

AN EXTRAORDINARY WRIT

No. _____
IN THE US SUPREME COURT
for this UNITED STATES OF AMERICA

“In Re James Frank Osterbur”
petitioner, pro se
www.justtalking3.info
{website a free speech/ freedom of the press initiative and right}

the petition called mandamus
a case determining both the foundation of
democratic authority as we the people:
as declared in constitutional law as
REDRESS OF GRIEVANCES

the petition called prohibition
A CASE determining the foundation of WE THE
PEOPLE, as it decides WHO has the power in this
question between:
money of a few/ **versus the people and their
decision**, their right to be informed, their right to
be protected by their government.

The petition called habeas corpus
The demand for judicial determination on the status
of personal jurisdiction: MY RIGHT to trial, MY
RIGHT as a pro se litigant. To use the language of a
common citizen, in the real world/ and expect the
judiciary to understand. Anything less is a corrupt
court!

THE APPELLATE JURISDICTION

In these descriptions of “more than one courtroom” of this state of IL and this nation called the United States of America. **The value and respect for democracy, described as:**
WE THE PEOPLE RULE OURSELVES BY CONSTITUTIONAL LAW; the law we create for ourselves.

Is tested and known by its truth within a courtroom. Within this Supreme Court courtroom. As your subservient “work sites/ courtrooms” have failed in their duties: bringing the disease of arrogance/ the power of failed justice/ and the disgrace of disrespect for constitutional law by the judiciary and discarding, justice upon us all. Is that current truth.

The order of this district court: USING MONEY, to deny access by establishing “only a lawyer”/ disputes and determines, who shall or shall not represent a case for constitutional democracy: Sells that democracy to the few/ democracy means: together we are one, united for the sake of society. Constitutional law denied by any means, establishes so-called:

“justice belongs only to the rich”.

I DO seek to change that fact. By strict adherence to CRITICAL FOUNDATION PRINCIPLES OF DEMOCRACY.

Or, more simply: I demanding: of the court, do, your job. As the law demands/ as your oath

describes.. Redress is not discretionary/ it is the law.
A mandate upon the court and all its employees.

APPELLATE JURISDICTION 2

In this case, the critical foundation of democracy is upheld by the plaintiff as OUR RIGHT to decide for ourselves, in the matters and realities of society that truly do affect our lives. We the people is synonymous, with OUR RIGHT to vote upon the most important issues of society in this our time. That right is exercised with redress of grievances: THE DEMAND to vote for myself/ **rather than** vote on the laws that govern society by voting for someone to vote for me. The element called money has invaded the lives of a community in this case. That money brings a very substantial increase in noise, traffic, pollution/ decreasing property value by turning a town into an industry site. And no doubt bears heavily upon the reality of human health and happiness for all concerned as there are limits and standards in particular for noise, created by the federal government: because damage is, or can be done to the human ear. It can be irreversible/ therefore all have the right to know, if that standard for safety is being kept. Otherwise, you gamble with our lives/ completely unfair. The elemental charge is: that money shall NOT decide/ DEMOCRACY by the ascension of knowledge shall. The courtroom was then accessed to provide that knowledge. The judiciary involved discarded that and reestablished the case against the elevator/ which was NEVER a defendant. That is illegal seizure, not the performance of due

process. 263 P 2d769,773. A prohibition upon the judiciary refused. You have no right, to change my plea, my lawsuit, or interpret as you desire. The law decides/ not the judge.

APPELLATE JURISDICTION 3

The elemental determination of this trial is governed by this decision: IS CONSTITUTIONAL LAW/ IS DEMOCRACY/ IS THE FOUNDATION OF LEGAL DUE PROCESS:

subject to procedural rules/ beyond what is consistent with fair.

Because if it is: then the rule has exceeded the constitution/ democracy has been invaded by traitors/ and the foundation of legal right has been given over to fools.

JUSTICE IS THE DEMAND OF EVERY PEOPLE.

Here too. Justice is not governed by rules/ but by truth, and no greater truth exists in human society than what is fair to all.

I have been imprisoned from my rights under the constitution, and very specifically REDRESS OF GRIEVANCES: in lawsuit after lawsuit by the clear and certain ridicule of the judiciary: “their words, frivolous, incoherent, delusional, incomprehensible, rambling and mostly unintelligible, and more”. Yet I have not lost a single case by law. Only ridicule and innuendo. YOUR JOB, IS TO CORRECT THAT and establish we the people.

The courtroom has been imprisoned against me (refused to me); by the judiciary and employees of government with claims of sovereignty, claims of immunity, and claims they need not be responsive

to the law of this land as is redress of grievances.
They claim as employees to “be the government”/
whereas in democracy WE THE PEOPLE ARE
ASSURED: WE ARE THE GOVERNMENT
OURSELVES! Only one statement is true. Either
we the people are sovereign as owners of this nation/
thereby entitled to all that ownership grants: OR
the employees hired are found to be anarchists;
tearing down that democratic structure of authority
by we the people, thereby traitors. Because that
would not be democracy if we are ruled, by anyone
other than ourselves. There is no immunity for
that. There is no immunity claimed for the
judiciary in the constitution aside from “DURING
GOOD BEHAVIOR”. Which does translate into IF
there is bad behavior/ THEN the judge shall be
removed.

THE EXCEPTIONAL CIRCUMSTANCES

In this case defined by the simple assertion: does
money rule here/ OR do we the people. The answer
provides distinct and powerful possibilities of
democracy. As the preamble to the US constitution
does command of us all. Thereby prove that what
the constitution demands, shall not be the law.

Prove our democracy is real! Denied.

Order of the court 2023

also demands that 10-CV-2277 is in partnership
with this lawsuit. That lawsuit brought by me
sought the knowledge and truth: that terrorists are
**GAMBLING WITH OUR LIVES/ OUR NATION/
AND EVERY FUTURE ON EARTH.**

Consequently it is the job of our employees to
investigate what is so obviously errant and wrong

(one claim established: we at NIF shall create an explosion [energy burst] one thousand times greater than all the electrical generating capacity of this United States. Based upon theories and assumptions; in a suburb of San Francisco). Being wrong has true consequences, the failure of a single laser, releases all that energy! And again (their claim: we will try to recreate the single most destructive event in the history of the universe/ the BIG Bang, wherein all mass disintegrates, including planets). And again: we will be gods/ we will change nature by our own design. Nature is the genetic structure of biology, there is nothing more insane, than to risk everything, for every life/ for all time. **This lawsuit: LET THE PEOPLE DECIDE FOR THEMSELVES.** Its their life/ their child/ their future/ their everything. None have a right to take it all away.

