

## REMOVAL OF ACTIONS TO FEDERAL COURT

In the past I found it necessary to determine whether a criminal case pending in a State court could be removed to the federal court, by one who has the right of citizenship according to the Preamble of the State and United States Constitutions, respectively rather than the Fourteenth Amendment.

In an effort to help Citizens avoid following procedures detrimental to their cause and status, I will relate my findings to you here.

Removal of causes to federal district court from a State court are governed by 28 USC § 1441-1452, and, once a case has been removed, if criminal in nature, it will be governed by the rules of criminal procedure in 18 USC (rule 54 of the Federal Rules of Criminal procedure).

Most recent to the adoption of the Constitution for the United States of America (1787), Congress passed the 1789 Judiciary Act found at 1 Stat. 73 (1st volume of the United States Statutes at Large, page 73), passed on September 24, 1789. In section 12 of that Act, we find the only clause allowing removal of cases from State courts to the federal courts.

Section 12 shows that the only time removal could be had was if: (1) the value in controversy exceeded 500 dollars; and, (2) the suit was commenced in a State court against an alien, or if there was diversity of citizenship (parties were citizens of different States); or, (3) if either party claims that he shall rely on a right or title to land under a State from a State other than the in which the suit is pending.

From this you can see that the only cause for removal was an alien being a

party, diversity of citizenship, or diversity in a land claim, and that the removal was only allowed in civil cases. These are the only claims that are properly removable without alleging Fourteenth Amendment citizenship, the status of statutory "person," or that charges were brought pursuant to legislation finding basis in the Fourteenth Amendment; here is the reason why.

The only other section of 28 USC that allows removal of criminal cases from State court is section 1443, entitled civil rights cases. This section allows the removal of cases on the ground that the party cannot enforce a "right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof; or that the suit pending is for an act claimed to be allowed by any law providing for equal rights, or for refusing to do such act.

In tracing the history of 28 USC § 1443, and its related sections, we find ourselves referring to the 1911 Judiciary Act (36 Stat. 1087). 28 USC, section 1443 finds basis in section 31 of the 1911 Act, which uses basically the same language as 28 USC, section 1443. It should be noted that this legislation was made after the adoption of the Fourteenth Amendment and finds its authority based upon "civil rights," not natural or common law rights. As referred to in the removal legislation, civil rights are those privileges and immunities protected by the Fourteenth Amendment for artificial citizens and artificial persons (see the preamble to the 1st Civil Rights Act, 14 Stat. 27).

When we look at 28 USC § 1441 we see that one of the causes for removal of a civil rights case is "local prejudice;" The historical and revisor

's noted  
 in Title 28, published by West's Publishing Company, shows that removal for local prejudice was brought about in the reconstruction era after the Civil War, because of the prejudices related to the war. I can confidently say that this legislation finds basis in the Fourteenth Amendment and suits brought under its authority.

In 28 USC § 1442, removal is allowed if an officer of the United States, or any agency thereof, or person acting under him, is being prosecuted for an act under that authority. Note, prior to the Civil War, the State courts were left free in their sovereign capacity to determine whether an official of the United States acted lawfully.

This within the original intent of the Constitution for the United States of America, since the States adopted the Constitution for the United States of America and conferred power on the United States. Who would know better than the States what authority was actually conferred? Furthermore, the State could enforce the rights of its own Citizens under the Ninth and Tenth Articles of the Bill of Rights, without interference from, or deference to, the federal courts.

But, since the adoption of the Fourteenth Amendment, the States have been deprived of their sovereignty to the point where the newly created National government decides what its own authority is. How does the thing created (federal government) presume to determine its own authority above the edicts of its creators (We the People)? This the federal government could not do. But, after the revolution of the Civil War, a "national government" was created (in place of the federal government), which claimed power

regardless of whether the several States even existed (see the definition of "National" and "Federal").

Thus, I have reached the following conclusions, where the question presented is the removal of causes to federal court: (1) a Citizen within the meaning of the Preamble cannot remove a criminal case to federal court, except possibility where there is a diversity of citizenship or diversity of land claims; (2) if a Citizen is charged with a civil rights violation, he would be better off adjudicating it in the State court and demanding State sovereignty and the rights protected by State sovereignty; (3) where a federal officer is being sued for acting in excess of his official capacity it should be held to State court for the same reason as in #2 above; and, (4) the only cases a Citizen should remove to the federal courts are those mentioned in section 12 of the 1789 Judiciary Act.

To find equivalents to the removal statutes of 28 USC, sections 1441-52, refer to the 1911 Judiciary Act, sections 2839 (36 Stat. 1094-99). To determine which portions of 28 USC, sections 1441-52 are usable, see the 1789 Judiciary Act, section 12 (1 Stat. 79-80).

For those of you that do not have ready access to a law library, the Judiciary Acts cited herein are available from BEHOLD! For any of you contemplating removal of a cause to federal court, or those of you being forced to remove a case to federal court, it is imperative that you research this information for yourself, to prepare a defense against removal.

February 1994

B E H O L D !

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### § 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of

1. Article 3 Sec 2 of U.S. Constitution states  
 when a state is against a citizen  
 a) Court of original jurisdiction is  
 U.S. Supreme Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JOHN W. DODSON,  
1976 West Silver Rose Place  
Tucson, AZ 85737,

Plaintiff,

Civil Action No.

v.

U.S. DEPARTMENT OF JUSTICE

respect to the remainder of his FOIA requests, which have been assigned FOIA Case Numbers  
AG/12-01459, DAG/12-01460, PAO/12-01462, OLA/12-01463, PAO/12-01437, and  
PAO/12-01435, pursuant to 5 U.S.C. § 552(a)(6)(C).

**COMPLAINT**

Plaintiff John W. Dodson brings this action against Defendant U.S. Department of Justice to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As grounds therefor, Plaintiff alleges as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

**PARTIES**

8. Defendant was required to determine whether to comply with Plaintiff's requests within 20 days of receipt of his requests, excepting Saturdays, Sundays, and legal public holidays, pursuant to 5 U.S.C. § 552(a)(6)(A). Pursuant to this same provision, Defendant also was required to notify Plaintiff immediately of the determinations, the reasons therefor, and the right to appeal any adverse determinations to the head of the agency. Excluding weekends and the intervening Veterans Day (November 12, 2012) holiday, Defendant was required to make its determination and provide Plaintiff with the requisite notifications by November 21, 2012.