IN THE UNITED STATES DISTRICT COURT
FOR THE XXXXXXXX DISTRICT OF XXXXXXX
XXXXXXXX DIVISION

Cause No.: 9:99-CV-123-ABC

Firstname X. LASTNAME, Petitioner (Xxxxxxx below),	)	In a petition for removal from the Circuit Court of Xxxxxxx County, Xxxxxx
v.	)	
Firstname X. LASTNAME, Respondent (Xxxxxx below),	)	State court cause no.: ##########
and,	)	
Firstname X. LASTNAME, Respondent (Xxxx below)	)	Honorable Just-Us Justice, Judge

Response to Motion to Dismiss Petition for Removal

Comes now the Petitioners, Man X. and Woman Y. Xxxxxxx, in response to Respondent's recent "pleading", the same being nothing but a sham, filed in bad faith, and easily revealed as sheer frivolousness, and with due respect for the wisdom and clarity of this Court, by stating:

Nature of the instant State Case versus *this* Federal Case

1. The instant State case is, or was, a statutory guardianship proceeding under Indiana law. *See* **Ind. Code § 29-3**, et seq. The parties in the instant State guardianship case were Respondent #1 above, Ex-Antichrist, *suing her own adult son*, Respondent #2 above, Poor-Me Child, for full and complete guardianship over his person and estate. The undersigned Petitioners filed a competing action for limited guardianship over Poor-Me Child, but because of the refusal of the State court to listen to, honor, or obey the expressly commanding law of the State of Xxxxxxx, they eventually had no choice but to voluntarily withdraw their competing guardianship action.

2. The undersigned Petitioners and Ex-Antichrist never **sued *each other* in that case**.

3. Moreover, because of the sheer fraud against law and basic civil procedure in that lower State case, the undersigned Petitioners have already perfected their appeal to the Xxxxx Court of Appeals, and **that appeal is now in progress for the merits of the guardianship proceedings**, themselves – a fact that Respondent's counsel has conveniently tried to overlook, and tried to mislead this Court with, while screaming "res judicata" in his most recent "pleading" herein.

4. The **federal removal at bar**, *however*, is simply not about the merits of the guardianship proceedings, themselves, whatsoever. It is a statutory proceeding under **28 USC § 1443** for the denial of equal civil rights by a state court against the Petitioners. The undersigned Petitioners have no pressing need or desire for this federal court to delve into any of the actual merits for determining whether or not *the guardianship adjudication* was properly done or not – that is now already underway within the Xxxxxx Court of Appeals. What is before this federal court, is the various civil rights violations that have been committed by the state court directly against the Petitioners, including such things as ordering large monetary judgments against them when they are *not even parties* in that case, i.e., when the state court has **no** personal jurisdiction over them.

5. Indeed, **the state court even expressly ordered** the Petitioners removed as non-parties, and *still proceeded to order monetary judgments against them*, in direct violation of its lack of jurisdiction over them, and also in direct violation of Indiana state law – even *after* being told.

Response to the Respondent's frivolous "motion to dismiss" filed in bad faith

6. Respondent, Ex-Antichrist, by counsel, has filed both a "motion to dismiss petition for removal" and a "brief" supporting said "motion to dismiss", arguing several things **in bad faith**.

7. First, it is obvious that Respondent's counsel does not understand the nature of removal proceedings. While his "motion to *dismiss*" is cute, at best, he would have more properly filed a motion for *remand*. Also, his "pleadings" do not even properly encaption the parties in interest.

8. Second, his "brief" in support of Respondent's "motion to *dismiss*" is simply not a brief. A brief, whether used within state court proceedings, or within the federal court system, is much more formal than any standard pleading or filing. A brief necessarily contains a table of contents, a table of authorities, various separated statements, and clearly delineated argument sections. His "brief" is actually nothing more than a weakly-prepared memorandum of law, *if* that, at best.

9. Next, Respondent's counsel opens his "argument" with alleging that this Court lacks jurisdiction, but this has already been covered, and rendered meritless, previously. Within the Petitioners' opening notice and warrant for petition for removal, the express statutory authority for removal was plainly laid out for Respondent's counsel to review for himself, if he was able.

