No. 22-717

In the
# Supreme Court of the United States

ADRIAN PERKINS, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF SHREVEPORT, LOUISIANA,
*Petitioner*,

v.

CELCOG, LLC, DBA STRAWN'S EAT SHOP TOO, MONJUNI'S OF PORTICO, INC., AIR U SHREVEPORT, LLC, THE BRIAN TRAIN, LLC, AND BEARING SERVICE & SUPPLY, INC.,
*Respondents.*

**On Petition for Writ of Certiorari to the Court of Appeal of Louisiana, Second Circuit**

## BRIEF OF INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER, MAYOR PERKINS

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## INTEREST OF THE AMICUS[1]

The International Municipal Lawyers Association ("IMLA") is a non-profit, nonpartisan professional membership organization comprised of more than 2,500 local government entities as represented by their chief legal officers, state municipal leagues, and individual attorneys. Established in 1935, IMLA's mission is to advance the responsible development of municipal law through education and advocacy, by providing the collective viewpoint of local governments before the United States Supreme Court and Courts of Appeals, and in state supreme and appellate courts.

IMLA files this *amicus* brief to assist in trying to obtain a consistent and uniform body of interpretive law with regards to application of state and federal law, generally, as well as the interplay of the application of federal laws in cases heard in state courts so as to assist and guide local government agencies and their attorneys in legal matters. The rulings in this case, if allowed to stand, will significantly impact a substantial number of local governments on a national basis with no clear path on how to ensure that state courts are interpreting and granting relief under federal laws in a consistent and correct manner.

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[1] Pursuant to Supreme Court Rule 37.6, Amicus certifies that no counsel for any party authored this brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparation or submission of the brief, and no persons other than Amicus contributed money that was intended to fund preparation or submission of the brief. Parties received timely notice of the intent to file this brief.

## SUMMARY OF ARGUMENT

This case involves an important legal issue, i.e., can a state court award attorney's fees under 42 U.S.C. 1988 if the allegations in the Petition filed in state court fail to state a claim "arising under the Constitution and laws of the United States" sufficient to confer jurisdiction in federal court and/or which would allow a defendant to remove the action to federal court?

There is a fundamental discord and disconnect between the analysis of what allegations in a Petition are sufficient to plead a case "arising under the Constitution and laws of the United States" sufficient to bestow jurisdiction in a federal district court versus Louisiana's fact-pleading requirement that simply states that a plaintiff is entitled to "any relief" allowed under the facts pled. Here, use of boilerplate language and "buzz words" such as unconstitutional, due process, equal protection, and attorney's fees has been ruled by the Louisiana Second Circuit Court of Appeals as being sufficient to state a claim under the US Constitution, so as to trigger an attorney's fees award under 42 U.S.C. § 1988. However, use of those same boilerplate buzz words is, by definition in the US Fifth Circuit, insufficient to invoke federal court jurisdiction by a removing defendant who seeks to remove such cases to federal court. See 28 U.S.C. §1331 and §1441(a)(b). Thus, the practical effect of the Louisiana state courts' rulings is that a plaintiff can avoid removal of his Petition under 28 U.S.C. §1331 and §1441(a)(b) simply by carefully wording his Petition to ensure that the federal courts decline

jurisdiction over federal claims, such as claims under 42 U.S.C. § 1983, with use of buzz words that are covered under both Louisiana's Constitution and the United States Constitution.[2]

Additionally, allowing state courts to use state law when determining whether a federal question is raised will lead to inconsistent rulings and law among the 50 states in the application of federal law in cases involving concurrent jurisdiction. For instance, Louisiana is a "fact" pleading state,[3] while a majority of other states follow the federal "well-pleaded complaint" or "notice" pleading rule. To allow such inconsistencies in the Courts as to what constitutes a properly pled ***federal*** claim for

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[2] The rights guaranteed under Louisiana's state constitution are not always synonymous with federal constitutional rights. *Crier v. Whitecloud*, 496 So. 2d 305 (La.1986) and *Sibley v. Bd. of Supervisors of Louisiana State University*, 477 So. 2d 1094 (La.1985). In *Sibley*, the Louisiana Supreme Court rejected the three-tiered federal system standard of equal protection review for interpreting and applying the equal protection clause of Louisiana's state constitution found in Article I, § 3. *Messina v. St. Charles Par. Council*, 865 So.2d 158 (La. App. 5th Cir. 2003). Further, La. Const. art. I, § 5 protects against unreasonable searches, seizures and invasions of privacy; this declaration of rights does not duplicate the US Fourth Amendment, but represents a conscious choice by the citizens of Louisiana to give a higher standard of individual liberty than that afforded by the jurisprudence interpreting the federal constitution. *State v. Moses*, 655 So.2d 779 (La. App. 4th Cir. 1995).

