

In the
Supreme Court of the United States

SHREVEPORT CHAPTER #237 OF THE
UNITED DAUGHTERS OF THE CONFEDERACY,

Petitioner,

v.

CADDO PARISH COMMISSION, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In a 42 U.S.C. § 1983 action, the Petitioner Shreveport Chapter #237 of the United Daughters of the Confederacy (“UDC”) filed its lawsuit in response to a deprivation of its First, Fifth, and Fourteenth Amendment was based on the actions of seven commissioners of the Caddo Parish Commission (“Respondent”) who voted on Resolution No. 69 of 2017 (“hereinafter Resolution 69”). Resolution No. 69 ordered the UDC to remove its Confederate Monument from the front of the local courthouse. At the time of the Fifth Circuit decision, this Court had not ruled on *The American Legion v. American Humanist Association*. See, *The American Legion v. American Humanist Association*, 588 U.S. ____ (2019). Under *American Humanist Association*, as owner of the monument the UDC does not have to be the land owner in order to have standing under 42 U.S.C. § 1983. And the UDC should have two affirmative defense: i) the affirmative defense that it has stood on their property for almost a century without controversy and is now too fragile to move; and ii) the affirmative defense of the federal common law doctrine of *laches*. At the time of the Fifth Circuit’s decisions, this Court’s decision in *Herrera v. Wyoming* was not announced. See, *Herrera v. Wyoming*, 587 U.S. ____ (2019). In the instant matter the treaty between the U.S. and the Caddo Nation remains in effect. Under *Herrera v. Wyoming*, the lower courts do not have the authority to abrogate a treaty with Native Americans without express Congressional approval. The questions presented are:

1. Does the Court’s ruling in *The American Legion v. American Humanist Association*, afford the owner

of a monument to have standing under 42 U.S.C. § 1983 without having to prove land ownership?

2. Does the Court's ruling in *The American Legion v. American Humanist Association*, afford the owner of a monument two affirmative defenses: i) the affirmative defense that the monument has stood for almost a century without controversy and is now too fragile to move; and ii) the affirmative defense of the federal common law doctrine of *laches*?

3. Does the district court have the authority to abrogate the Caddo Nation Treaty without the U.S. Congress stating it in explicit terms under *Herrera v. Wyoming*?

LIST OF PARTIES

Petitioner (Plaintiff-Appellant)

- The Petitioner (plaintiff-appellant) is the Shreveport Chapter #237 of the United Daughters of the Confederacy (hereinafter “UDC” or Petitioner), which is non-profit entity under a parent corporation named the United Daughters of the Confederacy which is 501 (c)(3) in good standing in the State of Louisiana; and the petitioner is the owner of the Caddo Parish Confederate Monument and the owner of the land underneath said Caddo Parish Confederate Monument, which is located on Shreveport Block 23 where the Caddo Parish Courthouse sits.

Respondents (Defendant-Appellee)

- The Respondents (defendant-appellee) are the Caddo Parish Commission, a political subdivision of the State of Louisiana and the governing body of Caddo Parish, Louisiana;
- Steven Jackson, President Caddo Parish Commission and Caddo Parish Commissioner District 3, in his official capacity,
- Lyndon B. Johnson, Caddo Parish Commissioner, in his official capacity,
- Matthew Linn, Caddo Parish Commissioner District 4, in his official capacity,
- Jerald Bowman, Caddo Parish Commissioner District 5, in his official capacity,
- Stormy Gage-Watts, Caddo Parish Commissioner District 7, in her official capacity,

- Louis Johnson, Caddo Parish Commissioner District 12, in his official capacity.

CORPORATE DISCLOSURE STATEMENT

Petitioner, Shreveport Chapter #237 of the United Daughters of the Confederacy (UDC) (a non-profit entity with its own EIN 72-6034845), who declares that it has a parent corporation named the Louisiana Division United Daughters of the Confederacy which is a 501 (c) (3) in good standing in the State of Louisiana; and no publically traded corporation currently owns 10% or more of its stock.

LIST OF ALL PROCEEDINGS

Shreveport Chapter #237 of the United Daughters of the Confederacy v. The Caddo Parish Commission, et al.
United States District Court,
Western District of Louisiana-Shreveport Division
Case No. 17-cv-01346 (RGJ)
Decision Date: July 25, 2018 (App. 4a-30a)

Shreveport Chapter #237 of the United Daughters of the Confederacy v. The Caddo Parish Commission, et al.
United States Court of Appeals, Fifth Circuit
Case No. 19-30951
Decision Date: March 7, 2019 (1a-3a)
Date of Order Denying Motion for Rehearing:
April 15, 2019 (App. 33a-34a)

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, The Shreveport Chapter #237 of the United Daughters of the Confederacy (“UDC” or Petitioner), respectfully petition the Court for a writ of certiorari to review the judgment of the United States of Appeals for the Fifth Circuit.



OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Fifth Circuit is unreported and is reprinted at Appendix, App.1a-3a. The ruling of the U.S. Court of Appeals for the Fifth Circuit denying the Petitioner’s petition for rehearing is unreported and is reprinted at Appendix, App.33a-34a. The order of the District Court of the Western District of Louisiana-Shreveport Division granting the motion to dismiss all of the named Caddo Parish commissioners is unreported and is reprinted at Appendix, App.31a-32a. The memorandum ruling of the District Court of the Western District of Louisiana-Shreveport Division granting the motion for summary judgment is unreported and is reprinted at Appendix, App.4a-30a.



JURISDICTION

The judgment of the U.S. Court of Appeals for the Fifth Circuit was entered on March 7, 2019. The

order of the U.S. Court of Appeals for the Fifth Circuit denying petition for rehearing was entered on April 15, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).



CONSTITUTIONAL PROVISIONS, STATUTORY PROVISIONS, AND INTERNATIONAL TREATIES INVOLVED

- **U.S. Const. amend. I**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

- **U.S. Const. amend. V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

- **U.S. Const. amend. XIV, § 1**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- **Treaty with the Caddo (signed July 1, 1835),
Introduction provides:**

Articles of a treaty made at the Agency-house in the Caddo nation and State of Louisiana, on the first day of July in the year of our Lord one thousand eight hundred and thirty-five, between Jehiel Brooks, Commissioner on the part of the United States, and the Chiefs, head men, and Warriors of the Caddo nation of Indians.

- **Treaty with the Caddo (signed July 1, 1835),
Introduction to Articles supplementary to the
said treaty provides:**

Articles supplementary to the treaty made at the agency house in the Caddo nation and State of Louisiana on the first day of July, one thousand eight hundred and thirty-five between Jehiel Brooks Commissioner on the part of the United States, and the Chiefs head men and Warriors of the Caddo nation of Indians concluded at the same place, and on the same day between the said Commissioner on the part of the United States

and the Chiefs Head men and warriors of the said nation of Indians, to wit:

WHEREAS the said nation of Indians did in the year one thousand eight hundred and one, give to one François Grappe and to his three sons then born and still living, named Jacques, Dominique and Belthazar, for reasons stated at the time and repeated in a memorial which the said nation addressed to the President of the United States in the month of January last, one league of land to each, in accordance with the Spanish custom of granting land to individuals. That the chiefs and head men, with the knowledge and approbation of the whole Caddo people did go with the said François Grappe, accompanied by a number of white men, who were invited by the said chiefs and head men to be present as witnesses, before the Spanish authority at Natchitoches, and then and there did declare their wishes touching the said donation of land to the said Grappe and his three sons, and did request the same to be written out in form and ratified and confirmed by the proper authorities agreeably to law.

