**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF GEORGIA -- ATLANTA DIVISION**

| | | |
|---|---|---|
| WILLIAM M. WINDSOR,<br>Plaintiff | ) | |
| v. | ) | CIVIL ACTION NO. |
| JUDGE WILLIAM S. DUFFEY, et al,<br>Defendants. | ) | 1:11-CV-01922-TWT |

**EMERGENCY REQUEST FOR CONSENT TO FILE MOTION FOR RECONSIDERATION OF ORDER TO SHOW CAUSE**

William M. Windsor ("Windsor" or "Plaintiff") hereby files this REQUEST FOR CONSENT TO FILE MOTION FOR RECONSIDERATION OF ORDER TO SHOW CAUSE.

1. On October 17, 2011, an ORDER was entered (Docket #113) ordering Windsor to show cause by October 31, 2011 (14 days from docketing).

> "ORDER the Plaintiff is ordered to show cause within 14 days why this action should not be dismissed for failure to serve the remaining Defendants. The response is limited to 10 pages including any attachments. Signed by Judge Thomas W. Thrash, Jr on 10/14/11. (dr) (Entered: 10/17/2011)."

2. The ORDER limits Windsor's response to 10 pages, but this Court has no legal authority whatsoever to limit the number of pages and the evidence necessary to respond. There is no statute and no case law to allow such an order,

and it violates the Constitution and rights granted under the Bill of Rights. It is a clear violation of the rights to due process.

3. The Clerks of the Court refuse to docket or process anything that Windsor files. But Windsor will be delighted to present the proof at the hearing on the Order to Show Cause.

**4.** Windsor immediately attempted to serve all parties with the Summons and Verified Complaint, and Windsor has documents to show several of the Defendants took steps to avoid service.

5. All parties were immediately notified of this Civil Action by personal delivery immediately after filing. All parties have been served. Knowledge of the Verified Complaint was received from various letters and emails. The proof of all of this takes far more than 10 pages. Exhibit A hereto includes true and correct copies of just some of the documents that Windsor needs to file and explain.

6. Windsor needs an order of the Court to authorize discovery.

7. Windsor must have the Clerk of the Court issue subpoenas so Windsor can conduct depositions to obtain evidence needed for the response to the order to show cause.

8. This Civil Action is on appeal. A district court has no jurisdiction to dismiss parties when a civil action is on appeal. (*Huff v. Dekalb County, Georgia*,

516 F.3d 1273 (11th Cir. 02/15/2008); *Williams v. Brooks*, 996 F.2d 728 (5th Cir. 1993).)

9. FED. R. CIV. P. Rule 4(m) mandates an extension of time for plaintiffs who show good cause. (***Lemoge v. United States***, 587 F.3d 1188, 1198 (9th Cir. 2009).) A plaintiff may be required to show the following factors to bring the excuse to a level of good cause:

> "(a) the party to be served personally received actual notice of the lawsuit; (b) the defendant would suffer no prejudice; and (c) plaintiff would be severely prejudice if his complaint were dismissed."

10. All parties received actual notice of the lawsuit. No Defendant suffered any prejudice nor will suffer any prejudice. This is merely a declaratory judgment action that does not even require an answer from a defendant before a judge may issue an opinion and order in the matter. Windsor will suffer severe prejudice if this Civil Action is dismissed because he is unable to re-file due to an order of this Court that denies Windsor the ability to ever file anything anywhere in America. Windsor does not have any ability to post a $50,000 bond, so the courthouse doors are closed to Windsor if any Defendant is dismissed.

11. This Court has no jurisdiction over this matter – never had any. This Court failed to address jurisdiction, the Court's first requirement following a notice

of removal. Due to the illegal and defective notice of removal, this Court has no jurisdiction and all of its orders are void.

12. The NOTICE OF REMOVAL has multiple procedural defects that make it void on its face. Technical, procedural requirements were not met.

13. Judges Mr. Dubina and Ms. Kravitch have so ruled: (***Russell Corp. v. American Home Assur. Co.***, 264 F.3d 1040, 1044 (11th Cir. 2001).)

14. Judge Duffey has so ruled: (***Henry County School Dist. v. Action Development, Inc.***, No. 1:07-cv-1490-WSD (N.D.Ga. 09/06/2007).)

15. Removal statutes are strictly construed in favor of state court jurisdiction. Defendant Judge Duffey has so ruled. (***Shamrock Oil & Gas Corp. v. Sheets***, 313 U.S. 100, 108-09 (1941). (***Henry County School Dist. v. Action Development, Inc.***, No. 1:07-cv-1490-WSD (N.D.Ga. 09/06/2007).)

