No. _____

IN THE

Supreme Court of the United States

ADRIAN PERKINS, in his official capacity as MAYOR OF THE CITY OF SHREVEPORT, LOUISIANA,

Petitioner,

v.

CELCOG, LLC, dba STRAWN'S EAT SHOP TOO, MONJUNI'S OF PORTICO, INC., AIR U SHREVEPORT, LLC, THE BRIAN TRAIN, LLC, and BEARING SERVICE & SUPPLY, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA COURT OF APPEALS, SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Nichole M. Buckle, Bar No. 305018
CARMOUCHE, BOKENFOHR, BUCKLE & DAY
One Bellemead Center
6425 Youree Drive, Suite 380
Shreveport, Louisiana 71105
Phone: (318) 629-0014
Fax: (318) 404-1571
nikki@cbbd.com

QUESTION PRESENTED

Whether the lower courts erroneously granted attorney's fees to Plaintiffs-Respondents pursuant to 42 U.S.C. § 1988(b), where Plaintiffs' Petition solely alleged violations of the Louisiana Constitution and Louisiana Revised Statutes, and Plaintiffs' Petition lacked any reference to the United States Constitution or federal law?

STATEMENT OF RELATED CASES

Celcog, LLC et al v. Perkins, No. 2022-C-00959, Louisiana Supreme Court. Writ denied November 1, 2022.

Celcog, LLC et al v. Perkins, No. CA 21-54254, Louisiana Court of Appeals, Second Circuit. Judgment entered May 18, 2022.

Celcog, LLC et al v. Perkins, No. 624,744-B, First Judiical District Court, Caddo Parish, Louisiana. Judgments entered December 18, 2020 and March 17, 2021.

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PETITION FOR WRIT OF CERTIORARI

Adrian Perkins, in his official capacity as Mayor of the City of Shreveport, Louisiana, respectfully petitions this Honorable Court for a writ of certiorari to review the judgment of the Louisiana Court of Appeals, Second Circuit.

OPINIONS BELOW

The Louisiana Supreme Court's denial (4-3) of the Petitioner's writ application is published at 349 So.3d 9 (La. Nov. 1, 2022), and is attached as Appendix A. The opinion of the Louisiana Court of Appeals, Second Circuit, affirming the First Judicial District Court's Judgment awarding attorney fees to Respondents is reported at 340 So.3d 1259 (La.App. 2 Cir. May 18, 2022), and is attached as Appendix B. The Judgment of the First Judicial District Court in Caddo Parish, Louisiana, is unreported, and is attached as Appendix C.

JURISDICTION

The Louisiana Supreme Court denied Petitioner's writ application (4-3) on November 1, 2022. *See* Appendix A. This Petition is timely filed within ninety (90) days of that order in accordance with Supreme Court Rule 13.1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257, as the state court erroneously granted Respondents' motion seeking attorney's fees pursuant to a federal statute, 42 U.S.C. § 1988, and the Applicant exhausted his state court remedies. *See* Appendix A.

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1988(b):

(b) Attorney's fees. In any action to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of the Public Law 92-318, the Religious Freedom Restoration Act of 1993, the Religious Land Use and Institutionalized Persons Act of 2000, title VI of the Civil Rights Act of 1964, or section 12361 of Title 34, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

STATEMENT OF THE CASE

Beginning March 11, 2020, in response to the COVID-19 pandemic, the Governor of Louisiana declared a statewide public health emergency and issued a series of "Stay at Home" orders. On or about July 8, 2020, in accordance with the recommendations of the Centers for Disease Control ("CDC") and the World Health Organization ("WHO"), the Petitioner, Mayor Adrian Perkins ("Mayor Perkins"), issued an executive order requiring that citizens wear masks or facial coverings when inside a business establishment in Shreveport, Louisiana ("the Order").

Following the issuance of Mayor Perkins'

executive order, on July 10, 2020, Plaintiffs-Respondents, Celcog, L.L.C. dba Strawn's Eat Shop Too, Air U Shreveport, LLC, The Brain Train, LLC, and Bearing Service & Supply, Inc., filed a Petition for Declaratory and Injunctive Relief in the First Judicial District Court, Caddo Parish, Louisiana, requesting an injunction and temporary restraining order pursuant to La C.C.P. art. 3603. The Petition specifically alleged that the mask mandate violated provisions of the Louisiana Constitution and Louisiana state law, as follows:

COUNT II – RIGHT TO DUE PROCESS OF LAW

* * *

42. **Article I, Section 2, of the Louisiana Constitution** provides that "No person shall be deprived of life, liberty, or property, except by due process of law."