Denied.

In the report and recommendation of judge Bernthal, lawsuits 10-2257 returns to this trial as a lawsuit by me demanding accountability in government/ **LET US ALL KNOW THE TRUTH/** and nothing but the truth: Regarding what our employees have done in money for the nation and more. Where did it really go. Which is now US SUPREME CT case 11-100 lawsuit 10-2055 by me returns to this trial as a demand made upon the district court to enforce state of IL law. Enforce the fifth, written guaranteed constitutional right of the state of IL called redress of grievances. Denied. Lawsuit 11-2111 by me, returns to this trial as a demand for contractual duties **MUST BE PERFORMED**; before payment is due. In the

matter of taxes/ it is then absolutely clear that every constitutional guaranteed inherent and protected right to each and every citizen SHALL be honored in full/ OR no payment is due. That includes taxes, because you the employee, ARE NOT the government. Rather our constitution and foundation documents as agreed ARE, "OUR GOVERNMENT" by law. You the employee have a job to do: the critical question being. DO YOU OWE ME REDRESS OF GRIEVANCES BY LAW/ or do you not. Prove the truth. Because if owed, then entitled to receive/ or legally entitled NOT to pay the tax, because YOU failed to uphold the contract that is identified by sworn oath/ and amendments directing our employees of government what they MUST do, for all the people.
Denied.

COURT OF LAST RESORT

I am removed from participating further in the champaign county courtroom of this state called ILLINOIS and this US district as identified in the order 11-2023 that order removes this trial, and returns it to the state court/ where they are certain to follow the guidelines of the report and recommendation IV pages 6-8. Providing a step by step return to the processing of service by rules that seek to control justice rather than provide fair play. That is tyranny. Those issues were removed in Peoria district court/ when they failed, it was moved to Urbana.

From plaintiff filing dated 2/ 28/11 this case:

PLAINTIFF RESPONDS TO MOTION TO
DISMISS FOR LACK OF PERSONAL
JURISDICTION. An excerpt:

I do swear: no intent exists to fail to provide all information to every defendant or the court as is necessary and known. My web address where each filing is exhibited has been sent to you; thereby allowing each one to search for themselves and PLEASE DO, inform me if something is amiss in any mailing. It is NOT intended. Remembering I sent you a note asking "please advise" because some of your legal addresses are wrong how should I proceed: and received no reply. Nobody is perfect/ including the postoffice: I have now, emboldened the text to insure nobody is left out. I cannot tell you why you failed to receive the notification due each one/ I do not know, apart from the fact it was unintentional. And the problem will be fixed as soon as possible: kindly instruct.

As is consistent with a pro se litigant, each and every minimal rule of the court shall not be kept/ because the courtroom has been designed for lawyers to control. NOT people to find their justice in the law. That fact is again identified in the footnote 1: being true that whosoever is in charge of traffic safety, IS intended to be the recipient of a summons. That fact is known to the court/ and it is the court who obstructs justice if the necessary information regarding state run agencies is not produced. Footnote 2 page 2 identifies the assertion that justice is irrelevant when confronted by rules. I, TOTALLY DISAGREE, and demand the clear constitutional standing upon which you declare this is acceptable in your job to present justice to this people. While there must be an acceptance of duty on

*the part of any pro se litigant. THERE IS a duty inside the courtroom and other agencies of the state or nation as it regards simple constructions of justice. Such as the proper names, addresses, summons, and means to attain DUE PROCESS as is promised to each and every citizen. WHERE is my due process, if justice is condemned by a rule: **have I not sworn to do what is necessary if you provide the correct information directly to me. Send what is lacking/ and be very clear about what you want.** They refused.*

The US district court/ the US appellate court/ the state of IL circuit courts/ the state of IL appellate court/ and the state of IL supreme court **have all been intertwined in this demand for redress/ for justice/ for democracy/ and for protection of the people.** All failed to accept their duty to obey constitutional law, and assert democracy as is called WE THE PEOPLE. That leaves only the US SUPREME COURT; as you are, their superior. 2023 “the court is now left in the uncomfortable position of being asked to analyze Illinois procedural rules in a case between the state of ILLINOIS and a citizen of IL. (HE refuses). This in a case demanding that the guarantees of the IL constitution as is legal redress/ MUST be adhered to by the state. **MUST BE ENFORCED BY THE FEDERAL COURTS,** as is the guarantee of article 3 US constitution. Denied.

Other realities of the courtroom are highlighted in the originating writ **REQUIRED** because there was no other way to get the report and recommendation or order of the court for the purposes of an appeal **OTHER THAN** to threaten the US supreme court. US supreme court case 11-

100 was exactly the same way: they refused to deliver the report and recommendation plus order until the US supreme court was brought into the picture as a threat. Fundamentally proving: they have no honor, with regard to me.

Parties to the proceeding

THE UNITED STATES OF AMERICA: *the guarantors of our constitution, our democracy, our state rights, & our ownership as WE THE PEOPLE.*

These are, “The principles of this case” guaranteeing to the citizens of each state: that the state SHALL uphold and provide its constitutional guarantees to each of their citizens. Protect the constitution both state & nation: They have refused.

**FOR THE USA: THE SOLICITOR GENERAL
ROOM 5614, Department of Justice, 950
Pennsylvania ave, NW Washington DC 20530-0001**

The originating defendants:

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

box 19281 Springfield IL 62794-9276

IL DEPT OF AGRICULTURE OVERSIGHT AND
ENFORCEMENT.

Box 19281 Springfield IL 62794-9281

Environmental protection agency for the USA,
Chicago office IL:

US EPA region 5 Ralph Metcalfe Federal building
77 W. Jefferson blvd Chicago IL 60604

Department of OSHA for this USA. Chicago area
701 Lee st. Suite 950 Des Plaines IL 60016

Department of traffic safety for IL

box 19245 Springfield IL 62794-9245

Department of human rights; 100 W. Randolph st.

Chicago IL 60601-3218
added is
*US ATTORNEY Gerard A. Brost 211 Fulton st.
Suite 400, Peoria IL 61602
STATES ATTORNEY office Champaign county 101
E. Main st. Champaign IL 61801
IL ATTORNEY GENERAL 500 S. Second st.
Springfield IL 62706
champaign county circuit clerk 101 E. Main st
Urbana IL 61801*
added as lawyers for the defense was:
*IGNACIA S. MORENO Lawyer for epa requesting
electronic filing from court/ no address to me.
AMY J. DONA Lawyer for US dept of justice/
environmental and natural resources division/
environmental defense section box 23986
Washington DC 20026-3986*

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We now begin with **the judgment of the court US DISTRICT COURT/ CENTRAL DISTRICT OF ILLINOIS/ located Urbana IL**

CASE 2:11-cv-02023-MPM-DGB #22

James Frank Osterbur plaintiff

vs.