And WHEREAS *Larkin Edwards* has resided for many years to the present time in the Caddo Nation—was a long time their true and faithful interpreter, and though poor he has never sent the Red man away from his door hungry. He is now old and unable to support himself by manual labor, and since his employment as their interpreter has ceased possesses no adequate means by which to live: Now therefore—(underline added for emphasis)

- **Treaty with the Caddo (signed July 1, 1835),
Articles supplementary to the said treaty article II
provides:**

And it is further agreed that there shall be reserved to *Larkin Edwards his heirs and assigns* for ever one section of land to be selected out of the lands ceded to the United States by the said nation of Indians as expressed in the treaty to which this article is supplementary in any part thereof not otherwise appropriated by the provisions contained in these supplementary articles. (underline added for emphasis)

- **38 U.S.C. § 1501(3)**
(3) The term “Civil War veteran” includes a person who served in the military or naval forces of the Confederate States of America during the Civil War, and the term “active military or naval service” includes active service in those forces.

- **42 U.S.C. § 1983**

Every person who, under color of any statute, ordinances, regulations, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizens of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declar-

atory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

- **LA Rev Stat § 41:1323.4 (current) (Sales, transfers or exchanges of public property by cities, towns, villages and police juries prior to twelve o'clock, noon, July 28, 1948)**

All sales, transfers or exchanges of public property made by cities, towns, villages and police juries made prior to twelve o'clock, noon, July 28, 1948 are hereby validated, ratified and confirmed unto the original purchasers or transferees and their successors in title, notwithstanding any informalities provided there was a valid consideration therefor.

Added by Acts 1962, No. 205, § 1.

- **LA Rev Stat § 48:701(current)
(Revocation of dedication; reversion of property)**

The parish governing authorities and municipal corporations of the state, except the parish of Orleans, may revoke and set aside the dedication of all roads, streets, and alleyways laid out and dedicated to public use within the respective limits, when the roads, streets, and alleyways have been abandoned or are no longer needed for public purposes.

Upon such revocation, all of the soil covered by and embraced in the roads, streets, or alleyways up to the center line thereof, shall revert to the

then present owner or owners of the land contiguous thereto.

Nothing in this Section shall be construed as repealing any of the provisions of special statutes or charters of incorporated municipalities granting the right to close or alter roads or streets.

- **LA Civ Code Art. 3437 (current)
(Precarious possession)**

The exercise of possession over a thing with the permission of or on behalf of the owner or possessor is precarious possession.

- **LA Civ Code Art. 3477 (current)
(Precarious possessor; inability to prescribe)**

Acquisitive prescription does not run in favor of a precarious possessor or his universal successor.

- **Constitution of the State of Louisiana
Art. 148 (1868)**

The ordinance of succession of the State of Louisiana, passed twenty-sixth January, eighteen hundred and sixty-one is hereby declared to be null and void. The Constitution adopted in eighteen hundred and sixty-four, and all previous constitutions in the State of Louisiana, are declared to be superseded by this Constitution.

- **Constitution of the State of Louisiana
Art. 154 (1868)**

In order to establish a civil government as required by act of Congress, passed March twenty-third, eighteen hundred and sixty-seven, as election shall be held at the same time and place at which the Constitution is submitted for ratification, for all State, the General Assembly and for

the Congressional Representatives, at which election the electors who are qualified under the Reconstruction acts of Congress shall vote, and none others: Provided; That any elector shall be eligible to any office under any municipal corporation in this State.

- **LA Civ Code Art. 439 (1870)**

The attorneys in fact or officers thus appointed by corporation for the direction and care of the affairs have their respective duties pointed out by their nomination and exercise them accordingly to the general regulations and particular statutes of the corporation which they are the heads.

These attorneys or officers by contracting, bind the corporations to which they belong in such things as do not exceed the limits of the administration which is intrusted to them; their act is supposed to be the act of the corporation.

If the powers of such attorney or officers have been expressly determined, they are regulated in the same manner as those of other agents.

- **LA Civ Code Art. 3467 (1870)**

The time required for prescription is reckoned by days, and not by hours; it is only acquired after the last day allowed by law has elapsed.

- **LA Civ Code Art. 3474 (1870)**

Immovables are prescribed for by thirty years without any title on the part of the possessor, or whether he be in good faith or not.

- **LA Civ Code Art. 3499 (1870)**

The ownership of immovable is prescribed for thirty years without any need of title or possession in good faith.

- **LA Civ Code Art. 3500 (1870)**

The possession on which this prescription is founded must be continuous and uninterrupted during all the time; it must be public and unequivocal, and under the title of owner.



STATEMENT OF THE CASE

In summary, this case involves the Petitioner fighting the removal of its Confederate Monument where evidence exists that it owns the property underneath it. This case clarifies whether the Petitioner has to prove land ownership in order to assert standing under 42 U.S.C. § 1983. This case further clarifies if Petitioner may assert two affirmative defenses: 1) The affirmative defense that the said monument has stood without controversy for over one hundred years and is now too fragile to move; and 2) the affirmative defense of the federal common law doctrine of *laches* without the State of Louisiana either allowing or barring said defenses. This case further involves the Petitioner asserting its standing under the Caddo Nation Treaty and whether the lower courts have the authority to abrogated said treaty without the U.S. Congress terminating it. UDC is asking for a review of the Fifth Circuit decision.

First, this case presents an opportunities for the Court to question a decision of the United States court of appeals which is in direct conflict with the decision of the U.S. Supreme Court on a similar important matter such as the case involving a group wanting the removal of a WWI monument due a perceived establishment clause violation. *See, The American Legion v. American Humanist Association*, 588 U.S. ____ (2019). The UDC owns both the Confederate Monument and land underneath it. The said monument sits in front of the Caddo Parish Courthouse for almost one hundred years without controversy. In 2018, the Respondent ordered the removal of it.

Second, in light of the Court's recent *The American Legion v. American Humanist Association*, this case presents further opportunities for the Court to address a novel issue regarding an issue of standing under 42 U.S.C. § 1983 and whether the UDC can assert two affirmative defenses: 1) that the Confederate Monument has stood on their property for almost a century without controversy and is now too fragile to move; and 2) the common law doctrine of *laches*. In order to remove the Confederate Monument, the Respondent has to demolish it because the construction material have the monument has deteriorated for being outside for over a century.

Third, this case further presents an opportunity to question decision of the United States court of appeals which is in direct conflict with the decision of the U.S. Supreme Court on a similar matter such as the case involving the termination of a treaty with Native Americans without a congressional decision to do so. *See, Herrera v. Wyoming*, 587 U.S. ____ (2019).