[3] California, New York, Pennsylvania, Florida, Texas, Missouri, Virginia, Illinois, New Jersey, Connecticut and Louisiana are states with fact pleading requirements.

purposes of determining whether ***federal*** remedies can be awarded in state court cases and/or whether defendants in those cases can properly remove those claims under 28 U.S.C. § 1331 and §1441(a)(b) no doubt affects a defendant litigant's federal statutory rights depending on where they reside in the country generally, and specifically, with regards to removal under federal question jurisdiction. This is especially so where the federal courts in the Fifth Circuit have specifically ruled in the past that removal under the facts as presented in the case *sub judice* failed to state a viable federal claim or provide the federal court with jurisdiction as a matter of law – yet, the state Courts are applying federal law remedies to facts which were carefully drafted to, on the surface and through the trial on the merits, assert state law claims only.

Here, the State Court's ruling that the face of the Petition asserted viable claims arising under the Constitution and laws of the United States for purposes of imposing an award of attorney's fees against Applicant under 42 U.S.C. § 1988 is especially egregious, since the record clearly shows that the reach to impose attorney's fees under the federal statute came after trial on the merits of the original claim, and after Respondents admitted on the record that there was no contract or state statute that would entitle Respondents to an attorney's fee award.

It is in the interest of justice and a promotion of comity between the state and federal judiciary for this Honorable Court to issue a ruling that would

impose a rule of law resulting in consistent and uniform interpretation of federal laws and statutes, even when being made by a State Court exercising concurrent jurisdiction, to have one general rule as to whether a Petition or Complaint filed in ***any court*** (state or federal) asserts a viable claim "arising under the Constitution and laws of the United States." A uniform rule of law that would clearly outline and enunciate the criteria as to whether a viable constitutional or federal claim has been made under the same legal test – i.e., the "well-pleaded" Complaint rule – appears to be the most efficient and cohesive test to ensure uniformity across the nation. Further, *Amicus* prays that this Honorable Court issue a ruling that directs State Courts that are making a determination as to whether a suit is "arising under the Constitution and laws of the United States" to apply federal law principles in making such a determination. If a Petition fails to establish federal jurisdiction because the allegations made are wholly without reference to federal law, then it should follow that no relief available under federal law should obtain.

## ARGUMENT

This Court retains a role when a state court's interpretation of state law has been influenced by an accompanying interpretation of federal law. *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P. C.*, 467 U.S. 138, 152, 81 L. Ed. 2d 113, 104 S. Ct. 2267 (1984). Likewise, this Court has jurisdiction over a state-court judgment that rests, as a threshold matter, on a determination of federal

law. See *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 816, 92 L. Ed. 2d 650, 106 S. Ct. 3229 (1986) ("This Court retains power to review the decision of a federal issue in a state cause of action."); *St. Louis, I. M. & S. R. Co. v. Taylor*, 210 U.S. 281, 293-294, 52 L. Ed. 1061, 28 S. Ct. 616 (1908); *Ohio v. Reiner*, 532 U.S. 17, 20, 121 S.Ct. 1252, 1254, 149 L.Ed.2d 158, 162 (2001).

Here, that "federal issue" is whether Respondents' state court Petition adequately pled a claim "arising under the Constitution and laws of the United States," so as to trigger an award of attorney's fees under 42 U.S.C. § 1988. Petitioner's brief shows that the allegations in the pleadings do not adequately assert such a claim, because under Fifth Circuit and other precedent, had Petitioner tried to remove the case under 28 U.S.C. §1331 and §1441(a)(b), the courts in the Fifth Circuit would have declined to exercise jurisdiction over this Petition. Thus, *Amicus* asserts that if the allegations of a Petition are insufficient on the "face of the pleadings" to support a federal district court's exercise of jurisdiction over the case, then those same factual allegations are, as a matter of law, insufficient to invoke remedies under 42 U.S.C. § 1988 in the form of "prevailing party" attorney's fees.

