

1 CIVIL DISTRICT COURT
2 PARISH OF ORLEANS
3 STATE OF LOUISIANA
4
5 CASE NO. 2018-03843 CIVIL ACTION
6 SECTION 6 DIVISION I
7
8 DEEP SOUTH CENTER FOR ENVIRONMENTAL JUSTICE, VAYLA
9 NEW ORLEANS, JUSTICE AND BEYOND, 350 NEW ORLEANS,
10 SIERRA CLUB, MR. THEODORE QUANT, AND MS. RENATE
11 HEURICH
12
13 VERSUS
14
15 THE COUNCIL OF THE CITY OF NEW ORLEANS, THE UTILITY,
16 CABLE TELECOMMUNICATIONS AND TECHNOLOGY COMMITTEE OF
17 THE NEW ORLEANS CITY COUNCIL, JASON R. WILLIAMS,
18 STACY HEAD, SUSAN G. GUIDRY, LOTOYA CANTRELL, NADINE
19 M. RANSEY, JARED C. BORSSETT, AND JAMES A. GRAY, II
20
21
22 Testimony and Notes of Evidence
23 heard in the above entitled cause of action held in
24 Open Court before the HONORABLE PIPER D. GRIFFIN,
25 judge presiding in Division "I" on THURSDAY, the 19TH
26 day of JULY of 2018.
27
28
29 Reported By:
30
31 SHANNON DERUISE'
32 Official Court Reporter

1

1 * * * P R O C E E D I N G S * * *
2 Thursday, July 19, 2018
3
4
5
6 THE COURT:
7 This is case
8 number 2018-03843, Deep South Center
9 for Environmental Justice, et al
10 versus the City Council of New
11 Orleans, et al, Make your appearances
12 for the record.
13
14 MS. TAPLIN:
15 Cherrell Taplin for the City of New
16 Orleans.
17
18 MR. GOFORTH:
19 William Goforth for The New Orleans City
20 Council, et al.
21
22 MR. ST.RAYMOND:
23 And Corwin St.Raymond here on behalf of the
24 City of New Orleans Council.
25
26 MS. HARDEN:
27 Monique Harden representing Deep South
28 Center for Environmental Justice, Your Honor.
29
30 MS. MILLER:
31 Susan Stevens Miller representing the other
32 organizational plaintiffs, Vayla New Orleans, Justice

3

1 * * * A T T O R N E Y S * * *
2
3
4 REPRESENTING PLAINTIFFS:
5
6 Attorney Bill Quigley, Esq.
7 FOR ALL PLAINTIFFS
8 Attorney Monique Harden, Esq.
9 FOR DEEP SOUTH CENTER FOR
10 ENVIRONMENTAL JUSTICE
11 Attorney Susan Stevens Miller, Esq.
12 FOR VAYLA NEW ORLEANS, JUSTICE
13 AND BEYOND, 350 NEW ORLEANS,
14 SIERRA CLUB.
15 Attorney JILL M. TAUBER, Esq.
16 FOR VAYLA New Orleans, Justice
17 and Beyond, Sierra Club.
18 Attorney Alexander Bollag, Esq.
19 FOR Plaintiffs
20
21
22 REPRESENTING DEFENDANTS:
23
24 Attorney Cherrell Taplin, Esq.
25 FOR THE CITY OF NEW ORLEANS
26 Attorney William Goforth, Esq.
27 FOR THE NEW ORLEANS CITY COUNCIL
28 Attorney Corwin St.RAYMOND, Esq.
29 FOR THE NEW ORLEANS CITY COUNCIL
30
31
32

2

1 and Beyond, 350 New Orleans, and Sierra Club.
2
3 MR. QUIGLEY:
4 Bill Quigley, Loyola Law School
5 representing all plaintiffs.
6
7 MS. TAUBER:
8 Jill Tauber, good morning, Your Honor. I'm
9 representing Vayla New Orleans, Justice and Beyond,
10 Sierra Club.
11
12 MR. BOLLAG:
13 Alexander Bollag representing plaintiffs.
14
15 THE COURT:
16 Okay, just so
17 we're clear, we will try to leave the
18 door open but if it becomes disruptive
19 we will have to close the door. Are
20 those seats being saved for someone?
21 So that the record is
22 further clear prior to taking the
23 bench the Court did meet briefly with
24 the attorneys in this case to set out
25 some conversations and learn some
26 issues relative to some exhibits, the
27 Court then took a break, I apologize
28 for starting late, to review some
29 exhibits that the Court was not aware
30 were filed. The Court has reviewed
31 those exhibits that were file on
32 behalf of the City, to the extent as

4

1 noted with the attorneys to the extent
 2 the Court believes that I need to
 3 review them again if they become an
 4 issue, I will do that prior rendering.
 5 Everybody understands where we are.
 6 Are ya'll ready to proceed?
 7
 8 MS. HARDEN:
 9 Yes, Your Honor.
 10
 11 MR. ST.RAYMOND:
 12 Your Honor, if we could put the preliminary
 13 statements I was making upstairs on the record, I
 14 would appreciate that.
 15
 16 THE COURT:
 17 Sure.
 18
 19 MR. ST.RAYMOND:
 20 If you prefer me to wait?
 21
 22 THE COURT:
 23 You can do it
 24 now.
 25
 26 MR. ST.RAYMOND:
 27 As the Court is aware, we're here on a rule
 28 to show cause. Title 42 provides that this matter
 29 shall be tried in summary fashion, Article 2593
 30 provides that summary proceedings do not require an
 31 answer. Plaintiffs have put forth an argument that
 32 the City somehow waived rights by not filing an

1 answer to plaintiff's petition. Petitioners claim in
 2 their reply that some facts that we failed to respond
 3 to are somehow admitted. This is not the law.
 4 Moreover, it isn't what we agreed to. Counsel
 5 believes it's opposition exhibits and affidavits
 6 address all material facts. Petitioners have
 7 submitted a litany of incompetent evidence with their
 8 petition including newspaper articles and web sites
 9 which are clearly hearsay and inadmissible. As this
 10 Court is aware we participated in the scheduling
 11 conference whereby we agreed to dates and procedure.
 12 We specifically discussed proceeding in a summary
 13 fashion. Moreover, prior to the conference I
 14 discussed with counsel for the petitioners that we
 15 would be proceeding in a summary fashion.
 16 Plaintiff's reply to our opposition makes it clear
 17 that they're looking for some type of "gotcha"
 18 moment. The Court wants to make sure the record is
 19 absolutely clear we're not waiving an answer and
 20 we're not stipulating to any facts outlined in
 21 petitioner's pleading. We filed an opposition in
 22 accordance with 2593 and that's all we believe is
 23 necessary. Thank you.
 24
 25 THE COURT:
 26 Okay.
 27
 28 MR. QUIGLEY:
 29 And Your Honor, Bill Quigley for the
 30 plaintiffs. We would dispute any suggestion of
 31 "gotcha" moment. We filed a reply stating which
 32 facts they did contest and which facts they did not

1 contest and we will argue the substance of it before
 2 the Court.
 3 THE COURT:
 4 Ready to
 5 proceed?
 6
 7 MS. HARDEN:
 8 May it please the Court, Your Honor, again
 9 I'm Monique Harden attorney for the plaintiffs. New
 10 Orleans residence and Groups are here today to
 11 enforce the Open Meetings Law and defend their rights
 12 under the Louisiana Constitution.
 13
 14 THE COURT:
 15 And I guess,
 16 let's make sure we're clear, I know
 17 you've never ever practiced in front
 18 of me, to the extent I have questions
 19 I may stop you, you may not get to
 20 read, say everything you want to say,
 21 I've read everything.
 22
 23 MS. HARDEN:
 24 Yes, Ma'am.
 25
 26 THE COURT:
 27 I've read
 28 with the exception of all -- let me
 29 tell you what I have not read so the
 30 record is clear. All of the
 31 transcripts of all of the proceedings
 32 in detail. I read every affidavit.

1 I've read every pleading filed. Are
 2 we on the same page?
 3
 4 MS. HARDEN:
 5 Yes, Your Honor.
 6
 7 THE COURT:
 8 My issue
 9 becomes, how can you at this, I mean,
 10 what you are suggesting is failing to
 11 allow or to have adequate ability, I
 12 mean right now I don't have enough
 13 room for everyone who may want to see
 14 these proceeding to be in this room.
 15 You all are suggesting in part that
 16 the failure of the City Council to
 17 have everyone in the room or able to
 18 get into the room is a failure to
 19 adhere to the Open Laws, Open Meetings
 20 Laws.
 21 MS. HARDEN:
 22 That's correct, Your Honor, but under the
 23 particular facts of 2 meetings by the City Council.
 24
 25 THE COURT:
 26 Correct.
 27
 28 MS. HARDEN:
 29 If I can elaborate on what those fact are?
 30
 31 THE COURT:
 32 Sure, and

1 I've looked at the facts, but I, one
 2 room could accommodate 252 people the
 3 other room that could accommodate 258
 4 people, my appreciation is that they
 5 accommodated as many people as they
 6 thought appropriate. I know there are
 7 some statements that talk about there
 8 being some seats available, there is
 9 the affidavits of the police officers,
 10 which I just read this morning, that
 11 specifically talk about leaving 2 rows
 12 available for the people who were in
 13 fact parties, making certain that the
 14 parties had seats in the rooms.
 15 Perhaps there was some lack of
 16 conversation and lack of discussion
 17 relative to who should sit in those 2
 18 rows. You guys suggested there were
 19 about 20 to 30 seats available
 20 depending on what meeting you're
 21 talking about.
 22
 23 MS. HARDEN:
 24 Your Honor if I may, the issues are not
 25 limited to the capacity of a room size or the number
 26 of seats.
 27
 28 THE COURT:
 29 I agree,
 30 and that's my problem because -- let
 31 me tell you. This is my issue, my
 32 issue becomes if they have a room and
 9