The instant matter involves a combination of an order of removal of a Confederate Monument in front of a courthouse and the provisions of the Caddo Nation Treaty concerning property rights of the parties: 1) Petitioner UDC; 2) the legal heirs of the original owner; and 3) The Caddo Nation itself. Prior to this lawsuit, the Caddo Nation Treaty had not been a subject of litigation since 1850. The U.S. Congress has not terminated the Caddo Nation Treaty but the district court did not consider the said treaty's legal existence in its decision in favor of the respondent. Since evidence exists pointing to the actual said treaty remaining in effect, Shreveport Block 23 is the last piece of ancestral land of the Caddo Nation in which it has maintained a property interest.¹

As an aide the Petitioner presents a summary of the facts concerning the contested land underneath the Confederate Monument.

- (a) The contested land originated from an aboriginal title held by the Caddo Nation to its ancestral lands. On July 1, 1835, the Caddo Indians signed a treaty with the United States which granted Larkin Edwards a floating reservation of 640 acres;
- (b) On January 26, 1836, the United States ratifies said treaty; *See, United States v. Brooks*, 51 U.S. 442 (1850);
- (c) On February 3, 1836, Larkin Edwards allegedly sold his interest to the Shreve Town Company;

¹ The full text of said treaty is in 18-30951ROA. 1096-ROA. 1202 (5th Cir.).

- (d) In 1837, the Shreve Town Company “laid off the town of Shreveport . . . made there of the grant to Larkin Edwards; *See, City of Shreveport v. Walpole*, 22 La. Ann. 526 at 528 (La. 1870);
- (e) On March 14, 1840, Larkin Edwards signed a document which declared that the sale of his floating reservation to the Shreve Town Company as “null and void and as though the same had never been passed . . . ”;
- (f) Sometime in 1841, Larkin Edwards died. His six (6) heirs voluntarily partitioned his property prior to opening his succession; but later a Louisiana district court declared those partitions null. *See, Wright and Williams v. Mrs. M.D.C. Cane, et al.*, 18 La. Ann. 579 (La. 1866);
- (g) On December 14, 1841, the Shreve Town Company dissolved and it sold many lots within the incorporated limits except for Shreveport Block 23. *See, Angus McNeil et al., v. Hicks & Howell*, 34 La. Ann. 1090 at 1092 (La. 1882); and *Pickett et al. v. Brown et al.*, 18 La. Ann. 560 (La. 1866);
- (h) The Caddo Parish Police Jury minutes states, “From inquiry your Committee have been led to believe that the title vested in the Parish of Caddo to the lot of ground known as the public square [*i.e.* Shreveport Block 23] is of too precarious and uncertain a character to justify the erection of any public building there.”² By 1860, the Respondent constructed a courthouse on said lot. In 1868, the State of Louisiana declares the

² 18-30951 ROA. 995-ROA. 999; and 18-30951 ROA. 1016-ROA. 1052 (5th Cir.).

ordinance of succession as illegal and it establishes a civil government under Reconstruction.³

Constitution of the State of Louisiana Art. 148 (1868), provides:

The ordinance of succession of the State of Louisiana, passed twenty-sixth January, eighteen hundred and sixty-one is hereby declared to be null and void. The Constitution adopted in eighteen hundred and sixty-four, and all previous constitutions in the State of Louisiana, are declared to be superseded by this Constitution.

- (i) By 1877, home-rule returned to the State of Louisiana;
- (j) On June 18, 1903, the Petitioner asked for monies and land for the erection of the Confederate Monument and the Caddo Parish Police Jury “reserved for that purpose” the small plot of land where the Confederate Monument currently stands to the UDC;
- (k) Sometime in 1905, the Petitioner enclosed the complete Confederate Monument with a fence and sometime in 1935, the UDC acquired the ownership of the land underneath the Confederate Monument via acquisitive prescription because thirty (30) years have passed;⁴

³ Constitution of the State of Louisiana (1868) Art. 148 and Art. 154 respectively.

⁴ LA Civ Code Art. 3467 (1870); LA Civ Code Art. 3474 (1870); LA Civ Code Art. 3499 (1870); and LA Civ Code Art. 3500 (1870).

- (l) In May, 1954, Shreveport real estate broker Ike Lowenthal offered to secure a purchase of Shreveport Block 23 (on behalf of actress Zsa Zsa Gabor's second ex-husband Conrad Hilton) but no records proving ownership existed which brought negotiations to an end;
- (m) In 1958, the U.S. government recognized Confederate veterans as United States war veterans. *See*, 38 U.S.C. § 1501;
- (n) In 1962, the Louisiana Legislature passed LA R.S. 41:1323.4 (sales, transfers or exchange of public property by cities, towns, villages and police juries prior to twelve o'clock, noon, July 28, 1948). This law ratified the transfer of the land underneath the Confederate Monument to the UDC. Thus as a matter of law, the UDC owns the land based on LA R.S. 41:1323.4 too;
- (o) In 1970, the Second Circuit Court of Appeals for Louisiana failed to find that Caddo Parish owned Shreveport Block 23. *See, Akins et al. v. Caddo Parish Police Jury*, 234 So.2d 203;
- (p) In 2002, United Title of Louisiana, Inc. ("United Title") which found no written conveyances for neither the UDC nor Respondent to the Shreveport Block 23;
- (q) On October 19, 2017, Respondent passed Resolution No. 69 which ordered the petitioner to remove the Confederate Monument from the front of the Caddo Parish Courthouse on Shreveport Block 23. The UDC filed its lawsuit against the Caddo Parish Commission and the seven (7) commissioners, in their official capacity, who voted

in favor of Resolution No 69. *See, Jefferson Community Health Care Center, Incorporated v. Jefferson Parish Government, et al.*, No. 16-30875, 2017 WL 513888642 (5th Cir. 2017);

(r) On December 11, 2017, the district court held a hearing on the UDC's Motion for Preliminary Injunction. Prior to the hearing the district court ruled in favor of dismissing the seven (7) commissioners without addressing the U.S. Fifth Circuit legal precedent which allowed for a lawsuit against the said commissioners in their official capacity. *See, Jefferson Community Health Care Center, Incorporated v. Jefferson Parish Government, et al.*, No. 16-30875, 2017 WL 513888642, (5th Cir. 2017);

(s) On January 26, 2018, the district court denied the UDC's Motion for Preliminary Injunction which rejected the UDC's affirmative defense of laches⁵;

⁵ The district court wrote the following:

Finally, UDC argues that the common law doctrine of laches should be applied in this case. Lashes is an affirmative defense recognized in federal law, as well as in common law. However, the underlying issue in this case is of Louisiana law—the ownership of the plot where the Confederate Monument sits. UDC has cited the Court to no authority which would support the idea that a Louisiana court applying Louisiana law would allow it to use laches affirmatively to prove ownership of an immovable. *See generally* John T. Cross, The Erie Doctrine in Equity, 60 LA.L. Rev. 173, 232 n. 264 (1999) (“A federal court adjudicating a state-law claim makes an initial reference to state law to determine if laches and unclean hands are

(t) On April 19, 2018, UDC signed a quitclaim deed with four (4) heirs of Larkin Edwards which confers their ownership interest to the UDC.