IL ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF OSHA, USA
IL DEPT OF AGRICULTURE
US EPA
IL DEPT OF TRAFFIC SAFETY
IL DEPT OF HUMAN RIGHTS

defendants.

JUDGMENT IN A CIVIL CASE

“Decision by the court. This action came to trial or hearing before the court. The issues have been tried or heard and a decision has been rendered.”

“It is ordered and adjudged that the Defendants Motion to dismiss for Lack of Personal Jurisdiction [7] filed by the Illinois Defendants is moot and the case is remanded back to the Circuit Court of Champaign county. This case is terminated.

Dated: September 26, 2011

Judge: Michael P. McCuskey/ Chief US district judge.

Plaintiff replies

Within the confines of federal law/ the judge fails entirely, supports no reference to law; and uses ridicule to remove the case involving a corporation, whose headquarters are located in the state of Indiana/ and whose operational site is located in Illinois. Makes this a potential federal case/ which means the knowledge and evidence collected: MUST be useable in federal court. The standards relied upon are federal in nature/ making those who control the authority and the courtroom: the ones who must participate in the collection of evidence. OSHA agrees 1/ 26/ 2011, Barry Solerno / assistant area director: and is then told to stand down My reliance on Article 3 of the US constitution: “Between a state, or the citizens thereof”: establishes legal right.

Thereby the judge's order is moot.

Legal theory

The fact of elevator involvement although NOT a current part of trial, does cause the surrounding area not the elevator itself to be involved in this dispute. As it is not the elevator property, but the consequences to the community that are to be resolved here. All the evidence collection is about the elevator; to be a distinct part of trial, discovering the boundaries between what money can do to the people/ OR WHAT PEOPLE can legally do, in regards to the impact that money has brought into their lives. Particularly through redress of grievances, the issue itself is brought into the state or federal realm/ as this affects all citizens: WE NEED TO KNOW, the standards and the legal boundaries of democratic influence and liberty versus individual freedom. Not a game, the demand is: to legally identify exactly what is fair to all, in these situations. So that we the people can then vote for ourselves, and establish our authority as a democracy over society/ but under constitutional law.

Secondly; the fundamental process involved here is constitutional law; to protect, serve, and obey the constitution; **OUR DECISION TO BE A DEMOCRACY, AND HIRE EMPLOYEES, RATHER THAN ALLOW RULERS TO INVADE OUR LIVES.** Which literally does mean: NO EMPLOYEE can rule/ we rule ourselves, by law! The first amendment REDRESS OF GRIEVANCES as applied and is declared to be a legally guaranteed right of all citizens in this state by its own constitution 5th declaration of guarantee. And the US constitution first amendment: what our employees owe us, as **our undeniable right, to democracy itself.** Instead of law or legal defense or sworn oath: as found in these lawsuits, there is only, denial of this right/ games and innuendo/ trickery and corruption. The court uses ridicule and excludes me from the courtroom; from participating in my own democracy as a citizen of both state and nation: that

is illegal. The circuit court not even by trial/ they terminated the case; and then demanded my return.

Thirdly; the foundation complaint is about the protection of a community from those whose assault upon my life/ “their lives” does have consequences. I AM AN EXPERT; on the effects and consequences of excessive long term noise on the human existence. I DO have tinnitus/ extending from excessive long term noise: therefore I KNOW, the damage it can do on any human life. IT IS, or can be HARSH; even causing suicide [never in me, but many]. Not a game; 153 S.E. 2d 356, 359! The further effect of substantially increasing traffic; functionally turning this small town into an industrial zone; extensive large equipment crossing the path of school children 438 P. 2d 477, 482. Alters the town. Instead of a community business (which I support): issues of health and happiness are taken away, that has consequences as well, in myriad ways.

Fundamental constitutional assertions

The critical relationship we the people do hold with our government as a democracy is: according to the preamble of the US constitution. “The following”.

“WE the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

amplification of the reason

The right: to access and determine knowledge, as to the validity of WHO has the greater right/ who has the greater jurisdiction to protect and defend themselves as a

community/ OR demand whatever the money wants shall win. Is fundamental to this quest for democratic authority: where does the boundary between freedom and liberty exist/ law proves liberty, but freedom is present in everything we do.. **We the people, RULE OURSELVES: BY LAW. The liberty to decide as a people united, what is fair for everyone!**

Therefrom the duty presented to this court for extraordinary writ examines the appellate duties of the US SUPREME court and its oversight upon the judicial system of America. As we see in both the state of IL and the federal system of courts, an absolute denial of constitutional law, called redress. And a foundation of ridicule instead of law, by the judiciary in their consistent failures of due process. I am forced from courts by rules NOT justice/ I am denied legitimacy to stand and defend my life, my community, my nation, my future, and my world; because of meritless procedural dribble and stupidity/ FORCING JUSTICE from the law and this land.

I am forced from my home, the place 3 generations have grown for the harvest season; due to excessive noise 237 U.S. 309. OTHERS are subjected to an environment beyond their control, a pollution forced upon them. They do have a right to determine the precise nature of how they will be affected before damage is done 397 U.S. 254 262-263. If that is what they choose. But more important than that is the right to be informed of the damage being done prior to even the possibility of grave consequences. The constitutional rights granted to me, and to us as a society: **RELIES upon redress of grievances to establish our ownership as a democracy** that then is the fundamental which shall decide what is fair: my life/ my decision. Our lives/ therefore our decision; but with the future involved and declared equal! That is the demand of this trial.

To understand the effects, limit the damage, refine the boundary between money and democracy, participate in

that democracy through the courtroom, and adhere to constitutional law 341 U.S. 123, 162-163

YOUR courtrooms have failed in these matters!

THE DEMAND FOR RELIEF IS:

LET THE CONSTITUTION DECIDE, do you owe each citizen their right to redress of grievances? Yes or no!

Let the judiciary understand: THE LAW is our democracy, our authority/ NOT you. You, are the employee! Your job, is to provide JUSTICE, by the democratic principles we have agreed to within our constitutions, and foundation documents which bind this people together; as both state and nation. Your job is to define the boundaries that then protect us all, with knowledge and understanding, by the best evidence and nothing but the truth. So that we the people shall then decide what we choose for ourselves, as democracy in action.

as is redress. for WE the people.

