRISTER**, **CAMPO**, and **RABALAIS** continue to block the plaintiffs' Code complaint.

70. By blocking the plaintiffs' Code complaint, defendants **BRISTER**, **CAMPO**, and **RABALAIS** are retaliating against the plaintiffs by denying them access to the protections of the law. This retaliation is intentional, malicious, and premised solely on the fact that the plaintiffs have exercised their First Amendment right to seek judicial remedies against government action and inaction.

71. **PATRICIA BRISTER, GINA CAMPO, KELLY RABALAIS, CHARLES WILLIAMS,** and **PAUL CARROLL** have intentionally refused or failed to perform the duties lawfully required of them as public employees and have knowingly permitted **CARROLL** and other members of the Engineering Department, as well as the Code Enforcement Division of STPG, to refuse to perform their duties under the Net Fill Ordinance and other administrative, statutory, and / or legal duties. These actions and inactions have damaged and continue to damage the Marys' property and caused them mental and emotional damages.
72. **PATRICIA BRISTER, GINA CAMPO, KELLY RABALAIS, CHARLES WILLIAMS,** and **PAUL CARROLL** have and continue to willfully, intentionally, or grossly misunderstand or intentionally misrepresent the facts of this case, including the facts surrounding the mistakenly approved Cut and Fill Plan and that there is no violation of the Net Fill Ordinance on Lot 584.
73. The positions, actions and omissions taken by all of the defendants are arbitrary and capricious, reckless and show willful and wanton disregard for the purposes and spirit of the Net Fill Ordinance, as well as the plaintiffs' constitutional rights.
74. The Net Fill Ordinance was enacted specifically to prohibit the placement of fill that will cause adverse drainage impact on any adjacent parcel. All defendants owed a duty to the Marys to comply with the Ordinance. All defendants knew that a violation had occurred and secreted the violation from the Marys. Said violations still exist where flood plain storage was filled under and behind the Lot 584 project, causing adverse drainage impacts on the plaintiffs' property. All defendants breached their duties causing destruction of the Marys'

property and violation of the Marys' rights. These breaches are the direct cause of the Marys' damages.

75. The defendants are solidary obligors for the damage to the Marys' Property and the violation of their constitutional rights, and all acted in concert to cause the harm suffered.

IV. CAUSES OF ACTION

COUNT 1:

§1983: EQUAL PROTECTION (CLASS OF ONE) VIOLATION

76. Defendants **PATRICIA BRISTER, GINA CAMPO, KELLY RABALAIS, CHARLES WILLIAMS, and PAUL CARROLL**, acting individually and together, under color of law, acted to violate the plaintiffs' right to equal protection of the law as protected under the Fourteenth Amendment of the United States Constitution. They did so by arbitrarily and capriciously failing to enforce the Net Fill Ordinance designed to protect property owners in St. Tammany Parish. The Defendants treated and continue to treat the Marys differently from other similarly situated St. Tammany Parish residents by failing to enforce the approval process and the code enforcement process related to the Critical Drainage Area abutting their property, the jurisdictional wetlands abutting their property, and in allowing neighboring fill activity to cause adverse impact to the Mary property.

77. The Marys further allege that, despite clear code violations of the Net Fill Ordinance, defendants have done nothing to enforce the Net Fill Ordinance, including, without limitation, conducting a proper investigation and ordering remediation. The Marys allege that the Parish defendants had, and continue to have, a duty to ensure that a proper investigation of the alleged code violations occurs and that the NFO is enforced on Lot 584.

78. The Marys further allege that, within a year of the filing of the original Complaint in this matter, they discovered instances of disparate treatment by the STPG of other, similarly-

situated residents in relation to the Net Fill Ordinance. Specifically, the Marys allege that they have been singled out by defendants and have been, and continue to be, treated differently from other, similarly situated property owners in St. Tammany Parish. Contrary to what occurred on Lot 584, the Marys allege that the STPG, in other instances, demands that the Net Fill Ordinance be strictly complied with and that the STPG vigorously enforces their Net Fill Ordinance by requiring violators to remove unlawful fill. The Marys have discovered, and continue to discover, numerous investigations and citations of property owners who have been found guilty of violating the Net Fill Ordinance.

79. The Marys allege that there is no rational basis for the defendants' disparate treatment of them. Nor is there a rational basis for the manner in which defendants have singled out the Marys with respect to the approval and code enforcement policies, practices, and procedures that the defendants have chosen to ignore. Over and above this disparate treatment, the Marys allege that defendants have, among other things, concealed their conduct, denied any responsibility, and have gone on the attack against the Marys, who simply want an obvious problem to be rectified. The above-described actions of defendants show their improper motives in this case.

80. The Marys were specifically harmed by the defendants' actions and inactions, as they resulted in material and detrimental alterations to their property, reducing its utility and value, and violated the Marys' constitutional rights.

COUNT 2:
§ 1983: VIOLATION OF SUBSTANTIVE DUE PROCESS RIGHTS

81. Defendants **PATRICIA BRISTER, GINA CAMPO, KELLY RABALAIS, CHARLES WILLIAMS, and PAUL CARROLL**, acting individually and together, under color of law, acted to violate the plaintiffs' right to substantive due process as protected under the

Fourteenth Amendment of United States Constitution. They did so by arbitrarily, capriciously, wrongfully, and without a rational basis failing to enforce on Lot 584 the Net Fill Ordinance designed to protect property owners in St. Tammany Parish, resulting in the Marys' loss of use and value in their home.

82. The defendants have afforded the Marys no recourse, and have eliminated procedural safeguards designed to protect property from adverse drainage impacts.

COUNT 3:
§ 1983: VIOLATION OF FIRST AMENDMENT RIGHTS

83. Defendants **PATRICIA BRISTER, GINA CAMPO, KELLY RABALAIS, CHARLES WILLIAMS, and PAUL CARROLL**, acting individually and together, under color of law, acted to violate the plaintiffs' right to freedom of speech and right to seek judicial remedies for wrongs done, as protected under the First and Fourteenth Amendments of the United States Constitution. They did so by arbitrarily and capriciously denying the Marys access to the normal procedures to raise, investigate and enforce ordinances through Code Enforcement solely on the basis of and in retaliation for seeking judicial redress for damage to their property caused by STPG's previous failure to enforce the Net Fill Ordinance.

V. DAMAGES

84. As a result of the actions and inactions of the defendants as described above, damages have been incurred as follows:

- a. The Marys have suffered diminution in the value of property as it has converted to wetlands;
- b. The Marys have suffered loss of enjoyment of property;
- c. The Marys have suffered emotional distress;

- d. The Marys have suffered special damages including attorneys' fees and other expenses in the course of seeking to petition the defendants to enforce the Net Fill Ordinance.

VI. PRAYER FOR RELIEF

WHEREFORE, the plaintiffs pray that after due proceedings are had there be judgment rendered in plaintiffs' favor and against all defendants individually and jointly, as follows:

1. Compensatory, nominal and punitive damages as prayed for herein;
2. All declaratory and injunctive relief restoring the properties in suit to their prior state and an Order of any and all other appropriate relief;
3. Reasonable attorneys' fees, as provided in 42 U.S.C. §1988, and all costs of these proceedings, and legal interest;
4. All other relief as appears just and proper to this Honorable Court.

Respectfully submitted,

/s/ Stephen Haedicke

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing motion has been served upon all counsel of record by notice from this Court's CM/ECF filing system, this 25th day of June, 2018.

/s/ Stephen Haedicke