16. **DEFECT #1 -- THE REMOVAL FAILS TO COMPLY WITH THE REQUIREMENT THAT DEFENDANTS MUST MAKE AN APPEARANCE.**

**17.** None of the Defendants have made an appearance. None of the Defendants have filed a CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT as required by N.D.Ga Local Rule

3.3 and FRCP 7.1, which was due to be filed with the Clerk "at the time of first appearance." This is a violation of the rules that is a procedural defect.

**18. DEFECT #2 -- THE ACTION WAS NOT YET PENDING IN FULTON COUNTY SUPERIOR COURT AS 28 U.S.C. § 1442 REQUIRES.**

19. The removal statute requires service prior to removal in the state of Georgia. The removal statute requires that an action must be "pending" in a state court before it may be removed. See 28 U.S.C. § 1442(a) (noting that civil action may be removed to the district court "embracing the place wherein it is **pending**").

20. Under Georgia law, filing a suit "is still not the commencement of suit unless followed by service within a reasonable time." (***McClendon v. Hernando Phosphate Co.***, 28 S.E. 152, 153 (Ga. 1897); ***Franek v. Ray***, 236 S.E.2d 629, 632 (Ga. 1977).) Thus, under Georgia law, "an action is not a 'pending' suit until after service of process is perfected." (***Steve A. Martin Agency, Inc. v. PlantersFIRST Corp.***, 678 S.E.2d 186, 188 (Ga. Ct. App. 2009); see also ***Jenkins v. Crea***, 656 S.E.2d 849, 850 (Ga. Ct. App. 2008).)

**21.** Since the Civil Action is not yet "pending" in Fulton County Georgia Superior Court, the text of the removal statute prevented removal prior to service on Judge Joel F. Dubina, John Ley, Maid of the Mist Corporation, and Maid of the Mist Steamboat Company Limited. (28 U.S.C. § 1446(b).)

22. **DEFECT #3 -- THE DEFENDANTS DID NOT SIGN OR AUTHORIZE THE NOTICE OF REMOVAL.**

23. The Notice of Removal was not authorized by the Defendants. **None** of the Defendants signed a consent or otherwise approved the removal. **None** of the Defendants are identified in the signature block on the NOTICE OF REMOVAL, so the Petition has not been filed on behalf of any of the Defendants.

(See 14C Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, ***Federal Practice and Procedure*** § 3730 (4th ed. 2009).)

(See also ***Bank of America National Association v. Derisme***, No. 3:10cv900 (D. Conn. 08/13/2010); ***Helm v. Drennan***, No. 07-CV-0344-CVE-SAJ (N.D.Ok. 07/25/2007); ***Sovereign Bank v. Park Development West, LLC***, No. 06-2603 (E.D.Pa. 08/17/2006); ***Williams v. City of Beverly Hills, Missouri***, No. 4:07-CV-661 CAS (E.D.Mo. 09/24/2007); ***Evanston Insurance Co. v. O'Conner***, No. 06-4687 (D.N.J. 03/20/2007); ***Day Imaging, Inc. v. Color Labs Enterprises, L.L.C.***, No. 09-cv-02123-DME-MEH (D.Colo. 12/11/2009).)

24. **DEFECT #4 – THE REMOVAL IS DEFECTIVE FOR FAILURE TO COMPLY WITH THE RULE OF UNANIMITY.**

25. 28 U.S.C. § 1446(a) states that "**defendants desiring to remove any civil action** . . . shall file in the district court of the United States . . . a notice of removal." All Defendants have not filed the NOTICE. At best, only one has.

28 U.S.C. § 1446 requires the unanimous consent of *all* defendants to the removal. (***Russell Corp. v. American Home Assurance Co.***, 264 F.3d 1040 (11th Cir. 09/06/2001); ***Loftis v. U.S. Parcel Serv., Inc.***, 342 F.3d 509, 516

(6th Cir. 2003); ***Maguire v. Genesee County Sheriff***, 601 F.Supp.2d 882 (E.D.Mich. 02/17/2009).)

26. The NOTICE OF REMOVAL fails to claim the consent of ANY Defendant; it clearly fails to explain the absence of consent to the removal by at least 55 of the Defendants. It is defective for violating the rule of unanimity. Since 98.2% of the Defendants did not join in the notice of removal and the NOTICE OF REMOVAL failed to account for the lack of their consent, the NOTICE is procedurally defective and this MOTION FOR REMAND must be granted.

27. Judges Mr. Johnson, Mr. Duffey Mr. Edmondson, Mr. Cox, and Mr. Ed Carnes have ordered that unanimity is required. Judge Ms. Totenberg so ordered on April 27, 2011. (***William & Jin Nam, Individually, and William Nam As the Personal v. U.S. Xpress, Inc., A Nevada Corporation***, No. 1:10-CV-3924-AT (N.D.Ga. 04/27/2011).)