The Petitioner is a non-profit named The Shreveport Chapter #237 of the United Daughters of the Confederacy or UDC. It has been responsible for the upkeep of the Confederate Monument and property. In 1903, the UDC requested that the Caddo Parish Police Jury provide monies and a plot of land for purposes of erecting the Confederate Monument in order to honor the Confederate soldiers who died during the American Civil War.⁶ Due to the fact that many

'complete' defenses that may be used against both legal and equitable claims. If the state law treats it as a complete bar, and the federal standard for laches or unclean hands is the same as the state, a federal court that ignored the defense would in effect be creating a substantive right.") Allowing UDC to affirmatively apply a common law defense in this case would be inconsistent with the law on acquisitive prescription discussed, *supra*. In other words, allowing UDC to affirmatively use the defense of laches against the Commission [*i.e.* respondent] would, in effect, result in a finding that UDC had obtained title or ownership to the plot where the Confederate Monument sits by acquisitive prescription. *See* 18-30951 R.O.A. 655-R.O.A. 656 (5th Cir.).

6 The pertinent of the Caddo Parish Police Jury minutes of the meeting on June 18, 1903 reads as the following:

The rules were suspended and Mr. W.H. Wise on behalf of the Daughters of the Confederacy made an earnest appeal for an appropriation of \$1000 for the Confederate Monument, at the same time requesting that the monument association be given the front plat or portion of court house square as a site for the monument.

Moved by J.S. Young that the \$1000.00 be allowed and

Confederate soldiers remained missing or remained buried in unmarked graves, the Confederate Monument provided a place for their families to honor their memories. Although there is controversy concerning the racial make-up of the Confederate military, history shows that Native Americans, Mexican-Americans, Native Hawaiians, Jewish Americans, and Irish Catholic immigrants served alongside southern whites within the ranks of the Confederate service.⁷ The Confederate Monument honors all Confederate service members regardless of race, creed, or national origin. For nearly a century no one disputed that the UDC owned the Confederate Monument and the land underneath it without controversy. In 2002, the Respondent paid for a title opinion which did not exclude the UDC as a landowner. Until 2018, the official website for the Respondent stated that the UDC owned the land underneath the Confederate Monument.⁸ On October 19, 2017, the Respondent passed Resolution No. 69 which ordered the UDC to remove its Confederate

the front plot of court house square be reserved for that purpose, which motion was unanimously adapted.
(underline added)

⁷ Cherokee Chief Stand Waties (1806-71), a principal chief of the Cherokee Nation, attained a general's rank in the Confederate States Army during the American Civil War.

⁸ Until 2018, the official website of Caddo Parish Commission stated that, "On the Texas Street side of the Courthouse Square is the Forty-six Confederate Veterans Reunion Monument. This monument commemorates the soldiers who lost their lives during the Civil War. A very interesting fact about the land on which this monument sits is that it does not belong to the Commission but to the Daughters of the Confederacy. However, this small piece of land is surrounded by the Courthouse Square."

Monument from Courthouse Square. Within the body of said Resolution No. 69, it alleges for political reasons that the Confederate Monument is “an object of division and a painful reminder of racial inequities locally and nationally” and “citizens would be better served if the monument was placed in a museum . . . instead of the Courthouse where justice is to be determined fairly and impartially.” The UDC filed its federal lawsuit claiming a deprivation of its First, Fifth, and Fourteenth rights under the U.S. Constitution pursuant to 42 U.S.C. § 1983 seeking a permanent injunction preventing the removal of the Confederate Monument. The UDC found that the Respondent’s decision to order the removal of the Confederate Monument in order to satisfy the opposing views of the respondent is not legitimately related to any government interest much less narrowly tailored to meet it.

Afterwards, the individually named Respondents filed a *Motion to Dismiss* the individual commissioners on November 15, 2017. On December 11, 2017, the district court heard the UDC’s *Motion for Preliminary Injunction*. The district court granted the individual commissioners’ *Motion to Dismiss*.⁹ The district court denied the UDC’s *Motion for Preliminary Injunction* on January 26, 2018. On May 31, 2018, the Respondent filed its *Motion for Summary Judgment*. On July 18, 2018, the district court heard oral arguments on it. On July 25, 2018, the district court granted the Res-

⁹ The district court concluded that, “In this case, the dismissal of the Commissioners streamlines the litigation and does not prejudice Plaintiff in the slightest to eliminate the Commissioners in their official capacities as defendants.” *See* App.32a.

ponent's *Motion for Summary Judgment*. The UDC filed its *Notice of Appeal* to the U.S. fifth Circuit on August 17, 2018. On March 7, 2019, the Fifth Circuit affirmed the district court ruling. On April 15, 2019, the Fifth Circuit denied the Petitioner's Petition for Rehearing.

At the time of the proceedings in the lower courts, the Court had decided *The American Legion v. American Humanist Association* where a war memorial had stood for almost one hundred years without controversy. *See, The American Legion v. American Humanist Association*, 588 U.S. ____ (2019). Based on the Court's ruling acknowledging the non-controversial history as evidence in *American Humanist Association*, the UDC avers it has standing without proving ownership of the land underneath the said monument under 42 U.S.C. § 1983 and two affirmative defenses to removal of the Confederate Monument: i) The affirmative defense that the Confederate Monument has stood on their property for almost a century without controversy and is now too fragile to move; and ii) the affirmative defense that the doctrine of *laches* can be asserted even where Louisiana law neither recognize it nor bars it.

Louisiana does not follow the common law tradition. Louisiana's civil law system does not have a civil law counterpart for every specific common law doctrine. The Louisiana civil law system does not have a civil law counterpart for *laches*.

At the time of the lower courts' decisions, the U.S. Supreme Court's decision in *Herrera v. Wyoming* had not been announced which would have precluded the lower courts from abrogating the Caddo Nation

Treaty. Under *Herrera v. Wyoming*, the Court states that Congress “must clearly express” an intention to end a treaty with a Native American tribe in order for the treaty’s rights to expire. *Herrera v. Wyoming*, 587 U.S. __ (2019) and *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999). The title of the land known as Shreveport Block 23 originated from said treaty and the UDC has standing under *United States v. Brooks* to assert a defense of “ejectment” under it. Larkin Edwards’ heirs and the Caddo Nation were not notified of the taking of their property interests by the Respondents. The district court’s ruling abrogated the said treaty without authorization from the U.S. Congress. On appeal the U.S. Fifth Circuit did not address the abrogation of said treaty.



REASONS FOR GRANTING THE PETITION

This Court should grant the petition to clarify whether Petitioner as owner of monuments has to be the owners of the land underneath the said monument too in order to have standing under 42 U.S.C. § 1983. This Court should grant the petition in order to clarify whether a party is allowed affirmative defense of *laches* when state law does not expressly permit it or bar it. This Court should further grant the petition in order to address whether or not a district court has the authority to abrogate the Caddo Nation Treaty.

First, this case presents an issue in direct conflict with the Court regarding statutory standing under 42 U.S.C. § 1983. This case presents opportunities for the Court to question a decision of the lower courts

which is in direct conflict with the U.S. Supreme Court on a similar important matter such as the case involving a group wanting the removal of a WWI monument due a perceived establishment clause violation. Under *The American Legion v. American Humanist Association* the lower courts would be compelled not to analyze the non-controversial historical association of the said monument with the site. *See, The American Legion v. American Humanist Association*, 588 U.S. ___ (2019). The Confederate Monument did not cause controversy for almost 100 years. The UDC registered it on the National Historic Registry in 2014.