43. The Order purports to permit enforcement by undefined measures.

44. The Order threatens to terminate or suspect protected property rights, including utility services, permits, and licenses without due process.

45. The Order is vague in that it requires determination of whether certain actions are "impractical."

46. **The Order poses a direct conflict with La. R.S. 14:313** and thereby

presents citizens with conflicting legal obligations.

COUNT III – EQUAL PROTECTION

***

48. The Order applies arbitrarily, capriciously, and without rational basis.

COUNT IV – RIGHTS TO FREE EXPRESSION, FREE EXERCISE OF RELIGION, AND TO ASSEMBLE PEACEABLY

* * *

50. **Article I, Section 7 of the Louisiana Constitution** provides: "No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but it responsible for abuse of that freedom."

51. **Article I, Section 8, of the Louisiana Constitution** provides: "No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof."

52. **Article I, Section 9, of the Louisiana Constitution** provides: "No law shall impair the right of any person to assemble peaceably[.]"

53. The Order purports to restrict the rights of citizens to assembly peaceably unless they undertake symbolic political activity.

54. The Order purports to command businesses to post signage with political content and/or to condition their right to do business on posting signage with political content.

55. The Order purports to permit large, risky protests without masks while requiring worshipers to wear masks at religious gatherings.

COUNT V – RIGHT TO PRIVACY

* * *

57. **Article I, Section 5, of the Louisiana Constitution** provides: "Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful person or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court."

> 58. Neither the Order nor any purported violation of the Order provides grounds for any fire marshal, police officer, or other government agent to search, inspect, or demand access to any private property.

(Appendix D) (emphasis added). Importantly, the Petition did not allege that the mask mandate violated any provision of the United States Constitution or any federal statutes or regulations, nor did the Petition contain any other reference to the United States Constitution or any federal statute or regulation.

The district court issued a temporary restraining order pursuant to La. C.C.P. art. 3603, and a hearing on the petition for preliminary injunction occurred on July 20, 2020. The sole issue before the district court was whether Mayor Perkins had the authority to issue the July 8, 2020 Order. The district court converted the previously granted temporary restraining order to a preliminary injunction, finding that Mayor Perkins lacked the authority to issue the July 8, 2020 Order and that the Order was "unconstitutional in that it violates separation of powers and Plaintiffs' constitutional rights to due process of law." (Appendix C). Mayor Perkins did not seek review of the district court's July 21, 2020 judgment and the underlying merits of the litigation pertaining to the Order are not at issue.

During the July 21, 2020 hearing, the district court correctly recognized, and Plaintiffs-Respondents'

attorney acknowledged,[1] that Louisiana law does not authorize recovery of attorney's fees in this type of proceeding.[2] Nevertheless, the district court allowed Plaintiffs-Respondents additional time to research and brief the issue of attorney's fees.

On September 18, 2020, Plaintiffs-Respondents filed a Motion for Attorney's Fees alleging that they were entitled to attorney's fees pursuant to 42 U.S.C. § 1988(b) on the grounds that their Petition asserted claims that were actionable under both state and federal law. (Appendix E). This was the first time that Plaintiffs had referenced a federal law in this action. Plaintiffs appeared to acknowledge that their Petition lacked any reference to the United States Constitution or to any federal statute, but nevertheless argued that "[d]ue process is both a state and federal claim, and a violation would be actionable under 42 USC 1988." (Appendix E, ¶ 3). Plaintiffs

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[1] Plaintiffs' counsel reported to the district court that he had conducted extensive research and he was unable to locate any statutory authority for an award of attorney's fees in this case.

[2] Louisiana law allows for recovery of attorney's fees only for the "wrongful issuance of a temporary restraining order or preliminary injunction," and only the fees incurred "for the services rendered in connection with the dissolution of a restraining order or preliminary injunction" are considered as an element of damages. La. C.C.P. art. 3608. There are no statutory provisions that allow a plaintiff to recovery attorney's fees, regardless of whether the plaintiff is a prevailing party.

further argued that Louisiana is a fact-pleading state, "so the allegations of the petition cover any relief to which Plaintiffs are entitled." (Appendix E, ¶ 3).