28. **DEFECT #5 -- THE NOTICE OF REMOVAL FAILS TO COMPLY WITH THE REQUIREMENT OF A PLAIN STATEMENT OF THE GROUNDS FOR REMOVAL**.

29. The NOTICE OF REMOVAL has no plain statement of grounds.

30. Judge Ms. Totenberg ordered in April 2011 that a plain statement of the grounds is required:

> A defendant or defendants ... shall file in the district court of the United States for the district and division within which such action is pending a notice of removal ... containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action. (***William & Jin Nam, Individually, and William Nam As the Personal v. U.S. Xpress, Inc., A Nevada Corporation***, No. 1:10-CV-3924-AT (N.D.Ga. 04/27/2011).)

31. Judges Mr. Tjoflat, Mr. Marcus, and Ms. Barkett have so ordered: ***Lowery v. Alabama Power Co.***, 483 F.3d 1184 (11th Cir. 04/11/2007). Judges Ms. Black, Ms. Hull, and Ms. Kravitch have so ordered: ***Roe v. Michelin North America, Inc.***, 613 F.3d 1058 (11th Cir. 08/05/2010). Judges Mr. Edmondson, Mr. Ed Carnes, and Mr. Pryor have so ordered: ***Pertka v. Kolter City Plaza II, Inc.***, 608 F.3d 744 (11th Cir. 06/08/2010). Judge Tjoflat and Mr. Ed Carnes have so ordered: ***Cook v. Randolph County, Georgia***, 573 F.3d 1143 (11th Cir. 07/07/2009). Judges Mr. Edmondson and Mr. Wilson have so ordered: ***Bautista v. Star Cruises***, 396 F.3d 1289 (11th Cir. 01/18/2005). Judges Mr. Tjoflat and Mr. Anderson have so ordered: ***Hernandez v. Seminole County***, 334 F.3d 1233 (11th Cir. 06/24/2003). Judge Tjoflat has so ordered: ***Bradway v. American***, 965 F.2d 991 (11th Cir. 07/07/1992).

32. **DEFECT #6 -- THE NOTICE OF REMOVAL FAILED TO COMPLY WITH THE MANDATORY PROCEDURE TO INCLUDE WITH THE NOTICE OF REMOVAL THE SUMMONS ISSUED BY THE COURT**

**ON ALL DEFENDANTS AND OTHER DOCUMENTS SERVED ON DEFENDANTS CONTAINED IN THE STATE COURT RECORD**.

33. This is a fatal, non-amendable defect that mandates remand. 28 U.S.C. 1446 (a).

> (William & Jin Nam, Individually, and William Nam As the Personal v. U.S. Xpress, Inc., A Nevada Corporation, No. 1:10-CV-3924-AT (N.D.Ga. 04/27/2011).)

34. **THE DEFENDANTS HAVE FAILED TO PROVE THE EXISTENCE OF FEDERAL JURISDICTION.**

35. The Defendants have the burden of proving the existence of federal jurisdiction, and they have failed to do so. Mr. Huber's NOTICE OF REMOVAL does not even include the word "jurisdiction."

> **Removal jurisdiction** merely refers to the right of a defendant to move a lawsuit filed in state court to the federal district court for the federal judicial district in which the state court sits. (***Wikipedia***.)

36. Mr. Huber's NOTICE OF REMOVAL mentions **removal** "pursuant to 28 U.S.C. §1442(a)(1),(3)," but that's it. Nothing is proven or argued or anything.

37. The sole issue in this matter is a declaration of the meaning and terms of Georgia state law O.C.G.A. § 10-6-5. The legislative intent and purpose of the Georgia Declaratory Judgment Act is to settle and relieve against uncertainty and

insecurity with respect to rights, status, and legal interpretation. O.C.G.A. § 9-4-1 (CGA § 110-1111). Pursuant to O.C.G.A. § 9-4-2(b) (GCA § 110-1101) the Georgia Superior Courts are charged with the responsibility to "determine and settle by declaration any justiciable controversy of a civil nature where it appears to the court that the ends of justice require that such should be made for the guidance and protection of the petitioner, and when such a declaration will relieve the petitioner from uncertainty and insecurity with respect to his rights, status, and legal relations." Only the Georgia Superior Courts have the authority for a declaratory judgment action regarding Georgia statutes.

