

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

MONTGOMERY BLAIR SIBLEY,

PLAINTIFF,

VS.

THE HONORABLE MITCH MCCONNELL, AND  
THE HONORABLE JOHN A. BOEHNER,

DEFENDANTS.

Case No.: Case 1:15-cv-00730 **JEB**

**PLAINTIFF'S MOTION TO REMAND**

Plaintiff, Montgomery Blair Sibley ("Sibley"), pursuant to 28 U.S.C. §1447(c), moves for an Order remanding this matter back to the District of Columbia Superior Court, and for grounds in support states:

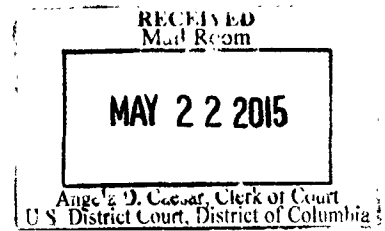
**I. TITLE 28 U.S. CODE §1441 IS UNCONSTITUTIONAL**

"It is well settled in the courts of the United States the special facts necessary for jurisdiction must in some form appear in the record of every suit, and that the right of removal from the State courts to the United States courts is statutory." *Gold Washing & Water Co. v. Keyes*, 96 U.S. 199, 201 (1877).<sup>1</sup> Thus, the right of removal is a matter of legislative grace and thus subservient in all respects to the organic law found in the U.S. Constitution. Here, as applied, §1441 violates that superior organic law.

The genesis of the prevailing judicial view that 28 U.S.C. §1441 is constitutional is *Hunter's Lessee*, 14 U.S. 304 (1813) in which the Supreme Court held that it had authority over state courts

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<sup>1</sup> 28 U.S. Code § 1451 - Definitions states: "For purposes of this chapter— (1) The term "State court" includes the Superior Court of the District of Columbia. (2) The term "State" includes the District of Columbia."



in matters of federal law.<sup>2</sup> However, a reading of *Hunter's Lessee* clearly establishes that the referenced authority only related to federal appellate review:

A writ of error is, indeed, but a process which removes the record of one court to the possession of another court, and enables the latter to inspect the proceedings, and give such judgment as its own opinion of the law and justice of the case may warrant. There is nothing in the nature of the process which forbids it from being applied by the legislature to interlocutory as well as final judgments. And if the right of removal from state courts exist before judgment, **because it is included in the appellate power**, it must, for the same reason, exist after judgment. (Emphasis added).

*Id.* at 349. Importantly, the only question before the Supreme Court in *Hunter's Lessee* was whether it had jurisdiction to review the decision of Court of Appeals of Virginia which was brought again to the Supreme Court on writ of error because the Court of Appeals of Virginia would not recognize the Supreme Court's decision. Hence, any attempt to argue that *Hunter's Lessee* determined the constitutionality of §1441 is *obiter dicta* not *stare decisis* binding<sup>3</sup> on this court.

Accordingly, the first-impress question presented to this Court for determination is the constitutionality of 28 U.S.C. §1441 *et seq.* when removal is sought for an original – not appellate – jurisdiction purpose. When §1441 is employed to divest a state court of its original jurisdiction,

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<sup>2</sup> *Accord: Marathon Oil Co. v. Ruhrgas*, 145 F.3d 211, 231 (5<sup>th</sup> Cir. Tex. 1998)(“Indeed, in the famous and early debate about the scope of federal jurisdiction in *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 4 L. Ed. 97 (1816), both sides proceeded from the assumption that removal was a fundamental, and noncontroversial, aspect of our federalist judicial system. *See* 14 U.S. at 348-51 (Story, J.); *id.* at 378.”); *Murray v. Patrie*, 17 F. Cas. 1061, 1062 (C.C.S.D.N.Y. 1866)(“The question of the removal of causes from the state courts to the circuit courts of the United States was discussed very much in *Martin v. Hunter's Lessee*, 1 Wheat. [14 U.S.] 346-350, and no doubt was entertained that it might take place after, as well as before, judgment.”)

<sup>3</sup> *See: Humphrey's Executor v. United States*, 295 U.S. 602, 626-627 (1935)(“In the course of the opinion of the court, expressions occur which tend to sustain the government's contention, but these are beyond the point involved and, therefore, do not come within the rule of *stare decisis*.”)

Sibley maintains that the Tenth Amendment is violated.

The Tenth Amendment states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” In applying the Tenth Amendment, the Supreme Court has been very clear: “The powers granted by the Constitution to the Federal Government are subtracted from the totality of sovereignty originally in the states and the people. Therefore, when objection is made that the exercise of a federal power infringes upon rights reserved by the Tenth Amendment, the inquiry must be directed toward the granted power under which the action of the Union was taken. If granted power is found, necessarily the objection of invasion of those rights, reserved by the Tenth Amendment, must fail.” *United Public Workers v. Mitchell* , 330 U.S. 75, 96 (1947).

Here, Congress has usurped state original jurisdiction authority to determine federal questions by action of §1441. Absent express Constitutional-granted power, that usurpation must be rebuked by this Court by declaring §1441 unconstitutional and remanding this matter to D.C. Superior Court.

Moreover, under the so-called *Rooker-Feldman* doctrine as dispositively defined in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S.280 (2005), this Court may not adjudicate Sibley’s claims filed in D.C. Superior Court as Congress has expressly reserved that right in the U.S. Supreme Court pursuant to 28 U. S. C. §1257.

The Supreme Court released a unanimous opinion by Justice Ginsburg in *Exxon Mobil Corp.*, in which she held that the Supreme Court appellate jurisdiction over state-court judgments, 28 U. S. C. §1257, precludes a United States District Court from exercising subject-matter jurisdiction in an action it would otherwise be empowered to adjudicate under a congressional grant of authority, e.g., §1330 (suits against foreign states), §1331 (federal question), and §1332 (diversity).” *Id.* at 292.