A hearing on plaintiff's Motion for Attorney's Fees was held on December 14, 2020. Plaintiffs-Respondents argued that the allegations in the Petitioner were sufficient to state a cause of action under federal law because the due process clause of the Louisiana Constitution is merely a codification of the due process clause of the United States Constitution. They alleged that the district court must have considered the United States Constitution in determining the constitutionality of the July 8, 2020 Order because of the similarities between the Louisiana and United States Constitutions. In response to Plaintiffs' motion, Mayor Perkins argued that Plaintiffs were not entitled to attorney's fees under 42 U.S.C. § 1988(b) because Plaintiffs' Petition failed to allege a single violation of the United States Constitution or any other claim arising under federal law, that Plaintiffs' suit did not arise under one of the specifically enumerated federal statutes identified in § 1988(b), that Plaintiffs were masters of their petition and chose to forego federal jurisdiction by intentionally and solely pleading violations of the Louisiana Constitution and Louisiana Revised Statutes, and that Plaintiffs should not be allowed to change the allegations of their Petition to include federal claims *after* a trial on the merits.

Despite the clear and unambiguous language of 42 U.S.C. § 1988(b), the district court erroneously granted Plaintiffs' Motion for Attorney's Fees. The district court conceded that Plaintiffs specifically

referred to only Louisiana statutes and the Louisiana Constitution in their Petition, but nevertheless stated that its July 21, 2020 ruling was an "implicit" finding that both the United States and Louisiana Constitutions were violated. On March 17, 2021, after Petitioner had an opportunity to traverse the invoices submitted by Plaintiffs' counsel, the district court awarded $36,000.00 of the approximately $41,900.00 in attorney's fees requested by Plaintiffs.

On appeal to the Louisiana Court of Appeal, Second Circuit, Petitioner argued that the district court abused its discretion in granting the Plaintiffs' Motion for Attorney's Fees under 42 U.S.C. § 1988(b) because that statute is inapplicable where the Plaintiffs' claims were made solely and specifically under the Louisiana Constitution and Louisiana Revised Statutes. On May 18, 2022, the Second Circuit Court of Appeal erroneously affirmed the district court's ruling that Plaintiffs were entitled to attorney's fees pursuant to 42 U.S.C. § 1988 and affirmed the judgment awarding $36,000.00 in attorney's fees to the Plaintiffs.

On June 17, 2022, Petitioner filed an Application for Writ of Supervisory Review with the Louisiana Supreme Court. Petitioner argued the ruling of the lower courts was manifestly erroneous and contrary to clearly established principles of federal law. On November 1, 2022, the Louisiana Supreme Court denied Petitioner's writ application in a 4-3 order.

REASONS FOR GRANTING THE PETITION

Although this case involves only an intermediate appellate court ruling from a Louisiana state court, two Louisiana courts[3] have now erroneously applied 42 U.S.C. § 1988(b) to allow parties to recover attorney's fees in actions brought solely under state law. The Louisiana appellate courts' application of § 1988(b) to state law claims is a glaringly egregious violation of § 1988(b) that defies principles of federalism and common sense. The error is, or should be, easily recognizable, but the Louisiana Supreme Court has twice refused to take action to correct the error committed by its lower courts.[4]

The precise issue presented in this matter involves an important question of federal law that has not been, but should be, settled and corrected by this Honorable Court in order to prevent other municipalities and state actors from suffering a similar injustice. (Rule 10(c)). If the decisions of the Louisiana intermediate appellate courts are allowed to stand, plaintiffs will be allowed to intentionally avoid pleading violations of federal law as a tactical decision, yet recover attorney's fees under federal law after a trial on the merits. Such action will be

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[3] *See Celcog, L.L.C. et al v. Perkins,* 340 So.3d 1259 (La.App. 2 Cir. 05/18/2022), *writ denied*, 349 So.3d 9 (La. 11/01/2022) (Appendices A and B); *and see Hughes v. Livingston Parish Sch. Bd.,* 459 So.2d 10 (La.App. 1 Cir. 10/09/1984), *writ denied,* 462 So.2d 1250 (La. 01/25/1985).

[4] *See Id.*

extremely costly for municipalities and state actors, will deprive them of defenses or remedies that would otherwise be available to them under federal law, and is contrary to the jurisdictional principles first enunciated by this Court more than a century ago. *See infra, Great Northern Ry. Co. v. Alexander,* 246 U.S. 276, 282, 38 S.Ct. 237, 62 L.Ed. 713 (1918).