38. The NOTICE OF REMOVAL fails to address subject matter jurisdiction at all, so the MOTION TO REMAND must be granted.

> "...**even though an action is eligible for removal pursuant to 28 U.S.C. §1442(a)(1), it is still subject to dismissal for lack of subject matter jurisdiction**. See ***Rankin v. I.R.S.***, No. 5:01-CV-79-OC10GRJ, 2001 WL 34107044, at *1 (M.D. Fla. May 16, 2001) (noting that "[t]he issue of whether the court has subject matter jurisdiction and the issue of whether there is removal jurisdiction, however, involve separate considerations.") (***Morse v. United States***, No. 2:07-cv-249-FtM-34DNF (M.D.Fla. 12/04/2007).) [**emphasis added**.]

39. Judges Mr. Tjoflat and Ms. Black have ruled that defendants have the burden of proving the existence of federal jurisdiction, as have Judges Mr. O'Kelley, and Mr. Story:

(***Tapscott v. MS Dealer Service Corp.***, 77 F.3d 1353, 1356 (11th Cir. 1996).) (***Standridge v. Wal-Mart Stores***, 945 F. Supp. 252 (N.D.Ga. 09/18/1996).) (***Wells Fargo Bank NA v. Narh***, No. 1:06-CV-0580-RWS (N.D.Ga. 05/09/2006).)

40. So ordered Judge Thrash on April 22, 2011 as in 2007:

(***Federal Home Loan Bank of Atlanta v. Countrywide Securities Corporation, et al***, No. 1:11-CV-489-TWT (N.D.Ga. 04/22/2011).) (***AR Motorsports, Inc. v. City of Lawrenceville, Georgia***, No. 1:07-CV-847-TWT (N.D.Ga. 08/07/2007).)

41. **THE NOTICE OF REMOVAL FAILED TO ASSERT GROUNDS FOR SUBJECT MATTER JURISDICTION AND FAILED TO RAISE A DEFENSE.**

(See ***Rankin v. I.R.S.***, No. 5:01-CV-79-OC10GRJ, 2001 WL 34107044, at *1 (M.D. Fla. May 16, 2001); ***Morse v. United States***, No. 2:07-cv-249-FtM-34DNF (M.D.Fla. 12/04/2007).)

When considering such a motion, a court should examine closely the grounds asserted for its subject matter jurisdiction. "As a congressionally imposed infringement upon a state's power to determine controveries in their [sic] courts, removal statutes must be strictly construed." ***Cowart Ironworks, Inc. v. Phillips Construction Co.***, 507 F. Supp. 740, 743 (S.D. Ga. 1981). "Where the basis for jurisdiction is doubtful, the court should resolve such doubt in favor of remand." Id.; ***Clyde v. National Data Corp.***, 609 F. Supp. 216 (N.D. Ga. 1985). (***Hall v. Travelers Ins. Cos.***, 691 F. Supp. 1406 (N.D.Ga. 04/29/1988).)

42. Federal officers must raise a federal defense before removing to federal court, and the NOTICE OF REMOVAL failed to do so. Judges Mr.

Edmondson, Mr. Tjoflat, Mr. Anderson, Ms. Black, Mr. Ed Carnes, Ms. Barkett, Mr. Marcus, and Mr. Wilson have all so ordered:

> (***Bellsouth Telecommunications, Inc. v. MCImetro Access Transmission***, 317 F.3d 1269, 317 F.3d 1270 (11th Cir. 01/10/2003).)
>
> An unbroken line of Supreme Court decisions extending back nearly a century and a quarter have understood all the various incarnations of the federal officer removal statute to require the averment of a federal defense. (***Mesa et al. v. California***, 109 S. Ct. 959, 489 U.S. 121 (U.S. 02/21/1989).)

43. The U.S. district courts may hear only cases arising under federal law and treaties, cases involving ambassadors, admiralty cases, controversies between states or between a state and citizens of another state, lawsuits involving citizens of different states, and against foreign states and citizens. Judge Story ruled:

> No federal question is present on the face of Plaintiff's Complaint, and the requirements for diversity jurisdiction are not satisfied. The Court therefore concludes that it lacks subject matter jurisdiction and that this action is frivolous. (***HSBC Mortgage Services, Inc. v. Williams***, No. 1:07-CV-2863-RWS (N.D.Ga. 12/10/2007).)

44. This case does not arise under federal law or treaties. It does not involve an ambassador. It is not an admiralty case. It is not a controversy between states. It is not a controversy between a state and citizens of another state. All parties are from Georgia, as admitted on the New Case Filing Form included as part of the Notice of Removal. It is not a case against foreign states and citizens.