Because redress is a foundation law, in both state and nation/ and has NEVER been tried successfully within the courtrooms of state or nation. THE DEMAND it is a judicial conspiracy to deny redress: does erupt. Therefore it is the US supreme court which must prove REDRESS either exists for this people, both state and nation/ OR it does not. Your job/ your oversight, failed numerous times both state and nation. is in question. The element called “good behavior” to be decided; “with consequences” ; let the people decide.

LET THE PEOPLE UNDERSTAND: that democracy does not intimidate the citizen, but empowers them all to participate in their government/ their situation in life and society; by asserting

NO GAMBLING WITH OUR LIVES/ NO overwhelming our lives with the power of money/ NO power is greater than the constitutional law/ and NO employee holds the title of “government/ immune from justice/ or sovereign (above the people themselves united)”. They are contracted to do a job/ the failure to do that job, or the failure to honor that purpose, or provide legitimate responses: ALL CARRY PENALTIES FOR THE EMPLOYEE.

LET THE PRINCIPLE, the plaintiff pro se: be proven *Rambling and mostly unintelligible filings/ naked assertions...in unspecified way/ deemed frivolous. Cannot show he is plausibly entitled to relief.* As is claimed by the judiciary in the “order of the courts”.

Demanding again EXPLAIN:

What is not common in terms of a pro se complaint “well-pleaded, with reasonable inferences in the plaintiff’s favor”. Therefore a judge must act. Or, What is not understandable to the common public school teenager? If a child (young adult) can understand/ then so must the court.

Section 15 page 10 of the report and recommendation of judge David G. Bernthal:

{ 15. The court states page 3 “*the court must treat all well-pleaded allegations in the complaint as true, and draw all reasonable inferences in the plaintiff’s favor*”. (#19) page 2 “plaintiff’s claim is summarized in the following excerpt from his complaint”. The judge uses this to infer “failing to provide a short and plain statement of the claim showing the pleader is entitled to relief”. The grounds, requiring the court to intervene: as portrayed by a “common pro se litigant” are very clear.

“Establish the intent of the preamble to our US constitution; and sustain our right as we the people to do what that law, gives us the authority to do: demands over,

our employees, as a democracy requires, is our responsibility: as is found in these words.

“WE the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

I return the court to its own decision to use as “its chosen summary from my complaint”: page 2. Report and recommendation. “Quote:.... “merit-less litigation, to conclude that a complaint consists only of naked assertions and delusional scenarios.....frivolous. From the plaintiff, The writing starting with;

“Not a claim for money from me. Rather it is a demand upon government officials to do your job, which is to protect all our lives from injury, protect us from infraction of the law that harms without cause/ or subsequently takes away our freedom and our right to decide for our own lives: thereby damaging our property or ability to remain in our own homes. This is an unreasonable seizure of our environment trespassing and causing in effect “an enemy soldier to be quartered in my house/ without my consent; for sustained period of time. MORE SIMPLE: keep this corporation from dramatically affecting our lives, by demanding they stay on their side of the line. Don’t trespass over here/ not, past “the legal limit or this standard”. Is that not, “what the law means”; ends it.

The judge is asked, explain what is not well pleaded here, by a common pro se litigant? What cannot be understood as a need for legal remedy? Or what is abstract, being specific/ as was I in defining the reality of tinnitus that does affect, and substantially disables my life, and can afflict

any or all others dependent upon the impact of noise. **As is consistent with a need to know, for this community.}**

In pro se law, the necessity to describe statutory or regulatory law **falls short of justice/** as pro se means: NOT educated in legal innuendo and trivia. The assertion of this need, fails WE THE PEOPLE/ as it denies access to the court: UNLESS a legal assistant (for free) is provided in all constitutional or democratic authority issues as the public demands: with public media attention being provided by the court. You failed/ we the people, and our democracy. Are we less than a criminal; and their right to a lawyer/ whether they can afford one or not. Indeed we are/ to throw murderers from the court due to an infraction of the procedural rules is akin to tyranny: **THE JUDICIARY IS NOT THE LAW/** therefore they cannot act as if they are the law, presenting rules that impede or deny the law as we the people believe and demand **IS JUSTICE, EQUALITY, AND FAIR PLAY.** Not your rules to govern us/ **OUR** laws.

The judges' conclusion "merit-less litigation, to conclude that a complaint consists only of naked assertions and delusional scenarios.....frivolous. Is in short plaintiff's complaint fails to give fair notice of the claim or the grounds upon which it rests". But the facts show, that the judiciary assumed and interpreted, rather than accepted the facts of the case which are: the presentation of a need for clear and certain standards and measurements to be found, for the protection of the people in this place. You set the standards/ therefore you take the measurements to defend this democracy as we the people, rule ourselves by law.

Examining the order

ORDER 11-cv-2023

On September 14, 2011, Magistrate judge David G. Bernthal filed a report and recommendation (#19) in this

case. Judge Bernthal recommended that Defendant's motion to dismiss the federal defendants as party defendants (#10) be granted. Judge Bernthal further recommended that defendants motion to dismiss for lack of personal jurisdiction (#7) filed by the Illinois defendants be deemed moot and that the case be remanded to state court for further proceedings. On September 20, 2011, plaintiff filed a pro se Objection (#20) to the report and recommendation.[1]

1 this court notes that in case no. 10-cv-2277, this court entered an order and enjoined Plaintiff from "filing any further lawsuits, motions or pleadings in the United States District court, central district of Illinois, all divisions (other than habeas corpus petitions and criminal cases in which he is a party defendant) unless those lawsuits, pleadings and motions are filed through counsel (Emphasis in original)." This court ordered that the clerks in all divisions of the central district of Illinois are directed to return unfiled any papers that plaintiff attempts to file that do not comply with this order. However, because this case was filed by the pro se plaintiff prior to the entry of this courts order in case no. 10-cv-2277, this court has considered plaintiff's pro se objections to the report and recommendation.

This court has carefully reviewed judge Bernthal's report and recommendation (#19) and plaintiff's pro se objection(#20). This court notes, as it has in previous cases filed by the pro se plaintiff, that this review has been complicated by plaintiff's rambling and most unintelligible filings with this court. Following this court's careful and thorough de novo review, this court agrees with and accepts judge Bernthal's report and recommendation. This court completely agrees that "Plaintiff's complaint is merely a naked assertion that the federal government should take action in some unspecified way, similar to plaintiff's numerous other cases filed in this court that have been deemed frivolous". This court further agrees that plaintiff cannot show that he is plausibly entitled to relief. Accordingly, this court agrees that defendants motion to dismiss the federal defendants as party defendants (#10)

should be granted. This court also agrees that the case should be remanded to state court and the motion to dismiss for lack of personal jurisdiction (#7) filed by the Illinois defendants should be deemed moot.

