No. 19-925

In the Supreme Court of the United States

KEBREAB ZERE,

Petitioner,

v.

DISTRICT OF COLUMBIA (D.C.),

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

PETITION FOR A WRIT OF CERTIORARI

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JANUARY 22, 2020

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QUESTIONS PRESENTED

1. Whether the due process law of the Fourteenth Amendment of the U.S. Constitution was violated when the District invoked D.C. Code § 47-1382(a)3 for its claim of public prescriptive easement on the total area of the lots?

2. Whether petitioner, Zere, deserved the right to compensation as per the taking clause of the Fifth Amendment of the U.S. Constitution?

3. Whether the District of Columbia violated the Fourteenth Amendment of the U.S. Constitution by filing a lawsuit of public prescriptive easement while eminent domain Bill 21-218 was still pending?

4. Whether the District of Columbia violated the due process law of the Fourteenth Amendment of the U.S. Constitution with regard to:

   a. To the tax sale of the lots in 1998, 2000, 2002, 2004 and 2007?

   b. To the declarations of the affiants and "The Dead Man's Statue" (D.C. Code § 14-302)?

   c. Giving constructive notice of the public prescriptive easement to the predecessor owners?

   d. The filing of public prescriptive easement for the first time?

   e. The testimony of Alice Kelly, Manager of Policy and Governmental Affairs at the District Department of Transportation (DDOT) on eminent domain Bill 21-218?

LIST OF PROCEEDINGS

Court of Appeals of the District of Columbia
No. 17-CV-829
Kebreab Zere, Appellant v.
District of Columbia, Appellee.
Date of Decision: June 6, 2019
Date of Rehearing Denial: October 28, 2019

Superior Court of the District of Columbia
Case No. 2016 CA 772 B
District of Columbia, Plaintiff v.
Kebreab Zere, Defendant.
Date of Decision: July 7, 2017

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PETITION FOR A WRIT OF CERTIORARI

Kebreab Zere, a pro se litigant, respectfully petitions this court for a writ of certiorari to review the judgment of the District of Columbia Court of Appeals. (*See* App.XX).

OPINIONS BELOW

The District of Columbia Superior Court granted summary judgment in favor of the District of Columbia on June 6, 2019. *See* App.XX.

Petitioner filed an appeal with the District of Columbia Appeals Court on July 24, 2017. The Appeals court affirmed the judgment of the Superior Court on June 6, 2019. *See* App.XX. The decision of the Appeals Court is reported as *Zere v. the District of Columbia*, 209 A.3d 94 (2019).

Petitioner filed a petition for rehearing en banc but was denied by the Appeals Court on October 28, 2019. *See* App.XX.

JURISDICTION

Kebreab Zere's petition for rehearing en banc to the Appeals Court of the District of Columbia was denied on October 28, 2019. Petitioner, Kebreab Zere, now invokes this court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of

certiorari within ninety days of denial of his petition for rehearing en banc by the District of Columbia Court of Appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth and Fourteenth Amendments to the U.S. Constitution require that no person be deprived of "life, liberty or property" without due process of law. Because historic resources are often privately owned, compliance with due process is an essential component of historic preservation law–especially in matters involving the regulation of historic properties under local preservation ordinances.

Courts recognize two distinct forms of due process. "Substantive due process" insists that governmental actions affecting an individual's constitutionally protected interests be rational or reasonable. "Procedural due process" requires that the means used by government officials in making and carrying out decisions affecting such interests be fair.

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 put twice 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.

§ 47-1378—Final Order

Upon the occurrence of the last event specified in § 47-1374(e), a plaintiff may be entitled to judgment foreclosing the right of redemption. An interlocutory order shall not be required. The judgment shall be final and conclusive on the defendants, their heirs, devisees, and personal representatives and they, or any of their heirs, devisees, executors, administrators, assigns, or successors in right, title, or interest, shall be bound by the judgment as if they had been named in the action and personally served with process.

§ 47-1379—Reopening Judgments

The Superior Court shall not open a judgment rendered in an action for foreclosure of the right of redemption, except on the grounds of lack of jurisdiction or fraud in the conduct of the action to foreclose; provided, that the reopening of a

judgment on the ground of constructive fraud in the conduct of the action to foreclose shall not be entertained by the court unless an application to reopen a judgment rendered is filed within 90 days from the date of the judgment.

