

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

PETER STEWART,

Plaintiff,

vs.

SIOUX CITY COMMUNITY SCHOOL
DISTRICT,

Defendant.

No. C 12-4015-MWB

**ORDER REMANDING ACTION TO
STATE COURT FOR LACK OF
SUBJECT MATTER JURISDICTION**

This case is before me on defendant School District's February 8, 2012, Notice Of Removal (docket no. 2), removing to this federal court plaintiff Peter Stewart's February 2, 2012, Petition For Temporary And Permanent Injunction, filed in the Iowa District Court For Woodbury County. The basis for removal alleged by the School District is that the plaintiff's action against the School District is founded on claims or rights arising under the United States Constitution or laws of the United States, such that this court has original jurisdiction of this action pursuant to 28 U.S.C. § 1331. I conclude that I do not have subject matter jurisdiction over this action and that it should be summarily remanded to state court.

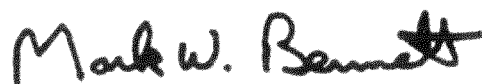
Removal of a civil action to federal court is permissible, *inter alia*, when "the [federal] district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States." 28 U.S.C. § 1441(b). However, "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c).

I have reviewed the plaintiff's Petition For Temporary And Permanent Injunction and find nothing on the face of the Petition stating or suggesting that the plaintiff's action is "founded on a claim or right arising under the Constitution, treaties or laws of the United States." 28 U.S.C. § 1441(b). Rather, the gravamen of the plaintiff's claim is "that certain procedural rights were violated in this case," that is, in a hearing process before the School District leading to his suspension. *See* Petition, ¶ 16. Even the more specific identification of the "procedural rights" allegedly violated does not indicate that any federal (or state) constitutional rights have been violated. A vague reference to "violation of the Equal Protection clause" in the penultimate paragraph of the plaintiff's Brief In Support Of Plaintiff's Petition is simply insufficient to support a contention that the Petition is "founded on a claim or right arising under the Constitution, treaties or laws of the United States." 28 U.S.C. § 1441(b).

THEREFORE, this matter is **remanded to state court** pursuant to 28 U.S.C. § 1441(b), for lack of subject matter jurisdiction.

IT IS SO ORDERED.

DATED this 8th day of February, 2012.



MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA