

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

JACQUELINE STOWERS, et al.	)	CASE NO. 1:09CV264
	)	
Plaintiffs,	)	JUDGE KATHLEEN O'MALLEY
	)	
vs.	)	
	)	
DIRECTOR ROBERT BOGGS	)	<u>BRIEF IN OPPOSITION TO PLAINTIFFS'</u>
OHIO DEPARTMENT OF AGRICULTURE,	)	<u>COMBINED MOTION TO AMEND AND</u>
et al.	)	<u>MOTION TO REMAND</u>
	)	
Defendants.	)	

Now comes Defendant, Lorain County General Health District and files its Brief in Opposition to Plaintiffs' Combined Motion to Amend and Motion to Remand for the reasons more fully stated in Movant's Brief which is attached hereto and incorporated by reference herein.

s/ Abraham Cantor  
ABRAHAM CANTOR (0011867)  
Johnnycake Commons  
9930 Johnnycake Ridge Road, Suite 4F  
Concord, Ohio 44060  
(440) 354-7749 Facsimile: (440) 354-7392  
E-mail: [acantor@abrahamcantor.com](mailto:acantor@abrahamcantor.com)  
Co-counsel for Defendant,  
Lorain County General Health District

s/ Scott F. Serazin  
SCOTT F. SERAZIN (0006980)  
Lorain County Prosecutor's Office  
225 Court Street, 3<sup>rd</sup> Floor  
Elyria, Ohio 44035  
(440) 328-2246 Facsimile: (440) 329-5430  
E-mail: [scott.serazin@lcprosecutor.org](mailto:scott.serazin@lcprosecutor.org)  
Co-counsel for Defendant,  
Lorain County General Health District

PROOF OF SERVICE

A copy of the foregoing was sent this 17<sup>th</sup> day of March, 2009 via the Court's electronic filing system to the following:

*Attorney for Plaintiffs*

Maurice A. Thompson, Esq,  
1851 Center for Constitutional Law Buckeye Institute  
88 East Broad Street, Suite 1120  
Columbus, Ohio 43215

*Attorney for Plaintiffs*

David G. Cox, Esq.  
Farm-to-Consumer Legal Defense Fund  
4240 Kendale Road  
Columbus, Ohio 43220

*s/ Abraham Cantor*

ABRAHAM CANTOR (0011867)  
*Co-counsel for Defendant,*  
*Lorain County General Health District*

BRIEF

Plaintiffs have moved to file its Second Amended Complaint, add a new party plaintiff and finally remand this pending action from federal court to state court.

No objection is made concerning Plaintiffs' request to amend and insert a new party plaintiff.

The Lorain County General Health District does disagree that this case be remanded back to state court.

Plaintiffs do not deny that the initial removal to this court was proper because of federal issues present in the First Amended Complaint. Instead, it accuses Defendants of forum shopping when seeking to properly remove the case with federal issues to federal court.

Any civil action brought in state court in which the district court has original jurisdiction may be removed by the defendant to federal court. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). The existence of subject matter jurisdiction is determined by examining the complaint at the time of removal. *Harnden v. Jayco, Inc.*, 496 F.3d 579, 581 (6<sup>th</sup> Cir. 2007).

The scope of removal jurisdiction is based on the existence of a federal question which is identical to the scope of federal question jurisdiction found under 28 U.S.C. § 1331. *Warthman v. Genoa Twp. Board of Trustees*, 549 F.3d 1055, 1061 (6<sup>th</sup> Cir. 2008), citing *Long v. Bando Mfg. of Am.*, 201 F.3d 754, 758 (6<sup>th</sup> Cir.2000). Federal question jurisdiction can be established by showing either that federal law creates the cause of action or that Plaintiffs' right to relief necessarily depends on resolution of a substantial question of federal law.

The issue of what constitutes a substantial federal question involves the interpretation of

federal law that actually is in dispute in the litigation and is so important that it sensibly belongs in federal court. *Eastman v. Marine Mechanical Corp.*, 438 F.3d 544 (6<sup>th</sup> Cir. 2006) citing *Grable and Sons Metal Products v. Darue Engineering and Mfg.*, 545 U.S. 308, 312 (2005).

As this court stated in *Carn v. BOC Group*, 2008 WL 5244785 (N.D. Ohio 2008) at

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There is a type of “arising under” federal jurisdiction, however, that gives this Court the power to adjudicate cases that contain only state law claims, if those claims implicate significant federal issues. As the Court put it in *Grable*, “the [substantial federal question] doctrine captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.”

A copy of the decision is attached hereto as Exhibit “A”.

Here, Plaintiffs acknowledge that there were federal claims in the First Amended Complaint but now seek to avoid federal jurisdiction by amendment. In furtherance of their wish, Plaintiffs seek to distinguish between various Ohio Constitution and Federal Constitutional provisions. Merely making allegations that additional protections are available under the state constitution does not mean that greater protections are afforded. Plaintiffs’ allegations do not change established case law.

The Second Amended Complaint references an unlawful search and seizure at Paragraph 65 to 74.

The Fourth Amendment of the United States Constitution and Article 1, Section 14 of the Ohio Constitution both protect against unreasonable searches and seizures. Plaintiffs argue that the protections offered under the Ohio Constitution is greater than that offered under the Federal

Constitution.

Section 14, Article 1 of the Ohio Constitution provides no wider prohibition against searches and seizures than that found in the Fourth Amendment to the United States Constitution. Even the wording of the constitutional provisions are identical. *State v. Nelson*, 2002 WL 356317 (Ohio 10<sup>th</sup> Dist. 2002) at Page 3. Thus the claims would be identical under either the federal or state constitution and a substantial federal question is present. A copy of the decision is attached hereto as Exhibit "B".

Plaintiffs also claim that the equal protection clause in the Ohio Constitution has been violated and that provision offers greater protection than its federal counterpart. (Second Amended Complaint, Paragraph 96). The Ohio Supreme Court has analyzed both the state and federal constitutions as to the issue. The Ohio Supreme Court has concluded that Ohio courts has consistently adopted the federal standard in construing the Ohio Equal Protection Clause. *Keaton v. Ribbeck*, 58 Ohio St.2d 443, 445 (1979). Again any state claim would be identical to a federal claim and a substantial federal question would be present.

Plaintiffs make a due process clause claim in which it alleges that improper classification has occurred in the application of a state statute. (Second Amended Complaint, Paragraph 100). Next Plaintiffs claim that such conduct runs afoul of both the equal protection and due process clauses in the State constitution. As indicated above, the equal protection clause requires federal law analysis and the due process claim of misclassification also requires reference to federal law. *Steele, Hopkins and Meredith v. Miller*, 92 Ohio St. 115 (1950).

The bromide used by Plaintiff to avoid jurisdiction of the court by alleging that the Ohio

Constitution in some manner is broader in its protection than its federal counterparts does not alter that substantial federal questions are present.

In *Therrien v. Hamilton*, 881 F. Supp. 76 (D. Mass 1995), Plaintiff sought to remove all federal claims through an amendment and instead sought relief under the Massachusetts Civil Rights Act. The District Court denied the maneuver.

For the foregoing reasons it is respectfully requested that Plaintiffs' Motion to Remand the present case to the state court for further proceedings be denied.

Respectfully submitted,

*s/ Abraham Cantor*  
ABRAHAM CANTOR (0011867)  
*Co-counsel for Defendant,*  
*Lorain County General Health District*