IT IS THEREFORE ORDERED THAT

(1) the report and recommendation (#19) is accepted by this court.

(2) the defendants motion to dismiss the federal defendants as party defendatns (#10) is GRANTED.

(3) defendants motion to dismiss for lack of personal jurisdiction (#7) filed by the Illinois defendants is MOOT and this case is remanded to the circuit court of Champaign county.

(4) this case is terminated. Accordingly, the pro se motions (#17, #18) filed by plaintiff are MOOT.

ENTERED this 26th day of September 2011

Michael P. McCuskey
chief US district judge.

We now turn to the truth of case 11-cv-2023

Contrary to the assertion of judge Bernthal/ taken from the same original complaint (#1) 10-MR-906 DATED 12/ 30/10 used by judge Bernthal above

MY DEMAND AS STATED IS:

*The demand: We/ I need to know: if this complaint is based within the law/ if compliance to the standards set by state and nation shall be applied/ or if this corporation conforms and does not endanger the health, happiness, or safety of the public. **Therefrom with evidence in hand:** whether or not, I should or could take this corporation to court IF NEEDED/ or more specifically ask the people of this community if they will accept that damage, or “apply for redress in a court of law to determine the boundaries*

and establish the difference once and for all: between liberty and freedom. The question: to make the elevator stay within its boundaries, by making them comply to the standards set for our safety as citizens. Is a legal matter. If our employees in the court don't do their job; then they deny the constitution itself. Leaving for me in court, to demand; it's the law. NOT, my job. The difference between money rules our lives, OR we the people rule our society by vote and accountability. IS FUNDAMENTAL TO LIFE IN SOCIETY. If necessary the people will be asked: do they wish to go on to court, IN REDRESS (our authority as owners); by this evidence, THE STANDARDS OUR FEDERAL EMPLOYEES CREATED. The protection of the people/ the collection of evidence, is one in the same! IT IS, The job of our employees.

THE COURT MISREPRESENTS MY LEGAL ACTION: **TO COLLECT EVIDENCE AND SET STANDARDS, by law:** and assumes this is a direct legal action against the elevator so mentioned. It is not/ rather it is a direct legal action to involve the governmental agencies so declared to protect and serve the people of this state and nation/ this community, and me. As to the constitutionally valid assignment of evidence gathering, standards set, and society protected thereby. I remind the court: YOU SET/ THE GOVERNMENTAL AGENCIES both state and nation set: **the standards being legally asked required** for consideration of courtroom actions. **By setting those standards YOU ACCEPTED the contractual obligation** to provide and perform the actions necessary to insure they DO protect all the people, including me.

It is that evidence that grants to me, the right to bring redress of grievances both state and nation: before the people most affected by this invasion of our lives. Thereby you are at this time forcibly restraining the true structure of democracy. **The right: to ask those affected, if they will**

demand the legal authority of a democracy/ to decide:
IF MONEY SHALL RULE OUR LIVES/ OR IF
DEMOCRACY SHALL HAVE ITS SAY. Is fundamental
to our authority as a democracy. Is critical to the future of
our nation and its children. Thereby declaring the
boundaries between those who make the rest pay for their
decision by insisting, “the money rules here”. Is NOT
consistent with the declaration of democracy which is we
rule ourselves by law, through our vote, under the
supervision of our contract with ourselves and our
employees. Which is the constitution and foundation
documents called the bill of rights and declaration of
independence.

In this matter: It is their right to decide to defend
themselves or not/ it is my legal right to ask within a
courtroom, as provided by redress of grievances guaranteed
in the law that rules our state and nation. If accountability in
this matter deserves our attention, our authority to decide for
ourselves. That law called constitutional democracy, IS
NOT the description of a judge. That law declares: THE
JUDGE SHALL OBEY, THIS LAW (redress); provided by
we the people, to ourselves. And present the power and
responsibility of democracy to each and every citizen. You
decide means: YOU take the blame, it was your decision.

The courts both state and federal have failed to obey
constitutional redress/ refuses to accept the law. This
federal court refuses / REFUSES to make the state IL court
obey its own constitutional guaranteed redress of grievances.
Thereby usurping article 3 of the US constitution. As is
consistent in the many trials that I have established, and are
portrayed by each judge in this and every trial. That is a
constitutional violation/ that is a conspiracy to deny.

**Taken from supplement to brief 1/4/ 11 trial 10-
mr-906** But it is “a felony trespass” on our lives, when the
impact of their games, becomes the reality of what we must

endure simply because they want more. I am paying, for their greed/ they use, abuse, & take my freedom; thereby my life away. Because they want more money, more pride, and more power. Not a game for me/ an unjustifiable impact. The same being true for all those affected, within the environment they created, which we cannot escape. Greed is a game/ it is not about survival, it is not about society: greed is about power/ pride/ and selfishness. Greed is about robbing others, so that you can have more. How is that “democracy in action”? How is that freedom, when it imprisons me with environmental consequences & changes my life/ because of their actions. There is no constitutional right to greed, only the right to participate for the benefit of society and yourself.

Redress of grievances: is democracy in action/ or more simply as WE THE PEOPLE! We do, own everything, as we the people CAN change or demand society shall be, as we see fit. Our lives/ our government/ our decisions; not a ruler in sight: OUR CHOICE as a state or nation. As WE THE PEOPLE! Therefore we decide for ourselves, one citizen equals one vote. Keep it simple and plain, A DEMOCRATIC REALITY. Redress is a choice of the people/ they decide. But every educated decision requires the necessary knowledge and understanding: consequently our employees are responsible to us for truth.

There will be an attack of people who claim, “this is against democracy/ this is an attack on their freedom to pursue wealth by any means they desire”. IT IS NOT TRUE! This is the essence of democracy, the very foundation of what it means to be “WE THE PEOPLE”/ the OWNERS of this place!

In democracy: No allowance is given, to discard the rest/ to use, abuse, destroy, or threaten the others: just because you want more. WE WANT MORE for our lives, than to be inundated with your noise, and the reality of what you did to

us/ what any other chose to do for money, that now costs us our freedoms, our rights, our environment, and by that effect essentially makes us your slaves! This by the fact “you say”, we have no choice.