Second, under *The American Legion v. American Humanist Association*, this case presents further opportunities regarding whether the petitioner can assert two affirmative defenses under 42 U.S.C. § 1983. Does the new legal precedence found in *The American Legion v. American Humanist Association* afford the petitioner's rights to assert two affirmative defenses: i) that the Confederate Monument has stood on their property for almost a century without controversy and is now too fragile to move; and ii) the common law doctrine of *laches* where the State of Louisiana neither recognizes it nor bars it?

Third, this case presents an opportunity for the Court to clarify whether a district court has the authority to abrogate the terms of the Caddo Nation Treaty without the U.S. Congress first terminating it. This case further presents an opportunity to question a decision of the United States court of appeals which is in direct conflict with the decision of the U.S. Supreme Court on a similar matter such as the case involving the termination of a treaty with Native

Americans without a congressional decision to do so under *Herrera v. Wyoming*. Prior to this lawsuit, the Caddo Nation Treaty has not been a subject of litigation since 1850. The U.S. Congress has not terminated the Caddo Nation Treaty. The district court did not consider the said treaty's legal existence without the Respondent notifying all of the interested parties such as Larkin Edwards' heirs and the Caddo Nation of its taking by Respondent. Shreveport Block 23 is the last piece of ancestral land of the Caddo Nation in which it has a property interest.

I. THIS CASE PRESENTS A CONFLICT REGARDING STATUTORY STANDING UNDER 42 U.S.C. § 1983.

The lawsuit involves Petitioner's claims pursuant to 42 U.S.C. § 1983 which allows a person whose constitutional rights have been deprived to bring an action to redress the constitutional deprivation. The UDC owns the Confederate Monument itself and for almost a century it stood without controversy. Historically Shreveport Block 23 was also the site of the headquarters of the Confederate Army's The Army of the Trans-Mississippi under the Department of the Trans-Mississippi during the American Civil War. The last major Confederate command to exist before it dissolved on May 26, 1865.

The Confederate Monument stands as a memorial to those Confederate service personnel who died during the American Civil War. Many families with dead Confederate soldiers either could not travel to his grave or no known grave existed for him. The Confederate Monument has four busts of Confederate generals on it, a statue of a lone Confederate enlisted man on the top, and the Greek Goddess Clio pointing to an

inscription. Like the Confederate Monument located in Arlington National Cemetery which depicts whites and African-Americans, the said monument honors all Confederate soldiers without distinction for either combat or non-combat roles, race, creed, or national origin. During the Eisenhower Administration, the U.S. Congress passed 38 U.S.C. § 1501(3) which classifies Confederate soldiers and sailors as U.S. war veterans. Thus, the Caddo Parish Confederate Monument honors U.S. war veterans.

In honor of the centennial of the U.S. Civil War, the Caddo Parish Police Jury allowed a Confederate Battle flag to fly next to the said Confederate Monument. The Confederate Battle flag flew until the Caddo Parish Commission ordered its removal in 2011. The Petitioner did not resist the chain-saw wielding Caddo Parish employee who cut down the flag pole.

In 2017, the Respondent passed Resolution No. 69 which ordered the UDC to remove its Confederate Monument. The said Resolution No. 69 states in part the following:

“WHEREAS, the Confederate Monument currently on the lawn of the Caddo Parish Courthouse serves as an object of division and a painful reminder of racial inequities locally and nationally;

WHEREAS, although historically significant, citizens would be better served if the monument was placed in a museum or at another site dedicated to memorials, instead of the Courthouse where justice is to be administered fairly and impartially;

WHEREAS, the Caddo Parish Commission wishes to end the constant debate on the placement of this monument.

NOW, THEREFORE, BE IT RESOLVED by the Caddo Parish Commission in due, regular and legal session convened, authorizes the Parish Administrator, assisted by the Parish Legal Staff, to pursue any and all legal means to remove the monument from Caddo Parish Courthouse Square.”

In response, the UDC filed its federal lawsuit claiming a deprivation of its First, Fifth, and Fourteenth rights under the U.S. Constitution. Prior to Resolution No. 69, the Louisiana Supreme Court considered whether or not the presence of the Confederate Monument (referred too as a “Confederate flag memorial”) had an impact on the trials of African-Americans in Caddo Parish. In 2011, the Louisiana Supreme Court did not find that the said Confederate Monument “outside the courthouse in Caddo Parish injects an arbitrary factor-race-into the capital sentencing decision” of defendant Felton Dejuan Dorsey. *See, State of Louisiana v. Felton Dejuan Dorsey*, No. 2018-KA-0216, Decided: September 07, 2011.¹⁰ In the more recent

10 In its *Dorsey* ruling, the Louisiana Supreme Court addressed the issue of “the presence of a confederate flag memorial outside the courthouse in [Caddo Parish] and wrote the following:

“In this assignment of error, defendant contends the presence of a confederate flag memorial outside of the courthouse in Caddo Parish injects an arbitrary factor-race-into the capital sentencing decision. Defendant argues this Court should, as a matter of greater protection afforded by state law, reject the burden of proof in *McClesky v. Kemp*, which requires a defend-

Anderson case, a Louisiana appellate court denied the defendant's supervisory writs review of a decision by a district court judge in Clinton, Louisiana. *See, In re: Ronnie Anderson, applying for supervisory writs, 20th Judicial District Court, Parish of East Feliciana*, No. 18-CR-685, writs denied; from defendant Ronnie Anderson in *State of Louisiana v. Ronnie Anderson*; Clinton, Parish of East Feliciana; 20th Judicial District Court; No. 2019 KW 0529. In *Anderson* the district

ant to establish specific evidence of discriminatory intent beyond discriminatory effect before being entitled to relief. 481 U.S. 279, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987). Defendant admits he cannot prove the confederate flag memorial was placed outside the courthouse with the intent to interpose racial considerations, to both intimidate prospective black jurors and prime white jurors to impose the death penalty, into his specific case. However, he argues it was placed there to remind all persons who approach the courthouse of an era when lynching and enslavement of blacks was permitted by law Although this Court can likely take judicial notice that the display of a confederate flag would be offensive to some, defendant did not raise an objection on this or any other related basis in the court below and is raising these concerns for the first time on appeal In *Segura v. Frank*, this Court noted, “[t]he general rule is that appellate courts will not consider issues raised for the first time on appeal.” 93-1271, p. 15 (La.1/14/94); 630 So.2d 714, 725 (citing *Fried v. Bradley*, 219 La. 59, 87, 52 So.2d 247, 257 (1950) (cases cited therein)) Since defendant failed to raise an objection regarding the confederate flag memorial in the district court, we find his claims regarding endemic racism are not properly before the Court. La. C. Cr. P. art. 841; *Segura*, 93-1271 at 15, 630 So.2d at 725; *cf. United States v. Williams*, 504 U.S. 36, 41, 112 S.Ct. 1735, 1738, 118 L.Ed.2d 352 (1992).”

judge rejected a motion by a black defendant Ronnie Anderson to move a case because he worried that the presence of a Confederate statue in front of the courthouse inhibits his ability to get a fair trial. *Id.*

Besides the state court findings that Confederate Monuments in front of courthouse do not inject an unfair racial animus into proceedings with African-American defendants, this Court should grant the petition for both clarifying whether owners of monuments have to be the owners of the land underneath the said monument too in order to have standing pursuant to 42 U.S.C. § 1983 when challenging a governmental body's order for removal of said monument for political reasons.