Accordingly, pursuant to the Rule 10(c) of the Supreme Court Rules, Petitioner shows that it is imperative that this Honorable Court exercise its judicial discretion and grant the Petition for Writ of Certiorari in order to correct the material injustice resulting from the Louisiana courts' erroneous interpretation and/or application of 42 U.S.C. § 1988(b), and to settle a significant issue of law which has not previously been addressed by this Court.

ARGUMENT

I. The lower courts erred in finding that Plaintiffs' were entitled to attorney's fees pursuant to 42 U.S.C. § 1988(b) because that statute does not authorize recovery of attorney's fees for claims made solely and specifically under state law.

As a general rule, attorney's fees are not awarded in Louisiana unless they are authorized by statute or provided for by contract. *State, Dept. of Transp. & Dev. v. Wagner*, 2010-0050 (La. 5/28/10), 38 So.3d 240. In this case, Plaintiffs' counsel specifically acknowledged that there is no Louisiana law which permits an award of attorney's fees.

After acknowledging defeat on their claim for attorney's fees under state law, and after the trial on the merits, Plaintiffs-Respondents sought to take advantage of a federal statute, 42 U.S.C. § 1988(b), in order to recover attorney's fees. In the Motion for Attorney's Fees, Plaintiffs for the first time asserted that "due process is both a state and federal claim, and a violation would be actionable under 42 U.S.C.A. § 1988" (Appendix E), despite having specifically plead violations of the due process clause of the Louisiana Constitution only. *See* Appendix D. Plaintiffs' relied on the "allegations of violations of their constitutional rights in paragraphs 28, 35, 42-46, 50-55, 57-58, and 62 of the Petition" in support of their motion (Appendix E), but as outlined above, Plaintiffs intentionally asserted their claims only under the Louisiana Constitution and Louisiana Revised Statutes, and their Petition lacked a single reference to the United States Constitution or any federal statute.

Plaintiffs-Respondents drafted their Petition to avoid pleading any violation of federal law, presumably to avoid Mayor Perkins' removal of the suit to the U.S. District Court for the Western District of Louisiana. 28 U.S.C. § 1441(a) allows a defendant to remove "any civil action brought in a state court of which the district courts of the United States have original jurisdiction…to the district court of the United States for the district and division embracing the place where such action is pending." Pursuant to 28 U.S.C. § 1331, the district courts of the United States have original jurisdiction of suits involving federal questions. This Court has explained that "under the present statutory scheme as it has existed

since 1887, a defendant may not remove a case to federal court unless the plaintiff's complaint establishes that the case 'arises under' federal law." *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Trust for S. California*, 463 U.S. 1, 10, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983).

The well-pleaded complaint rule is well-established:

> [W]hether a case is one arising under the Constitution or a law or treaty of the United States, in the sense of the jurisdictional statute, ... must be determined from what necessarily appears in the plaintiff's statement of his own claim in the bill or declaration, unaided by anything alleged in anticipation of avoidance of defenses which it is thought the defendant may interpose.

Id., quoting *Taylor v. Anderson*, 234 U.S. 74, 75-76, 34 S.Ct. 724, 58 L.Ed. 1218 (1914). While the well-pleaded complaint rule restricts a defendant's ability to remove a case from state court, "a party may not fraudulently evade removal by drafting a complaint so that the true purpose of the lawsuit is artfully disguised." *Garner v. City of New Orleans*, No. CIV. A. 95-1257, 1995 WL 569209, at *1 (E.D.La. Sept. 27, 1995), citing *Villarreal v. Brown Express, Inc.*, 529 F. 2d 1219, 1221 (5th Cir. 1976).

"The plaintiff [is] the master of the claim," so he may confine his arguments to those arising under state law even if federal claims are available. "If [the plaintiff] so chooses, there is no basis for federal

jurisdiction." *Quinn v. Guerrero*, 863 F.3d 353, 359 (5th Cir. 2017) (emphasis added), citing *Caterpillar Inc. v. Williams*, 482 U.S. 386, 107 S. Ct. 2425, 96 L. Ed. 2d 318 (1987). As this Court explained long ago:

> The obvious principle of these decisions is that, in the absence of a fraudulent purpose to defeat removal, the plaintiff may be the allegations of his complaint determine the status with respect to removability of a case, arising under a law of the United States, when it is commenced, and that this power to determine the removability of his case continues with the plaintiff throughout the litigation, so that whether such a case nonremovable when commenced shall afterwards become removable depends not upon what the defendant may allege or prove or what the court may, after hearing upon the merits, in invitum, order, ***but solely upon the form which the plaintiff by his voluntary action shall give to the pleadings*** in the case as it progresses towards a conclusion.