§ 47-1303.03—Tax Deed

(a) The Mayor shall issue a deed for the bid off property sold pursuant to § 47-1303.02 to the person whose offer the Mayor accepts.

(b) The deed shall be prima facie evidence of a good and perfect title in fee simple to the bid off property.

STATEMENT OF THE CASE

A. Background

The lots which are the subject of this litigation are located in Washington D.C., Georgetown, between N Street and O Street on the south and north; and Potomac Street and 33rd Street on the east and west side. They are designated as square 1230, Lot 0804, 0814, 0818, 0820 and 0822. They are 22' by 142' for a total area of about 3100 square feet. They are unimproved, open and vacant lots. The lots were created in 1905, 1930, 1937 and 1940.

I am a bona fide buyer who bought square 1230, Lot 0818 and 0822 at a discount tax sale in 2004, which means the two lots were bid off by the District in 2002 but expired. *See* App.XX, XX, XX. I bought square 1230, Lot 0804, 0814 and 0820 at a regular

tax sale in 2007. I went to court to foreclose on the right of redemption and received judgment from the District of Columbia Superior Court. All defendants, including the District, had extinguished their rights, claims, estates and liens by the judgment order. *See* App.XX. The District issued Zere fee simple deeds between 2006 and 2012. *See* App.XX. The deeds were properly recorded at the District recorder of deeds, the office of tax and revenue and the surveyor's office between 2006 and 2012. Zere has been paying property tax, including back taxes, penalties and interest since 1997. Zere also paid water bills for several years. *See* App.XX. In addition to the deeds, Zere has a plat issued by the Surveyor's office which showed that the lots are private lots. *See* App.XX. On November 14, 2005, the District wrote a letter to Zere assuring him that Lots 0818 and 0822 are R3 zoned. *See* App.XX. The District gave 1314 Potomac Street N.W. address to Lot 0814 and 1315 33rd Street N.W. address to Lot 0822. *See* App.XX.

The predecessor owner, Katherine McCook Knox, acquired Lot 0804, 0814, 0818 and 0820 on April 19, 1963. She had also acquired residential property on October 21, 1937 described as square 1230, Lot 0819 with a street address 3259 N Street N.W. *See* App.XX. She died on July 9, 1983. *See* App.XX. The lots and the house were conveyed to her daughter, Kathleen K. Smith, on December 19, 1983 and on March 12, 1984, respectively. *See* App.XX. Kathleen Knox Smith died on October 6, 2002. *See* App.XX. Both of them used the lots as a driveway to their garage in their backyard, in common with their neighbors and the public. They implicitly gave permission to the neighbors and the public to freely traverse the lots. They never attempted

to enclose the lots. *See* App.XX admission 5 and 6. Thus they implicitly gave permission to the neighbors and anyone else to traverse the lots freely.

> "Where a claimant relies upon the presumption of adverse use, the landowner may rebut that presumption with contrary evidence of permissive use, either express or implied." See *Chaconas v. Meyers*, 465 A.2d 379, 382 (D.C. 1983).

But other than the declarations of the affiants which was made against the deceased prior owners, neither the District nor the affiants produced a shred of corroborative evidence which contradicted the implicit permission.

All the adjoining neighbors have street assess to their properties.

B. Nature of the Case

This is the first time the District filed a lawsuit of public prescriptive easement after issuing fee simple deeds on vacant lots. *See* App.XX interrogatories # 14 and 16, admission #4. After buying the lots, Zere, went to court to foreclose on the right of redemption and received judgment. The judgment was final as per D.C code § 47-1378 and it can't be reopened as per D.C. Code § 47-1379. The District was one of the defendants which extinguished its rights, claims, estates, interests and liens by the judgment order. The District accepted judgment and issued Zere fee simple deeds on the five vacant lots between 2006 and 2012. *See* App.XX.

But on February 2, 2016, the District filed a complaint for declaratory judgment alleging that it had established public prescriptive easement on the total

area of the lots in 1995. The District invoked D.C. Code § 47-1382(a)3 and claimed that it had not extinguished its claim of public prescriptive easement.

The purpose of the District's filing of the lawsuit it to deprive Zere of his hard earned investment without compensation.