1 it doesn't hold everybody but they
 2 believe they have a process by which
 3 everyone has an opportunity to be
 4 heard meaning that comment cards are
 5 given to everyone, and even the people
 6 outside of the room will have an
 7 opportunity if they want to stick
 8 around to make those comments, which
 9 is what's been suggested by the City
 10 that there was no limitation that the
 11 people who didn't comment either chose
 12 to leave or chose not to comment.
 13 Those were the people who were outside
 14 of the room. What was also suggested,
 15 which is similar to what I just said
 16 earlier, is that even at the first
 17 meeting the conversation about the
 18 doors initially were opened. They
 19 were forced to close the doors because
 20 there began chanting and something
 21 else outside of the room that was
 22 disrupting the meeting. So that there
 23 was an attempt to allow everyone here
 24 but that attempt had to be squelched
 25 in order to make sure that the meeting
 26 went on appropriately.
 27
 28 MS. HARDEN:
 29 Let's start with the comment cards then we
 30 can go with the barred doors if I can address those
 31 one by one?
 32
 10

1 THE COURT:
 2 Sure.
 3
 4 MS. HARDEN:
 5 Okay. So with regards to the comment card,
 6 Your Honor, we have an affidavit that was part of our
 7 petition at Exhibit 6, at paragraph 12 that discusses
 8 what occurred at the February 21 meeting of this year
 9 by the Council Utility Committee, and that is that
 10 comment cards were filled out by people who were
 11 barred from entering the room and they were in the
 12 hallway and the Council staff person, in fact the
 13 same Council staff person who filed an affidavit on
 14 behalf of the City Council's defense told the people
 15 waiting outside that their comment cards would not be
 16 accepted and also went on to say that they weren't,
 17 that people outside waiting in the hallway would not
 18 be able to comment and that might also extend to
 19 people that may be inside the room. So the Louisiana
 20 --
 21
 22 THE COURT:
 23 You
 24 understand that I have 2 sets of
 25 people saying 2 different sets of
 26 things. I have one set of people that
 27 disputes that and you all that say
 28 that that was the fact.
 29
 30 MS. HARDEN:
 31 Where in the -- we didn't see that any
 32 dispute on comment cards not being accepted.
 11

1
 2 THE COURT:
 3 In, the
 4 -- suggestion...well, the suggestion
 5 was that everyone, and that's the
 6 policeman's statement, that everyone
 7 outside of the room was given an
 8 opportunity to comment until the
 9 meeting ended.
 10
 11 MS. HARDEN:
 12 And that's really outside of the personal
 13 knowledge of the police officer in terms of the --
 14
 15 THE COURT:
 16 Let's have
 17 this conversation because this is the
 18 problem. The affidavits of the police
 19 officers are in personal knowledge,
 20 those affidavit you guys submitted do
 21 not say personal knowledge at all.
 22 They don't. They do not say personal
 23 knowledge. They specifically do not
 24 talk about, the police officers
 25 specifically say they have personal
 26 knowledge of the following, and that's
 27 not the language they use, they use a
 28 different language, but there is no
 29 such language in the affidavits that
 30 you all submitted. They say the
 31 police officers basis of my own
 32 knowledge, the other affidavits do
 12

1 not, they simply go into detail.
2
3 MS. HARDEN:
4 And the notarized statement as well?
5
6 THE COURT:
7 I'm talking
8 about the affidavits.
9
10 MS. HARDEN:
11 well, notarized statements are part of the
12 affidavit.
13
14 THE COURT:
15 I can read,
16 I'll give you one.
17
18 MS. HARDEN:
19 Sure.
20
21 THE COURT:
22 Any, pick one and you
23 tell me which one you want me to read
24 and I'll tell you where it reads.
25
26 MS. HARDEN:
27 Let's take Exhibit number 2, the affidavit
28 of Renate Heurich.
29
30 THE COURT:
31 I am 18 years a
32 resident of New Orleans. I'm

1 currently domiciled...I'm currently
2 Vice-President. I joined New Orleans
3 because of concern, in my role I focus
4 on...there is no statement of personal
5 knowledge. You show me one.
6
7 MS. HARDEN:
8 So, in the, at the end of each of the
9 affidavits, Your Honor, the affiants declare the
10 penalty of perjury that what they say is true and
11 correct.
12
13 THE COURT:
14 They do not say
15 it's their personal knowledge. That
16 is a different statement as has been
17 determined by the Courts. True and
18 correct is different from personal
19 knowledge.
20 MS. HARDEN:
21 well going back to comment cards, just --
22
23 THE COURT:
24 The only
25 reason I said that, I wasn't going to
26 bring it up, you brought it up.
27
28 MS. HARDEN:
29 Sure, well because --
30
31 THE COURT:
32 You said they

1 can't have personal knowledge of that.
2
3 MS. HARDEN:
4 well, the comment cards were handled not by
5 the police officer, that was my only point. And so
6 for people who were filling them out and giving them
7 to City Council staff person, Keith Lampkin, this is
8 what they were told that they would not be able to
9 have the opportunity to make a public comment and
10 that goes right, you know, against what's required
11 under the Open Meetings Law.
12 With regards to the room capacity size,
13 moving on to comment cards to the room capacity,
14 under the Open Meetings Law the requirement of public
15 bodies including committees and subcommittees thereof
16 to allow opportunity for a public comment, the
17 legislature allows those public bodies to devise
18 rules, reasonable rules and regulations for doing so.
19
20 THE COURT:
21 Right.
22
23 MS. HARDEN:
24 What we have here is the City Council does
25 not put forth any rule or regulation that exist for
26 handling a situation of this large room full of
27 people and people outside, but they certainly don't
28 have any defense for why they would turn down and
29 refuse to accept comment cards that were turned over
30 to them, and that's part of the sworn testimony of
31 one of the affiants.
32

1 THE COURT:
2 Okay.
3
4 MS. HARDEN:
5 So if I may continue. This case that we're
6 bringing is the not brought out of the disagreement
7 with the decision reached by the City Council in
8 these meetings, there's a separate case challenging
9 that. This lawsuit is brought because the City
10 Council conducted the meetings in an egregious manner
11 and that denied people their right to have their
12 voices heard. Pursuant to Louisiana Open Meetings
13 Law, this lawsuit which is timely filed cease to void
14 the actions taken by the City Council and the Council
15 Utility Committee at meetings on February 21 and
16 March 8 of this year in violation of the Open
17 Meetings Law. The Open Meetings Law expressly
18 provides that it is to be construed liberally, not
19 narrowly. And the Fourth Circuit of Court of Appeals
20 in the case of Jackson v Board of Commissioners for
21 the Housing Authority of New Orleans explain that
22 "The purpose of the Open Meetings Law is to allow the
23 public to voice its opinion an the decision making
24 process." The City Council and the Council Utility
25 Committed conducted meetings that violated the Open
26 Meetings Law beginning with the first decisional
27 meeting on February 21, 2018. The Council Utility
28 Committed barred more than 70 people from entering
29 the meeting room when vacant seats were available.
30 The excluded residents could not see or hear the
31 meeting.
32

1 THE COURT:
2 Let me ask you
3 this, if they had let, if they had
4 filled up the other 30 seats and they
5 still had 40 seats, and I don't
6 remember if it's 30 or 20 from the
7 February meeting, if they filled up
8 those seats and there still were
9 people who were unable to enter, what
10 would your argument be?

11
12 MS. HARDEN:
13 We wouldn't have the argument if, we would
14 see that the Council try to accommodate.

15
16 THE COURT:
17 So even though
18 there, at least one of the affidavits
19 of one of the police officers
20 specifically attest to the fact that
21 the reasons the seats were held was
22 because they had parties to the action
23 who they wanted to ensure had an
24 ability to get into the room. Member
25 of Deep South, members of VAYLA,
26 Justice and Beyond, Sierra Club who
27 clearly had a right and a need to be
28 in the room. Okay, so that we're
29 clear. So they blocked off seats for
30 those people. If they failed to block
31 off those seats and those parties
32 didn't have access, I think we have

1 more of a problem.

2
3 MS. HARDEN:
4 The -- I don't know about that --

5
6 THE COURT:
7 --there was
8 some communication there -- I don't
9 know.

10
11 MS. HARDEN:
12 Sure, it kind falls on its face when you
13 consider the fact that people who are outside of the
14 room included parties, including Renate Heurich, and
15 when she tried to enter the room because door was
16 open an was about to sit in one of those vacant seats
17 she was removed by the security officer.

18
19 THE COURT:
20 And this was
21 at the February meeting?

22
23 MS. HARDEN:
24 Yes, Your Honor.

25
26 THE COURT:
27 Okay.

28
29 MS. HARDEN:
30 Residents left in frustration after waiting
31 to enter the meeting room. Council members were
32 aware that residents were excluded but they took no

1 action that resolved the problem.

2
3 THE COURT:
4 What action
5 could they have taken?

