IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3067

INTERNATIONAL PRIMATE PROTECTION LEAGUE,
PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS
and LOUISIANA IN SUPPORT OF ANIMALS,

Plaintiffs-Appellants,

versus

ADMINISTRATORS OF THE TULANE EDUCATIONS FUND,
NATIONAL INSTITUTES OF HEALTH and INSTITUTES
FOR BEHAVIOR RESOURCES, INC.,

Defendants-Appellees.

Appeal from the United States District Court for
the Eastern District of Louisiana
(CA-91-2966 "L" (2))

(May 9, 1994)

Before REAVLEY and JOLLY, Circuit Judges, and PARKER[*], District Judge.

PER CURIAM:[**]

The facts of this case are adequately set forth in *International Primate Protection League v. Administrators of the Tulane Educ. Fund*, 895 F.2d 1056, 1057-58 (5th Cir. 1990). The

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[*] Chief Judge of the Eastern District of Texas, sitting by designation.

[**] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Supreme Court reversed our judgment and remanded the case to state court. *International Primate Protection League v. Administrators of Tulane Educ. Fund*, 111 S. Ct. 1700 (1991). Tulane then removed the case to federal court under 28 U.S.C. § 1442(a)(1). The district court determined that removal was proper and dismissed the suit for lack of standing. The International Primate Protection League appeals. We affirm.

I. Removal under § 1442(a)(1)

For Tulane to remove under § 1442(a)(1), it must be (1) a person (2) acting under a federal officer (3) for an act under color of such office. 28 U.S.C. § 1442(a)(1). Tulane, as a corporate entity, is "a person" within the meaning of § 1442(a)(1). *See Ryan v. Dow Chem. Co.*, 781 F. Supp. 934, 946-47 (E.D.N.Y. 1992); *see e.g., Peterson v. Blue Cross/Blue Shield of Texas*, 508 F.2d 55, 58 (5th Cir.), *cert. denied*, 422 U.S. 1043 (1975); *Texas v. National Bank of Commerce of San Antonio*, 290 F.2d 229, 231 (5th Cir.), *cert. denied*, 368 U.S. 832 (1961).

Next, we must determine whether Tulane was "acting under" a federal officer. While we review the propriety of the removal *de novo*, we review the court's findings of fact relating to the jurisdictional issue for clear error. *See MDPhysicians & Assc., Inc. v. State Board of Ins.*, 957 F.2d 178, 180-81 & n.2 (5th Cir.), *cert. denied*, 113 S. Ct. 179 (1992); *Williamson v. Tucker*, 645 F.2d 404, 412-17 (5th Cir.), *cert. denied*, 454 U.S. 897 (1981). "Acting under" as used in § 1442(a)(1) means the federal officer directs or exercises substantial control over the party's

actions. *See Camacho v. Autoridad de Telefonos de Puerto Rico*, 868 F.2d 482, 486 (1st Cir. 1989); *Ryan*, 781 F. Supp. at 947-50; *Noble v. Employers Ins. of Wausau*, 555 F.2d 1257, 1258-59 (5th Cir. 1977); *see e.g., Peterson*, 508 F.2d at 57; *Bank of Commerce*, 290 F.2d at 231.

The National Institute of Health (NIH) and Tulane entered into a letter agreement that specifically sets forth Tulane's duties as an "aide to NIH," and it states that Tulane must obtain NIH's permission before performing any activity other than the custodial care of the monkeys. Further, NIH officials participated in and directed the euthanasia of the monkeys; Tulane provided the facilities and support staff. Based upon the letter agreement and NIH's participation in the euthanasia of the monkeys, we cannot say that the court clearly erred. *See Bank of Commerce*, 290 F.2d at 231 (holding that detailed letter agreement showed that bank was "acting under" a federal officer). Removal was proper under §1442(a)(1).

II. Standing

Appellants argue that because they have standing under state law, they should be accorded standing to pursue their claim in federal court. In the previous appeal, the Supreme Court noted that this was an open question, which was not before the Court. *Primate Protection*, 111 S. Ct. at 1074-75 n.4. The Supreme Court reversed our judgment on a federal *agency's* right to remove under § 1442(a)(1), but left intact our ruling on standing. We are,

therefore, bound by our previous holding under the "law of the case" doctrine. *See Falcon v. General Tel. Co.*, 815 F.2d 317, 319-20 (5th Cir. 1987) ("[I]t would not do well for the morale or credibility of the judiciary to have one panel of Circuit Judges second-guessing another panel from the same circuit on the same question of law in the same case."). Appellants lack standing and the district court properly dismissed the suit.

AFFIRMED.