45. According to Judge Duffey, federal courts are courts of limited jurisdiction:

46. This Court does not have original jurisdiction. So says Judge Story:

> A defendant may only remove an action from state court if the federal court would possess original jurisdiction over the subject matter. 28 U.S.C. § 1441(a). ***Williams v. Best Buy Co.***, 269 F.3d 1316, 1319 (11th Cir.2001). 28 U.S.C. § 1447(c). (***Kofi Boateng v. Morrison Management Specialists, Inc***, No. 1:11-CV-00142-RWS (N.D.Ga. 06/13/2011).)

47. This Court lacks subject matter jurisdiction. Lack of subject matter jurisdiction requires remand to the state court. (28 U.S.C. § 1447(c), FRCP 12(h)(3); ***Standridge v. Wal-Mart***, 945 F. Supp. 252 (N.D.Ga. 09/18/1996).)

48. The U.S. District Court lacks federal-question jurisdiction because there is no dispute as to the validity, construction or effect of a federal statute with a cause of action "arising under" the laws of the United States. So says Judge Baverman in ***Wells Fargo Bank v. Cyrus***, No. 1:10-CV-02064-RLV-AJB (N.D.Ga. 07/15/2010).

49. No federal statute has been included in the causes of action. To meet the requirement of a case "arising under" federal law, the federal question must appear on the face of the plaintiff's complaint. There is no federal question presented on the face of the Verified Complaint. Windsor intends this Action to be solely based on Georgia law.

Federal courts use the "well-pleaded complaint" rule to determine "arising under" jurisdiction. ***Long***, 201 F.3d at 758. That rule provides that "'federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint.'" Id. (quoting ***Caterpillar Inc. v. Williams***, 482 U.S. 386, 392 (1987)). ***The Fair v. Kohler Die & Specialty Co.***, 228 U.S. 22, 25 (1913).

50. Judge Duffey has regularly ruled that when a plaintiff has relied exclusively on state law, remand is required:

"...a suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution. ... In this case, it is clear that Plaintiff relies exclusively on state law, and thus the well-pleaded complaint rule is not satisfied. Because Defendant fails to demonstrate that the Court has subject matter jurisdiction over this case, the Court is required to remand this action pursuant to 28 U.S.C. § 1447(c). (***Deutsche Bank Nat'l v. Eberhart***, No. 1:06-cv-1588-WSD (N.D.Ga. 07/10/2006).)

"In this case, it is clear that Plaintiff relies exclusively on state law, and thus the well-pleaded complaint rule is not satisfied. ...the Court is required to remand this action pursuant to 28 U.S.C. § 1447(c)." (***Equity Residential Properties v. Bravo***, No. 1:06-cv-1012-WSD (N.D.Ga. 05/03/2006).)

"Because Ms. Davis fails to demonstrate that the Court has subject matter jurisdiction over this case, the Court is required to remand this action pursuant to 28 U.S.C. § 1447(c)." (***PHH Mortgage Corp. v. Diamond***, No. 1:06-cv-0673-WSD (N.D.Ga. 03/29/2006).)

See also ***Chase Home Finance, LLC v. Mungaro***, No. 1:05-cv-3082-WSD (N.D.Ga. 12/08/2005). (See also ***State v. Serries***, No. 1:10-cv-01564 -WSD (N.D.Ga. 07/16/2010); ***Cunningham v. HSBC Mortgage Services***, No. 1:07-cv-1346-WSD (N.D.Ga. 06/20/2007); ***Chase Manhattan Mortgage Corp. v. Gresham***, No. 1:05-cv-1944-WSD (N.D.Ga. 11/17/2005).)

51. Judge Thrash said on April 22, 2011 that a Georgia law issue is not a matter of federal law:

> In ***Grable & Sons Metal Products, Inc. v. Darue Engineering and Manufacturing***, 545 U.S. 308 (2005), the Supreme Court held that a state-law claim gives rise to federal jurisdiction when it "necessarily raise[s] a . . . disputed and substantial" federal issue. Id. at 314. The Eleventh Circuit applied Grable's substantiality test in ***Adventure Outdoors, Inc. v. Bloomberg***, 552 F.3d 1290 (11th Cir. 2008). ***Austin v. Ameriquest Mortgage Co.***, 510 F. Supp. 2d 1218, 1226-27 (N.D. Ga. 2007). (***Federal Home Loan Bank of Atlanta v. Countrywide Securities Corporation, et al***, No. 1:11-CV-489-TWT (N.D.Ga. 04/22/2011).)

52. **THE REMOVAL IS DEFECTIVE PURSUANT TO 28 U.S.C § 1442 (a)(1) BECAUSE FEDERAL OFFICERS.**

53. The U.S. Attorney erroneously cites 28 U.S.C. § 1442(a)(1) as a basis for the removal.

54. 28 U.S.C. § 1442(a)(1) does not apply because the Verified Complaint is not about suing "in an official or individual capacity for any act under color of such office or... under any Act of Congress...." (See ***Mesa v. California***, 489 U.S. 121, 109 S. Ct. 959, 103 L. Ed. 2d 99 (1989).)

