

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

JACK PIDGEON and	§	
LARRY HICKS,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Civil Action No. 4:13-CV-3768
	§	
MAYOR ANNISE D. PARKER and	§	
CITY OF HOUSTON,	§	
<i>Defendants.</i>	§	

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**BRIEF OF THE STATE OF TEXAS AS AMICUS CURIAE  
IN SUPPORT OF THE PLAINTIFFS' MOTION TO REMAND**

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## INTEREST OF AMICUS CURIAE

The State of Texas has an interest in this litigation because the defendants have challenged the constitutionality of Texas’s marriage laws.<sup>1</sup> Defs.’ Am. Notice of Removal (Doc. 22) at ¶¶ 6-10. The State has a further interest because the defendants’ improper removal has wrongly deprived the state courts of their authority to resolve the plaintiffs’ requests for preliminary relief.

## ARGUMENT

This case should be remanded to state court as soon as possible. Removal is permitted only when the federal district court would have original jurisdiction over the action. *See* 28 U.S.C. § 1441(a). This court lacks original jurisdiction because plaintiffs have sued as taxpayers to enjoin the mayor of Houston from unlawfully spending public funds. Pls.’ Orig. Pet. at ¶¶ 2.1–2.5, 5.1–8.2 (attached as Ex. A to Defs.’ Am. Notice of Removal). Texas law allows taxpayers to challenge illegal expenditures without demonstrating any particularized injury. *See Andrade v. Venable*, 372 S.W.3d 134, 137 (Tex. 2012) (“[A] taxpayer has standing to sue to enjoin the illegal expenditure of public funds, and need not demonstrate a particularized injury.”). But Article III does not. *See Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436, 1442–44 (2011). The Supreme Court has recognized one “narrow exception” to the Article III prohibition on taxpayer standing, but that exception applies only in Establishment Clause cases. *Id.* at 1445–47 (discussing

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

*Flast v. Cohen*, 392 U.S. 83 (1968)). The plaintiffs allege no other injury that could support Article III standing, and the notice of removal does not explain how the plaintiffs could secure Article III standing in federal court. *See generally Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013). The plaintiffs' claims must be litigated in state court, which is the only forum in which the plaintiffs' claims may be heard.

The case should also be remanded because the plaintiffs' claims do not "arise under" federal law within the meaning of 28 U.S.C. § 1331, as the plaintiffs have explained in their motion to remand. Pls.' Mot. to Remand at 4–6 (Doc. 11). The plaintiffs have brought only state-law causes of action, and when federal issues come into a case only by way of defense, there is no federal jurisdiction under 28 U.S.C. § 1331. *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392–93 (1987). But even if this Court were to reject the plaintiffs' analysis of the well-pleaded complaint rule, the prohibition on taxpayer standing presents an independent (and insurmountable) obstacle to removal.

When a plaintiff in a removed action lacks Article III standing, the action should be remanded, not dismissed. *See* 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."); *see also Coyne ex rel. Ohio v. Am. Tobacco Co.*, 183 F.3d 488, 496 (6th Cir. 1999); *Wheeler v. Travelers Ins. Co.*, 22 F.3d 534, 540 (3d Cir. 1994); *Page v. Tri-City Healthcare Dist.*, 860 F. Supp. 2d 1154, 1171 (S.D. Cal. 2012); *Immigration Reform Coal. of Tex. v. Texas*, 706 F. Supp. 2d 760, 765 (S.D.

Tex. 2010). The State agrees with the plaintiffs that the removal had no objective basis, especially given the federal courts' longstanding prohibition on taxpayer standing, and respectfully urges the Court to remand the case as soon as possible.

The need for a prompt remand is particularly acute because the defendants' improper removal is enabling them to persist in violating the Texas Constitution. *See* TEX. CONST. art. I, § 32. In the context of this litigation, only a state court has jurisdiction to enjoin the defendants' unconstitutional conduct. The case should be remanded to allow Texas courts to enforce the Texas Constitution.

## CONCLUSION

The case should be remanded.

Respectfully submitted.

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Dated: January 17, 2014

**CERTIFICATE OF SERVICE**

I certify that on January 17, 2014, this document was served on counsel of record for all parties, via the Court's CM/ECF Document Filing System and/or electronic mail.

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