6
7 MS. HARDEN:
8 They could have filled up those vacant
9 seats. They could have been sure that people's
10 comment cards would have been accepted and people
11 could have the opportunity to be called so that they
12 could speak for 2 minutes.

13
14 THE COURT:
15 I guess what
16 I have is a, he said she said, because
17 what I have are affidavits of personal
18 knowledge that specifically said that
19 everyone who had a comment card was
20 allowed to speak both at the February
21 meeting and at the subsequent meeting
22 and that no one was turned away in the
23 sense that was refused. I've got one
24 person saying one thing and another
25 person saying something entirely
26 different.

27
28 MS. HARDEN:
29 And you also have people saying that folks
30 were turned away just because they because it was
31 interminable in terms of how long they were going to
32 be waiting outside and because they also saw that

1 their comment cards were refused to be accepted.

2
3 THE COURT:
4 Okay.

5 MS. HARDEN:
6 The transcripts of the February meeting
7 also shows, and this is looking at the exhibit that
8 the City Council has filed part of it's defense
9 pleading, Exhibit D, looking at page 148 thru 149.
10 The transcript of that meeting at that particular
11 location shows that a complaint was made to the
12 Council that paid actors were in the meeting room to
13 show sham support for their Entergy gas plant and
14 were also at a previous public hearing on October 16,
15 2017. This transcript also shows that the Council
16 members took no action on this complaint. I didn't
17 know if you wanted to find that.

18 So moving on at the next and
19 final decisional meeting on March 8, 2018 the full
20 City Council gave full preferential treatment to
21 Entergy supporters but allowed them to enter the
22 meeting room through a separate entrance before doors
23 were opened to the public. The City Council barred
24 more than 20 people from entering the meeting room
25 for a couple of hours and the City Council did not
26 address the issue that actors were paid to show sham
27 support and crowd out the meeting room at the
28 February meeting even though some of the paid actors
29 at this point had come forward to tell their stories
30 publically and share information about how they were
31 recruited.

32 THE COURT:

1 Do you have
 2 any idea how many of the people in
 3 either the February meeting or the
 4 March meeting were in fact "paid
 5 actors"?

6
 7 MS. HARDEN:
 8 Not at this point, Your Honor.

9
 10 THE COURT:
 11 Do we have
 12 any idea or any count as to how many
 13 people you, said 70 at the March
 14 meeting, how many, at the February
 15 meeting, how many people were unable
 16 to get into the room at the subsequent
 17 meeting?

18
 19 MS. HARDEN:
 20 One of affidavits, you'll hear phrases of
 21 many people but one specifically says about 40 people
 22 that she was in line with. The affidavit of
 23 Margaret, petition Exhibit 8 at paragraph 11. So,
 24 the City Council has expressed outrage over Entergy's
 25 use of paid actors to pose as concerned citizens,
 26 crowd out spaces and create a false public record of
 27 support for the proposed gas plant. In media
 28 messages, the Council calls this as a "perversion of
 29 the democratic process". In other media statements
 30 the Council assures the public that it will "defend
 31 our democratic --
 32

21

1 THE COURT:
 2 All of that,
 3 that is not admissible.

4
 5 MS. HARDEN:
 6 Public notice of news journals is not
 7 admissible?

8
 9 THE COURT:
 10 (INDICATING
 11 NEGATIVE).

12
 13 MS. HARDEN:
 14 However to this Court, the City Council
 15 does not make these statements, instead the City
 16 Council contradicts itself to argue that the paid
 17 actors scandal is "irrelevant to this Open Meetings
 18 Law case". It must be noted that the City Council
 19 routinely exercises its authority to stop any
 20 disruption or interference with its meetings.
 21 However, at the time of the February meeting and
 22 March meeting the City Council did nothing in
 23 response to information about the paid actors.

24
 25 THE COURT:
 26 So you're
 27 saying they learned of it during the
 28 course of the meeting and did not try
 29 to identify the people.

30
 31 MS. HARDEN:
 32 That's correct and that's in the

22

1 transcript.

2
 3 THE COURT:
 4 Okay.

5
 6 MS. HARDEN:
 7 For the February meeting. The City Council
 8 does not explain to this Court its reason for taking
 9 no action prior to voting in these meetings.

10
 11 THE COURT:
 12 why would
 13 that affect their voting?

14
 15 MS. HARDEN:
 16 Well, it should have affected their vote
 17 that what they were hearing and what was being said
 18 into the public record was not true. It was
 19 scripted.

20
 21 THE COURT:
 22 Well, if the
 23 City Council, and my assumption is as
 24 a separate branch of government that
 25 they're doing their due diligence that
 26 they're basing it not simply on public
 27 comment but on the evidence in front
 28 of them when they're trying to make a
 29 determination of an action to be taken
 30 that they're looking not to just what
 31 people are saying, that they are
 32 looking in fact to what's the

23

1 investigative body is doing and what's
 2 been put in front of them and the
 3 investigation that's been done usually
 4 by staff people, that is usually what
 5 happens in these committee. Staff
 6 people go out and they make a
 7 determination, they make a
 8 recommendation then the committee
 9 meets, the committee looks at the
 10 evidence that, or the information at
 11 least that's been gathered and they
 12 make a determination based on not just
 13 what people say but what the
 14 information, what information they
 15 must rely on says.

16
 17 MS. HARDEN:
 18 Well, and part of that information comes
 19 from what people says for the purpose of assisting
 20 the City Council to determine what is in the public
 21 interest, that's their main charge in this Utility
 22 Regulatory proceeding. And the public interest was
 23 as the City Council said perverted and compromised
 24 the democratic process in terms of figuring out where
 25 people stood in the community on this gas plant.

26
 27 THE COURT:
 28 Let me hear
 29 from your opponent.

30
 31 MR. ST. RAYMOND:
 32 Thank you, Your Honor. Corwin St. Raymond,

24

1 counsel, here on behalf of the City of New Orleans.

2

3 THE COURT:

4 Even if I'm

5 not persuaded by the issue of the
6 people who are not allowed to enter
7 the room, if, why wouldn't I be
8 concerned about the issue of, and I
9 think it's somewhat of a red herring,
10 but not really, the paid actors, let
11 me make sure you're clear, if the paid
12 actors are in the room they're
13 preventing other people who truly have
14 an interest in seeing what's going to
15 say and truly perhaps have comments
16 that they think should be heard,
17 number one, but the paid actors are
18 occupying seats. Did you all ever do
19 any investigation to make a
20 determination of how many seats were
21 not being utilized?

22
23 MR. ST.RAYMOND:

24 Well, Your Honor...

25

26 THE COURT:

27 Yes or no?

28

29 MR. ST.RAYMOND:

30 Ever performed an investigation to
31 determine how many seats were not being utilize?

32

25

1 MR. ST.RAYMOND:

2 Well would say the City Council made
3 efforts to make sure that as people gave comment, and
4 it's all in our brief.

5

6 THE COURT:

7 I saw that.

8

9 MR. ST.RAYMOND:

10 They made comment, they asked people to
11 leave, so --

12

13 THE COURT:

14 Some did and
15 some didn't.

16

17 MR. ST.RAYMOND:

18 Some did and some didn't and that includes
19 both supporters and opponents. I do not believe
20 that, well first of all let me say this, paid actors,
21 if they are members of, if they do live in Orleans
22 parish, they're members of this community and they
23 have every right to voice their opinion. Do I --
24 does the Council as they have indicated think that
25 it's a good thing that Entergy have that type of
26 support, no, the Council does not believe, and they
27 have voiced their concerns about it however it does
28 not again amount to a violation of the Open Meetings
29 Law. Entergy had a right to get support there, is
30 there a violation for paying somebody for support
31 versus grass roots efforts as our opponents have
32 done, I really don't really see a huge difference

27

1 THE COURT:

2 Not being
3 utilized by the public because they
4 were being utilize by paid actors.

5

6 MR. ST.RAYMOND:

7 I believe that there is an investigation
8 going on right now. I do not know the status of that
9 investigation. Frankly, I do not believe that even
10 if there were paid actors at either meeting that that
11 would amount to a violation of the Public Meetings
12 Law.

13

14 THE COURT:

15 I didn't say
16 it was violation of the Public
17 Meetings Law. What I asked the
18 question about was the failure of the
19 public, the general public to be able
20 to have access at the February meeting
21 we're talking about 70 people, I don't
22 know if there's 70 paid actors, at the
23 March meeting we're talking about
24 perhaps 40 people who are outside of
25 the room. I'm just trying to get an
26 idea of whether or not there was some
27 inability in fact for the City Council
28 to be able to adequately supply what
29 it needed to supply relative to
30 seating because of some action taken
31 that they had no control over.

32

26

1 there.

2

3 THE COURT:

4 Okay.

5

6 MR. ST.RAYMOND:

7 So...

8

9 THE COURT:

10 And I'm going
11 to say this once and I'm not going to
12 repeat it. If you have a comment to
13 make and you make it verbally you will
14 be removed from the courtroom. I am
15 not going to tolerate murmuring and
16 comments. Does everybody understands?
17 okay.

