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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

RIVERSIDE COALITION OF BUSINESS
PERSONS and LANDLORDS, RUTH
MARINO, and John Doe 1,

CIVIL ACTION NUMBER:

Plaintiffs,

06-CV-5521 (RMB)

-vs-

TOWNSHIP OF RIVERSIDE,

Defendant.

Mitchell H. Cohen United States Courthouse
One John F. Gerry Plaza
Camden, New Jersey 08101
FEBRUARY 23, 2007

B E F O R E: THE HONORABLE RENÉE MARIE BUMB
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

SPEAR, WILDERMAN, BORISH, ENDY, SPEAR & RUNCKEL, PC
BY: JAMES KATZ, ESQUIRE

FOSTER MAER, ESQUIRE

PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND

OMAR C. JADWAT, ESQUIRE
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Attorneys for the Plaintiffs

GEORGE R. SAPONARO, ESQUIRE
Attorneys for the Defendant

Theodore M. Formaroli, CSR, CRR
Official Court Reporter
New Jersey CSR # 433

1 THE COURT: We're here this afternoon in the matter of
2 Riverside Coalition of Business Persons and Landlords, et al,
3 versus the Township of Riverside. Docket No. 06-5521. May we
4 have your appearances. We'll start with the plaintiffs,
5 please.

6 MR. KATZ: Good afternoon, your Honor. James Katz
7 from the law firm of Spear Wilderman, I'm here as a volunteer
8 attorney on behalf of plaintiffs on behalf of the American
9 Civil Liberties Union of New Jersey. At counsel table but
10 they are not admitted at this point is Foster Maer of the
11 Puerto Rican Legal and Education Fund and Omar Jadwat of the
12 American Civil Liberties Union Foundation, Immigrants Rights
13 Project, but I will be addressing the Court.

14 THE COURT: Good afternoon.

15 MR. SAPONARO: Good afternoon, your Honor. George R.
16 Saponaro for the Township of Riverside.

17 THE COURT: Good afternoon, Mr. Saponaro.

18 Mr. Katz, it's your motion, I'll hear from you.

19 MR. KATZ: Thank you, your Honor. Your Honor, I
20 believe this case is very straightforward. There is absolutely
21 no basis under any stretch of the imagination for federal
22 jurisdiction in this matter. The case should be remanded to
23 the state court and counsel is entitled to costs and fees for
24 the need to bring this application.

25 Principles of federal jurisdiction have been long

1 established. Federal court is a court of limited jurisdiction,
2 and because it's a court of limited jurisdiction the burden is
3 on the party which seeks removal to prove the basis for
4 federal jurisdiction and any doubts or ambiguities in
5 connection with that removal petition should be decided in
6 favor of remanding that petition.

7 In this case, plaintiffs' complaint relies solely on
8 state law causes of action. And as your Honor is well aware,
9 the plaintiff is the master of the complaint. It is up to
10 plaintiff to decide which claims to bring. The fact that
11 there may be equally available federal claims as well as state
12 law claims is not determinative. The fact that there may be
13 defenses to the complaint, even defenses which rely upon
14 federal law, even defenses which may be the only matter at
15 issue before the Court is not grounds to remove this case from
16 state court to federal court.

17 THE COURT: Mr. Katz, the plaintiff is in fact the
18 master of the complaint, but that's with its limits, is it
19 not?

20 MR. KATZ: It certainly has limits, but those limits
21 are extremely narrow.

22 THE COURT: What are they?

23 MR. KATZ: The two limits are as follows: First, if
24 the plaintiff's complaint raises a substantial question,
25 federal question, which must be resolved in order to

1 adjudicate the plaintiff's claims, it must be both a
2 substantial question, not simply a federal question, it must
3 be a question that is necessary to resolve the plaintiff's
4 claims. That would constitute a situation where the
5 plaintiff's claims essentially arise under federal law. The
6 second alternative --

7 THE COURT: What about the argument that the defendant
8 makes, which is that you need to -- that the Court will have
9 to necessarily resolve issues, for example, of what is an
10 alien, what is the various definitions within the ordinance
11 that's the subject of this litigation? What about that
12 argument, aren't those going to be issues that are going to
13 necessarily have to resolve themselves under federal law?

14 MR. MAER: Not at all, your Honor.

15 THE COURT: Why?

16 MR. KATZ: Because the issue which has been raised in
17 this case is plaintiff has challenged Riverside's ordinance on
18 state law grounds. The grounds which we have challenged it on
19 are that the municipality lacks the authority under New Jersey
20 law to enact any type of ordinance regarding the subject
21 matter, the fact that the ordinance violates the New Jersey
22 constitution because it deprives the plaintiffs of due process
23 under law. Those are state law questions that have nothing to
24 do with resolution of any federal law issue.

25 THE COURT: But doesn't it require to first

1 determine -- I mean, the ordinance, for example, let's just
2 take an example, the ordinance in Section 5 says that illegal
3 aliens are prohibited from leasing or renting property. Who is
4 to decide what the definition of illegal aliens is and isn't
5 that a matter under federal law?

6 MR. KATZ: Your Honor, the ordinance is seeking to
7 penalize employers and businesses who either hire or rent to
8 illegal, allegedly illegal aliens.