C. Procedural History and Summary of the Case

On February 2, 2016, the District filed a complaint for declaratory judgment alleging that it had established public prescriptive easement on the total area of the lots in 1995. The District admitted that it was not contacted by any one of the Public prescriptive easement but the Office of the Attorney General became aware of the easement as the result of its investigation between August 2014 and January 2016. *See* App.XX interrogatories #14.

The District claimed that the public's long and continuous crossing of the lots was adverse and hostile. But these are general statements used in other prescriptive easement cases and have no relevance to the instant case because the laws and the facts are different. None of the authorities cited by the District deal with public prescriptive easement nor tax deeds. There are no precedent cases on tax deeds and public prescriptive easement.

The District's allegation is based solely on the declarations of three adjoining neighbors which were made against the deceased prior owners. Neither the District nor the affiants produced a shred of corroborative evidence to support the declarations. It is only the Office of the Attorney General which is making the allegation of the public prescriptive easement. Other-

wise, the lots are recorded as private lots at the District Recorder of Deeds, the Office of Tax and Revenue and the Surveyor's Office. On October 8, 2015, Alice Kelly, Manager of Policy and Governmental Affairs at the District of Transportation (DDOT), testified on eminent domain Bill 21-218 that the lots were not maintained by DDOT between 1980 and 1995, nor were they recognized as public alley. *See* App.XX # 2.

Therefore, there were numerous factual and law errors when the courts granted the District's complaint of public prescriptive easement as illustrated below:

i. This is the first time that the District had filed public prescriptive easement on tax deeds. *See* App.XX interrogatory # 16 and admission # 4. After buying the lots in 2004 and 2007, Zere went to court to foreclose on the right of redemption and received judgment from the District of Columbia Superior Court. The District was one of the defendants as per D.C. Code § 47-1371(g) which made no claim of public prescriptive easement at the time. It actually accepted the judgment and issued Zere fee simple deeds between 2006 and 2012. *See* App.XX. The judgment was final as per D.C. Code § 47-1378, and it shouldn't be reopened as per D.C. Code § 47-1379. Therefore, the District had already extinguished its claims, rights, estates and liens. *See* App.XX. But the same court erred by reopening the case and reversing the prior judgment.

ii. In this case, it was the District which sold Zere the lots and issued him fee simple deeds. That means the District granted Zere ownership of the lots, and when the District takes away the lots, it should compensate him the fair market value of the lots. But so far, the District's offer was to reimburse Zere the purchase price he paid more than 15 years ago, without even

adding interest. *See* App.XX interrogatory #7 at 4. Zere notified the court for compensation in his answer to the complaint, in his opposition to summary judgment and in the pre-trial statement but the courts denied him. *See* App.XX "H" at 10.

The Fifth Amendment of the U.S. Constitution reads in part:

> "Nor shall private property be taken for public use without just compensation."
>
> "A takings claim accrues where the Government's trespass is repetitive enough that it effectively diminishes the use of the property so that the conduct takes the easement." *See Silver Smith*, supra note 68, at 390 or causes a "substantial interference" with record owner's enjoyment of the land (*See United States v. Causby*, 328 U.S. 256 (1946). *See Palm v. United States*, 835 F.Supp. 512 (9th Cir. 1966).

iii. The Courts erred by basing their decisions solely on the declarations of three affiants because:

a. The affiants said they didn't ask for permission to cross the lots. But the lots are vacant, unimproved and open and thus the affiants didn't need to ask for permission to cross the lots because they were already given implicit permission. The affiants did not come up with concrete evidence which contradicted the implicit permission. They didn't say that they maintained the lots nor they did something else which could have alerted the previous owners that they trespassed the lots with a claim of public prescriptive easement. As a

matter of fact, when the lots were sold at tax sale in 1998, 2000, 2002, 2004 and 2007, 'tax sale Sign' and 'delinquent tax notices' were posted on the lots but no one showed up in court nor contacted the District. *See* App.XX, XX, XX. If the affiants had contacted the District, the District could have stopped the tax sale or cancelled it. The District admitted that it was not contacted by anyone but it became aware of the easement as the result of the investigation made by the Office of the Attorney General between August 2014 and January 2016. *See* App.XX interrogatories #14 at 7.

b. The court accepted the uncorroborated declarations of the affiants which was made against the deceased predecessor owners in violation of "The Dead Man's Statue" (D.C. Code § 14-302.) *See* App.XX "F" at 5.

