

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

**PATRICK BRAXTON, JAMES
BALLARD, BARBARA PATRICK,
JANICE QUARLES, and WANDA
SCOTT,**

Plaintiffs,

v.

**HAYWOOD STOKES, III, GARY
BROUSSARD, JESSE DONALD
LEVERETT, VONCILLE BROWN
THOMAS, LYNN THIEBE, WILLIE
RICHARD TUCKER, and PEOPLE'S
BANK OF GREENSBORO,**

Defendants.

Civil Action No. 2:23-cv-00127-KD-N

NOTICE OF REMOVAL

The United States of America, by and through Sean P. Costello, the United States Attorney for the Southern District of Alabama, on behalf of United States Postal Service (USPS) employee, Lyn Thiebe, hereby gives notice of the removal of Case Number 27-CV-2022-900217 from the Circuit Court of Dallas County to this Court. This action is removable to this Court pursuant to 28 U.S.C. § 1442, as follows:

1. The removed suit filed in the Circuit Court of Dallas County by Plaintiffs Patrick Braxton, James Ballard, Barbara Patrick, Janice Quarles, and Wanda Scott, alleges that Defendant Thiebe, in her official capacity, conspired to discriminate based on race and failed to prevent such a conspiracy.

2. Plaintiffs commenced their state court suit on November 21, 2022. Plaintiffs amended their complaint on March 17, 2023, and caused a summons to Thiebe to issue on the same day.

3. This action is removable to this district court pursuant to the federal agency/officer removal statute. 28 U.S.C. § 1442. Plaintiffs name Thiebe, a federal employee, as a defendant. To be clear, Thiebe removes this action to seek her dismissal as a party on the grounds of qualified immunity and failure to state a claim.

4. This Notice of Removal is timely. The summons to Thiebe issued on March 17, 2023. However, to date, Plaintiffs have not properly served Thiebe in her official capacity under the Federal Rules of Civil Procedure or the Alabama Rules of Civil Procedure. Thiebe does not waive service. In any event, this Notice of Removal is filed within 30 days of the issuance of the summons. Under Section 1446(b)(1), the notice of removal must be filed:

within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

28 U.S.C. § 1446(b)(1). Despite the statute's use of the phrase, "through service or otherwise," the time to remove does not start to run before formal service of a summons on the defendant.

Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999).

5. Thiebe has attached copies of the record in Case No. 27-CV-2022-900217.

6. Thiebe is filing a copy of this Notice of Removal with the Clerk of the Circuit Court of Dallas County pursuant to 28 U.S.C. § 1446(d).

Based on the foregoing, Thiebe removes Case No. 27-CV-2022-900217, originally filed in the Circuit Court of Dallas County, to the United States District Court for the Southern District of Alabama, Northern Division.

Respectfully submitted,

SEAN P. COSTELLO
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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2023, the foregoing was electronically filed with the Clerk of the Court's ECF system, and I hereby certify that I caused to be mailed by United States Postal Service, postage prepaid, the document to the following:

Richard P. Rouco
George N. Davies
Quinn, Connor, Weaver, Davies & Rouco, LLP
2 – 20th Street North
Suite 930
Birmingham, AL 35203

s/Keith A. Jones
Keith A. Jones