In fact, one district court within the Fifth Circuit has ruled that the Federal Rules of Civil Procedure are not intended to be geographically non-uniform; therefore, if that theory of uniformity applies to federal procedural rules, certainly the same result would be true of federal procedure

embodied in the relevant federal removal statutes, which are intended to be geographically uniform. *Newby v. Enron Corp. (In re Enron Corp. Sec., Derivative & ERISA Litig.)*, 2004 U.S. Dist. LEXIS 32176, at *240 (S.D. Tex. May 19, 2004). While Louisiana is most certainly free to establish such rules of practice for its own courts as it chooses, the removal statutes and decisions of this Court are intended to have uniform nationwide application. "Hence the Act of Congress must be construed as setting up its own criteria, irrespective of local law, for determining in what instances suits are to be removed from the state to the federal courts." *Shamrock Oil Corp. v. Sheets*, 313 U.S. 100, 104 (1941); *Grubbs v. Gen. Elec. Credit Corp.*, 405 U.S. 699, 705, 92 S.Ct. 1344, 1349, 31 L.Ed.2d 612, 619 (1972).

"It is plain that the framers of the constitution did contemplate that cases within the judicial cognizance of the United States not only might but would arise in the state courts, in the exercise of their ordinary jurisdiction." *Martin v. Hunter's Lessee*, 14 U.S. 304, 1 Wheat. 304, 340 (1816). To secure state-court compliance with and national uniformity of federal law, the exercise of jurisdiction by state courts over cases encompassing issues of federal law is subject to two conditions: state courts must interpret and enforce faithfully the "supreme Law of the Land," and their decisions are subject to review by this Court. *McKesson Corp. v. Div. of Alcoholic Bevs. & Tobacco*, 496 U.S. 18, 28-29, 110 S.Ct. 2238, 2246, 110 L.Ed.2d 17, 30-31 (1990).

In the case submitted for consideration, the state court Petition specifically alleged that the mask mandate violated provisions of the Louisiana Constitution and Louisiana state law, as follows:

COUNT II – RIGHT TO DUE PROCESS OF LAW

* * *

42. Article I, Section 2, of the Louisiana Constitution provides that "No person shall be deprived of life, liberty, or property, except by due process of law."

43. The Order purports to permit enforcement by undefined measures.

44. The Order threatens to terminate or suspect protected property rights, including utility services, permits, and licenses without due process.

45. The Order is vague in that it requires determination of whether certain actions are "impractical."

46. The Order poses a direct conflict with La. R.S. 14:313 and thereby presents citizens with conflicting legal obligations.

COUNT III – EQUAL PROTECTION

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48. The Order applies arbitrarily, capriciously, and without rational basis.

COUNT IV – RIGHTS TO FREE EXPRESSION, FREE EXERCISE OF RELIGION, AND TO ASSEMBLE PEACEABLY

* * *

50. Article I, Section 7 of the Louisiana Constitution provides: "No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but it responsible for abuse of that freedom."

51. Article I, Section 8, of the Louisiana Constitution provides: "No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof."

52. Article I, Section 9, of the Louisiana Constitution provides: "No law shall impair the right of any person to assemble peaceably[.]"

53. The Order purports to restrict the rights of citizens to assembly peaceably unless they undertake symbolic political activity.

54. The Order purports to command businesses to post signage with political content and/or to condition their right to do business on posting signage with political content.

55. The Order purports to permit large, risky protests without masks while requiring worshipers to wear masks at religious gatherings.

COUNT V – RIGHT TO PRIVACY

* * *

57. Article I, Section 5, of the Louisiana Constitution provides: "Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or

> things to be seized, and the lawful person or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court."
>
> 58. Neither the Order nor any purported violation of the Order provides grounds for any fire marshal, police officer, or other government agent to search, inspect, or demand access to any private property.

Finally, in the prayer for relief, Respondents requested an award of "attorney fees to the extent provided by law."[4]

As shown above, there are no facts alleged making any claim under federal law or arising under the United States Constitution. Respondents carefully chose their wording, as well as their claims. Based on these factual allegations, under binding Fifth Circuit law, Petitioner had no right to remove the case to federal court. In *Bernhard v. Whitney Nat'l Bank*, 523 F.3d 546, 551-52 (5th Cir. 2008), the

[4] An award of attorney's fees is not available to a prevailing party in Louisiana unless directed by contract or a specific state statute. *Killebrew v. Abbott Laboratories,* 359 So.2d 1275, 1278 (La. 1978) and cases cited therein.

