

**23RD JUDICIAL DISTRICT COURT FOR THE PARISH OF ASCENSION  
STATE OF LOUISIANA**

NUMBER

DIVISION

DOCKET

**Louisiana Environmental Action Network and  
O'Neil Couvillion**

versus

**Tommy Martinez, Ascension Parish President**

FILED: \_\_\_\_\_

DEPUTY CLERK: \_\_\_\_\_

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**PETITION**

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NOW INTO COURT, through undersigned counsel, Plaintiff Louisiana Environmental Action Network and O'Neil Couvillion respectfully submit, upon information and belief, as follows:

**NATURE OF THE ACTION**

1. Ascension Parish President Tommy Martinez began draining Alligator Bayou and Spanish Lake on April 5, 2009. Mr. Martinez was not authorized to drain Alligator Bayou and Spanish Lake, and in doing so, he acted *ultra vires*.

2. Plaintiff Louisiana Environmental Action Network ("LEAN") is a non-profit corporation organized under the laws of Louisiana. Its purpose is to protect Louisiana citizens from activities that are harmful to their health, safety, and environment and to educate members of the public about Louisiana's environmental resources. LEAN has used Alligator Bayou in its educational activities and intended to continue to do so, but Mr. Martinez's illegal act of draining Alligator Bayou and Spanish Lake has prevented them from using Alligator Bayou. LEAN includes members that live, work, and recreate on and around Alligator Bayou. LEAN members pay taxes in Ascension Parish.

3. Plaintiff Mr. O'Neil Couvillion is a citizen of Louisiana and a resident of Livingston Parish. Mr Couvillion regularly visited Alligator Bayou to recreate, enjoy an

educational swamp tour, view wildlife, and otherwise enjoy the aesthetics of the area. Mr. Couvillion would like to visit Alligator Bayou and Spanish Lake to recreate, view wildlife, enjoy an educational swamp tour, and enjoy the aesthetics of the area, but he cannot do so because Mr. Martinez illegally drained Alligator Bayou and Spanish Lake.

4. The Ascension Parish is a political subdivision of the State of Louisiana. Defendant Tommy Martinez is a natural person and the President of Ascension Parish.

5. Venue in the 23rd Judicial District Court is proper for Mr. Martinez regarding actions he takes within the course and scope of his employment through his power as Ascension Parish president because Ascension Parish is a political subdivision located in the 23rd Judicial District. *See* La. Rev. Stat. § 13:5104B (venue is proper against an officer of a political subdivision in the judicial district in which the political subdivision is located or where the cause of action arises); *see also* La. Code Civ. P. art. 74 (“An action to enjoin the commission of an offense... may be brought in the parish where the wrongful conduct occurred....”).

#### **GENERAL ALLEGATIONS**

6. Alligator Bayou is a bayou running through Ascension and Iberville Parishes. Alligator Bayou connects Spanish Lake and Bayou Manchac. It is approximately 66 feet wide feet wide and approximately 1 mile long.

7. The Alligator Bayou water control structure located at the convergence of Alligator Bayou and Bayou Manchac was constructed in the early 1950s. For the past fifty years this control structure has been operated to maintain the water levels in Alligator Bayou and Spanish Lake at a navigable level.

8. Louisiana law authorizes a parish’s policy jury or parish council to create a consolidated gravity drainage district governed by a board of commissioners. *See* La. Rev. Stat. 38:1843.A.

9. Ascension Parish created the East Ascension Parish Consolidated Gravity Drainage District to control drainage within the district, which includes Alligator Bayou and Spanish Lake. *See* Ascension Parish Code of Ordinances §18-30. The East Ascension Parish Consolidated Gravity Drainage District may only act by and through its board of commissioners. *See* Ascension Parish Code of Ordinances §18-30.

10. The board of commissioners of the East Ascension Parish Consolidated Gravity Drainage District never adopted a resolution authorizing Mr. Martinez to drain Alligator Bayou and Spanish Lake.

11. On June 1, 2009, the East Ascension Consolidated Gravity Drainage District No. 1 passed a resolution requesting Iberville Parish to close the Alligator Bayou water control structure and maintain the water level in Alligator Bayou at the 4.0 foot mark on the gauge in Alligator Bayou until such time as the agencies and experts working on the issues facing the basin have reached a conclusion as to the best course of action.

12. The Ascension Parish Home Rule Charter enumerates the Parish President's powers, limiting them to those powers and duties as provided in the charter or by ordinance. *See* Ascension Parish Home Rule Charter § 3-03.

13. Ascension Parish President Tommy Martinez does not have the power, under either the Ascension Parish Home Rule Charter or any Ascension Parish Ordinance, to drain Alligator Bayou and Spanish Lake.

14. Since Mr. Martinez began draining Alligator Bayou and Spanish Lake on April 5, 2009, the water level in Alligator Bayou and Spanish Lake has dropped to approximately 6 inches deep—a level that precludes LEAN members and Mr. Couvillion from recreating on and enjoying Alligator Bayou and using bayou swamp tours for educational purposes.

#### **FIRST CAUSE OF ACTION**

##### **East Ascension Parish President Mr. Martinez Acted in Excess of His Authority by Opening the Alligator Bayou Floodgate Structure**

15. Plaintiffs reallege and incorporate by reference paragraphs 1 through 14.
16. Mr. Martinez acted *ultra vires* by draining Alligator Bayou and Spanish Lake.
17. Mr. Martinez's *ultra vires* actions harm LEAN members and Mr. Couvillion.

#### **SECOND CAUSE OF ACTION**

##### **Mr. Martinez's Action Draining Alligator Bayou and Spanish Lake is Arbitrary and Capricious.**

18. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 14.
19. The Louisiana Constitution mandates that “[t]he natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people.” La. Const. art. IX, § 1.

20. Draining Alligator Bayou and Spanish Lake is not consistent with protecting natural resources and the welfare of the people of the state or Ascension Parish.

21. Mr. Martinez's decision to drain Alligator Bayou and Spanish Lake was arbitrary and capricious.

**PRAYER FOR RELIEF**

Petitioners respectfully pray for a judgment entered in their favor as follows:

- A. Pursuant to La. C.C. art. 1871, a declaratory judgment stating that:
  - 1. Defendant Martinez drained Alligator Bayou and Spanish Lake *ultra vires*.
  - 2. Mr. Martinez's decision to drain Alligator Bayou and Spanish Lake was arbitrary and capricious.
- B. An injunction directing Mr. Martinez to stop draining Alligator Bayou and Spanish Lake.
- C. An award of such further relief as the Court deems just and proper.

Respectfully submitted this 31st day of July 2009



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*Counsel for Louisiana Environmental Action Network and  
Mr. O'Neil Couvillion*

**Sheriff, Please Serve:**

Tommy Martinez,  
or in his absence, Ascension Parish Secretary Suzanne Patterson  
208 E. Railroad Ave,  
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