Democracy disagrees; regardless of what our employees say. WE THE PEOPLE HAVE RIGHTS, WE OWN THIS STATE AND NATION! No exceptions: it is treason to suggest otherwise!

With regard to this situation, established by this trial: the right of redress is “to contain the boundaries of greed/ to stop the invasion of our lives/ to transform the reality of “their work” to best practices for all our lives/ and to make them stop taking from our lives, to pay, for their greed.

Explain to me: what is frivolous?

**TAKEN FROM THE AMENDED COMPLAINT
TRIAL 10-MR-906 DATED 1/7/10** (should be 2011 instead of 10)

LET IT hereby be known, that in the interest of justice, democracy, duty, and honor: the foundations of constitutional law as are being tested here in this courtroom. I Accept and declare that it is within the best interest of WE THE PEOPLE of this state called ILLINOIS, and this nation called the UNITED STATES OF AMERICA, be included in this trial. Having the same rights, is without doubt: as this is the law of redress on trial. The foundation of our relationship as owners, to those we employ to do our business of government.

The purpose of trial here, is to enforce the law/ and provide legal redress of grievances to these people and to myself. NOT by my actions/ but because it is the law. THE LAW is

not subject to discretion/ it is compulsory! That means, NO JUDGE, in this state or this nation has a right to reinterpret this law in any form other than what it distinctly meant for us, “we the people” as both state and nation. It is a felony offense, to steal our laws/ and there is absolutely NO IMMUNITY from penalty in those actions. There is in fact a guaranteed penalty, due to the oath of office required of those whose deliberate job is to enforce that very law, without menacing it!

We have come to the point of trial, wherein it is clear: the foundation of each argument has been tested/ the reality of viewing, as is the truth of our democracy and the honor of our judiciary showing/ and the clear need for intervention as is the purpose of redress has been established for both state and nation. That means it is now “our trial, as we the people”/ RATHER than the listed plaintiff/ appellee; James Frank Osterbur. Therein this formal notice of change, has been defined/ the creation of deliberate inclusion for the purpose of democracy in action, as we the people: FUNDAMENTALLY PROVEN a right of this people.

It is the federal defendants that chose to take this case from state to federal court/ not me, nor the state defendants so charged in the originating case 10-mr-906. They chose it/ they own it!

The originating extraordinary writ; dated September 12, 2011 by the USSC CLERK Ruth Jones now becomes a writ of certiorari; and will be so stamped to inform. Any other instructions for change, await that result/

this extraordinary writ is then filed.
Dated October 5, 2011.

we now turn to the report and recommendation of judge Bernthal

appending that file to this extraordinary writ.

**11-cv-2023 REPORT AND RECOMMENDATION:
dated September 14, 2011**

In December 2010, plaintiff James F. Osterbur, acting pro se, filed a complaint in the champaign county sixth judicial circuit court. In January 2011, the United States defendants filed a notice of removal (#1). Plaintiff brought suit against six government agencies with a “demand for enforcement of the rules and laws”. In his complaint, plaintiff primarily complained of the governments failure to regulate a grain elevator in Royal IL, which created noise and traffic.

United States defendants filed a motion to dismiss the federal defendants as party defendants (#10). [1]

1. The United States defendants include the US environmental protection agency and the US occupational safety and health administration.

Plaintiff filed a response (#15). In addition, Illinois defendants filed defendants motion to dismiss for lack of personal jurisdiction (#7). [2]

2. Illinois defendants include the IL dept of human rights, the IL dept of agriculture, the IL EPA, and the IL dept of transportation.

Plaintiff filed a response (#14). After reviewing the parties’ pleadings and memoranda, this court recommends, pursuant to its authority under 28 U.S.C. 636 (b)(1)(B), that the United States defendants motion to dismiss the federal defendants as party defendants (**#10**) **be GRANTED**. The

court further recommends that the defendants motion to dismiss for lack of personal jurisdiction (#7) filed by Illinois defendants be deemed **MOOT, AMENDED COMPLAINT**

LET IT hereby be known, that in the interest of justice, democracy, duty, and honor: the foundations of constitutional law as are being tested here in this courtroom. I Accept and declare that it is within the best interest of WE THE PEOPLE of this state called ILLINOIS, and this nation called the UNITED STATES OF AMERICA, be included in this trial. Having the same rights, is without doubt: as this is the law of redress on trial. The foundation of our relationship as owners, to those we employ to do our business of government.

The purpose of trial here, is to enforce the law/ and provide legal redress of grievances to these people and to myself. NOT by my actions/ but because it is the law. THE LAW is not subject to discretion/ it is compulsory! That means, NO JUDGE, in this state or this nation has a right to reinterpret this law in any form other than what it distinctly meant for us, “we the people” as both state and nation. It is a felony offense, to steal our laws/ and there is absolutely NO IMMUNITY from penalty in those actions. There is in fact a guaranteed penalty, due to the oath of office required of those whose deliberate job is to enforce that very law, without menacing it!

We have come to the point of trial, wherein it is clear: the foundation of each argument has been tested/ the reality of viewing, as is the truth of our democracy and the honor of our judiciary showing/ and the clear need for intervention as is the purpose of redress has been established for both state and nation. That means it is now “our trial, as we the people”/ RATHER than the listed plaintiff/ appellee; James Frank Osterbur. Therein this formal notice of change, has been defined/ the creation of deliberate inclusion for the purpose of

democracy in action, as we the people: FUNDAMENTALLY PROVEN a right of this people. and that the case be remanded to state court for further proceedings.

1. Background

In a complaint filed in state court, plaintiff filed a “legal demand for enforcement of rules and laws” seeking unspecified remedy, with respect to a grain elevator operated in Royal Illinois, near plaintiff’s residence. Plaintiff alleges that the elevator emits excessive noise, and the trucks driving to and from the elevator create a traffic hazard. Defendants have taken plaintiff’s complaint as a request for injunctive relief to shut down the grain elevator.

Plaintiff’s claim is summarized in the following excerpt from his complaint:

“Not a claim for money from me. Rather it is a demand upon government officials to do your job, which is to protect all our lives from injury, protect us from infraction of the law that harms without cause/ or subsequently takes away our freedom and our right to decide for our own lives: thereby damaging our property or ability to remain in our own homes. This is an unreasonable seizure of our environment trespassing and causing in effect “an enemy soldier to be quartered in my house/ without my consent; for sustained period of time. MORE SIMPLE: keep this corporation from dramatically affecting our lives, by demanding they stay on their side of the line. Don’t trespass over here/ not, past “the legal limit or this standard”. Is that not, “what the law means”?”