Great Northern Ry. Co., v. Alexander, 246 U.S. 276, 282, 38 S.Ct. 237, 62 L.Ed. 713 (1918) (emphasis added). *See also, Quinn*, *supra* ("despite vague references to excessive force and the United States Constitution," the petition "d[id] not specifically list any federal causes of action or make any claims under federal law," thus plaintiff's original petition did not establish federal-question jurisdiction). *Id*.

In this case, Plaintiffs-Respondents carefully avoided allegations of any violation of the United States Constitution or any other federal law. As the

"master of the claim," it was Plaintiffs' choice to assert all of their claims, including due process claims, under only the Louisiana Constitution and Louisiana Revised Statutes. Based upon their voluntary and intentional pleading, there was no basis for federal jurisdiction. In the absence of federal jurisdiction, it reasonably and logically follows that there was no basis for an award of attorney's fees under federal law, and the lower court's ruling was contrary to the express language of § 1988(b) and contrary to established principles of federalism. *See e.g., Lexjac, LLC v. Bd. of Trustees of the Inc. Vill. of Muttontown*, No. CV 07-4614 (ARL), 2015 WL 13001537, at 5 (E.D.N.Y. Mar. 20, 2015) ("The Plaintiffs made a tactical decision … to have their right to an injunction determined based on the merits of their state law claims rather than on the merits of their civil rights causes of action. While that approach may have been advisable from a tactical standpoint, it certainly does not provide a legal basis for recovery of the attorneys' fees"); *Seaway Drive-In, Inc. v. Clay Twp.*, 791 F.2d 447, 450 (6th Cir. 1986) ("Had appellant not asserted a section 1983 claim, but instead asserted only the state law claims, or a federal law claim that is not listed in section 1988, and prevailed, it would not have been entitled to attorney's fees"); *Huffman v. Hart*, 576 F. Supp. 1234, 1234 (N.D. Ga. 1983) (plaintiff, who brought both a section 1983 claim and a pendent state-law claim of negligence against the defendants, may not be awarded attorney's fees under 42 U.S.C. § 1988 because he prevailed at trial only on the pendent claim); *see also, Sharp v. Town of Kitty Hawk,* 2011 WL 5520432, fn.1 (N.D.N.C. 11/14/11) (recognizing attorney's fees could not be awarded where "plaintiff's

complaint did not assert any claim which would trigger §1988's applicability").

Incredibly, the Louisiana Court of Appeals, Second Circuit, is not the only Louisiana court to have erroneously applied § 1988(b) to state law claims. In affirming the district court's award of attorney's fees to Plaintiffs, the Second Circuit relied upon the erroneous holding in *Hughes v. Livingston Par. Sch. Bd.*, 459 So. 2d 10 (La. Ct. App. 1984), *writ denied*, 462 So. 2d 1250 (La. 1985), decided nearly 40 years earlier, wherein the Louisiana Court of Appeals, First Circuit, found that Hughes had factually stated a demand for recovery under 42 U.S.C. § 1983 based upon an allegation that he was a victim of racial discrimination, even though the plaintiff made no reference to the United States Constitution or other federal law. Specifically, in that case, the Livingston Parish School Board was authorized by state statute to reapportion itself based upon the 1980 census. Hughes filed suit demanding that the board be reapportioned, and he alleged that the multi-member voting districts used for school board elections violated Article I, Section 3 of the Louisiana Constitution of 1974, and that he was "a victim of racial discrimination because of his race…" *Id.* at 11. After the underlying merits were resolved, the state district court awarded attorney's fees to Hughes, and the First Circuit affirmed, stating:

> The general rule of law is that attorney's fees are not allowed except when authorized by statute or contract. There is no contractual basis for attorney's fees in this case. Further, we are not aware of nor have we been cited to

> any Louisiana statute which would allow attorney's fees in an action of this kind based on Louisiana law would be erroneous.
>
> However, Hughes' petition clearly alleges discrimination based upon race due to the multi-member districts of the Livingston Parish School Board. The Louisiana Code of Civil Procedure sets forth a system of fact-pleading. LSA-C.C.P. arts. 854, 891, 1003, 1004. Pleading the theory of the case is rejected and recovery may be had under any legal theory justified by the facts pleaded in the petition. Accordingly, we find that Hughes factually stated a demand for recovery under federal law, specifically 42 U.S.C.A. § 1983.

Id. (internal citations omitted).