Fifth Circuit ruled that removal of a state court Petition was improper, stating:

> The district court found a necessary federal issue because the Bernhards requested attorneys' fees, which are available only under federal law. The court found that attorneys' fees are not available under Louisiana law unless specifically authorized by statute or provided for by contract, but that attorneys' fees are allowed under the EFTA. See 15 U.S.C. § 1693m(a)(3). The court understandably relied on this court's decision in *Medina* for the proposition that a defendant can support removal by showing that a remedy the plaintiff seeks in his or her complaint is exclusively available under federal law. See *Medina*, 238 F.3d at 680.
>
> However, we have since distinguished this holding in *Medina* and have determined that a request for attorneys' fees, even if allowable under federal but not state law, **does not in itself present federal question jurisdiction**. In the case of *In re Hot-Hed, Inc.,* we said that:
>
> > a boiler-plate request for attorneys' fees 'as allowed by law' is insufficient to confer subject-

> matter jurisdiction on the federal courts. We agree with the Ninth Circuit's holding in *Carter v. Health Net of California, Inc.*[, 374 F.3d 830, 834 (9th Cir. 2004),] that '[a] request for attorney's fees cannot be a basis for federal jurisdiction.' A contrary holding would allow the proverbial tail to wag the dog. 477 F.3d 320, 324 (5th Cir. 2007) (second alteration in original).

In *Hot-Hed*, the plaintiff asserted claims under the Texas Business and Commerce Code and Texas common law and sought injunctive and compensatory relief, as well as attorneys' fees and costs, interest, and any other relief to which it was entitled. *Id.* at 322. The court held that, even if attorneys' fees were not authorized under state law, the plaintiff's request would not confer federal jurisdiction. *Id.* at 324.

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In the instant case, the Bernhards' request for "all costs of these proceedings, including attorney's fees" is a boiler-plate request for attorneys fees that does not reference any federal law. Irrespective of whether such fees would be available under state law, **the**

> **request does not raise a necessary federal question that would allow for original jurisdiction and therefore removal to the district court**.

*Bernhard v. Whitney Nat'l Bank*, 523 F.3d 546, 551-52 (5th Cir. 2008).

A plaintiff is "master to decide what law he will rely upon," and he may avoid federal jurisdiction by exclusive reliance on state law even though a federal cause of action may be available. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 107 S.Ct. 2425, 2429, 96 L. Ed. 2d 318 (1987); *MSOF Corp. v. Exxon Corp*., 295 F.3d 485, 490 (5th Cir. 2002) (allegations and prayer consistent with CERCLA claim did not support removal when CERCLA not specifically invoked and state law provided a cause of action); *Avitts v. Amoco Prod. Co.*, 53 F.3d 690, 693 (5th Cir. 1995) ("when both federal and state remedies are available, plaintiff's election to proceed exclusively under state law does not give rise to federal jurisdiction"); *Stinson v. Scoggins*, 2008 U.S. Dist. LEXIS 16325, 2008 WL 631204, *3 (2008) ("federal question jurisdiction is not present merely because a federal law claim, such as 42 U.S.C. § 1983, that was not pleaded by the plaintiff may be available to him.") (Hicks, J.); *Newton v. Carter Credit Union*, 2021 U.S. Dist. LEXIS 78765, at *7-8 (W.D. La. Mar. 23, 2021).

As this Court stated in *Webb v. Webb*, 451 U.S. 493, 501, 68 L. Ed. 2d 392, 101 S. Ct. 1889 (1981), "at

the minimum . . . **there should be no doubt from the record** that a claim under a federal statute or the Federal Constitution was presented in the state courts and that those courts were apprised of the nature or substance of the federal claim at the time and in the manner required by the state law." *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 77-78, 108 S.Ct. 1645, 1650, 100 L.Ed.2d 62, 71-72 (1988). Thus, in order to colorably raise a cognizable claim under a federal statute or the Federal Constitution for review by the United States Supreme Court in a case involving a state court decision, there should be no doubt from the record that the federal claim was presented in the state courts and that those courts were apprised of the nature or substance of the federal claim at the time.

One category of cases of which district courts have original jurisdiction is "federal question" cases: cases "arising under the Constitution, laws, or treaties of the United States." §1331. We face in this case the precise issue whether any part of Respondents' causes of action arise under federal law. Ordinarily, determining whether a particular case arises under federal law turns on the "'well-pleaded complaint'" rule. *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1, 9-10, 77 L. Ed. 2d 420, 103 S. Ct. 2841 (1983). This Honorable Court has explained that:

> Whether a case is one arising under the Constitution or a law or treaty of the United States, in the sense of the

> jurisdictional statute, must be determined from what necessarily appears in the plaintiff's statement of his own claim in the bill or declaration, unaided by anything alleged in anticipation of avoidance of defenses which it is thought the defendant may interpose. *Taylor v. Anderson*, 234 U.S. 74, 75-76, 58 L. Ed. 1218, 34 S. Ct. 724 (1914); *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207, 124 S.Ct. 2488, 2494, 159 L.Ed.2d 312, 325 (2004)

Under the "well-pleaded complaint" rule, an action arises under federal law "when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 107 S. Ct. 2425, 96 L. Ed. 2d 318 (1987). The relevant statute states that a federal district court "shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. §1331. Thus, a federal question is presented when the complaint invokes federal law as the basis for relief. A sufficient basis for federal-court jurisdiction is not presented, however, merely because the facts alleged in support of an asserted state-law claim would also support a federal complaint. *Dugas v. City of Jeanerette*, 2016 U.S. Dist. LEXIS 24128, at *3-7 (W.D. La. Feb. 26, 2016). Even in a situation where both federal and state remedies are available on a given set of facts, there is no basis for removal on the basis of a federal question if the plaintiff elects in his state-court petition to proceed exclusively under state

law. *Avitts v. Amoco Production Co.*, 53 F.3d 690, 693 (5th Cir. 1995). "[T]he paramount policies embodied in the well-pleaded complaint rule [are] that the plaintiff is the master of the complaint, that a federal question must appear on the face of the complaint, and that the plaintiff may, by eschewing claims based on federal law, choose to have the cause heard in state court." *Caterpillar Inc. v. Williams*, 482 U.S. at 398-99. These policies protect the proper balance of power between federal and state courts by favoring narrow construction of removal jurisdiction.

In this case, Respondents contend that their allegations can be read to constitute violations of both the Due Process clause of the Louisiana State Constitution and the US Constitution, despite the fact that there is no mention at all that they were making any claims under federal law and they specifically pled only state law claims. On that basis, the Respondents argue that the state courts were correct in applying federal law remedies to their claims, because those purported federal constitutional claims were somehow subsumed in their Petition. However, there is no federal statute cited in the Respondents' petition. On the other hand, Respondents expressly relied solely on state law constitutional provisions. In fact, a close reading of Paragraph 28 of Respondents' Petition shows that they specifically and solely relied on the Due Process Clause of the Louisiana Constitution. After this general allegation, which invokes only Louisiana state law, the plaintiff then went on to detail Petitioner's actions that purportedly support the general allegation; however, there is no reference to

the United States Constitution or to any other federal statute anywhere in the Petition. More particularly, the Respondents' claims are not articulated as being governed by 42 U.S.C. § 1983 — the procedural vehicle by which violations of the United States Constitution are typically presented, nor did the Respondents identify any amendment to the United States Constitution that they allege was violated by Petitioner's conduct. Therefore, nothing in the petition shows that Respondents asserted any claims founded upon federal law rather than state law.

As the Fifth Circuit has noted, however, "subject matter jurisdiction seldom depends on the precise relief sought. The caboose does not run the train." *Mungin v. Florida East Coast Ry. Co.*, 416 F.2d 1169, 1175 (5th Cir. 1969). In other words, it is the factual allegations set forth in the complaint and not the nature of the relief sought in the plaintiff's prayer that determines whether a federal question has been stated. *Conway v. Pommier*, 2017 U.S. Dist. LEXIS 34094, at *11-12 (W.D. La. Feb. 21, 2017). **A federal claim does not exist simply because facts are available in the complaint to suggest such a claim**. *Chavez v. McDonald's Corp.*, 1999 U.S. Dist. LEXIS 15978, 1999 WL 814527, at *2 (N.D. Tex. Oct. 8, 1999) (holding that plaintiff had not alleged a federal-law claim even though he referred at one point to exhausting his administrative remedies under federal law, where he otherwise clearly alleged that his claims were based on state statutory or common law); *Turbine Powered*

*Tech. LLC v. Crowe*, 2018 U.S. Dist. LEXIS 29806, at *17 (W.D. La. Feb. 14, 2018).