55. Maid of the Mist Corporation and Maid of the Mist Steamboat Company Limited are not federal officers, so they have no right to raise a federal

defense. The Georgia Attorney General is not a federal officer and has no right to raise a federal defense.

56. None of the other Defendants have raised any defense whatsoever to the Civil Action. The ONLY statement made by the U.S. Attorney in the NOTICE OF REMOVAL is: "This action is one that may be removed to the United States District Court pursuant to 28 U.S.C. § 1442(a)(1), (3)."

57. There is no citation of case law to support such a claim. 28 U.S.C. § 1442(a)(1) and (3) have nothing to do with defenses to a declaratory judgment action, so no defense has been raised.

> The purpose of section 1442(a)(1) is to "permit[ ] the removal of those actions commenced in state court that expose a federal official to potential civil liability or criminal penalty for an act performed ... under color of office." ***Murray v. Murray***, 621 F.2d 103, 107 (5th Cir.1980). ***Willingham***, 395 U.S. at 405, 89 S. Ct. at 1815.

58. The U.S. Attorney has failed to meet the Supreme Court's stated requirements for removal pursuant to 28 U.S.C. § 1442(a)(1) that are binding precedents recognized by the Eleventh Circuit.

> Proper removal of an action under section 1442(a)(1) has historically required the satisfaction of two separate requirements. **First, the defendant must advance a "colorable defense arising out of [his] duty to enforce federal law**." ***Mesa v. California***, 489 U.S. 121, 133, 109 S. Ct. 959, 966-67, 103 L. Ed. 2d 99 (1989) ...absent the assertion of a federal defense, a state court action against a federal officer is not removable. Id. [**emphasis added**.]

> **Second, the defendant must establish that there is a "causal connection between what the officer has done under asserted official authority" and the action against him**. ***Maryland v. Soper***, 270 U.S. 9, 33, 46 S. Ct. 185, 190, 70 L. Ed. 449 (1926) (interpreting predecessor statute); see also ***Willingham***, 395 U.S. at 409, 89 S. Ct. at 1817. (***Magnin v. Teledyne Continental Motors***, 91 F.3d 1424 (11th Cir. 08/15/1996).) [**emphasis added**.]

59. This Civil Action is a declaratory judgment action about Georgia state law. So, it is impossible for a Defendant to raise a colorable defense as the Defendants have nothing to defend. There can be no causal connection because this is merely a declaratory judgment action.

60. This Court's exercise of federal-question jurisdiction over this state-law claim would be inappropriate because there is no dispute as to any federal statute.

> "A removing defendant bears the burden of proving proper federal jurisdiction." *Adventure Outdoors, Inc. v. Bloomberg*, 552 F.3d 1290, 1294 (11thCir. 2008)

61. In this matter, NO federal issue exists. There is no disputed question of federal law.

> *Grable*, 545 U.S. at 313 (quoting ***Shulthis v. McDougal***, 225 U.S. 561, 569 (1912)). (See also ***Fed. Trade Comm'n v. Tashman***, 318 F.3d 1273, 1279 (11th Cir. 2003) (Vinson, J., dissenting).)

62. This Civil Action does not seek to hold an officer of the United States in violation of state law while simultaneously executing his duties as prescribed by federal law.

63. **THE REMOVAL IS DEFECTIVE PURSUANT TO 28 U.S.C § 1442 (a)(3) BECAUSE FEDERAL OFFICERS HAVE NOT RAISED A FEDERAL DEFENSE.**

64. 28 U.S.C. § 1442(a)(3) does not apply because the Verified Complaint is not about "**any act under color of office or in the performance of [anyone's] duties**."

65. The federal interest in this matter is insubstantial, and the exercise of federal-question jurisdiction would disrupt the Congressionally-approved balance of federal and state judicial responsibilities.

> "[F]ederal jurisdiction demands not only a contested federal issue, but a substantial one, indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum." ***Grable***, 545 U.S. at 313.

66. The U.S. District Court's exercise of federal-question jurisdiction over this state-law claim would be inappropriate because there is no dispute as to any federal statute.

"'A removing defendant bears the burden of proving proper federal

jurisdiction.'" *Adventure Outdoors, Inc. v. Bloomberg*, 552 F.3d 1290, 1294 (11thCir. 2008) (quoting *Leonard v. Enter. Rent a Car*, 279 F.3d 967, 972 (11th Cir. 2002)).