18

19 MR. ST.RAYMOND:

20 Okay, so just to state why we're here and
21 what the issue is, petitioners are alleging a
22 violation of Article 12 Section 3 of the Constitution
23 which specifically concerns an individual's right to
24 observe deliberations of a public body. It's
25 important to note that Article 12 Section 3 is not a
26 fundamental right. With that said, no one has been
27 denied the right to observe any meeting conducted by
28 the City Council. All meetings are broadcast live
29 both on the television and the internet. In fact,
30 the City Council is in chambers at this very moment
31 and their meeting is being broadcast live. with the
32 power of today's technology can easily observe the

28

1 Council's deliberations from anywhere in the City of
2 New Orleans. There's no requirement under the
3 Constitution that deliberations of public bodies be
4 observed in person. Goes without saying, it would be
5 impossible for every person that is a community
6 member of the City of New Orleans to enter the City
7 Council Chambers.

8 Lastly on this point, the
9 Constitution does not authorize a Court to nullify
10 actions of public bodies. As petitioners
11 acknowledge, the legislature has implemented Article
12 12, Section 3 through the Open Meetings Law.
13 Louisiana Revised Statute Title 42 contains relevant
14 portions of the Open Meetings Law at issue in this
15 case. Title 42 slightly enhances the Constitution by
16 declaring that meetings shall be open to the public
17 and subjects the public bodies to public comment
18 prior to any action on an agenda item. Title 42 does
19 not make public comment an absolute right for every
20 citizen nor does Title 42 declare that every person
21 shall be entitled to enter the meeting. What's
22 required is that comment be accepted before the vote
23 on an agenda item can that meeting be open to the
24 public. Petitioners also cite a violation --

25
26 THE COURT:

27 Is the
28 meeting sufficiently open to the
29 public if there not a sufficient
30 amount of seatings for the public to
31 be able to observe?
32

29

1 MR. ST. RAYMOND:

2 Yes, Your Honor. Number one, the meeting
3 is being broadcast, okay, so you can still go back to
4 that --

5
6 THE COURT:

7 But is there
8 a broadcasting taking place, if you
9 come to the meeting, if you come to
10 the room and the room is, is there
11 broadcasting outside?
12

13 MR. ST. RAYMOND:

14 There are places around City Hall where the
15 meeting is being watched, so, and, not only that --

16
17 THE COURT:

18 Are people
19 directed to go to those places so that
20 they could observe the broadcasting at
21 the time that the meeting is going on
22 or do this simply have to wait outside
23 of the chambers.
24

25 MR. ST. RAYMOND:

26 If they wanted get inside of the chambers
27 to provide public comment and public comment was
28 being accepted by the Council they'd have to wait
29 outside until there were sufficient number of people
30 in the room to accommodate them. The City cannot
31 exceed the fire code, it's a public safety --
32

30

1 THE COURT:

2 I'm not
3 suggesting they can. I saw the
4 affidavits. I saw that in fact the
5 fire marshall was at the first meeting
6 making sure that the room did not
7 exceed the 252 people, so I understand
8 that.
9

10 MR. ST. RAYMOND:

11 It's also important to note too, Your
12 Honor, that both the petitioner's affidavits and the
13 City's affidavits indicate that in the course of
14 these meetings everybody that waited outside to get
15 inside the meeting had obtain that, unless of course
16 they left. Now if they left they made a decision to
17 leave. Regarding what petitioners said regarding
18 Mr. Lampkin failing to accept comment cards at the
19 February 21 meeting, Exhibit 6 to their petition
20 which is paragraph 12 in Exhibit 6 directly
21 contradicts that statement. The affiant said that
22 Lampkin actually accepted comment cards and those
23 were the comment cards that were collected outside of
24 the room. Moreover, there was another statement
25 concerning one of the affiants and she cited Exhibit
26 8 paragraph 11, concerning that affiant waiting in
27 line, so it's clear that at the March 8 meeting the
28 officers had a --
29

30 THE COURT:

31 I guess that is
32 my biggest problem because what I

31

1 have, and I think I've said it
2 already, even if I looked at the issue
3 of whether or not certain affidavits
4 are competent, whether they're
5 competent or not, the reality becomes
6 is I've got affidavits with that
7 compete with each other. I've got
8 people who can't get on the same page
9 and agree what happened.
10

11 MR. ST. RAYMOND:

12 Well, Your Honor, I actually disagree with
13 you on that one and reason why is because their
14 affidavits and our affidavits indicate that the
15 spaces outside of those meeting rooms were eventually
16 empty and anybody that was waiting to get inside of
17 the meeting was able to get inside.
18

19 THE COURT:

20 On certain
21 points you may be correct, but there
22 are points where you all can't seem to
23 agree as relates to the facts, the
24 facts are different. As you've just
25 suggested Mr. Lampkin says he took all
26 comment cards, there are affidavits
27 that say he didn't take all comment
28 cards, affidavits, sworn testimony.
29

30 MR. ST. RAYMOND:

31 Yes, and as Your Honor has indicated our
32 affidavits are based on personal knowledge. Their

32

1 affidavits, a lot of it is talking about what someone
2 else or what they heard or knew and that's what
3 they're testifying to. I believe our evidence, and
4 you're also armed with the best evidence, Your Honor.
5 The best evidence is the videos for the March 21 and
6 March 8 meeting and the transcripts that you can read
7 and review. You can see as we've cited in our brief
8 at this March 8 meeting there's actually a pan that
9 shows the Council chamber and it shows that it was
10 fill to capacity with all of these folks.

11
12 THE COURT:

13 I know ya'll
14 like the podium but I'm not a fan of
15 podiums just so you'll know, and what
16 that means is I'm going to probably be
17 talking to both of ya'll at one time.

18
19 MR. ST. RAYMOND:

20 You want me to move?

21
22 THE COURT:

23 You can stay
24 there if you want, Shannon probably
25 wants ya'll to share the mic. The
26 issue becomes this, this is my issue,
27 and so that we understand where I am.
28 The Public Meetings Laws requires open
29 access, requires notice and agenda,
30 open access, and ability to attend,
31 and I guess I'm asking you, Miss
32 Harden, is the ability to attend in

33

1 sufficient to say it's not an Open
2 Meetings under Louisiana Constitution.

3
4 MS. MILLER:

5 I would say it is, Your Honor, for a number
6 of reasons. I'm sorry, Susan Stevens Miller
7 representing the petitioners. First on the specific
8 facts of this case there is evidence that there were
9 seats available, that people were barred despite
10 seats available. They have 2 affidavit from security
11 guards, neither of those affidavits bother to dispute
12 Mrs. Heurich's statement that she went in, there were
13 20-30 empty seats and when she tried to sit in the
14 they took her out.

15
16 THE COURT:

17 She, no, they
18 respond to that. One of the
19 affidavits specifically say that they
20 were asked to reserve seats for people
21 who were parties to the litigation.

22
23 MS. MILLER:

24 But her description was not that those were
25 the seats that were reserved for litigation, and
26 furthermore she's a plaintiff in the underlying
27 proceeding and the Council adviser told security that
28 she was a plaintiff in the underlying proceeding and
29 they still removed her. So in this instance there
30 were violations of the Open Meetings Law, you don't
31 have to determine if there's some situation out there
32 hypothetically where the Council did everything right

35

1 any way lengthened?

2
3 MS. HARDEN:

4 The ability to attend, Your Honor, the
5 obligation to allow -- to be sure no one is denied
6 the right to observe a meeting --

7
8 THE COURT:

9 How is there
10 a denial in this instance, explain
11 that to me. Because that is, I mean,
12 because you guys, and this is my
13 problem and I think that this is where
14 we're getting caught up in the weeds.
15 The weeds are these affidavits. This
16 is what happened, my issue is what
17 does the law mandate and whether or
18 not what the law mandates was in fact
19 followed, that's my issue. And if the
20 law mandates, everybody acknowledges
21 there was notice, there was space
22 provided, the space however -- what
23 some people, I mean I cannot
24 accommodate 252 people in this room,
25 the space provided for 252 seats,
26 that's what we were told, more than
27 252 people showed up. Even if you
28 back out the 30, the 20, whatever
29 number there was not an ability to
30 accommodate all the people who showed
31 up for the hearing for the meeting.
32 The question then becomes is that

34

1 and there still wasn't enough seats, what would
2 happen.

3
4 THE COURT:

5 Mr. St. Raymond
6 if you all have seats available is it
7 an open meeting if ya'll failed to
8 allow people to come in and take those
9 seats.

10
11 MR. ST. RAYMOND:

12 Your Honor, I thought about the seats
13 available issue at great length. I really believe
14 that the issue is about the occupancy of the room.

15
16 THE COURT:

17 No, the
18 issue is about the ability to come
19 into a meeting and take part, so the
20 issue becomes if the Council tells
21 people that they cannot come in, if
22 someone comes into the room and the
23 Council says you cannot stay, but
24 there are seats available, is that
25 person then being denied a right to
26 participate in that meeting if there
27 are seats available. That's my issue.

