

**In The Supreme Court Of Ohio**

THE STATE OF OHIO ex rel.  
DAVID MAHAL

Relator,

v.

JENNIFER BRUNNER,  
OHIO SECRETARY OF STATE

Respondent.

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:  
: Case No. 08-2027  
:  
:  
: Original Action in Mandamus  
:  
:  
: Expedited Election Matter  
: Under S. Ct. Prac. R. X. § 9  
:  
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**RESPONDENT SECRETARY OF STATE JENNIFER BRUNNER'S  
NOTICE OF REMOVAL**

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James B. Hadden  
Porter Wright Morris & Arthur, LLP  
41 South High Street  
Columbus, Ohio 43215  
614-227-2168  
614-227-2100 (Fax)  
jhadden@porterwright.com

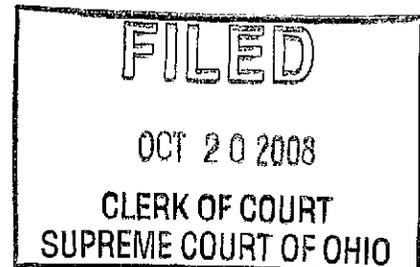
William M. Todd (0023061)  
Benesch Friedlander Coplan & Aronoff  
2600 Huntington Center  
41 South High Street  
Columbus, Ohio 43215  
614-223-9348

*Attorneys for Relator*

NANCY H. ROGERS  
Attorney General of Ohio

Richard N. Coglianese (0066830)  
Damian W. Sikora (0075224)  
Pearl M. Chin (0078810)  
Assistant Attorneys General  
Constitutional Offices  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
(614) 466-2872 – phone  
(614) 728-7592 – fax  
rcoglianese@ag.state.oh.us

*Attorneys for Respondent*



IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO *ex rel.*  
DAVID MAHAL

Relator,

v.

JENNIFER BRUNNER,  
OHIO SECRETARY OF STATE

Respondent.

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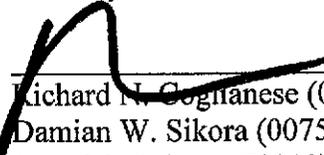
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RESPONDENT SECRETARY OF STATE JENNIFER BRUNNER'S  
NOTICE OF REMOVAL

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Now comes Respondent Secretary of State Jennifer Brunner and notifies the Court and the Relator that the Secretary of State has removed this case to the United States District Court for the Southern District of Ohio pursuant to 28 U.S.C. §§ 1441(b) and 1443(2). The case is captioned there as *The State of Ohio ex rel. David Mahal v. Jennifer Brunner, Ohio Secretary of State*, Case No. 2:08 CV 983(S.D. Ohio). A copy of the notice of removal is attached.

NANCY H. ROGERS  
Attorney General of Ohio

  
Richard N. Coglianese (0066830)  
Damian W. Sikora (0075224)  
Pearl M. Chin (0078810)  
Assistant Attorneys General  
Constitutional Offices  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
rcoglianese@ag.state.oh.us  
(614) 466-2872 – phone  
(614) 728-7592 – fax

*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing *Notice of Removal* was sent on October 20th, 2008, via electronic mail, facsimile transmission and ordinary U.S. mail, postage prepaid, to the following:

James B. Hadden  
Porter Wright Morris & Arthur, LLP  
41 South High Street  
Columbus, Ohio 43215-6194

*Attorney for Relator*

William M. Todd  
Benesch Friedlander Coplan & Aronoff  
2600 Huntington Center  
41 South High Street  
Columbus, Ohio 43215

*Attorney for Relator*



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Richard N. Coglianese (0066830)

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
JAMES BONINI  
CLERK

2008 OCT 20 A 9:19

U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
EAST. DIV. COLUMBUS

THE STATE OF OHIO ex rel.  
DAVID MAHAL

Plaintiffs,

v.

JENNIFER BRUNNER,  
OHIO SECRETARY OF STATE

Defendant.

Case No. **08 CV 983**

**JUDGE SMITH**

Judge  
**MAGISTRATE JUDGE KING**

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441(a) and 1441(b), Defendant Secretary of State Jennifer Brunner notifies this Court and Plaintiffs that Defendant hereby removes the case originally captioned as *The State of Ohio ex rel. David Mahal v. Jennifer Brunner, Ohio Secretary of State*, Case No. 08-2027 in the Supreme Court of Ohio, to this Court.

Removal is based on the fact that, on the face of the Complaint, Plaintiffs have asserted claims arising under Section 303 of the Help America Vote Act ("HAVA"), 42 U.S.C. § 15483. See Expedited Petition for Writ of Mandamus ("Complaint"), ¶¶ 12-13, filed with this Notice. A civil action filed in a state court may be removed to federal court if the claim is one "arising under" federal law based on the "well pleaded allegations of the complaint." 28 U.S.C. § 1441(b). *Beneficial Nat'l. Bank v. Anderson*, 539 U.S. 1, 6, 123 S. Ct. 2058 (2003). Because this Court has original jurisdiction over such claims pursuant to 28 U.S.C. § 1331, this action may be removed under 28 U.S.C. §§ 1441(a) and 1441(b). To the extent that the complaint raises claims arising under the law of the State of Ohio, the adjudication of Plaintiff's state law claims necessarily requires resolution of substantial, disputed issues of federal law under HAVA

such that jurisdiction properly lies with this Court. *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005).

Furthermore, under 28 U.S.C. § 1441(a), removal to this Court is proper as the district and division where the State Court action is pending. Plaintiffs originally filed the State Court action in the Supreme Court of Ohio, Case No. 08-2027. Because the Supreme Court of Ohio is located within this district and division, removal to this Court is proper.

Finally, removal is timely under 28 U.S.C. § 1446(b), as Defendant Secretary of State Brunner was served with Plaintiff's complaint on October 17, 2008. *See* Summons, filed with this Notice.

Copies of the Plaintiff's State Court Expedited Petition for Writ of Mandamus, the attachments thereto, the Supreme Court's Scheduling Order, and the State Court docket are being filed today with this notice. *See* Affidavit of Richard N. Coglianesse, attached to this Notice as Exhibit A. Additionally, a time stamped copy of this notice will be filed with the Clerk of the Supreme Court of Ohio.

Respectfully submitted,

NANCY H. ROGERS  
Attorney General of Ohio

  
/s/ Richard N. Coglianesse  
Richard N. Coglianesse (0066830), Trial Attorney  
Damian W. Sikora (0075224)  
Pearl M. Chin (0078810)  
Assistant Attorneys General  
Constitutional Offices Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
614-466-2872  
614-728-7592 (Fax)  
rcoglianesse@ag.state.oh.us

*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that a time stamped copy of the foregoing *Notice of Removal* will be filed with the Clerk of the Supreme Court of Ohio. I further certify that the foregoing *Notice of Removal* was sent by means of the Court's electronic filing system on October 20th, 2008 to the following:

James B. Hadden  
Porter Wright Morris & Arthur, LLP  
41 South High Street  
Columbus, Ohio 43215-6194

*Attorney for Plaintiff*

William M. Todd  
Benesch Friedlander Coplan & Aronoff  
2600 Huntington Center  
41 South High Street  
Columbus, Ohio 43215

*Attorney for Plaintiff*

  
/s/ Richard N. Coglianese  
Richard N. Coglianese (0066830)