Hence, §1257 “precludes” this Court from exercising subject-matter jurisdiction under §1441 as a result of the reach of §1257.

**II. THIS COURT LACKS SUBJECT MATTER JURISDICTION AS SIBLEY DOES NOT HAVE “STANDING” IN AN ARTICLE III COURT TO PURSUE HIS CLAIMS**

Sibley’s next ground for seeking remand is that this Court does not have subject-matter jurisdiction as Sibley does not have Article III “standing”. Therefore the matter will have to be remanded to D.C. Superior Court.

“Article III of the Constitution limits federal courts’ jurisdiction to certain “Cases” and “Controversies.” As we have explained, “[n]o principle is more fundamental to the judiciary’s proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.” *Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138, 1146 (2013). Additionally, “the core component of standing is an **essential and unchanging part of the case-or-controversy requirement of Article III.**” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (emphasis added).

As to Sibley’s “standing” in an Article III court, the analysis must start – and end – with the Complaint filed in the D.C. Superior Court. *Accord: Sparta Surgical Corp. v. National Ass’n of Sec. Dealers*, 159 F.3d 1209, 1213 (9th Cir. 1998)(“[J]urisdiction must be analyzed on the basis of the pleadings filed at the time of removal.”)

The Supreme Court has interpreted Article III standing as requiring the following prerequisites: (1) plaintiff must have suffered an injury in fact which is concrete and particularized, (2) the injury must be traceable to defendant’s conduct, and (3) the injury must be redressable by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561(1992). Here a review of

the Complaint establishes that Sibley has not suffered an injury-in-fact which is concrete and particularized. Indeed, all Sibley pleads in the Complaint regarding his injury is found at ¶6 which states:

The United States Supreme Court in *Fairchild v. Hughes*, 258 U.S. 126, 130 (1922) affirmed that Sibley, as a Citizen of the United States, possess the general right: “to require that the Government be administered according to law. . . .”. Moreover, Sibley maintains that under the implied covenant in the social compact which is the United States Constitution, he additionally possess such general right for to hold otherwise would be absurd. Finally, Sibley additionally maintains that this general right was expressly reserved unto him by the Ninth and Tenth Amendments to the United States Constitution.

Hence, Sibley’s claim to “injury in fact” is no different than any other United States Citizen thus it is not “concrete and particularized”.

Sibley’s lack of “standing” deprives this Court of subject-matter jurisdiction. In *Haase v. Sessions*, 835 F.2d 902, 906 (D.D.C., 1987), the court held:

Upon reviewing the government's motion to dismiss, however, we find that it unambiguously sought dismissal of Haase's complaint pursuant to Rule 12(b)(1). The motion expressly and exclusively states that **the defect presented by Haase is want of standing**. As applied to the categories supplied by the rules, **the defect of standing is a defect in subject matter jurisdiction**. *See, e.g., Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986)(classifying lack of standing as a defect in the court’s subject matter jurisdiction.)”(Emphasis added).

*Accord: Hildebrandt v. Vilsack*, 2015 U.S. Dist. LEXIS 58394 (D.D.C. May 5, 2015)(“USDA has miscast its argument as one of Article III standing, which implicates the subject matter jurisdiction of this Court.”).

Thus, this Article III Court can not exercise subject matter jurisdiction over Sibley’s claims as he does not possess “standing.” Accordingly, this matter must be remanded pursuant to 28 U.S.C.

§1447(c).

**III. CONCLUSION**

WHEREFORE, for the reasons stated herein, Sibley respectfully requests that: (i) this Court remand this matter back to the District of Columbia Superior Court and (ii) retain jurisdiction to determine payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. First class mail on (i) Peter R. Maier, Special Assistant United States Attorney, Counsel for Defendant, The Honorable Mitch McConnell, 555 4th St., N.W., Washington, D.C. 20530, Telephone: (202) 252-2578, (Peter.maier2@usdoj.gov) and (ii) William Pittard, Deputy General Counsel, Counsel for The Honorable John A. Boehner, Office of General Counsel, United States House of Representatives, 219 Cannon House Office Building, Washington, District of Columbia 20515, Telephone: (202) 225-9700, (William.Pittard@mail.house.gov) this May 20, 2015.

**MONTGOMERY BLAIR SIBLEY**  
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202-643-7232  
montybsibley@gmail.com

By: \_\_\_\_\_

  
Montgomery Blair Sibley

UNITED STATES DISTRICT COURT FOR THE  
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MONTGOMERY BLAIR SIBLEY,

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**ORDER ON PLAINTIFF'S MOTION TO  
REMAND**

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THIS MATTER came on to be heard on Plaintiff's Motion to Remand, and the Court being advised in the premises, it is hereby:

ORDERED AND ADJUDGED that the motion is granted. This matter is forthwith remanded to the District of Columbia Superior Court; and it is further

ORDERED AND ADJUDGED that jurisdiction is retained to determine payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.

DONE AND ORDERED in Chambers this \_\_\_\_ day of \_\_\_\_\_, 2015.

By: \_\_\_\_\_  
United States District Judge

Copies to:

Montgomery Blair Sibley, 402 King Farm Blvd, Suite 125-145, Rockville, MD 20850  
Peter R. Maier, Special Assistant United States Attorney, Counsel for Defendant, The Honorable Mitch McConnell (by CM/ECF)  
William Pittard, Deputy General Counsel, Counsel for The Honorable John A. Boehner (by CM/ECF)