28
29 MR. ST. RAYMOND:

30 Okay, the reason --

31
32 THE COURT:

36

1 That's not --
2
3 MR. ST.RAYMOND:
4 I just have to preface, I'm going to answer
5 the question.
6
7 THE COURT:
8 Okay.
9
10 MR. ST.RAYMOND:
11 There were available seats for intervenors.
12 When Miss Heurich entered the room the officers were
13 not aware that she was an intervenor. They
14 subsequently were alerted that she was an intervenor
15 and she was lead to an intervenor's seat. Just
16 because she saw that seats were available does not
17 mean that the occupancy of the room had not been met.
18 If you look at the video you can see that there is
19 more people than there are, then just seats. You
20 have the Council members that are present, you also
21 have news media along both sides and people waiting
22 in que to give public comment.
23
24 THE COURT:
25 So you're
26 suggesting that empty seats does not
27 mean that they have not met the fire
28 marshall.
29
30 MR. ST.RAYMOND:
31 Absolutely
32 THE COURT:
37

1 I don't have
2 an affidavit from the fire marshall
3 telling me that.
4
5 MR. ST.RAYMOND:
6 You do not, Your Honor, you do not.
7
8 THE COURT:
9 So my
10 assumption is if I got empty seats I
11 have not met the code requirement. I
12 don't have reason not to assume that.
13
14 MR. ST.RAYMOND:
15 Well, I think our affidavits indicate that
16 they allowed 252 people in and as people left they
17 would let more people in. The officers, especially,
18 and I will say this, especially for the March 8
19 meeting the officers indicated that they had a
20 clicker.
21
22 THE COURT:
23 Right, I
24 saw that.
25
26 MR. ST.RAYMOND:
27 Okay.
28
29 THE COURT:
30 And they
31 had one way in and one way out.
32 MR. ST.RAYMOND:
38

1 Correct, okay. So --
2
3 MS. MILLER:
4 Can I correct something Mr. St.Raymond
5 said that is actually factually incorrect that I
6 don't think it was intentional on his part. But Miss
7 Heurich went into the room to take a seat, the
8 security started to led her out, a Council advisor
9 said, no, she's an intervenor, the security still led
10 her out. Only later did they let her back in, so
11 it's incorrect that he let her stay once he found out
12 that she was an intervenor. He still forced her to
13 leave and she was taking a seat in the back of the
14 room because she didn't realize that she could sit in
15 the intervenor's seat.
16
17 THE COURT:
18 Okay.
19
20 MR. ST.RAYMOND:
21 And I would respond to that as I believe
22 that that was just, that was a miscommunication with
23 the security about the room capacity. The fact that
24 he led her out, her own affidavit indicates that she
25 was more are less immediately let back in once they
26 realized that they had done wrong.
27
28 MS. MILLER:
29 I would disagree with his interpretation of
30 that. And the affidavit also states that there were
31 20 or 30 empty seats. So there are people outside,
32 security was still forcing people to leave --
39

1
2 THE COURT:
3 Right, that's
4 a whole different conversation when
5 you're talking about whether or not
6 there is a capacity issue as relates
7 to the fire marshall.
8
9 MS. MILLER:
10 That is correct --
11
12 THE COURT:
13 Specifically
14 whether there was fire marshall
15 affidavit.
16
17 MS. MILLER:
18 And also, Your Honor, there is no evidence
19 they counted how many people came into the room --
20
21 THE COURT:
22 The only
23 evidence is an affidavit of personal
24 knowledge by the police officers who
25 specifically said they use a clicker.
26 That was the February meeting.
27
28 MS. MILLER:
29 No--no, that was the March meeting. The
30 February meeting there was no statement that there
31 was a clicker and that was the meeting that 70 people
32 got left out.
40

1
2 THE COURT:
3 Okay.
4
5 MR. ST. RAYMOND:
6 That's true, Your Honor, but they were
7 actively keeping track in their head. It's because
8 --
9
10 MS. MILLER:
11 Where does it say that, Your Honor?
12
13 MR. ST. RAYMOND:
14 Hold on, because petitioners made such
15 issue about that meeting that they made, they went at
16 great lengths to the March 8 meeting and used the
17 clicker because there's so many allegations that
18 people were excluded. We vehemently deny that people
19 were excluded and we take the position that anybody
20 that wanted to get into that February 21 meeting and
21 provide public comment was given the opportunity had
22 they waited.
23
24 THE COURT:
25 Thank you.
26 Is it a failure to give an opportunity
27 for public comment if someone chooses
28 not to wait around?
29
30 MS. MILLER:
31 I would say in this instance, yes, only
32 because Mr. Lampkin who provided a affidavit and

41

1 didn't dispute it specifically told our affiant,
2 Grace Morris, that not everyone would get to talk
3 today. So you have people who are locked out or
4 barred from going in or in the hallway, can't hear
5 anything, can't hear if their name is called to give
6 comments because there is no loud speakers and are
7 standing there for hours and I've been told that not
8 everyone is going to get to comment, so naturally
9 they leave. Why would you stay if you've been given
10 the impression you're not welcomed in the room and
11 you're not going to get a chance to speak. So I
12 would say yes it did. The totality of the
13 circumstances present an Open Meetings violation.

14
15 THE COURT:
16 But
17 Mr. Lampkin specifically states in his
18 affidavit of his own personal
19 knowledge that in fact the comment
20 card was submitted and accepted
21 throughout the meeting and called
22 during the period people entered the
23 auditorium after the meeting began
24 were afforded the opportunity to
25 provide comment.
26

27 MS. MILLER:
28 People who entered the meeting, auditorium
29 after the meeting began. People who were standing
30 outside for hours and finally gave up were not people
31 in the auditorium and that actually --
32

42

1 THE COURT:
2 That's not
3 what this says.
4
5 MS. MILLER:
6 I thought that was what you just said,
7 Ma'am, I'm sorry -- I --
8
9 THE COURT:
10 Right, you've
11 added to it, it doesn't say what you
12 just said.
13
14 MS. MILLER:
15 Well that's because Mr. Lampkin wouldn't
16 have known that. Mr. Lampkin would not have known
17 that there were people -- Mr. Lampkin would have
18 known he told Grace Morris that not everyone is going
19 to get to talk today. So, that's what was related to
20 the people in the hallway. The people in the hallway
21 stood there for hours with no other information from
22 the City Council or any official were barred from
23 getting in by security even though people were
24 texting them pictures that show there were empty
25 seats and so at some point human nature is just
26 decide they don't want to hear from you, they're not
27 going to hear from you, and give up. And so the
28 totality of the circumstances show that the City
29 Council was not meeting the Open Meetings Law
30 requirement in the February 21 meeting.
31
32 THE COURT:

43

1 And so that
2 we're clear, it's not suggesting that
3 the City Council did meeting, it
4 suggested that actions taken by people
5 during the course of the meeting for
6 whatever reason didn't, you're
7 suggesting didn't allow them to meet
8 the Open Meetings requirement.
9

10 MS. MILLER
11 Well, Your Honor, I understand that the City
12 Council is ultimately responsible for it's meeting --
13

14 THE COURT:
15 I'm not
16 saying they're not responsible, the
17 buck stops with them, they're the
18 elected official, the buck stops with
19 me, I understand that, but the reality
20 becomes because of actions taken,
21 you're saying Mr. Lampkin, you have
22 not named a City Council person who
23 failed to take a comment card. You're
24 suggesting that, as relates to the
25 building, the building and the space
26 is what it is, it accommodate 252
27 people. They could have done, since
28 the Council Chambers weren't available
29 they could have gone to my courtroom
30 which accommodates about 40-50 people,
31 not enough people to say that you're
32 making an effort, there was an effort

44

1 made.
2
3 MS. MILLER:
4 I would actually disagree, Your Honor.
5 This is why we thought the October meeting was so
6 important. The October meeting was held in the City
7 Council Chambers which has, they say a 258 capacity.
8 That meeting itself there were dozens of people who
9 could not get in. At that point the City Council was
10 aware that a meeting room of approximately 250-260
11 would not be enough to accommodate everyone who would
12 be interested in speaking. They chose a meeting room
13 other than -- they chose the meeting room themselves
14 for the February 21 meeting. It wasn't in the
15 Council Chambers, they chose something else and they
16 did not choose a meeting that would in any way
17 accommodate the number of people who showed up at the
18 October meeting.

19
20 MR. QUIGLEY:
21 Your Honor, Bill Quigley. I would say we'd
22 be in a far different place if maybe Mr. Raymond had
23 been at the meeting and made a public announcement,
24 look, we only have 250 people here and that's all we
25 can have, the fire marshall, but if you stay we will
26 make sure that you get inside and anybody who wants
27 to speak will be given the chance to speak. There is
28 no, nothing in the record that suggest that that
29 happened or that there was a television outside
30 provided so that people could watch or there were
31 loud speakers outside so that people could hear and
32 everybody was guaranteed that they were going to have

45

1 the right to do it. That's their position today
2 which is wonderful and maybe we've learned from this
3 going forward but if this law and the Constitution is
4 to be liberally construed in favor of the citizens
5 and the right to that then if they don't comply even
6 though they say, you know, maybe we didn't intend or
7 we didn't plan to and we didn't even that we didn't
8 know there were several dozen paid people there
9 sitting in seats to keep other people outside, if
10 they can say that, but the law is you either do it or
11 you don't do it and it's clear they do not contest
12 that there were 70 people outside or 40 people
13 outside. The specific number is not that important.
14 As you say we have physical limits. But within those
15 physical limits there's still an obligation to make
16 sure that people have their constitutional and
17 statutory rights.

18
19 THE COURT:

20 My biggest
21 concern, and I guess I need to look at
22 more closely and I'm looking at the
23 affidavit of Grace Morris. If Grace
24 Morris suggest that Mr. Lampkin, the
25 question is whether or not there was
26 in fact any inability for people or
27 the suggestion that people who had
28 comment who wouldn't have an
29 opportunity to make those comments.
30 That is a violation of the Open
31 Meetings Laws, no question about that.

46

1 MS. MILLER:
2 And I would respectfully point out that
3 Mr. Lampkin filed an affidavit and didn't address
4 that issue at all in his affidavit.