42 U.S.C. § 1983 allows a person whose constitutional rights have been deprived to bring an action to redress the constitutional deprivation without making a distinction that the complainant has to own all of the property that is the subject of a lawsuit pursuant to the said federal statute. There is no clear ownership of Shreveport Block 23 because the original owner died without signing any conveyance document for it. The original owner Larkin Edwards left seven (7) heirs and none of them have opened his estate for purposes of succession. Nothing in 42 U.S.C. § 1983 states that a complainant has to own all of the property involved in a lawsuit pursuant to said statute. Had Congress wanted to make such distinction it could have easily amended the law. It has not done so.

Due to the fact that the district court did not find that the UDC produced sufficient evidence that it owned the land underneath the Confederate Monument, the lower courts did not consider that the

respondent restricted the UDC's First Amendment rights on its private property. Thus, the lower courts did not address the Respondent's decision was based on content of its speech in violation of the First Amendment. The lower courts did not conduct a principal inquiry into determining content-neutrality in this speech case, and into time, place, or manner cases as to whether the respondent had adopted a regulation of speech because of its disagreement with the message it conveys or the government body's purpose. *See, Community of Creative Non-Violence, supra*, at 468 U.S. 295. The government's purpose of the Respondent is the controlling consideration. A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages, but not others. *See, Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 475 U.S. 47-48 (1986). Based on the district court's decision the Respondent did not have to prove that its government regulations of expressive activity is content-neutral so long as it is "justified without reference to the content of the regulated." *See, Community of Creative Non-Violence, supra*, at 468 U.S. 293 (quotation marks added); *Heffron v. International Society of Krisna Consciousness, Inc.*, 452 U.S. 640 (1981) quoting *Virginia Pharmacy Bd. v. Virginia Consumer Council*, 425 U.S. 748, at 771 (1976); *see Boos v. Barry*, 485 U.S. 312, 320-321 (1988) (opinion of O'Connor, J.). *Ward v. Rock Against Racism*, 491, 491 U.S. 781, 792 (1989). Based on the wording of Resolution No. 69 the Respondent's decision stems from an unsupported belief that the said monument represents slavery. The lower courts never analyzed this issue and it did not require the Respondent to present the

evidence of a rational basis for resolution No. 69. The lower courts further did not require the Respondent to show a balance between the ability to have the place of the message be part of the message and legitimate government concerns such as maintaining order or protecting the community against violence. *See, Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 294 (1984). The lower courts never analyzed said Resolution No. 69 in order to determine whether it contains vague, overly broad, and ambiguous language which leave no narrowly tailoring under the First Amendment. By excluding the UDC's standing under 42 U.S.C. § 1983 the district court ignored the lack of evidence whereby the Respondent has provided no rational basis to support its argument. The lower courts did not address the evidence presented by the UDC of interviews of former slaves from the area for none claimed that the said monument represented slavery.¹¹

By denying the Petitioner's standing under 42 U.S.C. § 1983, the district court did not address the fact that a large number of vocal protestors attended meetings where the respondent held open meetings concerning the removal of said monument in 2017. There is no place for a "hecklers' veto" under the First Amendment. The "heckler's veto" has been rejected by the Supreme Court of the United States as a legitimate basis for infringing upon First Amendment. *See, Cox v. Louisiana*, 379 U.S. 536 (1965). The Fourth Circuit recognizes that government officials may restrict expressive activity because of a threat of violence but

11 *See*, 19-30951 ROA. 1418-ROA. 1422 (5th Cir.) (i.e. interview of former slaves).

only if they have a reasonable belief that violence is imminent by those whose expression they seek to restrict, *See, Christian Knights of Ku Klux Klan Invisible Empire, Inc. v. Stuart*, 934 F.2d 318 (4th Cir. 1991) (heckler's veto not involved because real "threat" of violence was from Klan not spectators). Rather any real threat comes from the opponents of the said monument as evidenced by an act of vandalism committed on July 7, 2016. For the hecklers and vandals have shut down free speech with which they disagree by manufacturing threats to public safety.

By denying the Petitioner's standing under 42 U.S.C. § 1983, the district court ignored the evidence that the elimination of prior restraints was a "leading purpose" in the adoption of the First Amendment. *See, Lovell v. Griffin*, 303 U.S. 444, at 451-451 (1938). The Respondent's decision to order the removal of said monument without any announced procedural safeguards being in place to allow the Petitioner to contest the removal of it constitutes prior restraint.

"The loss of First Amendment freedoms, for even a minimal period of time, unquestionably constitutes irreparable injury." *See, Elrod v. Burns*, 427 U.S. 347, 373 (1976). The violation of First Amendment rights cannot be fully compensated later by damages. *See, e.g. Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir. 2011). In the Fourth Circuit, "[v]iolations of [F]irst [A]mendment rights constitute per se irreparable injury." *See, Johnson v. Bergland*, 86 F.2d 993 (4th Cir. 1978).

By denying the Petitioner's standing under 42 U.S.C. § 1983, the lower courts did not consider evidence that the said Resolution No. 69 did not permit the

UDC to appeal the respondent's arbitrary and capricious decision as to be unreasonable and oppressive that it constituted a violation of the UDC's rights to due process and equal protection under the Fourteenth Amendment. And by denying the Petitioner's standing under 42 U.S.C. § 1983, the lower courts did not consider that the said Resolution No. 69 did not permit the UDC to receive just compensation for the taking of its private property in violation of the Fifth Amendment. No other courts seem to have addressed this issue of having to prove complete ownership in order to have standing under 42 U.S.C. § 1983. For this reason the Court should resolve this important issue of statutory standing where the Petitioner is the conclusive owner of the Confederate Monument itself.

Under *The American Legion v. American Humanist Association*, the Court can and should conclusively resolve the question whether standing pursuant to 42 U.S.C. § 1983 relies on whether or not a district court can deny the owner of the said monument standing when it did not present sufficient evidence that it owned the land underneath the said monument. *See, The American Legion v. American Humanist Association*, 588 U.S. ___ (2019). In *The American Legion v. American Humanist Association*, the Court did not find that the American Legion had to prove that it owned the land underneath that monument in order to have standing pursuant to 42 U.S.C. § 1983. In the instant matter the lower court rulings seem to depart from the finding in *The American Legion v. American Humanist Association* because it improperly determined that the petitioner did not have standing

pursuant to 42 U.S.C. § 1983. This Court should resolve this important issue of statutory standing.

II. THIS CASE PRESENTS A CONFLICT REGARDING WHETHER TWO AFFIRMATIVE DEFENSES ARE AVAILABLE TO PARTIES UNDER “*THE AMERICAN LEGION V. AMERICAN HUMANIST ASSOCIATION*.”