10. Any litigant within any state court proceeding may file a removal to federal court under the express statutory authority of **28 USC § 1443(1)**, for the denial of equal civil rights. The frivolous "arguments" of Respondent's counsel, including, *inter alia*, averments regarding both F.R.Civ.P. Rules 12(B)(1) and 12(B)(6) simply do not apply. This is a statutory removal, *expressly* provided for under federal law, and relief is easily provided by this Court in at least the declaratory and/or injunctive sense(s). The only exceptions for types of state court cases that may not be removed are listed in **28 USC § 1445**, and the instant state court case is not one of those.

11. Next, Respondent's counsel continues his "argument" with claiming abstention doctrines. However, he is behind the times. The United States Supreme Court has already denied his claims, and put them to rest, more than once recently. The instant state court guardianship case is, of course, a probate proceeding, and the Petitioners have removed to federal court, *inter alia*, for tortious interference with their equal civil rights. This situation mirrors, nearly identically, the proceedings within the recent blockbuster Anna Nicole Smith case (*Marshall v. Marshall*, 126 S.Ct. 1735, 164 L.Ed.2d 480 (2006)), where Texas state probate proceedings were in parallel

with ongoing federal proceedings. The United States Supreme Court ruled, *inter alia*, that the lower federal courts have long abused the various abstention doctrines, over-reaching their use far beyond what they were originally intended for, and in violation of the Supreme Court's *previous* admonishments not to do so, beginning it's commanding opening statement with:

> We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." 19 U.S. 264, 6 Wheat. 264, 404, 5 L. Ed. 257 (1821).

and, adding, *inter alia*:

> In Ankenbrandt v. Richards, 504 U.S. 689, 112 S. Ct. 2206, 119 L. Ed. 2d 468 (1992), this Court reined in the "domestic relations exception." Earlier, in Markham v. Allen, 326 U.S. 490, 66 S. Ct. 296, 90 L. Ed. 256 (1946), the Court endeavored similarly to curtail the "probate exception."
>
> We have long recognized that "a State cannot create a transitory cause of action and at the same time destroy the right to sue on that transitory cause of action in any court having jurisdiction." Tennessee Coal, Iron & R. Co. v. George, 233 U. S. 354, 360 (1914).
>
> Directly on point, we have held that the jurisdiction of the federal courts, "having existed from the beginning of the Federal government, [can] not be impaired by subsequent state legislation creating courts of probate." McClellan v. Carland, 217 U.S. 268, 281, 30 S. Ct. 501, 54 L. Ed. 762 (1910) (upholding federal jurisdiction over action by heirs of decedent, who died intestate, to determine their rights in the estate (citing Waterman, 215 U.S. 33, 30 S. Ct. 10, 54 L. Ed. 80)).

Marshall v. Marshall, at 13-14, and 37-38.

12. There is absolutely nothing improper about this federal removal of the instant state court case, when the Petitioners are not asking the federal court to adjudicate the *merits* of *that* action, but to enforce their equal civil rights, as expressly provided for under federal law. *See*, e.g., *Asociacion Nacional de Pescadores v. Dow Quimica*, 988 F.2d 559, 566-567 (CA5 1993) (if removal is nonfrivolous and personal jurisdiction turns on federal constitutional issues, "federal intrusion into state courts' authority . . . is minimized").

13. Next, Respondent's counsel's "arguments" continue with his manifestly frivolous "res judicata" claim. A federal court looks to state law to determine any aspect of res judicata. *Elder v. Illinois Dep't of Human Servs.*, No. 99-3852, U.S. App. LEXIS 11820 (CA7 2000), at 6-7.