(#1-2, p 9). [3]

3. The above passage is taken from Plaintiffs original complaint filed in state court. Plaintiff subsequently filed an Amended complaint ((#1-3). However, because the amended complaint provides no factual detail supporting any claim against the defendants, the court considers

plaintiffs' original complaint, in the interests of liberally construing this pro se complaint. *Marshall v. Knight* 445 F. 3d 965, 969 (7th cir. 2006)

Plaintiff has filed many claims in this court within the past year, with unspecified demands for redress of grievances, demands for compliance with the constitution , and demands that government employees do their jobs [4].

4. See, e.g. *Osterbur v. Unites States* , case no. 10-2257; *Osterbur v. State of IL* case no. 10-2055; *Osterbur v. Federal Bureau of Investigation* case no. 10-2277; and *Osterbur v. Quinn*, case no. 11-2111, among others.

in a recent order from this court, entered after plaintiff filed this instant lawsuit, the court sua sponte enjoined plaintiff from filing any further lawsuits, motions, or pleadings in the US district court, central district of IL, Urbana division (other than habeas corpus petitions and criminal cases in which he is a party defendant), unless those lawsuits, pleadings, and motions are filed through counsel. *Osterbur v. Quinn* no 11-2111 (C.D. ILL July 20, 2011) (#20, p 4).

II standard

The purpose of a motion to dismiss for failure to state a claim is to test the sufficiency of the complaint, not to decide the merits of the case. *Gibson v. City of Chi.*, 910 F. 2d 1510, 1520 (7th cir. 1990). Federal rule of civil procedure 8 (a)(2). The complaint must give fair notice of what the claim is and the grounds upon which it rests. *E.E.O.C. v. Concentra Health Servs., inc.* 496 F. 3d. 773, 776-77 (7th cir. 2007). However, fair notice is not enough by itself; in addition, the allegations must show that it is plausible, rather than merely speculative, that the plaintiff is entitled to relief. *Tamayo v. Blagojevich*, 526 F. 3d. 1074, 1083 (7th cir. 2008).

When considering a motion to dismiss for failure to state a claim, the court is limited to the allegations contained in the pleadings. *Venture assoc corp v. Zenith data sys corp*, 987 F. 2d 429, 431 (7th cir. 1993). The court must treat all well-pleaded allegations in the complaint as true, and draw all reasonable inferences in the plaintiff's favor. *McMillan v. Collection Prof'ls, inc* 455 F. 3d 754, 758 (7th cir. 2006); see *Bell Atl Corp v. Twombly*, 550 U.S. 544, 556 (requiring plausible grounds for inferences if those inferences are to sustain a complaint). In considering the plaintiff's factual allegations, the court should not accept as adequate abstract recitations of the elements of a cause of action or conclusory legal statements. *Brooks v. Ross*, 578 F. 3d 574, 581 (7th cir. 2009). The application of the notice pleading standard is a context-specific task, in which the height of the pleading requirement is relative to circumstances. *Cooney v. Rossiter* 583 F. 3d. 965, 969 (7th cir. 2006) (citing *Ashcroft v. Iqubal*, 129 S. ct. 1937, 1950 (2009)). Furthermore, district courts are required to liberally construe complaints filed by pro se litigants. *Marshall v. Knight*, 445 f. 3d 965, 969 (7th cir. 2006) (citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972)).

III. United States Defendants' Motion to dismiss (#10)

The United States defendants have filed a motion to dismiss the federal defendants as party defendants (#10) because plaintiff has not established an applicable waiver of sovereign immunity to the cause of action. *FDIC v. Meyer* 510 U.S. 471, 475 (1994) (Stating “[a]bsent a waiver, sovereign immunity shields the federal government and its agencies from suit”.) Plaintiff has the burden to demonstrate that congress has waived the United States sovereign immunity. *Cole v. United States* 657 F. 2d 107, 109 (7th cir. 1981). Here, plaintiff has pointed to no statutory waiver of sovereign immunity to support his claims against the United

States defendants.

However, plaintiffs seeking to compel agencies to take certain actions often invoke the administrative procedure act to establish a waiver of sovereign immunity. Sovereign immunity is a jurisdictional bar where a suit threatens to impose upon the United States liability for money or property damages or some form of coercive injunctive relief. *United States v. Rural Elect Convenience coop. Co.*, 922 F. 2d 429, 434 (7th cir. 1981). Here, plaintiff has requested injunctive relief. Prospective relief requiring governmental officials to obey the law has long been available under *Ex parte Young* doctrine, and then later through 702 of the administrative procedure act. *EEOC v. Peabody W. Coal co.* 610 F. 3d 1070, 1085-86 (citing *Ex parte Young*, 209 U.S. 123 (1908) and administrative procedure act 5 U.S.C. 702). The waiver of sovereign immunity in 702 applies “when any federal statute authorizes review of agency action, as well as in cases involving constitutional challenges and other claims arising under federal law”. *Michigan v. US, Army Corps of Eng’s*, no 10-3891, 2011 WL 3836457 at *8 (7th cir. Aug 24, 2011). The seventh circuit has recently rejected the argument that this waiver of sovereign immunity only applies where there has been final agency action. *Id.*

It seems, therefore, that if plaintiff has adequately pled a constitutional violation or other violation of federal law perpetrated by the United States defendants, then the waiver of sovereign immunity could apply. Even though plaintiff failed to identify 702 as the waiver of defendants sovereign immunity, this court must liberally construe complaints filed by pro se litigants. *Marshall v. Knight* 445 F. 3d 965, 969 (7th cir. 2006). Therefore, the court proceeds to consider whether plaintiff has adequately alleged a constitutional violation or other claim arising under federal law.

United States defendants argue that plaintiff has failed to comply with federal rule of civil procedure 8(a), for failing

to provide a “short and plain statement of the claim showing that the pleaders is entitled to relief”. *Ashcroft v. Iqbal* 129 S. Ct. 1937, 1949 (2009). The complaint must give fair notice of what the claim is and the grounds upon which it rests. *E.E.O.C. v. Concentra Healthc Servs inc.* 496 F. 3d 773, 776-77 (7th cir. 2007). Here, as defendants note, the complaint fails to provide notice regarding what provisions of law they allegedly violated, and in what manner they violated the law. Plaintiff fails to cite any statutory or regulatory law supporting his claims. Though plaintiff provides some detail regarding the noise and traffic generated by the grain elevator, he does not connect this to any act or omission by the United States defendants that may be a basis for their liability. A complaint does not need to identify legal theories, and specifying an incorrect legal theory is not normally a fatal error. *Rabe v. United Air Lines inc* 366 F. 3d 866, 872 (7th cir. 2011). However, this court concludes that the sparse factual allegations regarding defendants acts or omissions , combined with the lack of a discernable legal theory, amount to failure to provide sufficient notice of the basis for the claim. Furthermore, the court notes that a district court is entitled to draw upon its familiarity with a plaintiff’s prior meritless litigation to conclude that a complaint consists only of naked assertions and delusional scenarios. *Nietzke v. Williams* 490 U.S. 319, 328 (1989). Here, plaintiffs complaint is merely a naked assertion that the federal government should take action in some unspecified way, similar to plaintiff’s numerous other cases filed in this court that have been deemed frivolous. In short, plaintiffs complaint fails to give fair notice of the claim or the grounds upon which it rests.