Under *The American Legion v. American Humanist Association*, this Court can define the scope of the relevancy that history of a monument should be considered as evidence in a lawsuit pursuant to 42 U.S.C. § 1983. In the instant matter, the district court ignored any historical evidence of petitioner’s monument being directly tied to this site of its present location. The Confederate Monument sits on the site of the last Confederate flag flying at a Confederate capital city. For historical reasons both the site and the said monument have an inextricably link to the content of its message. The said monument’s present location serves as a priceless geographical artifact. The basis for the passage of Resolution No. 69 stems from an unsupported belief that the Confederate Monument represents slavery. The Respondent provided no evidence or historical records as a basis which shows that its actions were not content-neutral. The Respondent’s lack of the content-neutral conclusion is bolstered by the wording of the said Resolution which states, “. . . the Confederate Monument currently on the lawn of the Caddo Parish Courthouse serves as an object of division and a painful reminder of racial inequalities locally and nationally.” And finally the district court’s Ruling denying injunctive relief is not plausible under the law when a preliminary injunction is in the public interest. Courts have repeatedly

recognized that the vindication of First Amendment rights is a significant public interest. *See, e.g., Giovani Carondola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (“upholding constitutional rights surely serves the public interest.”); *Christian Legal Society v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006) (“[I]njunctions protecting First Amendment freedoms are always in the public interest.”); *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005); *Pacific Frontier v. Pleasant Grove City*, 414 F.3d 427, 436 (6th Cir. 2004). For these reasons, the Court should promptly act to protect this fragile monument from destruction at its historical location absent a finding that the reasons for demolition is content neutral and historically accurate. Under *The American Legion v. American Humanist Association*, this Court can and should resolve this issue concerning whether the public body ordering the removal of a monument must use historically accurate facts as a basis for its actions. The cursory treatment of the Confederate Monument has placed it in grave danger. This Court should act promptly especially when it involves a fragile historical object endangered for reasons unsupported by credible historical facts.

The Confederate Monument has been reduced to a fragile state due to being outdoors for over a century. The evidence presented shows that the irreparable harm to UDC if the said monument is removed for the removal constitutes a deprivation of its Fifth Amendment rights. The said monument cannot be removed without it suffering expensive damages to its structure. The Respondent wants to saw the Confederate Monument into small pieces and transport the pieces to a warehouse. The Respondent provides no funding to

compensate the UDC for the cost of demolition and storage of its pieces.

The Court should resolve the important issue of statutory standing promptly. Based on the study conducted by Mr. Michael Drummond Davidson who analyzed “the Civil War Memorial.” Expert Drummond found micro cracking to be evident in both granite and marble of said memorial. And as a result of his “visual condition survey and masonry evaluation of the granite and marble,” he concludes that further lab testing be done so the monument can be preserved intact; and “it would be unwise to take the said memorial down until lab work tells us more.”¹² He estimates that it would cost \$1,260,000.00 (absent costs for the new location) for the insurance and removal of the Confederate Monument which cannot be in one piece. Thus without standing under 42 U.S.C. § 1983, the UDC can not prevent the Respondent’s actions which constitutes an unconstitutional taking of the UDC’s property in violation of its Fifth Amendment rights which requires that the power of eminent domain be coupled with “just compensation” for those whose property is taken. *See, Kelo v. City of New London*, 545 U.S. 469 (2005). The instant matter is indistinguishable from *Kelo* because the Respondent has not found UDC’s private property to be either blighted or abandoned.

Since disassembly would destroy it, the Confederate Monument has to be moved in one piece. The UDC’s expert Mr. William Nichols studied and mea-

¹² See, Michael Drummond’s report in 18-30951 ROA. 1772-1849 (5th Cir.).

sured the said monument. Expert Nichols determines that the said monument weighed 62.9-tons and he wrote the following:

It is essential that the lifting equipment hired to move the monument be sized based on this largest “worst case” size of approximately 63-tons plus whatever measure of safety is applied to their equipment. If a 15% (85% of capacity) safety factor is applied 72.5-tons must be used to determine the lifting capacity of the equipment hired. The monument is 30 foot tall and must clear 40 foot tall trees, thus the worst case calls for a 70 foot lift.

... I feel that moving the Caddo Parish Monument poses many potential risks of damage, loss of property, logistics problems as well as legal issues and costs to the parish and its taxpayers and should not be attempted.¹³

Under *The American Legion v. American Humanist Association*, the Petitioner should be afforded all available related affirmative defenses under federal common law such as *laches* for any facts or evidence involving the non-controversial history in which the passing of time and the passing away of the witnesses prejudices the petitioner’s claim. The Petitioner is located in a state with a civil law system thanks to the edict of the Emperor of the French Napoléon Bonaparte. Not all common law doctrines have an equivalent civil law counterpart. In Louisiana civil law system, no

¹³ See, William Nichols’ report in 18-30951 ROA. 1472-ROA 1478 (5th Cir.).

state laws either permit or deny *laches*. In lawsuits involving a deprivation of constitutional rights pursuant to 42 U.S.C. § 1983, a Louisiana resident is not afforded the right to use *laches* as an affirmative defense. 42 U.S.C. § 1983 does not explicitly bar *laches* in jurisdictions that do not explicitly allow it. In light of *The American Legion v. American Humanist Association*, the Court can and should clarify whether a party can use *laches* as an affirmative defense in jurisdiction that do not explicitly bar it.

Usually *laches* applies as a defense against a plaintiff's claim in patent infringement cases. The federal common law doctrine of *laches* clearly applies to the respondent's belated (well over one hundred years!) claimed ownership of the property underneath the Confederate Monument which gave it the authority to order removal. In 1903, no evidence existed that the Respondent owned Shreveport Block 23. In 1970, the court in *Akins* mentions that the Respondent had "actual possession" (which is not a legal term conferring ownership in Louisiana law) of Shreveport Block 23. *See, Akins et al. v. Caddo Parish Police Jury*, 234 So.2d 203. The term "actual possession" in *Akins* is similar to "precarious possession" which means that the *Akins* court did not find that the respondent actually owned it. The Civil Code defines precarious possession as "[t]he exercise of possession over a thing with the permission of or behalf of the owner or possessor." *See, La.C.C.Art. 3437*. However, precarious possession is insufficient for acquisitive prescription. *See, Boudreaux v. Cummings*, 167 So.3d 559, 562 (La. 2015). By 2019, the Respondent has still not filed any legal document purporting to own Shreveport Block 23. And the Respondent has still offered no excuse

for its belated claims of ownership. In everyday language the doctrine of *laches* refers to “sleeping on one’s rights” especially when the UDC has occupied the said “front plat” since 1903.

The district court rejected the petitioner first raising the doctrine of *laches* in its *Motion for Preliminary Injunction* in the initial hearing.¹⁴ Louisiana’s civil law system does not bar *laches* and for this reason the petitioner should be afforded the opportunity to use *laches* as an affirmative defense in matters involving historical events which span decades. None of the Court’s decision has addressed this issue in light of *The American Legion v. American Humanist Association*. This Court should address the scope of *laches* in matters involving the contested removal of monument especially in matters where even the grand-children of the eye-witnesses have died too. Thus, due to the extremely stale property claims of the Respondent, the evidence supporting the Peti-

¹⁴ In this case the district court reasoned that, “(“A federal court adjudicating a state-law claim makes an initial reference to state law to determine if laches and unclean hands are ‘complete’ defenses that may be used against both legal and equitable claims. If the state law treats it as a complete bar, and the federal standard for laches or unclean hands is the same as the state, a federal court that ignored the defense would in effect be creating a substantive right.”) (underline added). Allowing UDC to affirmatively apply a common law defense in this case would be inconsistent with the law on acquisitive prescription discussed, *supra*. In other words, allowing UDC to affirmatively use the defense of laches against the Commission [*i.e.* respondent] would, in effect, result in a finding that UDC had obtained title or ownership to the plot where the Confederate Monument sits by acquisitive prescription. *See* 18-30951 R.O.A. 655-R.O.A. 656 (5th Cir.).

tioner has been lost to time and for this reason the Respondent's claim of property ownership prejudices the Petitioner's case. In the instant matter, the petitioner proves both prongs of *laches*: (1) the Respondent has slept on its rights for no excusable reason, and (2) the death of witnesses and loss of documents prejudice the Petitioner's case.¹⁵

III. THIS CASE PRESENTS AN OPPORTUNITY FOR THE COURT TO RESOLVE WHETHER A DISTRICT COURT HAS THE AUTHORITY TO ABROGATE THE TERMS OF AN INTERNATIONAL TREATY WITHOUT CONGRESSIONAL AUTHORITY.