14. Under Indiana law, the doctrine of res judicata has four (4) prongs to be hurdled:

> Res judicata is a doctrine that bars litigation of a claim after a final judgment has been rendered on a matter in a prior action involving the same claim between the same parties or their privies. Keybank Nat'l Ass'n v. Michael, 770 N.E.2d 369, 375 (Ind. Ct. App. 2002), trans. denied. Four requirements must be satisfied for this doctrine to apply: (1) the former judgment must have been rendered by a court of competent jurisdiction; (2) the former judgment must have been rendered on the merits; (3) the matter now in issue was, or could have been, determined in the prior action; and (4) the controversy decided in the former action must have been between the parties in the present suit or their privies. Id. at 375-76.
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> *Thacker v. Bartlett*, 785 N.E.2d 621, 624-625 (Ind. Ct. App. 2003)

15. As the Petitioners have removed, necessarily based upon denials of their equal civil rights, the issues of prongs #1 and #2 are necessarily still in question, i.e., that the state court did not act competently, and the judgment was not rendered on the actual merits. Moreover, the state court's final judgment, in violating the equal civil rights of the Petitioners, by ordering a surprise monetary judgment against them in direct violation of having no *personal* jurisdiction over them, and in direct violation of not only express Indiana statutory law, but also in violation of recent commanding Indiana caselaw provided it, was an issue that could not have been known earlier. Hence, prong #3 does not apply, either. Lastly, since Ex-Antichrist was suing *her son*, and not the undersigned Petitioners, in that instant state case, prong #4 would never apply, either.

16. In short, the "res judicata" claim by Respondent's counsel is sheer frivolousness, and has been clearly made in bad faith. He literally seeks to extort large sums of monies from the undersigned Petitioners, when he knows the law forbids it, and he expects that every court will simply "look the other way", and allow such manifest violations of the Constitution to transpire.

17. Next, Respondent's counsel tries to pull an "orange rabbit" out of a "blue hat", by ridiculously attempting to lodge an attack under 28 USC § 1915, which is, of course, PLRA law.

18. Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), 110 Stat. 1321-71, as amended, 42 U.S.C. § 1997e et seq., in 1996 in the wake of a sharp rise in prisoner litigation in the federal courts, *see*, e.g., *Alexander v. Hawk*, 159 F.3d 1321, 1324-1325 (CA11 1998) (citing statistics). The PLRA contains a variety of provisions designed to bring this litigation under control. *See*, e.g., § 1997e(c) (requiring district courts to weed out prisoner claims that clearly lack merit); § 1997e(e) (prohibiting claims for emotional injury without prior showing of physical injury); § 1997e(d) (restricting attorney's fees).

19. But, of course, Respondent's counsel is way off target. This case is in no way, shape, or form related to any aspect of "prison litigation". None of the parties are prisoners in any institution, state or federal, and this case is neither an *in forma pauperis* proceeding, in any event.

20. Simply put, the continual "arguments" of Respondent's counsel are **sheer frivolousness**, and while within the instant state proceedings, the Petitioners always filed their various pleadings with caselaw, statutory law, and other authorities that were directly on point to each issue, the state court constantly ignored their pleadings (committing violations of the 6th Amendment right of Equal Access to the Courts, and also constant violations of Class Discrimination between "lawyers" and "nonlawyers"), the state court typically *upheld* the sheer frivolousness of the "pleadings" filed by Respondent's counsel.

21. Lastly, Respondent's counsel again "argues" – in bad faith, having *already been duly provided with the express federal statutory law* – that somehow a state case can only be removed to federal court within the first thirty (30) days. Frankly, it is high time for Respondent's counsel to *actually read* the law, particularly the **second** paragraph of **28 USC 1446(b)**.

WHEREFORE, the Petitioners, Man X. and Woman Y. Xxxxxxx, now pray for the wisdom and knowledge of this Honorable Court to forthwith DENY and/or STRIKE the Respondent's recent "pleading" accordingly, further move this Court for admonishment against Respondent's counsel regarding any future pleadings, and for all other relief just and proper in the premises.

Respectfully submitted,

_____ _____

Man X. Xxxxxxx Woman Y. Xxxxxxx

CERTIFICATE OF SERVICE

We hereby certify that, on this _____ day of August, 2006, a true copy of the foregoing *Response to Motion to Dismiss Petition for Removal*, by depositing the same in the United States mail, first class postage prepaid, has been duly served upon:

Attorneys R. Crooks, # 9999-99
Dewey, Cheatham, and Howe
123 Jokes-On-Your Way
City, State 99999

Respectfully submitted,

_____ _____

Man X. Xxxxxxx Woman Y. Xxxxxxx

Man X. and Woman Y. Xxxxxxx
P.O. Box ###
City, State 00000
123-456-7890
email@domain.ext