

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BENJAMIN A. WINDERWEEDLE,)	
)	
Petitioner,)	
)	Case No. 18-cv-1539
v.)	
)	Judge Robert M. Dow, Jr.
STATE OF ILLINOIS, et al.,)	
)	
Respondent.)	
)	
)	

STATEMENT

Before the Court are Petitioner’s motion for judicial notice or alternative motion to set hearing [23] and Petitioner’s motion for reconsideration [24] pursuant to Rule 59. For the reasons set forth below, Petitioner’s motion for reconsideration [24] is denied and Petitioner’s motion for judicial notice or alternative motion to set hearing [23] is stricken as moot.

ORDER

On April 2, 2018, the Court remanded this action to the Circuit Court of Lake County because the filings indicated that the Petitioner in federal court was also the Petitioner in state court and thus had attempted to effectuate removal of a case that he initiated in state court. [21.] The Court cited the federal removal statute, *id.*, which provides that only a “defendant” or “defendants” can remove a case to federal court. 28 U.S.C. § 1441(a); see also *First Bank v. DJL Props., LLC*, 598 F.3d 915, 916 (7th Cir. 2010) (“[A] litigant who files suit in state court is a ‘plaintiff’ and cannot remove the case.”). The Court noted that the provision allowing for removals of certain civil rights cases similarly authorizes removal only by “the defendant.” 28 U.S.C. § 1443; see also *Turner v. Jackson Park Hosp.*, 314 F. App’x 879, 880 (7th Cir. 2009) (affirming dismissal of lawsuit for lack of subject-matter jurisdiction because “[a] plaintiff cannot ‘remove’ a state lawsuit to federal court” under 28 U.S.C. § 1443). On May 3, 2018, Petitioner filed a motion for judicial notice or alternative motion to set hearing [23] and a motion for reconsideration [24] pursuant to Rule 59, which are currently pending before the Court.

Petitioner’s motion for reconsideration [24] pursuant to Rule 59 is denied as untimely. Under Rule 59(e), “[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of judgment.” Fed. R. Civ. P. 59(e). The Court remanded this case to state court on April 2, 2018. [21.] But Petitioner did not file his motion for reconsideration under Rule 59(e) until May 3, 2018. [24.] Although Petitioner contends that he had an extra three days to ask for reconsideration because he received the Court’s order by mail, the Seventh Circuit has held that “Rule 6(d) * * * does not extend the deadline for Rule 59(e) motions.” *Williams v. Illinois*, 737 F.3d 473, 475 (7th Cir. 2013) (collecting cases).

Even if Petitioner had timely filed his motion for reconsideration, his motion is meritless. To succeed, a Rule 59(e) motion “must clearly establish either a manifest error of law or fact or must present newly discovered evidence.” *LB Credit Corp. v. Resolution Trust Corp.*, 49 F.3d 1263, 1267 (7th Cir. 1995) (quoting *FDIC v. Meyer*, 781 F.2d 1260, 1268 (7th Cir. 1986)). The decision to grant or deny a Rule 59(e) motion “is entrusted to the sound judgment of the district court.” *In re Prince*, 85 F.3d 314, 324 (7th Cir. 1996). Petitioner argues that the Court erred in concluding that Petitioner was the petitioner in the state court action, because he was a “counter defendant” in his state court action. [1-1, at 2.] However, as the party who filed suit in state court, Petitioner is considered the “plaintiff” or petitioner even if the defendant or respondent filed a counterclaim. *Brown v. Young*, 600 F. App’x 461, 462 (7th Cir. 2015).

Petitioner also argues that the Court erred by *sua sponte* remanding Petitioner’s case because of a procedural defect. This argument also fails. To begin, the Court did not remand Petitioner’s case because of a procedural defect, such as the failure to comply with the procedural requirements of § 1446. *Cf. Matter of Cont’l Cas. Co.*, 29 F.3d 292, 294 (7th Cir. 1994). The Court remanded Petitioner’s case because he failed to establish jurisdiction under the cited removal statute. Federal courts “‘are obliged to construe removal jurisdiction strictly because of the significant federalism concerns implicated’ and * * * ‘if federal jurisdiction is doubtful, a remand to state court is necessary.’” *Palisades Collections LLC v. Shorts*, 552 F.3d 327, 333-34 (4th Cir. 2008) (quoting *Md. Stadium Auth. v. Ellerbe Becket Inc.*, 407 F.3d 255, 260 (4th Cir.2005));¹ see also *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941) (“The power reserved to the states under the Constitution to provide for the determination of controversies in their courts” calls for narrow construction of removal statutes.); *Healy v. Ratta*, 292 U.S. 263, 270 (1934) (“Due regard for the rightful independence of state governments * * * requires that [federal courts] scrupulously confine their own jurisdiction to the precise limits which the statute has defined”); *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 32 (2002) (“[The] statutory procedures for removal are to be strictly construed.”). Because the Court lacked removal jurisdiction over Petitioner’s case, the Court properly remanded the case to state court. 28 U.S.C.A. § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”).

Finally, Petitioner argues that the removal statute violates equal protection because it only affords defendants—not plaintiffs—the right to remove cases to federal court. [24, at 2.] Even though Petitioner has not provided any support for this argument,² the Court can easily dismiss it. The Supreme Court has long recognized the rational basis for allowing defendants and not plaintiffs to remove cases to federal court. See, e.g., *Shamrock Oil*, 313 U.S. at 106 (“[T]he plaintiff, having submitted himself to the jurisdiction of the state court, was not entitled to avail himself of a right of removal conferred only on a defendant who has not submitted himself to the jurisdiction.”). Regardless, finding the removal statute unconstitutional would not mean that Petitioner is entitled to remove the case he brought in state court to federal court, as such a finding would simply invalidate the statutory mechanism that would allow Petitioner to remove his case in

¹ In *First Bank v. DJL Properties, LLC*, the Seventh Circuit held that *Palisades* was “rightly decided.” 598 F.3d 915, 917 (7th Cir. 2010).

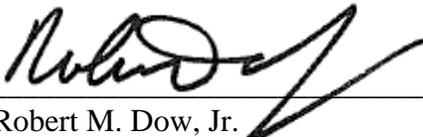
² In making this argument, Petitioner cites to the memorandum of law [11] he filed challenging the constitutionality of § 1443, which merely listed questions regarding the constitutionality of § 1443. Petitioner did not cite to any authority or make any argument in support of finding that § 1443 is unconstitutional.

the first place. Petitioner therefore has failed to show that the Court erred in remanding his case to state court.

Petitioner raises a number of other arguments that do not address the basis of the Court's decision (*i.e.* the law only permits defendants to remove a case to federal court under § 1443). If Petitioner has a valid claim under the federal Consumer Credit Protection Act or the False Claims Act, as Petitioner contends in his motion for reconsideration, nothing in this order or the Court's prior order stands as a bar to Petitioner initiating a new federal lawsuit.

Given that Petitioner's case remains in state court, Petitioner's motion for judicial notice or alternative motion to set hearing [23] is stricken as moot.³

Dated: May 29, 2018



Robert M. Dow, Jr.
United States District Judge

³ It is not clear to the Court what relief Petitioner seeks in his motion for judicial notice or alternative motion to set hearing [23]. Petitioner appears to be asking that the Court take judicial notice of the applicable law—including the differences between removal actions under § 1441 and § 1443—pursuant to Federal Rule of Evidence 201. However, Rule 201 applies to the judicial notice of adjudicative facts. To the extent the legal standards identified by Petitioner are relevant to his motion for reconsideration, however, the Court considered the relevant legal standard.