5
6 THE COURT:

7 Ma'am, I was
8 talking to them.

9
10 MS. MILLER:
11 I apologize, Your Honor.

12
13 THE COURT:

14 The Cardinal rule
15 is that when you're winning you
16 usually don't say anything. You were
17 winning that argument, I don't know
18 about now.

19
20 MR. ST.RAYMOND:
21 Your Honor, I don't think that there is any
22 competent evidence that the City of New Orleans did
23 not accept comment cards from everyone who waited.
24 Moreover, as I previously stated, all of these people
25 that turned in comment cards and wanted to provide
26 comment and wanted to gain access to the meeting were
27 admitted into the meeting in due time once the
28 occupancy was lowered by people leaving the room.
29 So, any argument that you couldn't wait and give a
30 comment, that would be a personal opinion or belief.
31 No one from the City Council and there is no evidence
32 that the City Council told her, we're not aware of

47

1 the City Council telling anybody that they couldn't
2 provide comment and in fact we collected comment
3 cards --

4
5 THE COURT:

6 The affidavit
7 specifically said Mr. Lampkin told
8 Miss Morris that he could not accept
9 comment cards from people who were...
10 could only accept comment cards from
11 people who were inside the room and
12 there would be no way to facilitate
13 everyone speaking today.

14
15 MR. ST.RAYMOND:
16 Yes, and then thereafter Mr. Lampkin
17 obtained the comment cards that were collected
18 outside of the meeting room and they were turned in
19 to Councilman Williams who read them on the record
20 and asked for people to come up and provide comment.
21 All comment cards were accepted and I believe our
22 affidavit establish that.

23
24 THE COURT:

25 The linchpin
26 of this entire conversation, the
27 linchpin of the constitutional
28 protection for Open Meetings is that
29 citizens are to be given an
30 opportunity to make whatever comment
31 they think are important for the
32 Council to have a clear picture of

48

1 what the concerns within the community
2 are, and so for me, this whole
3 question of whether or not comments
4 were accepted or not accepted from
5 people outside of the room, that's my
6 issue. I do not believe, and I'm
7 going to say it on the record, that
8 there was a necessity to provide a
9 seat for everybody that showed up. I
10 do not believe that there was a
11 necessity for everyone that showed up
12 to get into the room, that is not the
13 law. To say that is the law would
14 mandate that we build a much larger
15 City Hall with a much larger Council
16 Chambers that accommodates any number
17 that could be possibly be reached, and
18 that is an unreasonable expectation,
19 period. However, I think that to the
20 extent that meetings are open, to the
21 extent that there is notice of the
22 meeting, information regarding what is
23 going to be discussed at the meeting
24 and an opportunity to get there and
25 get into the room if you there is
26 space or to wait outside and have an
27 opportunity to come into the room at
28 an appropriate time. I think that's
29 what the constitution envisions. My
30 biggest quandary, quite honestly, is
31 that I have, and this is an issue, I
32 have affidavits on this side that

1 specifically say that everyone was
2 given an opportunity to give a
3 comment. That they don't know if
4 people left or didn't leave but in
5 fact comment cards were accepted, and
6 these are of personal knowledge. I
7 have affidavits on this side that
8 suggest a potential problem with that
9 but the question is the character of
10 those affidavits and the character of
11 that evidence and whether I can make a
12 ruling based on what would be deemed
13 under Louisiana Code of Evidence to be
14 incompetent evidence, that's an issue.
15 Overriding that is an obligation as
16 the gatekeeper to make sure that
17 constitutional mandates are adhered
18 to. Miss Harden, you wanted to say
19 something?

20
21 MS. HARDEN:
22 Yes, on this linchpin that you're delving
23 into with us, there's another aggravating fact and I
24 just want to raise and bring to your attention, Your
25 Honor, and that is the affect of the Council Utility
26 meeting where the chair changed the agenda with less
27 than twenty-four hours notice and particular a rule
28 that was issued, excuse me, a rule on the agenda that
29 was issued for the February 21, 2018 meeting that's
30 --

31 THE COURT:
32 Talking about the
50

1 issue of whose going to comment and
2 how much time, what are you referring
3 to?

4
5 MS. HARDEN:
6 Right, and since each public speaker not a
7 party will be allowed 2 minutes for the public
8 comment session. And I can tell you the affidavits
9 that we filed from Doctor Beverly Wright and again
10 from Grace Morris who are members and representatives
11 of organizations that were parties in the underlying
12 proceeding, they did not fill out comment cards
13 because they wanted to comply with that rule.

14
15 THE COURT:
16 I saw the
17 affidavit.

18
19 MS. HARDEN:
20 And the Chair changed the rule which denied
21 them the opportunity to speak. Doctor Wright
22 explains how she waited for a little while, heard
23 some of the other comments, none of those comments
24 she saw were coming from other parties and so she
25 left. But had she had the opportunity to give a
26 comment she would have wanted to have the opportunity
27 and when the Chair made the change of the, from the
28 agenda, again with less than twenty-four hours
29 notice. It was done without any announcement or any
30 provision around a comment for this inconsistent way
31 of handling --
32

1 THE COURT:
2 You saw their
3 response that there was no change but
4 there was a difference of appreciation
5 for what the rule was.

6
7 MS. HARDEN:
8 I saw that and I was curious that they
9 didn't provide with a different interpretation could
10 be with that plain reading of the language that says
11 each public speaker not a party will be allowed two
12 minutes.

13
14 THE COURT:
15 Why is, and I
16 guess this is my response to that.

17
18 MS. HARDEN:
19 Yes.

20
21 THE COURT:
22 Doctor
23 Beverly Wright is Doctor Beverly
24 Wright.

25
26 MS. HARDEN:
27 All day.

28
29 THE COURT:
30 All day and
31 all night. The entity which she
32 happens to be affiliated with, which
52

1 is a party is Deep South Center For
2 Environmental Justice. Deep South
3 Center for Environmental Justice has
4 an attorney. Doctor Beverly Wright as
5 an individual who apparently, as I
6 appreciate her affidavit, lives near
7 the area that she believes is affected
8 has a right to speak. That's two 2
9 different things and I would have
10 interpreted it that way.

11
12 MS. HARDEN:

13 Renate Heurich was allowed to speak as well
14 as Entergy employees were allowed to speak without an
15 distinguishing characteristics of their personal
16 versus their party, their affiliations with parties
17 underlying.

18
19 THE COURT:

20 Right, that
21 is what I'm suggesting to you. There
22 is no, that to the extent an entity
23 acts on behalf, an entity by law can
24 only act through their attorney or
25 their agent. Individuals have their
26 own individual right to speak. And
27 perhaps it wasn't clear but clearly
28 there was an opportunity for anyone
29 who is an individual who believes that
30 they have a personal stake, i.e. they
31 live in the area, i.e. they are a
32 citizen of New Orleans, that they had

53

1
2 THE COURT:
3 Okay.

4
5 MS. HARDEN:

6 But, Your Honor, that didn't happen because
7 parties, individual did speak as representative of
8 parties during the public comment session and that
9 inconsistency was the change that denied others from
10 doing the same.

11
12 THE COURT:

13 Are you
14 suggesting that right now I have 3
15 lawyers here or 5, I'm sorry. Are you
16 suggesting that the lawyers didn't
17 speak that instead of the lawyers
18 speaking their agents and or employees
19 spoke on their behalf?

20
21 MS. HARDEN:

22 What I'm saying is that during the public
23 comment session which parties as we know, using your
24 definition in applying that to the rule, what we know
25 to be a fact is that people did speak as
26 representative of parties during the public comment
27 session.

28
29 THE COURT:

30 So the 2
31 minutes or the 15 minutes --

32

55

1 an opportunity to speak even if they
2 happen to be employed by or otherwise
3 affiliated with the entity. I don't
4 see the distinction, but I understand
5 that there was some confusion about
6 that. But there, those are very clear
7 distinct entities, those are
8 different.

9
10 MS. HARDEN:

11 Your Honor, I understand that
12 interpretation, I just want to for the record say
13 that that was an advanced by the City Council and
14 it's defense pleading or by the Chair or any member
15 of the City Council.

16
17 THE COURT:

18 My
19 understanding from the City is that
20 they said that it was a misreading of
21 the rule and that the rule was always
22 that the entity was that the party to
23 the litigation was the entity and that
24 interest had 15 minutes and that there
25 was no bar for anybody who wasn't a
26 citizen to be able to speak the
27 additional 2 minutes. Am I misstating
28 that?

29
30 MR. ST. RAYMOND:

31 No Your Honor, I wasn't going to say
32 anything.

54

1 MS. HARDEN:

2 The 2 minutes.

3
4 THE COURT:

5 They
6 specifically said I'm a member of this
7 group?

8
9 MS. HARDEN:

10 That's correct.

11
12 THE COURT:

13 And they
14 specifically say they were speaking on
15 behalf of the group --

16
17 MS. HARDEN:

18 I would have to dig in the transcript but
19 that's my understanding, if you can permit me a
20 moment.

21
22 THE COURT:

23 Sounds to me
24 like I'm going to have look at the
25 transcript a little bit, so I can't
26 rule today anyway. But, I guess my,
27 I'm going to go back...so let's go
28 passed, let's assume...let's go passed
29 where we are, how do we get to the
30 issue of voiding.