"We think the statue permits a judgment based essentially on the survivor's testimony if there is other evidence from which reasonable men might conclude that his testimony is probably true." *Rosinski v. Whiteford*, 184 F.2d 700 (D.C. Cir. 1950). *See also Gray v. Gray* 412 A.2d 1208 (1980).

c. The District of Columbia Appeals Court stated that the declarations of the two affiants corroborated the testimony of Mr. Queenan. *See* App.XX at 9.

i. But affiant Mary Carter who moved into her property in 1996 wasn't even there between 1980 and 1995. *See* App.XX at

9. Therefore, the court should not have accepted her declaration.

ii. Affiant Gerald turner, who moved into his house in 1989 only lived for six years before 1995. Therefore, he didn't meet the 15 year statutory requirement. *See* App.XX at 9.

"The law governing the creation of prescriptive is clear." *Chaconas v. Meyers*, 465 A.2d 379, 381 (D.C. 1983). To establish the existence of prescriptive easement, the appellants must show that their use of the appeal's land was" . . . for the statutory period of fifteen years." *Id.* at 381 (citing D.C. Code 12-301(1) (other citations omitted)

iii. Affiant, Queenan, was one of the adjoining neighbors who supported eminent domain Bill 21-218. But he contradicted himself by making the declaration for public prescriptive easement.

The affiants' declarations are not credible because the affiants are adjoining neighbors who have vital interest in the outcome of the case who gave their declarations without corroborating with other evidence

d. The District sold the lots at tax sale in 1998, 2000, 2002, 2004 and 2007 while claiming that it had established public prescriptive easement in 1995. If the lots were public alley in 1995, the District shouldn't have sold the lots and collected property tax because public

alleys are exempted from tax, as per D.C. Code 47-1002(2). *See* App.XX. There were occasions where the District bid off the lots but it let them expire. *See* App.XX. As a matter of fact, Lot 0818 and 0822 were bid off by the District but the District resold the lots to Zere in 2004. *See* App.XX.

Therefore, the District violated the due process law of the Fourteenth Amendment of the U.S. constitution by repeatedly selling the lots while claiming that it had established public prescriptive easement on them. The District also failed to give constructive notice to the owners about the easement. On the contrary, the repeated tax sale should have made any one to assume that there was no claim of public prescriptive easement by the District.

e. The courts did not take into account the nature of the lots which were vacant, unimproved and open which make them vulnerable to trespassers. The nature of the lots has remained more or less the same ever since they were created in 1905, 1930, 1937 and 1940. The trespassing on these types of lots is presumed to be by permission unless there is concrete evidence to the contrary.

The rule governing prescriptive rights of way over such lands is thus stated by the Supreme Court of Illinois, in *O'Connell v. Chicago etc. R. Co.*, 184 Ill. 308, 56 N.E. 355:

> "The land in question, being unenclosed prairie land, the rule applies, which has been

held by this court in a number of cases, that, where land is vacant and unoccupied and remains free to public use and travel until circumstances induce the owners to enclose it, the mere travel across it, without objection from the owners, does not enable the public to acquire a public road or highway over the same. Such use by the public of vacant and unoccupied land by travel over it, even after a period of twenty years, is regarded merely as permissive. Such user continues to be regarded by permission of the owner until he does some act, or suffers some act to be done, by way of his asserting of ownership over the land thus used. In other words, there must be something more than mere travel over unenclosed lands by the public, in order to establish a public highway over the same by prescription."

"If it be true that the lands were unenclosed, the presumption is that the use was permissive, and, therefore, that no easement was acquired." *See Roediger v. Cullen*, 26 Wn. at 710-11.

"It is reasonable to infer that the use was permitted by neighborly sufferance or acquiescence." *Id.* at 707.

"The pass was created by 'neighborly usage,' and none of the persons claiming an easement had asked or received permission to cross the property of the homeowners." *Id.* At 692.

The Court further explicated the doctrine in *Wilson v. Waters*, 192 Md. 221, 64 A.2d 135 (1949).

