

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

2009 MAY 13 PM 2:03

CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY \_\_\_\_\_  
DEPUTY

INSTITUTE FOR CREATION FOR §  
CREATION RESEARCH GRADUATE §  
SCHOOL, §  
An unincorporated educational ministry §  
Unit for the Institute for Creation §  
Research, Inc., a California not-for-profit §  
Corporation, §  
Plaintiff §

v. §

CIVIL ACTION NO.

TEXAS HIGHER EDUCATION §  
COORDINATING BOARD, a State §  
Agency; §  
COMMISSIONER RAYMUND §  
PAREDES, in his official and individual §  
Capacities; §  
LYN BRACEWELL PHILLIPS, §  
In her official and individual capacities; §  
JOE B. HINTON, in his official and §  
Individual capacities; §  
ELAINE MENDOZA, §  
In her official and individual capacities; §  
LAURIE BRICKER, in her official and §  
Individual capacities; §  
A.W. "WHIT" RITER, III, in his official §  
and individual capacities; §  
BRENDA PEJOVICH, in her official §  
And individual capacities; and §  
ROBERT SHEPARD, in his §  
official and individual capacities, §  
Defendants §

**A09CA 382SS**

**DEFENDANTS' NOTICE OF REMOVAL OF PLAINTIFF'S CIVIL RIGHTS**  
**ACTION BROUGHT PURSUANT TO 42 U.S.C. §1983**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiff, Institute for Creation Research Graduate School, filed this action under 42 U.S.C. § 1983 in the Travis County District Courts of the State of Texas against Defendants, Texas Higher Education Coordinating Board, Commissioner Raymund Paredes, Lyn Bracewell Phillips, Joe B. Hinton, Elaine Mendoza, Laurie Bricker, A.W. “Whit” Riter, III, Brenda Pejovich and Robert Shepard. A cursory review of their pleading makes clear that Plaintiff is seeking relief for Board actions taken in Travis County, Texas that purportedly amount to violations of the United States Constitution. Because their claims present a federal question, Defendants file this notice of removal under 28 U.S.C. §§1441(a), (b), 1443, and 1446.

#### INTRODUCTION

1. Plaintiff is Institute for Creation Research Graduate School (“ICRGS”); Defendants are Texas Higher Education Coordinating Board, Commissioner Raymund Paredes, and Board members Lyn Bracewell Phillips, Joe B. Hinton, Elaine Mendoza, Laurie Bricker, A.W. “Whit” Riter, III, Brenda Pejovich and Robert Shepard.
2. On April 16, 2009 Plaintiff filed a petition for Injunctive, Declaratory and other types of relief pursuant to 42 U.S.C. § 1983, the Texas Declaratory Judgment Act, the Texas Civil Practice & Remedies Code, and the Texas Religious Freedom Reformation Act in the 126th Judicial District Court of the Travis County, Texas. In the petition, Plaintiff primarily seeks relief under the federal Civil Rights Act, claiming that the Board violated its rights to free speech, association, press and religion under the First Amendment to the United States Constitution, and its rights to equal protection and due process under the Constitution’s Fourteenth Amendment. *Plaintiff’s Orig. Pet.* at 8.

### BASIS FOR REMOVAL

3. Texas Higher Education Coordinating Board, Commissioner Raymund Paredes, Lyn Bracewell Phillips, Joe B. Hinton, Elaine Mendoza, Laurie Bricker, A.W. "Whitt" Riter, III, Brenda Pejovich and Robert Shepard were served with the petition on April 23, 2009. Defendants file this notice of removal within the 30-day time period required by 28 U.S.C. §1446(b).

6. Removal is proper because ICRGS's suit involves a federal question. 28 U.S.C. §§1331, 1441(b). Specifically, ICRGS' claims arise under 42 U.S.C. §1983.

7. A federal district court has subject matter jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. §1331. Whether a court has federal question jurisdiction is resolved by application of the "well-pleaded complaint" rule. *Merrell Dow Pharms. v. Thompson*, 478 U.S. 804, 808 (1986); *Hart v. Bayer Corp.*, 199 F.3d 239, 243 (5th Cir.2000). This rule "provides that the plaintiff's properly pleaded complaint governs the jurisdictional inquiry. If, on its face, the plaintiff's complaint raises no issue of federal law, federal question jurisdiction is lacking." *Hart*, 199 F.3d at 243 (citing *Franchise Tax Bd. v. Laborers Vacation Trust*, 463 U.S. 1, 10 (1983)). ICRGS's complaint raises issues of federal constitutional law. Under the "well-pleaded complaint" rule, this Court has subject matter jurisdiction over ICRGS's §1983 claims.

9. All Defendants who have been served in this case consent to its removal to federal court. 28 U.S.C. §1446(a).

10. Defendants are required under 28 U.S.C. §1441(a) to remove this case to this federal district court in Austin because it and the Austin Division embrace the state

district court where the removed action has been pending. Moreover, because the events giving rise to ICRGS' civil rights claims occurred in Travis County, Texas, venue is proper in the United States District Court, Western District of Texas, Austin Division. 28 U.S.C. §1391(b).

11. Defendants have filed a copy of this notice of removal with the clerk of the state court where the action has been pending.

**JURY DEMAND**

12. Plaintiff did not demand a jury in the state court action.

**CONCLUSION**

13. Because Defendants have satisfied all prerequisites to removal and Plaintiff's federal civil rights claims are within the federal court's jurisdiction, Defendants remove this action to federal court.


Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

C. ANDREW WEBER  
First Assistant Attorney General

DAVID S. MORALES  
Deputy Attorney General for Civil  
Litigation

ROBERT O'KEEFE  
Chief, General Litigation  
Division

  
SHELLEY DAHLBERG  
Texas Bar No. 24012491  
Assistant Attorney General  
General Litigation Division

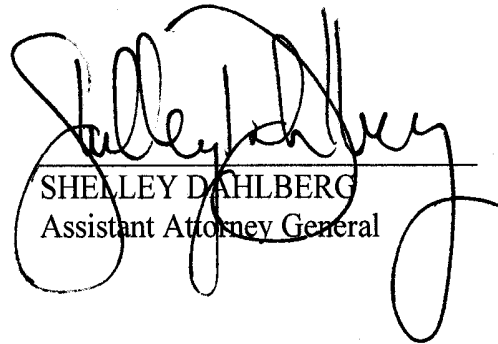
Post Office Box 12548,  
Capitol Station  
Austin, Texas 78711-2548  
(512) 463-2120 (Telephone)  
(512) 320-0667 (Facsimile)

**Certificate of Service**

I certify a true and correct copy of the foregoing document has been sent via certified mail, return receipt requested on May 13, 2009 to:

James J.S. Johnson  
The Institute for Creation Research  
1806 Royal Lane  
Dallas, TX 75229

John A. Eidsmoe,  
FOUNDATION FOR MORAL LAW  
One Dexter Ave.  
Montgomery, AL 36014



SHELLEY DAHLBERG  
Assistant Attorney General