

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
Civil Action No. _____

CASEY EDWARDS and Justin Williams,

Plaintiffs,

v.

THE STATE OF SOUTH CAROLINA
and MARK SANFORD, in his official
capacity as Governor of South Carolina,

Defendants.

NOTICE OF REMOVAL
OF CIVIL ACTION

TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH
CAROLINA:

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant Mark Sanford, Governor of South Carolina in his official capacity ("Governor Sanford"), by and through counsel, hereby files this Notice of Removal of this action from the Supreme Court of South Carolina, where this action is now pending in that Court's original jurisdiction, to the United States District Court for the District of South Carolina, Columbia Division. In support of this Notice of Removal, Governor Sanford shows the Court as follows:

1. On or about May 22, 2009, Plaintiffs Casey Edwards and Justin Williams filed a Petition for Original Jurisdiction in the Supreme Court of South Carolina entitled *Casey Edwards and Justin Williams v. State of South Carolina*. A copy of Plaintiffs' Complaint was attached to the Petition.
2. On May 26, 2009, the South Carolina Supreme Court granted Plaintiffs' Petition and accepted the Complaint into its original jurisdiction.

3. By Order of the South Carolina Supreme Court dated May 27, 2009, Governor Sanford was joined as a party to the state court action.

4. This Notice of Removal is filed with this Court within 30 days after Governor Sanford's receipt of the Complaint, pursuant to 28 U.S.C. § 1446(b) and Federal Rule of Civil Procedure 6(a).

5. In the Complaint, Plaintiffs asks the Court to interpret § 1607 of the recently enacted federal stimulus law, the American Recovery and Reinvestment Act of 2009 ("ARRA"), Pub. L. No. 111-5, 123 Stat. 115 (2009). Specifically, Plaintiff asks for declarations that, *inter alia*, (1) "§ 1607(b) and (c) of the Act [ARRA] permit the South Carolina Legislature, by concurrent resolution, to accept and distribute the ARRA funds where the governor makes the required certification, but fails to accept available funds," and (2) "§ 1607(b) and (c) [of ARRA] allows the South Carolina General Assembly to request and accept any available stimulus funds." (Complaint, pp. 10-11.)

6. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States. In addition, this Court has supplemental jurisdiction over any state-law claims pursuant to 28 U.S.C. § 1367.

7. Accordingly, this action is removable pursuant to 28 U.S.C. §§ 1331, 1441, and 1446.

8. The state court in which this action was commenced is within this Court's district and division.

9. Copies of all process, pleadings, and orders received by Governor Sanford are attached hereto.

10. A copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of South Carolina and served on all adverse parties, as required by 28 U.S.C. § 1446(d).

11. The consent of the State of South Carolina is not required for removal of this action. The relief sought by Plaintiff involves a dispute regarding the meaning of § 1607 of ARRA between Governor Sanford and the South Carolina General Assembly. Both the Governor and the General Assembly constitute part of the State of South Carolina. Thus, the State of South Carolina is not a proper party in this action, is merely a nominal party in this action, and/or was fraudulently joined as a defendant. Governor Sanford need not obtain a consent to removal from a nominal or fraudulently joined co-defendant. *See Brantley v. Vaughan*, 835 F. Supp. 258, 260 n.2 (D.S.C. 1993).

12. By filing this Notice of Removal, Governor Sanford does not waive and hereby expressly reserves the right to assert any defenses available to him.

WHEREFORE, Defendant Mark Sanford, Governor of South Carolina, respectfully gives notice of the removal of this action to this Court.

Respectfully submitted, this the 27th day of May, 2009.

s/ John W. Foster

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing NOTICE OF REMOVAL OF CIVIL ACTION was served upon the following by hand-delivery:

Richard A. Harpootlian
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The Honorable Henry McMaster
South Carolina Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

This the 27th day of May, 2009.

s/ John W. Foster

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