Furthermore, the allegations must show that it is plausible, rather than merely speculative, that the plaintiff is entitled to relief. *Tamayo v. Blagojevich* 526 F. 3d. 1074, 1083 (7th cir. 2008). The few factual details that plaintiff provides indicate that, even if plaintiff were granted leave to

amend his complaint, he is not plausibly entitled to relief. Plaintiff's basis allegation is that the federal government has failed to intervene to limit noise and pollution originating from a privately operated grain elevator near his home. This does not amount to a constitutional violation. As such, even if plaintiff were granted leave to amend his complaint, he could not state a claim for which he is plausibly entitled to relief, nor overcome the obstacle of the defendant's sovereign immunity discussed above. This court therefore recommends that the motion to dismiss the federal defendant as party defendant (#10) be granted.

IV Illinois defendant's motion to dismiss for lack of personal jurisdiction (#7)

Illinois defendant moves to dismiss plaintiff's complaint for lack of personal jurisdiction, insufficient process, and insufficient service of process. A district court may not assert personal jurisdiction over a defendant unless the defendant has been properly served with process. *United States v. Ligas* 549 F.3d 497, 500 (7th Cir. 2008). Illinois defendant indicates there have been numerous errors and omissions in process and service of process. 5

5. Illinois defendant attaches a copy of the court docket for the case from the Champaign County Circuit Clerk, along with numerous other exhibits cataloging what defendant has received from plaintiff. (#8-1). Perhaps the most succinct explanations of what materials Illinois defendant has received are contained in the affidavits included at (#8-1, pp. 74-80).

Illinois defendant argues that plaintiff has failed to comply with Federal Rule of Civil Procedure 4 in the following respects: (1) plaintiff has not delivered a copy of a federal summons or of the complaint to any of the state defendant

chief executive officers (FED. R. CIV. P. 4(j)(2)(A)); (2) Plaintiff has not filed an affidavit attesting to proof of service (FED. R. CIV. P. 4 (1)(1); FED R. CIV. P. 4 (c)(1); and (3) Plaintiff has not served a copy of a summons and complaint on each state defendant in the manner prescribed by Illinois law. (FED. R. CIV. P. 4 (j)(2)(B)).

Illinois defendants additionally argue that plaintiff has failed to comply with the following applicable state laws governing service of process: (1) plaintiff has not served the correct individuals (735 ILCS 5/2-211); (2) plaintiff failed to employ an authorized process server or accomplish personal service of process where it was required (735 ILCS 5/ 2-202). (3) plaintiff never sent a summons to the Illinois EPA, the IL dept of human rights never received a copy of the amended complaint; and (4) Plaintiff failed to file any proof of service (ILL S. CT. R. 12 (a); 102(d)).

The courts analysis of these arguments begins with 28 U.S.C. 1448, governing service of process in removal cases:

In all cases removed from any state court to any district court of the United States in which any one or more of the defendants has not been served with process or in which the service has not been perfected prior to removal, or in which process served proves to be defective, such process or service may be completed or new process issued in the same manner as in cases originally filed in such district court. 28 U.S.C. 1448.

Section 1448 allows for completion of state service of process if the process was commenced prior to the date of removal. *Schmude v. Sheahan* 214 F.R.D. 487, 490 (N.D.III. 2003). After removal, a plaintiff has two options for providing proper service of process: (1) service pursuant to federal rule of civil procedure 4, or (2) service pursuant to state court rules if the plaintiff commenced such service prior to removal. *Id.*

Plaintiff has not taken any steps to accomplish service

of process since this case was removed to federal court. This is evident from this courts docket, as well as exhibits submitted by Illinois defendants. [6]

6. Plaintiffs response to Illinois defendants' motion to dismiss does not dispute any of the defendants factual assertions, other than to note that plaintiff mailed a "supplemental brief" to defendants on February 18, 2011.

Therefore, the primary inquiry here is whether plaintiff has satisfied the IL procedural rules for process and service of process. See *Romo v. Gulf Stream Coach, Inc.* 250 F. 3d. 1119, 1123 (7th cir. 2001) (recognizing that federal courts have the power to review the sufficiency of state service of process in removal cases).

However, at this juncture, the court recommends that the case be remanded to state court, and that the IL defendants motion concerning this courts personal jurisdiction be deemed moot. Whenever a claim over which this court may exercise jurisdiction is joined with an otherwise non-removable claim, the district court may, in its discretion, remand all matters in which the state law predominates. 28 U.S.C. 1441 (c). Here, as indicated above, this court has already determined that the plaintiff has failed to adequately allege any constitutional violation or other violation of federal law. The court recommends dismissing the United States defendants, whose presence was the original basis for federal jurisdiction. The court is now left in the uncomfortable position of being asked to analyze IL procedural rules in a case between the state of IL and a citizen of IL. Even if this court were to determine that it had personal jurisdiction, any claims going forward would concern IL law. The court therefore recommends that the IL defendants motion to dismiss be deemed moot, and that the case be remanded to state court for further proceedings.

V. Summary

For the reasons discussed above, this court recommends that the United States defendants Motion to Dismiss the federal defendants as party defendants (#10) be GRANTED. The court further recommends that the defendants motion to dismiss for lack of personal jurisdiction (#7) filed by IL defendants be deemed MOOT, and that the case be remanded to state court for further proceedings.

The parties are advised that any objection to this recommendation must be filed in writing with the clerk within 14 days after being served with a copy of this report and recommendation. See 28 U.S.C. 636 (b)(1). Failure to object will constitute a waiver of objections on appeal *Video Views, inc. V. Studio 21 ltd*, 797 F. 2d 538, 539 (7th cir. 1986).

Entered this 14th day of September 2011
David G. Bernthal
US MAGISTRATE JUDGE