31 MS. MILLER:

32 Susan Stevens Miller again, Your Honor.

56

1 Under the Open Meetings Law a action that was taken
2 when the process was in violation of the Open
3 Meetings Law is to be voided. Essentially while the
4 City disputes, while th City states that it is not an
5 absolute nullity and we don't disagree with that they
6 failed to note it's a relative nullity which is a
7 very distinct term in the law. Essentially the only
8 thing you have to a establish under the relative
9 nullity standard for Open Meetings Law is (1) that
10 there was a violation of the Open Meetings Law and
11 (2) that as petitioners you filed on within the 60
12 day time limit. At that point the actions become a
13 nullity and are void. SO our contention is that the
14 Open Meetings Law mandates in that situation that the
15 actions taken in violation be avoided. They argue
16 that you have discretion, we would disagree, but even
17 if you have discretion we would argue they haven't
18 presented any argument to warrant you exercising that
19 discretion. One of their arguments is that the
20 underlying decision was real important and so under
21 there sliding scale the --

22
23 THE COURT:

24 That's even
25 more of a reason you got to dot I's
26 and cross T's.

27
28 MS. MILLER:

29 I would agree, Your Honor. They also argue
30 that you have the discretion not to void for
31 technical violations and there's only one case that
32 says that. It's very much fact specific and I do not

57

1 believe in any way these violations that occurred at
2 this meeting are just technical violations. Those
3 are typically that they wrote the notice wrong or
4 something like that. And they also argue that the
5 petitioners had plenty of other chances to come.
6 First of all there is nothing in the Open Meetings
7 Law that says that if you had a previous opportunity
8 to comment then your right to comment in this public
9 meeting is lessened.

10 Secondly and more importantly
11 that is just incorrect, there are only 2 public
12 meetings involving the gas plant issue, the one on
13 February 21 and the one on March 8. Both of those
14 meetings had Open Meetings Law violations. Every
15 other meeting, the 21 meeting they referred to were
16 meetings conducted by Entergy in order to around the
17 City and persuade people that the gas plant was
18 needed. They were in no way public meetings. So the
19 only 2 meetings at which the public actually had a
20 chance to speak were the 2 meetings that had all
21 these problems in them and these people, these
22 residents came out, took their time, took off work,
23 came downtown solely to have talked to their
24 representative for 2 minutes and they were
25 essentially denied that right. So, there is, even if
26 the Court does have discretion, which we do not
27 believe under the correct interpretations of the Open
28 Meetings Law you do, that discretion should not be
29 exercised in this situation to fail to void these
30 decisions.

31 MR. GOFORTH:

32 Your Honor, this is William Goforth on

58

1 behalf of the City Council. First, there is no
2 evidence that a violation of the Open Meetings Law
3 renders the act of public body a relative nullity.
4 The language of the statute says that the act may be
5 avoidable if the Court finds, not void, voidable.
6 The Dager (SP.PHO.) case clearly shows that the Court
7 has discretion even if it finds a violation, which
8 the City Council disputes in this case, even if the
9 Court finds a violation it does not have, is not
10 required by law to void the action of the public
11 body. The Dager case took into account the affect of
12 the violation on the party who is bringing the claim.
13 That was the basis for the Court's decision that it
14 was a technical violation in that case. And that
15 case there was a claim, the claim was that the vote
16 and reason for going into executive session were not
17 put on the record, however the person who brought the
18 claim was actually at the meeting and heard the vote
19 and the reasons. So that person was not prejudiced
20 by this violation. In this case, very specific
21 entities and individuals are bringing claims.

22 They're arguing that the public had not necessarily
23 given competent evidence that their members were
24 specifically affected by the violation they alleged

25 --

26 THE COURT:

27 Except that
28 the Deep South Center says that Doctor
29 Wright was not given an opportunity to
30 make comment because of what they
31 believe was a change in the rules.

32

59

1 MR. GOFORTH:

2 Your Honor, I will note that that was the
3 February meeting and at the March meeting I do
4 believe that at least Mss Heurich did give comment
5 and I will have to look and see if Doctor Wright also
6 provided comment at the March meeting, but I would
7 suggest that there is not evidence in the record that
8 the individuals who claim they did not get an
9 opportunity to give personal comments at the February
10 meeting were denied that opportunity at the March
11 meeting should they so choose. More generally I
12 would suggest that the actual purposes of the Public
13 Meeting Law were not violated in this case,

14

15 THE COURT:

16 How are they
17 not violated and I know I've got an
18 issue. I've got to figure that out,
19 how are they not violated if people
20 are if there is at least, if there is,
21 that's the question, competent
22 evidence of people not being given an
23 opportunity to comment even because
24 they were outside of the room.

25

26 MR. ST. RAYMOND:

27 Your Honor, we take the position that
28 public comment is not an absolute right. For
29 instance, there is nearly 400,000 people in the City
30 of New Orleans. There is a City Council meeting and
31 say every person wanted to come the City Council
32 would not be able to receive public comment from --

60

1
2 THE COURT:
3 There is no
4 question that the Council has the
5 ability and the right to limit
6 comment, there is no question. I
7 think it has to be within reason, it
8 can't be at nauseam. There has to be,
9 but there has to be a system in place
10 and the question is whether or not
11 simply saying because you couldn't get
12 in the room you can't give comment, is
13 that sufficient?
14
15 MS. MILLER:
16 Your Honor --
17 THE COURT:
18 I'm not --
19 Ma'am. Thank you.
20
21 MR. ST.RAYMOND:
22 I don't think that that is a violation. I
23 think if you can't get in the room it's because of
24 the space limitation
25
26 THE COURT:
27 Right,
28 correct and I agree. That's why I'm
29 asking the question, it's a space
30 limitation, not created by you, you're
31 there, so why aren't you given an
32 opportunity once the time is freed up
61

1 to make your comment to the extent
2 there is time still available on the
3 agenda.
4
5 MR. ST.RAYMOND:
6 Well, I would say that the Council at both
7 of these meetings went through every single comment
8 card --
9
10 THE COURT:
11 I understand
12 that that's what you're saying, I've
13 got another, and like I said I've
14 still got to deal with it, but I have
15 another affidavit that comments
16 differently.
17
18 MR. ST.RAYMOND:
19 I understand that.
20
21 THE COURT:
22 Miss Morris says
23 that Mr. Lampkin refuse to accept
24 comment cards from people who are
25 outside of the room.
26
27 MR. GOFORTH:
28 Your Honor, very quickly, I'm looking at
29 Miss Morris's affidavit right now. She testified
30 that Mr. Lampkin told her he would not accept comment
31 cards.
32
62

1 THE COURT:
2 Correct.
3
4 MR. GOFORTH:
5 Then she offered comment cards that she
6 explained with him outside of the room. He said that
7 he had Miss Sylvia in the room and took the full
8 stack of cards from me. That affidavit provided by
9 petitioner says is that Mr. Lampkin ultimately
10 accepted comment cards that they claim he said he
11 would no accept in the first place. So while he may
12 have said something to that affect, his actions were
13 reject any comment cards that were offered him.
14 There is no evidence in the record that comment cards
15 were actually rejected.
16
17 THE COURT:
18 Okay.
19
20 MS. MILLER:
21 Your Honor, just a couple points.
22 Mr. Lampkin said he was taking the comment cards for
23 the record. He did not say he was taking the comment
24 cards so those people could actually speak, and
25 you're correct, the Open Meetings Law does allow
26 reasonable restrictions on the comment period, sorry,
27 but those restrictions have to be adopted through
28 regulation or rule, you just can't make them up in
29 the middle of a meeting. People have to be able to
30 know and that's one of the restrictions they actually
31 put on that is correct. The notice specifically says
32 you're limited to 2 minutes. That's a restriction
63

1 that the City Council is allowed to make under the
2 law.
3 And finally with regard to whether the
4 relative nullity issue is the Delta Development case.
5 The very case they rely on the fact that's not an
6 absolute nullity and it also says that it's a
7 relative nullity. So the case law does establish
8 that it is, it says that it shall be voidable and
9 that it's a relative nullity and if these 2 instances
10 are met it's void.
11
12 MR. ST.RAYMOND:
13 I just want to respond to the statement
14 regarding the comment cards not being perhaps
15 accepted and not used. Petitioners have offered zero
16 evidence, in fact if you look at the record and watch
17 the video, the comment cards are read. They have
18 offered no competent evidence that says that I turned
19 in a comment card and my name was not called. And so
20 I think that that would directly contradict what she
21 just stated.
22
23 THE COURT:
24 Okay.
25
26 MS. MILLER:
27 Your Honor, there's also evidence that
28 people's names were called and they didn't speak and
29 that may well be because they were outside the room
30 and the City Council made no accommodation to make
31 sure that people outside the room knew that their
32 name was called.
64

1
2 THE COURT:
3 In here I
4 can't speculate as to why, and I still
5 have to deal with, how do I get around
6 the issue of the defective affidavits?
7 As far as the affidavits are concerned
8 none of your affidavits, and I'll look
9 at them again, but there not evidence
10 competent enough for me to consider,
11 period. How do I get around it?
12

13 MR. QUIGLEY:
14 We'll give you a memo on that this
15 afternoon, judge.
16

17 THE COURT:
18 Okay, give me a
19 memo on it because I don't know how, I
20 mean, and I do, I recognize anyone who
21 practices in front of me knows this be
22 it motions for summary judgment or
23 otherwise, in order for evidence to be
24 appropriately considered it has to
25 meet certain parameters and failing to
26 meet those parameters I just don't get
27 it.
28