67. In this matter, NO federal issue exists. There is no disputed question of federal law. The meaning of a Georgia state statute is the only legal and factual issue contested.

> Federal-question jurisdiction over state-law claims is confined to those claims that "'really and substantially involv[e] a dispute or controversy respecting the validity, construction or effect of [federal] law.'" *Grable*, 545 U.S. at 313 (quoting ***Shulthis v. McDougal***, 225 U.S. 561, 569 (1912)). (See also ***Fed. Trade Comm'n v. Tashman***, 318 F.3d 1273, 1279 (11th Cir. 2003) (Vinson, J., dissenting).)

68. There is no legal authority to permit a Federal court to claim jurisdiction over a state declaratory judgment action. This Civil Action does not seek to hold an officer of the United States in violation of state law while simultaneously executing his duties as prescribed by federal law.

> The removal statute is strictly construed against removal jurisdiction and doubt is resolved in favor of remand. ***Libhart v. Santa Monica Dairy Co.***, 592 F.2d 1062, 1064 (9th Cir. 1979); ***Prize Frize Inc. v. Matrix Inc.***, 167 F.3d 1261, 1265 (9th Cir. 1999).

69. This Court must confirm that jurisdiction must remain with the Superior Court of Fulton County, Georgia.

> 28 U.S.C. § 1446 (c )(4) provides: The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

**70.** Judge Thomas Woodrow Thrash ("Judge Thrash") has no jurisdiction in this matter as he failed to rule on a motion for recusal, and this renders him without jurisdiction.

71. Judge Thrash has violated 28 U.S.C. § 455 and the Code of Judicial Conduct. Judge Thrash has no business sitting in judgment of Windsor in this action while he is a party to actions involving Windsor and has a personal interest in this matter.

72. Judge Thrash has violated Canon 3 E. (1) of the Code of Judicial Conduct: "Judges shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where: (c) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person, or any other member of the judge's family residing in the judge's household: (i) is a party to the proceeding, or an officer, director, or trustee of a party;" Judge Thrash is a defendant, and he is disqualified from presiding in this case.

> At least since the time of Lord Coke, (Nemo debet esse judex in propria causa -- no one may be a Judge in his own case), a fundamental precept of due process has been that an interested party in a dispute cannot also sit as a decision-maker. See, e.g., ***Withrow v. Larkin***, 421 U.S. 35, 46-47, 43 L. Ed. 2d 712, 95 S. Ct. 1456 (1975); ***Gibson v. Berryhill***, 411 U.S. 564, 578-79, 36 L. Ed. 2d 488, 93 S. Ct. 1689 (1973); ***Wolkenstein v. Reville***, 694 F.2d 35, 38-39 (2d Cir. 1982). (***International Association of Machinists and***

*Aerospace Workers v. Metro-North Commuter Railroad*, 24 F.3d 369 (2nd Cir. 04/18/1994).)

73. Judge Thrash has a proven bias against pro se parties as no pro se plaintiff has ever won in his court.

> The appearance of impropriety may also result where the judge has evidenced a bias directed against a class of which the defendant is a member. See ***Berger v. U. S.***, 255 U.S. 22, 41 S. Ct. 230, 65 L. Ed. 481 (1921).

74. Eleventh Circuit Defendants EDMONDSON, BIRCH, and BLACK said this in ***Whisenhant v. Allen***, 556 F.3d 1198 (11th Cir. 02/03/2009).

75. Windsor has been treated unfairly, and his due process rights have been violated. Judge Thrash has personal and financial incentives to rule against Windsor.

> "A fair trial in a fair tribunal is a basic requirement of due process." ***In re Murchison***, 349 U.S. 133, 136 (1955); see also ***Ward v. Village of Monroeville***, 409 U.S. 57 (1972). Due process demands more than that the sentencer actually be impartial; rather, "'justice must satisfy the appearance of justice.'" ***In re Murchison***, 349 U.S., at 136, quoting Offutt v. United States, 348 U.S. 11, 14 (1954); see also In re Murchison, 349 U.S., at 136 ("Our system of law has always endeavored to prevent even the probability of unfairness."); ***Mayberry v. Pennsylvania***, 400 U.S. 455, 469 (1971) (Harlan, J., concurring) ("The appearance of even-handed justice . . . is at the core of due process"). The risk that Judge Chapman may have brought to bear on his decision specific information about Robertson not presented as evidence in the sentencing proceeding is too great in this case to satisfy the demands of the Due Process Clause. (***ANDREW EDWARD ROBERTSON v. CALIFORNIA***, 111 S. Ct. 568, 498 U.S. 1004 (U.S. 12/03/1990).)

