



# United States Proxy Exchange

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Press Release – USPX to File *Amicus Curiae* Brief in Apache vs. Chevedden

**February 23, 2010**

Yesterday, Judge Lee Rosenthal of the Federal District Court in Houston issued an order granting the United States Proxy Exchange (USPX) leave to file an *amicus curiae* (friend of the court) brief in Apache vs. Chevedden. The USPX had petitioned the court for leave on February 16, stating in part:

*Amicus curiae* filings are often appropriate in cases where one party is *pro se* or where a decision might impact parties that are not litigants. Both conditions are present in this case. Mr. Chevedden is representing himself, and an adverse decision could impair property rights of most shareholders in the United States in ways the court should be made aware of.

The directors, staff and volunteers of the USPX have extensive experience with SEC Rule 14a-8 resolutions. Their perspective and expertise are complementary to, but not duplicative of, the analysis given by the parties and might assist the court in deciding this case.

The USPX is a non-government organization, incorporated in the Commonwealth of Massachusetts, dedicated to facilitating the exercise of shareholder rights, primarily through the proxy process.

Apache's lawyers have advanced the position—contrary to standard practice followed with shareowner resolutions for years—that a broker letter is not acceptable evidence of share ownership. An ambiguous sentence in SEC Rule 14a-8 states that beneficial shareowners who are not owners of record must prove ownership by submitting “a written statement from the ‘record’ holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year.” For almost all retail and institutional shareowners, the owner of record is Cede & Co. But Cede & Co. has no information about beneficial owners. Apache's lawyers have not explained how Cede & Co. would provide letters confirming matters of which they have no knowledge. Apache's lawyers have not addressed whether Cede & Co.—even if it had such information—would be willing to participate in the shareowner resolution process in this way. There are no SEC rules requiring them to do so!

An adverse ruling in Apache vs. Chevedden might undermine the use of broker letters while not providing any clear alternative. This could have a chilling effect on all shareholders' ability to submit shareowner resolutions. John Chevedden is heroic standing up to Apache and its lawyers. All shareowners owe him their gratitude, not only for his efforts in this case, but for his tireless work on their behalf over many years of submitting shareowner resolutions.

However, *pro se* litigants are rarely successful. With John Chevedden representing himself against high-priced Houston lawyers, the potential for an adverse ruling was significant. Now that the USPX is involved, all shareowners can breath a little easier. That doesn't mean we are out of the woods, but shareholders now have an independent and authoritative voice advocating for their rights before the bench.

For further information, please contact USPX Executive Director Glyn A. Holton at 617.945.2484 or [mail@glynholton.com](mailto:mail@glynholton.com).