As demonstrated above, the decision in *Hughes* was contrary to the express language of § 1988(b) and is in direct conflict with principles established by the "well-pleaded complaint rule," yet the Louisiana Supreme Court has failed to correct the manifest injustice created by its lower courts.

Like the *Hughes* court, the Louisiana Court of Appeals, Second Circuit, also erroneously relied upon the notion of a state court's concurrent jurisdiction in support of its finding that Plaintiffs sufficiently pled a claim under 42 U.S.C. § 1983. While it is true that a state court may exercise jurisdiction over a § 1983 claim pursuant to concurrent jurisdiction, that principle does not extend the scope of state law claims to any possible federal law that may have been

available to a plaintiff. In this case, the district court did not and could not exercise concurrent jurisdiction over any federal claim because no federal claims had been asserted by Plaintiffs. The fact that the Louisiana Constitution and the United States Constitution provide similar due process protections is of no moment because Plaintiffs intentionally choose not to avail themselves, and intentionally chose not to allow Mayor Perkins to avail himself, of any claims, remedies, or defenses available under federal law.

In this case, Plaintiffs' claims referred specifically and solely to the Louisiana Constitution and Louisiana statutes. Plaintiffs' Petition does not even contain "vague references" to the United States Constitution or any other federal law. Rather, in paragraph 35 of their petition, Plaintiffs specifically requested "injunctive relief without the requisite showing of irreparable injury [because] the conduct sought to be restrained is unconstitutional or unlawful," and cited to the Louisiana cases of *Jurisich v. Jenkins*, 99-0076 (La. 10/19/99), 749 So. 2d 597, 599 and *South Cent. Bell Tel. Co. v. Louisiana Pub. Serv. Comm'n*, 555 So. 2d 1370 (La. 1990).[5] (Appendix D). There was no assertion of claims or right to relief under the United States Constitution or other federal

[5] These are both cases in which the courts examined whether the actions of a state agency violated the Louisiana Constitution. Neither case addressed any issue of constitutionality under the United States Constitution or provided that a violation of the Louisiana Constitution is automatically a finding of violation of the United States Constitution.

law. It is simply illogical that Mayor Perkins would have exposed himself to sanctions for removal based on the obvious lack of federal claims asserted by Plaintiffs, but that Plaintiffs could, post-trial, invoke a federal statute based on a federal claim that was never asserted or argued during the hearing on the merits of the underlying litigation. *See e.g., Whaley v. City of Burgin,* 2016 WL 3962938 (E.D.Ky. 7/21/16) (A vague reference to a "due process violation, which, generally speaking, could invoke state law, federal law, or both," but which "did not contain any reference to federal law or the United States Constitution, and did not use any similar descriptor to describe the due process claim," was insufficient to state a federal claim. The court further recognized that had the defendants attempted to remove the case to federal court based solely on the mention of "due process," defendants would have been exposed to potential sanctions.).

In order to obtain attorney's fees under 42 U.S.C.A. § 1988(b) there must a federal constitutional claim alleged that is sufficiently substantial to support federal jurisdiction. *See Maher v. Gagne,* 488 U.S. 122, 122, 100 S.Ct. 2570, 2571, 65 L.Ed.2d 653 (1980). Because Plaintiffs made a tactical decision to confine their allegations to include only those claims arising under state law, and sought relief only under state law, their claims did not "arise under" any federal law even though such claims may have been available to them, and Plaintiffs are not entitled to recover attorney's fees under § 1988(b).

CONCLUSION

The rulings of the Louisiana intermediate appellate courts, both in this matter and in *Hughes, supra,* (La.App. 1 Cir. 1985), are based on an erroneous interpretation of 42 U.S.C. § 1988(b) and is contrary to the principles established by federal jurisprudence. The Louisiana Supreme Court has failed to correct the errors committed by its lower courts, and the precise issue presented in this matter is one that has never been, but should be, settled by this Court.

WHEREFORE, the Petitioner, ADRIAN PERKINS, prays that his Petition for Writ of Certiorari be granted, that this Honorable Court review the erroneous rulings of the Louisiana courts concerning this significant issue of federal law, and that this Court issue an opinion reversing and correcting the rulings issued by the lower courts.

Respectfully submitted,

Nichole M. Buckle
Bar No. 305018
CARMOUCHE, BOKENFOHR, BUCKLE & DAY
One Bellemead Center
6425 Youree Drive, Suite 380
Shreveport, Louisiana 71105
Phone: (318) 629-0014
Fax: (318) 404-1571
nikki@cbbd.com