> "It is true that some courts have ruled that the fact that land, over which a right of way is claimed, was "unenclosed" raises a presumption that the use was permissive. By that ruling, however, the courts have occasionally been misled to establish easements over vacant lots in urban districts, although the lots had been cleared and cared for. Thus it seems that the more appropriate term in such cases is "unimproved." *Wilson*, 192 Md. at 228, 64 A.2d at 138 (citation omitted). The Court explained in Wilson that because the lot in question was only 150 feet deep that the case was "not exactly like those cases in which the land over which the right of way is claimed is wild land, woodland, or other land in a general state of nature." *Wilson*, 192 Md. at 228, 64 A.2d at 138. We recognized, however, that "[i]n such cases it may be presumed that use of the land is permissive, because it is the custom of neighboring owners to travel over such land for pleasure or convenience, and the owners usually make no objection to their doing so."
>
> "In the case of unenclosed woodlands, permission is presumed because, otherwise, [a]n owner could not allow his neighbor to pass and repass over a trail, upon his open, unenclosed land without the danger of having an adverse title successfully set against him. Moreover, [a] landowner who quietly acquiesces in the use of a path, or road, across his

> uncultivated land, resulting in no injury to him, but in great convenience to his neighbor, ought not to have thereby lost his rights. *Forrester*, 98 Md. App.at 485, 633 A.2d at 915 (Internal quotations omitted."
>
> "If the possession is hostile, the legal owner and the possessor cannot simultaneously exercise control over the land. Thus permission negates hostility." *See Mary Moody Northern*, 244 Va. At 122, 418 S.E.2d at 865.
>
> "When possession is permissive in its inception, adverse possession will not arise until there is a distinct assertion of a right hostile to the owner and brought home to him." *See Dukeminier & Krier*, *supra* note 27 27, at 139 & 12, *See Shandaken Reformed Church of Mount Tremper v. Leone*, 451 N.Y.S.2d 227 (App. Div. 1082.)

vi. The court disregarded the testimony of Alice Kelly, Manager of Policy and Governmental Affairs at the District Department of Transportation which she made on October 8, 2015 at the D.C. City Council Committee of the Whole eminent domain Bill 21-218. She held high position at the District Government and thus her testimony should have been given more weight and credibility than the self-serving affiants. Her testimony in part read as follows:

> "DDOT records were not electronic and staff did not have electronic access to records in the Surveyor's records to determine that this was a private alley. A paper search of records in the Surveyor's Office would have been the primary way for DDOT to determine

this was in fact not a public alley." *See* App.XX #2

On July 7, 2017, The District of Columbia Superior Court granted summary judgment to the District for its claim of public prescriptive easement. *See* App.XX

On July 24, 2017, Zere, filed an appeal to the District of Columbia Court of Appeals.

On June 06, 2019, The District of Columbia Appeals Court affirmed the Superior Court's summary judgment.

On October 28, 2019, The District of Columbia Appeals Court denied Zere's petition for re-hearing by en banc.

Zere timely filed petition for a writ of certiorari to the U.S. Supreme Court.

REASONS FOR GRANTING THE PETITION

1. This is the first time the District issued fee simple tax deeds and claimed that it had established public prescriptive easement on the total area of vacant lots. *See* App.XX Interrogatory #16 at 7 and admission # 4 at 2. The District, which was a defendant when the lots were foreclosed on the right of redemption, had already extinguished its claims, as per D.C. Code § 47-1378, and the case can't be reopened as per D.C. Code § 47-1379. This court's intervention is important because there is a violation of the due process law of the Fourteenth Amendment of the U.S. Constitution.

2. This court's intervention is important because the Fifth Amendment of the U.S. Constitution was violated by denying Zere just compensation for inverse condemnation.

The District argued that acquisition by prescription is not a taking and does not require compensation to the landowner. *See* App.XX interrogatories #3 (e).

The District Appeals court stated that I forfeited my right to compensation because I did not raise it as compulsory counter claim in my answer to the complaint, but rather, first raised it in a motion to dismiss before the trial court. But I actually informed the court of my right to compensation in my answer to the complaint, in my opposition to summary judgment and in the joint pre-trial statement. *See* App.XX.

