

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)

IN RE SUPERIOR COURT SUBPOENAS)

TO NON-PARTY)

THOMAS KIRK McCONNELL,)

Professional Staff Member of the)

United States Senate Committee)

on Armed Services)

)

in the matter of)

)

AO ALFA-BANK,)

)

Plaintiff,)

)

v.)

)

JOHN DOE, *et al.*,)

)

Defendants.)

_____)

Case: 1:21-mc-00100
Assigned To : Friedrich, Dabney L.
Assign. Date : 7/27/2021
Description: Misc.

Misc. No. _____

NOTICE OF REMOVAL OF SUBPOENAS

Non-party subpoena-respondent Thomas Kirk McConnell, Professional Staff Member of the United States Senate Committee on Armed Services, through undersigned counsel¹, respectfully files this Notice of Removal of Subpoenas pursuant to 28 U.S.C. §§ 1442(a) and 1446, and *Brown and Williamson Tobacco Corp. v. Williams*, 62 F.3d 408, 412-15 (D.C. Cir.

¹ Undersigned counsel appear pursuant to 2 U.S.C. §§ 288b(a), 288c(a), and Senate Resolution 316, 117th Cong., 1st Sess., *reprinted in* 167 Cong. Rec. S5054-55 (daily ed. July 22, 2021) (authorizing Senate Legal Counsel to represent Thomas Kirk McConnell and the Senate Committee on Armed Services in the subpoena matter *AO Alfa-Bank v. John Doe, et al.*). Section 288l(b) of title 2 of the United States Code provides that the counsel who serve in the Office of Senate Legal Counsel, “shall be entitled . . . to enter an appearance in any proceeding before any court of the United States or of a State or political subdivision thereof without compliance with any requirement for admission to practice before such court. . . .”

1995), and *Houston Business Journal, Inc. v. Office of the Comptroller of the Currency*, 86 F.3d 1208, 1211 (D.C. Cir. 1996), removing to this Court two subpoenas issued by the Superior Court of the District of Columbia (Exhibits A and B, hereto) in *AO Alfa-Bank v. John Doe, et al.*, Case No. 2021-02459 (D.C. Super. Ct.). The subpoenas were served on Mr. McConnell on July 19, 2021. In support of this notice, Subpoena Respondent McConnell states as follows:

1. Two subpoenas were issued to Thomas Kirk McConnell by AO Alfa-Bank for deposition testimony and production of documents in *AO Alfa-Bank v. John Doe, et al.*, Case No. 50-2020-CA-006304 pending in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida. The Florida state court subpoenas were presented to the Superior Court of the District of Columbia, and two subpoenas issued therefrom pursuant to the Uniform Interstate Depositions and Discovery Act, D.C. Code, Title 13, Chapter 4A, under Case No. 2021-02459. The subpoenas seek testimony and production of Senate Committee on Armed Services documents and information from Thomas Kirk McConnell in his capacity as a staff member of the Committee.

2. Removal of these subpoenas is authorized by 28 U.S.C. § 1442(a)², inasmuch as the subpoenas command the production of testimony and documents from Mr. McConnell regarding activities he performed as part of his employment with the Committee, and subpoena respondent will raise one or more federal defenses to support quashing the subpoenas, including

² Section 1441(d)(1) defines “civil action” for removal purposes under section 1442(a) to include “any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued.” The several amendments to Sections 1442 and 1446 in 2011 make “clear that federal agencies and officers will be permitted to remove” a state court subpoena “based on the mere service of a subpoena,” and without regard to the existence of any state court contempt proceedings. 16 James Wm. Moore et al., *Moore’s Federal Practice* § 107.100[4][c], at 107-253 and 107-254 (3d ed. 2018); see also 14C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3726 at 485-86 (4th ed. 2008) (same).

sovereign immunity and absolute legislative immunity under the Speech or Debate Clause, art. I, § 6, cl. 1, of the Constitution. *See, e.g., Brown & Williamson Tobacco Corp.*, 62 F.3d at 414-15 (Speech or Debate immunity).

3. Removal is timely because it is filed within 30 days of July 19, 2021, on which Mr. McConnell received service of the subpoenas. *See* 28 U.S.C. §§ 1442(d)(1) & 1446(g).

4. A notice of filing of this Notice of Removal of Subpoenas is being filed with the Clerk of the Superior Court of the District of Columbia.

WHEREFORE, this matter is properly removed from the Superior Court of the District of Columbia to this Court, pursuant to 28 U.S.C. §§ 1442(a) and 1446, *Brown and Williamson Tobacco Corp.*, 62 F.3d at 412-15, and *Houston Business Journal, Inc.*, 86 F.3d at 1211.

Respectfully submitted,

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Dated: July 27, 2021

Attorneys for Subpoena-Respondent Thomas Kirk
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Services

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2021, copies of the foregoing Notice of Removal of Subpoenas were sent by electronic mail and served by first class U.S. Mail on counsel for the subpoena issuer, at the following addresses:

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