29 MR. ST. RAYMOND:
30 If I may say something about providing a
31 supplemental memorandum, I would just ask the Court
32 that they be foreclosed from providing additional
65

1 evidence affidavits in support with their memorandum.
2
3 THE COURT:
4 And I guess the
5 question then becomes, they didn't ask
6 me for that number one. The question
7 then becomes one of, and at this stage
8 ya'll killed enough trees, I got a
9 lot of paper, Even though this is
10 not a fundamental right this is a
11 constitutional question and a
12 constitutional issue, so my role as
13 gatekeeper am I behooved at some point
14 to, which is the only reason because
15 to be honest with you, under any other
16 circumstance ya'll wouldn't even be
17 able to give me a memo because the
18 evidence is incompetent, you're gone.
19 There is nothing upon which to base
20 any ruling that you requested me to
21 give you on, period. That would be
22 the final chapter. When I'm dealing
23 with constitutional issues that I
24 think are important because we as
25 citizen, I'm a citizen of New Orleans
26 too, we have to believe in the
27 process. We also have to believe that
28 there are, that the constitution says
29 what it says for reasons. And so I
30 spend a of time talking to you all on
31 something which on a general rule day
32 probably would have taken me 2
66

1 minutes, but it's because it's an
2 issue of whether or not this
3 protection afforded by the
4 constitution is of such a nature that
5 I may not want to give them an
6 opportunity to fix it to the extent
7 it's fixable because it doesn't
8 change, that's the reality. It is a
9 procedural technicality and am I as a
10 gatekeeper going to allow citizens to
11 be thrown out based on a procedural
12 technicality when we're dealing with a
13 constitutional issue. So I understand
14 your position, but you need to
15 understand mine.
16

17 MR. ST. RAYMOND:
18 I absolutely understand your position, Your
19 Honor. It's just, it's a little concerning to me.
20

21 THE COURT:
22 Well because
23 let me tell you what happens so that
24 we're on the same page.
25

26 MR. ST. RAYMOND:
27 Sure.
28

29 THE COURT:
30 Let's assume,
31 and I can do this, these are my
32 options and these are your options.
67

1 I can deny what they requested without
2 prejudice, they refile, they
3 re-prepare all of these affidavits and
4 correct the mistake. You understand
5 where I'm at? And we start all over
6 with this whole process or I figure
7 out if there is an ability within,
8 Mr. Quigley has asked me to give him
9 an opportunity to give him a memo, the
10 issue becomes, because this is what
11 happens, even if I deny a motion for
12 summary judgment for the same reason
13 failure to state for personal reasons,
14 they can then refile and fix the
15 issue. It was asked would I simply
16 take a look at newspaper articles, I
17 don't do that. I am a stickler for
18 the rules. It needs an affidavit
19 because it's attested to. This
20 afternoon, by what time?
21

22 MR. QUIGLEY:
23 ...
24

25 THE COURT:
26 I'll give you
27 until tomorrow morning.
28

29 MS. MILLER:
30 Thank you.
31

32 THE COURT:
68

1 If you want
2 to respond I'll give you, you all have
3 until 10, you can respond by what
4 time. How much time do you need to
5 respond to the extent you want to
6 respond? You may want to think about
7 it, think about what I said.

8
9 MR. ST.RAYMOND:

10 Your Honor, could I quickly ask for
11 clarification of what you would be interested in
12 receiving in the memo because --

13
14 THE COURT:

15 They're
16 giving me a memo relative to the
17 affidavits and what they would ask me
18 to do.

19
20 MR. GOFORTH:

21 Okay.

22
23 THE COURT:

24 If you all want to
25 respond to that, that is what you all
26 would be responding to, what they
27 said. That is why you can't give it
28 to me at the same time.

29
30 MR. GOFORTH:

31 Right.

32
69

1 you've observed, that's all you're
2 supposed to be doing in an
3 affidavit.

4
5 MR. ST.RAYMOND:

6 I believe that is what our affidavit state.

7
8 THE COURT:

9 They don't
10 agree. Okay. All of that said I do
11 want an opportunity to look the
12 various transcripts. We talked about
13 Tuesday, is Tuesday still?

14
15 MS. MILLER:

16 Yes, Your Honor.

17
18 THE COURT:

19 Okay.

20 MR. QUIGLEY:

21 Yes.

22
23 MR. GOFORTH:

24 Yes.

25
26 MR. ST.RAYMOND:

27 So if we wanted to file a reply it would be
28 due by 4 pm tomorrow?

29
30 THE COURT:

31 If you can
32 get it in, is that fine with you?

71

1 THE COURT:

2 You have to
3 receive their memo in order to know
4 what you're responding to.

5
6 MR. GOFORTH:

7 And would you be interested in receiving
8 the memo on all the evidentiary issues related to the
9 affidavits, other than just the failure to attest to
10 the fact --

11
12 THE COURT:

13 I've read the
14 affidavits and I know what an
15 affidavit is suppose to say and I
16 understood before you all even said
17 it, the personal knowledge issue. I
18 understood that. I understand that
19 they cannot attest to stuff, that is
20 they can't have hearsay in their
21 affidavit, I saw that, it has to ---

22
23 MR. QUIGLEY:

24 And I would also say in terms of evidence
25 you can't just with the term personal knowledge be it
26 police officer and say what's going on in the room
27 outside the room at 2 meetings and all that other
28 stuff, so it goes both ways

29
30 THE COURT:

31 You can only
32 talk about what you did and what

70

1
2 MR. ST.RAYMOND:

3 It's going to be on my co-counsel.

4
5 MR. GOFORTH:

6 That's fine with me.

7
8 THE COURT:

9 It would be
10 10 o'clock for them, 4 o'clock for
11 you. You need to file and make sure
12 they have a copy via electronic.
13 Electronic means at the same time.
14 What time on Tuesday? So other people
15 in the room can understand what I've
16 told them, there were some issues
17 relative some evidence I wanted to
18 make sure that I had an opportunity
19 before I rule on this matter to review
20 everything that was submitted, to the
21 extent I thought it was necessary that
22 I review the stuff that was submitted.
23 They're having references to the
24 various transcripts of the proceedings
25 which which was submitted by the City.
26 The Court has those transcripts as
27 well as the video recordings and would
28 like an opportunity to look at that.
29 In addition the issue regarding these
30 affidavits has come up and so before I
31 give a final ruling, and I'm not
32 inclined to belabor this matter simply

72

1 take it under advisement and let it go
2 into what I call the black hole that
3 is my desk, that, that may take a
4 little more for me to write something.
5 I'm more inclined to render from the
6 bench and so I would be rendering from
7 the bench on Tuesday. At which time I
8 would have had an opportunity to
9 review all evidence and to consider
10 what evidence I should in fact
11 consider in connection with this case.
12 You're more than welcome, Mr. Quigley,
13 as part of your conversation to
14 include the fact that because, and I'm
15 going through my prior cases because
16 this is a constitutional, if this was
17 a different, it is not a, it's a
18 constitutional mandate but it's not a
19 constitutional right. That's what
20 we've got to figure out. You
21 understand what I'm saying? There are
22 different rights that have different
23 levels of protection.

24
25 MR. QUIGLEY:
26 It's a constitutional right and not one of
27 the fundamental.

28
29 THE COURT:
30 Correct, one
31 of the fundamental rights. And so the
32 issue becomes absent it being a

73

1 fundamental right...what happens to
2 it, because quite honestly absent, and
3 make sure ya'll are clear, and I'm
4 saying this again for the record,
5 absent the competent evidence it is
6 dismissed with or without prejudice.
7 If it's a constitutional right it's a
8 without prejudice because I do want an
9 opportunity for you all to have a
10 second bite at the apple. You just
11 got to start over. Ya'll understand
12 where I'm at? Ya'll may want to have
13 a conversation...let's say 9:30. Is
14 everybody available for 930 on
15 Tuesday? Is everybody else is fine
16 with the 9:30. If it becomes
17 problematic let me know. I will tell
18 you this the very next week I'm out of
19 town so we needs to be next week
20 sometime. Ya'll told me you weren't
21 available wednesday.

22
23 MR. GOFORTH:
24 Thursday morning ----

25
26 MR. QUIGLEY:
27 This is not a hearing. We are going to be
28 here and you are going to announce your decision.
29 You are not going to take argument at that time?

30
31 THE COURT:
32 No. The only

74

1 way I take argument is if, and we'll
2 call you if I think I need to is if
3 there is such a dispute relative to
4 the affidavits that I think there is a
5 necessity for me to make a record.
6 Okay, ya'll understand where I'm at?

7
8 MR. ST.RAYMOND:
9 Yes.

10
11 MS. HARDEN:
12 Yes, Your Honor.

13
14 THE COURT:
15 Anything else,
16 counsel?

17
18 R. ST.RAYMOND:
19 I have one last thing housekeeping. We'd
20 like to offer, file and introduce into evidence our
21 opposition exhibits A thru F in the record -- A thru
22 H, I'm sorry.

23
24 THE COURT:
25 So that the
26 record is clear the Court will deem
27 any and all prior submitted memos and
28 or exhibits to have been submitted in
29 connection with this matter. I'm not
30 trying to get ya'll to pay another 2
31 dollars. The City doesn't pay anyway,
32 but I will deem them to be part of the

75

1 record, anything else?

2
3 MS. HARDEN:
4 Thank you.

5
6 MR. ST.RAYMOND:
7 Thank you.

8
9
10
11
12
13 * * *

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