76. Judge Thrash has become embroiled in a bitter dispute, and he is disqualified. The Ninth Circuit recently said this in ***Richard D. Hurles v. Charles L. Ryan***, No. 08-99032 (9th Cir. 07/07/2011):

> "A fair trial in a fair tribunal is a basic requirement of due process." ***In re Murchison***, 349 U.S. 133, 136 (1955). Indeed, the "legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisan-ship." ***Mistretta v. United States***, 488 U.S. 361, 407 (1989). This most basic tenet of our judicial system helps to ensure both litigants' and the public's confidence that each case has been fairly adjudicated by a neutral and detached arbiter. An appearance of impropriety, regardless of whether such impropriety is actually present or proven, erodes that confidence and weakens our system of justice.

77. Judge Thrash's bias is dripping from his orders. He prejudged every issue in this and all other cases. Judge Thrash is a criminal who is hell bent on doing whatever it takes to violate all of Windsor's rights.

> Bias exists where a court has prejudged, or reasonably appears to have prejudged, an issue. The disciplinary proceedings must "satisfy the appearance of justice." ***In re Murchison***, 349 U.S. at 136 (quoting ***Offutt v. United States***, 348 U.S. 11, 14, 99 L. Ed. 11, 75 S. Ct. 11 (1954). (***Partington v. Gedan***, 880 F.2d 116 (9th Cir. 03/13/1989).)

78. Judge Thrash has violated just about every rule in the book. He must be disqualified, indicted, convicted, imprisoned, disgraced, and impeached.

79. Exhibit B hereto is a true and correct copy of an order by Judge William S. Duffey remanded a Windsor case to Fulton County Superior Court. This order explains some of the reasons why Judge Thrash is obligated to remand

this Civil Action. It states that the defendants have to file a notice of removal with the documents served on them. In this case, all defendants did not file, and the documents served were not included with the notice of removal. [Duffey Order, P.1 ¶2.] The notice of removal shall be filed AFTER SERVICE. In this case, not all defendants were served when the notice of removal was filed. [Duffey Order, P.2 ¶1.] Efforts to remove a case before service is premature. In this case, service had not been made on the defendants. [Duffey Order, P.3 ¶1.] Anticipatory removal is not allowed. [Duffey Order, P.3 – Footnote 1.]

WHEREFORE, Windsor respectfully requests that this Court:

a. grant this Request;

b. allow Windsor to file a Motion;

c. schedule a hearing;

d. grant Windsor permission to obtain all needed discovery

e. order the Clerk of the Court to issue subpoenas to Windsor for depositions and appearance in court for the hearing;

f. order the Clerk of the Court to always immediately docket Affidavits of Service;

g. vacate the Order to Show Cause or modify it to delete any limitation on the evidence that Windsor may file in response;

h. recognize that this Court has had no jurisdiction and declare all orders void;

i. order that Judge Thrash is disqualified;

j. remand this case to Fulton County Superior Court; and

k. grant any other relief this Court deems just and proper.

Submitted, this 26th day of October 2011.

**William M. Windsor**
**Pro Se**
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## VERIFICATION OF WILLIAM M. WINDSOR

I, William M. Windsor, swear that I am authorized to make this verification and that the facts alleged in the foregoing are true and correct based upon my personal knowledge, except as to the matters herein stated to be alleged on information and belief and citations of law, and that as to those matters I believe them to be true. This Verification makes this REQUEST a sworn affidavit.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

This 26th day of October 2011.

**William M. Windsor**

## CERTIFICATE OF COMPLIANCE

As required by Local Rule 7.1D, N.D. Ga., I hereby certify that this pleading has been prepared in Times New Roman 14-point font, one of the font and point selections approved by this Court in Local Rule 5.1B, N.D. Ga.

**William M. Windsor**
**Pro Se**

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Facsimile: 770-234-4106
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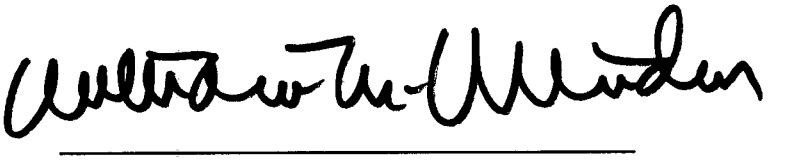
## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing by depositing the same with the United States Postal Service with sufficient postage and addressed as follows:

CHRISTOPHER J. HUBER
ASSISTANT U.S. ATTORNEY
Georgia Bar No. 545627
600 Richard B. Russell Federal Bldg.
75 Spring Street, S.W. -- Atlanta, Georgia 30303
Telephone: (404) 581-6292 -- Facsimile: (404) 581-6181
Email: chris.huber@usdoj.gov

This 26th day of October 2011.



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