This Court should grant the petition in order to resolve whether or not a district court has the authority to abrogate the Caddo Nation Treaty when the UDC has standing to assert it. After Larkin Edwards purportedly "sold his reservation" to the Shreve Town Company in 1836, Larkin Edwards signed a later document which declared that sale to be null and void in the clear language to that effect.¹⁶ Therefore, Shreveport Block 23 is still under the authority of the said treaty due to the nullification of the purported sale of the floating reservation. Thus, Larkin Edwards's heirs still retain an ownership interest in it and the Caddo Nation possesses a financial lien on their last plot of their ancestral lands. *See, United States v. Brooks*, 51 U.S. 10 How. 442 (1850). Accordingly, the UDC signed a

15 For a better discussion involving *laches*, *see Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. ____ (2014).

16 *See* the nullification of the previously mentioned sale, 18-30951 ROA. 10319-ROA. 1032 (5th Cir.).

quitclaim deed with four heirs of Larkin Edwards on April 19, 2019.

Since President Andrew Jackson and the Senate of the United States ratified the Caddo Nation Treaty in 1836, and the articles supplementary thereto, the said Caddo Nation Treaty “is part of the supreme law of the land, and as such must be respected and enforced by the courts of the United States.” *See, United States v. Brooks*, 51 U.S. 10 How. 442 (1850). Depending on the applicable law, the Supreme Court Chief Justice Roger Taney’s Court held that aboriginal title could sometimes be asserted as a defense in trespass, “ejectment”, and writ of right actions, even by those with no claim to title themselves.¹⁷ In 1840, all of the owners of the Shreve Town Company and Larkin Edwards signed a nullification of the said purported sale.¹⁸ Thus under the terms of the Caddo Nation

17 “ . . . That, as all the other defendants, besides Brooks, are his vendees, and hold title under him, if the jury think from the evidence that Brooks has no title to the land, then that the other defendants stand in the same category, and are also without title.” *See, United States v. Brooks*, 51 U.S. 10 How. 442 (1850). Under *Brooks*, the UDC has standing to use the Caddo Nation Treaty as a defense of ejection or evidence of ownership for the petitioner has a quit claim deed to the land underneath said monument.

18 On March 14, 1840 (filed on June 12, 1845), Larkin Edwards signed a document which declared that the sale of his floating reservation of 640 acres to Angus McNeil, Bushrod Jenkins, to the Commercial firm of Bennet & Cane composed of William Smith Bennet and James Huntington Cane, and to Captain Henry Shreve [*i.e.* all of the owners of the Shreve Town Company] to be “null and void and as though the same had never been passed, and I [*i.e.* Larkin Edwards] do hereby further bind myself, my heirs, executors and administrators, to pass and sign

Treaty and under *Brooks*, the floating reservation of 640 acres donated to Larkin Edwards remained under the provision of the said treaty except for the portions of immovable property conveyed under Louisiana law. By 1850, only one plot of land was still owned by Larkin Edwards' heirs subject to a possible financial lien of the Caddo Nation. No heirs of Larkin Edwards were notified of the taking of their property of Shreveport Block 23 by the Respondents. No notification of the Caddo Nation of the taking of Shreveport Block 23 by the Respondents happened. By not addressing the abrogation of the said Caddo Nation Treaty, the lower court's rulings in effect terminated the said treaty.

The Court can and should conclusively resolve the question whether the lower courts have the authority to abrogate an existing international treaty with a Native American nation without either informing all of the interested parties or under an express declaration of the U.S. Congress ending the terms of the said international treaty. Under *United States v. Brooks* the UDC has standing to assert a defense of "ejectment" under the authority of the Caddo Nation Treaty and it did. The petitioner informed the district court of the Respondents' failure to inform the heirs of Larkin Edwards and the Caddo Nation to this lawsuit. The district court did not address it. On appeal the U.S. Fifth Circuit did not address the

an authentic Act of Sale of the above mentioned tract of land before any Notary or other public officer duly authorized to receive and record contracts in the said State whenever I or they do hereby required to do so." Larkin Edwards never signed an Act of Sale because he died under mysterious circumstances in 1841.

abrogation of the Caddo Treaty either. During the litigation in the lower courts, the U.S. Supreme Court's decision in *Herrera v. Wyoming* had not been announced. Under *Herrera v. Wyoming* (which cited *Minnesota v. Mille Lacs Band of Chippewa Indians*), the U.S. Supreme Court states that Congress "must clearly express" an intention to end a treaty with a Native American tribe in order for the treaty's rights to expire. *Herrera v. Wyoming*, 587 U.S. ___ (2019) and *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999).¹⁹ *Herrera v. Wyoming* would have precluded the lower courts from abrogating the Caddo Nation Treaty whereby ejecting the UDC from its property.

Under *Herrera v. Wyoming*, the district court does not have the authority to abrogate the Caddo Nation Treaty without the U.S. Congress terminating said treaty. The lower courts' decision to ignore the existence of the Caddo Nation Treaty and failure to order the notification of all interested parties is inconsistent with the rulings held in *Brooks*, *Mille Lacs Band of Chippewa Indians*, and *Herrera v. Wyoming*. The lower courts' rulings suggest a split of authority based upon a review of *Minnesota v. Mille Lacs Band of Chippewa Indians* which looked at this issue. This Court should resolve this conflict on whether the lower courts have the authority to abrogate the terms

¹⁹ *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999), was a United States Supreme Court decision concerning the usufructuary rights of the Ojibwe (Chippewa) tribe to certain lands it had ceded to the federal government in 1837. The Court ruled that the Ojibwe retained certain hunting, fishing, and gathering rights on the ceded land.

of an international treaty especially when it involves the termination of a financial lien on the last parcel of the Caddo Nation's ancestral lands. This case affords this Court to properly determine the scope of the lower court's authority when it comes to abrogation.



CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari to resolve the conflict concerning important statutory and constitutional standing issues under 42 U.S.C. § 1983. And the Court should further grant this petition in order to resolve whether the affirmative defenses of historical non-controversy of a Confederate Monument and *laches* can be afforded to the Petitioner. In addition the Court should grant a writ of certiorari which calls for an exercise of this Court's supervisory power on an important federal question concerning the abrogation of an international treaty in a way that conflicts with relevant decisions of this Court in *Herrera v. Wyoming*.

Respectfully submitted,

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