The taking clause of the Fifth Amendment of the U.S. Constitution states in part:

> "Nor shall private property be taken for public use without just compensation."
>
> The requirement of "just compensation" prevents the government from "forcing some people alone to bear burdens which, in all fairness and justice, should be borne by the public as a whole." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Regional planning Agency*, 535 U.S. 302, 320-21 (2002).
>
> Compensation Clause is "self-executing." *Harbert International v. James*, 157 F.3d 1271, 1278 (11th Cir. 1998). States must provide "means of redress" for deprivations of property because Just Compensation Clause is "self-executing. *Mann v. Haigh*, 120 F.3d 4,

> 34 (4th Cir. 1997). If a government or another entity with the power of eminent domain, such as utility company or railroad, takes possession before accruing title to the land . . . the owner has a constitutional right to sue for the land's value in an inverse condemnation.

Private property shall not be taken or damaged without just compensation. *See Clark v. Taylor*, 19 Ark. 298, 314 (1938).

3. This Court's intervention is important because the District violated the due process law of the Fourteenth Amendment of the U.S. Constitution by filing public prescriptive lawsuit while eminent domain Bill 21-218 was still pending. *See* App.XX.

On October 08, 2015 the District City Council Committee of the Whole held eminent domain hearing. Then on February 2, 2016, the District filed a complaint for declaratory judgment, alleging that it had established public prescriptive easement on the total area of the lots in 1995. The City Council is a co-branch of the District Government responsible for passing legislations and ensuring that there are checks and balances in the Government. But the Office of the District Attorney General filed public prescriptive easement lawsuit before getting the outcome of Bill 21-218 by violating the due process of law. There is a conflict of opinion between the City Council and the Office of the Attorney General.

4. The District violated the due process law of the Fourteenth Amendment because:

a. While claiming that the District had established public prescriptive easement on the

total area of the lots in 1995, the District sold the lots at tax sale in 1998, 2000, 2002, 2004 and 2007. *See* App. There were instances where the District bid off the lots, If the District wanted to use the lots for public purpose, it could have gone to court and foreclosed on the right of redemption but the District let the sale expire and resold the lots. As a matter of fact, Lot 0818 and 0822 were bid off by the District in 2004 as per D.C. Code § 47-1352 but expired. *See* App.XX & XX. Then the District resold the two lots to Zere in 2004. The deeds were prima facia evidence of a good and perfect title, as per D.C. Code § 47-1303.03.

b. Katherine McCook and her daughter Kathleen Smith owned the vacant, unimproved and open lots since 1963. The nature of the lots remained the same ever since they were created in 1905, 1930, 1937 and 1940 1930, 1937 and 1940. Neither the affiants nor the District produced a shred of evidence that they maintained the lots between 1980 and 1995, nor did they produce other corroborative evidence which could have alerted the owners that there was a claim of public prescriptive easement on the lots. Actually, the District sent delinquent tax notices to the predecessor owners when it sold the lots at tax sale in 1998, 2000, 2002, 2004 and 2007. These notices should have sent a message to the owners and the buyers that there was no claim of public prescriptive easement on the lots. In fact, the District admitted in

the Discovery that it was not contacted by anyone but it became aware of the public prescriptive easement as the result of the investigation made by the Office of the Attorney General between August 2014 and January 2016. See App.XX interrogatory #14. Therefore, the District failed to give constructive notice of the alleged easement to the previous owners.

c. Neither the affiants nor the District produced a shred of corroborative evidence to support the declarations of the affiants. Therefore, the affiants' declarations which were made against the deceased predecessor owners violated "The Dead Man's Statue." (D.C. Code § 14-302).

d. This is the first time that the District filed a lawsuit of public prescriptive easement after issuing tax deed on vacant lots. *See* App.XX admission #4. Therefore, the filing of the lawsuit was unreasonable and arbitrary.

e. The District and the court disregarded the testimony of Alice Kelly, Manager of Policy and Governmental Affairs at the District Department of Transportation (DDOT). She testified at the eminent domain hearing held by the District City Council Committee of the Whole on October 8, 2015 as follows:

> "DDOT records were not electronic and staff did not have electronic access to records in the Surveyor's records to determine that this was a private alley. A paper search of records in the

> Surveyors Office would have been the primary way for DDOT to determine this was in fact not a public alley."

But the District ignored the testimony of its high ranking official and filed the public prescriptive lawsuit.

CONCLUSION

Because of the foregoing reasons, I respectfully pray this court to grant my petition for a writ of certiorari.

Respectfully submitted,

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JANUARY 22, 2020