In this instance, neither Section 1983 nor any other federal law completely preempts the state law constitutional claims that arise from Respondents' state court petition. Thus, the allegations in Respondents' petition control here. In that petition, Respondents do not reference a federal statute or a provision from the United States Constitution. As such, it necessarily fails to plead any cause of action "arising under" the Constitution, laws, or treaties of the United States, and using the well-pleaded complaint rule to interpret whether federal claims were adequately pled would lead to the inescapable conclusion that Respondents' petition should have been construed as only claiming violations of state law. See *Wells v. City of Alexandria*, 178 Fed.Appx. 430, 432-433 (2006). *Accord*, *Mangum v. Child Abuse Prevention Ass'n*, 358 F. Supp. 2d 492, 2005 U.S. Dist. LEXIS 4662 (D.S.C. 2005) (Removal of former foster child's gross negligence action against state Department of Social Services and its contractor was improper under 28 U.S.C. § 1441 because federal district court had no original federal question jurisdiction over action, which did not mention 42 U.S.C. § 1983 or First or Fourteenth Amendments; did not allege that defendants acted under color of law; sought monetary damages and not injunctive relief; alleged negligence claims relating to sexual battery; and, thus, did not rely exclusively on claim that defendants violated former foster child's religious preferences by making her say Christian prayers when she was Jewish; in addition, former

foster child's freedoms were adequately protected by state law because S.C. Const. art. I, § 2 provides protection similar to that of First Amendment) and *Hummel v. City of Montgomery*, 368 F. Supp. 2d 979, 2005 U.S. Dist. LEXIS 8636 (E.D. Mo. 2005) (Plaintiff's action, which was removed pursuant to 28 U.S.C. §1441, was remanded even though petition invoked plaintiff's right to freedom of association because it was not clear from petition which constitution, state or federal, plaintiff had invoked, and because state constitution also protected freedom of association, federal law was not essential element of petition).

## CONCLUSION

While *Amicus* concedes that Section 1983 cases can be heard in state courts, they must be pled as such. *Amicus* prays for the uniform and consistent analysis of what constitutes sufficiently pled claims that arise under the Constitution and laws of the United States. To allow the lower state court rulings to stand not only will serve to deprive Respondent of the federal statutory right to remove the case to federal court under 28 U.S.C. § 1331 and §1441(a)(b), but also highlights the danger that some municipalities and elected officials residing in "notice" pleading states will have greater access to the original jurisdiction of the federal courts, while those persons in "fact pleading" states have no such remedy.

Directing state courts to use one, unified test to determine whether a case arises under the

Constitution and laws of the United States will promote judicial efficiency, as well. The way the state court's rulings stand now places governmental bodies and their elected officials in the unenviable position of having to risk Rule 11 sanctions for filing a Notice of Removal in the federal district courts which comprise the Fifth Circuit should a crafty plaintiff only use "buzz words" in stating claims and relief sought that sound in both state and federal law. In addition, untold number of removal petitions may be filed, which would clog the federal courts with cases that may have never otherwise been brought, simply because they need to protect their clients' interests to ensure that any case asserting rights and privileges under a state constitution may also implicitly invoke a federal constitutional claim. Courts across the country should abide by the same guiding principle that whether a federal claim is being made which arises under the US Constitution or the laws of the United States should be clear from the Petition, without resort to defendants playing guessing games as to what claims are actually being pled. Uniform and consistent application of the well-pleaded complaint rule serves to solve this problem, and also prevents unnecessary mental gymnastics allowing state courts to apply federal remedies based on varying state law interpretations of whether a federal claim was sufficiently pled. One uniform standard is needed to allow application of 28 U.S.C. § 1331 and §1441(a)(b), as well, for Courts to determine whether attorney's fees should and could be awarded under 42 U.S.C. § 1988, especially when no federal constitutional article or federal statute is relied on in the Petition seeking relief.

Respectfully submitted,

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