9 THE COURT: Exactly.

10 MR. KATZ: It's our position what the ordinance is
11 trying to do is regulate the actions of private parties. This
12 Court must -- the only issue before this Court is whether we
13 can seek complete relief and obtain complete relief based upon
14 our theory, which is that regardless of what the ordinance
15 requires, the municipality does not have the power under state
16 law to even legislate on this subject matter. That's the basis
17 of our complaint. So, you don't even have to reach that
18 question because we are saying as a matter of law this
19 municipality does not have the right to legislate on
20 immigration matters. That's number one.

21 Number two. What you are suggesting, by the way, has
22 never been suggested by the defendants. The defendants have
23 relied upon two specific federal regulations, 18 U. S. C. 1644
24 and the other 18 U. S. C. 1373. Those are the bases on which
25 the defendants have claimed there is federal jurisdiction and

1 they're arguing that this Court has to resolve those issues in
2 order to provide complete relief to the plaintiffs.

3 THE COURT: Well, I don't know. I mean, that's how I
4 understood a part of their argument, although the other
5 argument you raised, I clearly understood that argument as
6 well. Maybe I'm being circuitous here, but the argument the
7 plaintiffs are making, as I understand it, is that as a matter
8 of law Riverside didn't have the authority to legislate in
9 this area. "This area," isn't that an issue of what has to be
10 defined and isn't that an issue?

11 MR. KATZ: No, it's a matter of state law, your Honor.

12 THE COURT: What, what an illegal alien is is a matter
13 of state law?

14 MR. KATZ: No, it has nothing to do with what an
15 illegal alien is. You're getting into the substance of the
16 ordinance, that's not the Court's place on an issue relating
17 to removal of federal jurisdiction. At best, what you may be
18 talking about is a defense to plaintiffs' complaint, but a
19 defense, once again, even if it is the only defense issue in
20 the case, is not the basis of federal jurisdiction. It's a
21 defense. It's a defense which the state court is perfectly
22 able to resolve and it is a defense which belongs before the
23 state court, not federal court.

24 Under your Honor's view of federal jurisdiction, we
25 will be turning federal courts from courts of limited

1 jurisdiction to courts of ubiquitous jurisdiction. The fact
2 that there may even be a federal issue involved is not the
3 touchstone for this Court's determination as to whether you
4 have jurisdiction. It has to be a substantial federal question
5 and it has to be a substantial federal question which is
6 critical to the resolution of granting plaintiffs' relief.
7 That's not the case here.

8 The case is simply does this municipality under New
9 Jersey law -- because municipalities under state law are
10 creatures of the state legislature, they only have those
11 powers that are enumerated either in the New Jersey
12 constitution or by the New Jersey statutes, and the issue in
13 plaintiffs' complaint is whether under New Jersey law this
14 municipality has the power to legislate in this area. And the
15 area --

16 THE COURT: But, Mr. Katz, let's be complete here. I
17 mean, that's not the only claim that you are arguing, that
18 Riverside didn't have the authority to legislate here. You
19 then go and make additional claims that the ordinance violates
20 certain provisions of New Jersey's constitution, right?

21 MR. KATZ: There are additional claims that the
22 ordinance is void for vagueness. Void for vagueness has
23 nothing -- is a due process argument. There are arguments that
24 it violates the New Jersey Law Against Discrimination, there
25 are arguments that it violates the New Jersey constitution,

1 none of those arguments require resolution of a federal
2 question at best.

3 THE COURT: So say you. I mean, I still understand the
4 defendant's argument to be that, for example, the argument
5 that the statute is void for, let's say void for vagueness
6 because it doesn't define what an illegal alien is. I mean,
7 isn't that going to be -- and the defendants say look to
8 federal law for that resolution. And what if the federal law
9 has to be resolved in terms of what does an illegal alien
10 mean? I took that to mean the defendant's argument that
11 that's an example of where the construction of federal law may
12 very well be an element that this Court has to decide.

13 MR. KATZ: Your Honor, there are a multitude of cases
14 where there may be federal questions. In fact, if you look at
15 the U. S. Supreme Court case --

16 THE COURT: Not federal questions, Mr. Katz, a
17 resolution of federal law, i.e., what is an illegal alien.

18 MR. KATZ: That's not required in order to determine
19 whether the statute is void for vagueness.

20 THE COURT: So say you.

21 MR. KATZ: Your Honor, if there is a definition of an
22 illegal alien and the statute isn't void on vagueness
23 grounds -- and once again, the fact that there may be a
24 federal statute that's involved, if you look, for example, at
25 the multitude of cases, such as Merrill Dow vs. Thompson,

1 there was a federal statute that needed to be determined, it
2 had to do with the Food and Drug Administration Act. There may
3 be federal statutes that are involved in state law questions
4 in state law cases, but that does not constitute "arising
5 under jurisdiction" as that term has been narrowly construed
6 by the courts in this country. There is a large number of
7 cases that may involve interpretations of federal law, but
8 that in and of itself still does not grant federal
9 jurisdiction. This case could never have been brought
10 initially in this Court and --

11 THE COURT: Well, because of the way that the
12 complaint has been drafted arguably, right?

13 MR. KATZ: Because of the way that the complaint is
14 drafted and because of the issues that are involved in this
15 complaint, it could not have been brought under established
16 cases that deal with federal jurisdiction. There simply is not
17 a substantial federal question that's involved and at most
18 what you have here is a defense, you do not have -- and a
19 defense is not grounds to provide federal jurisdiction.

20 THE COURT: What's the defense?

21 MR. KATZ: We'll, the defense that they're claiming is
22 is that you need to interpret 1373 and 1644 in order to
23 somehow grant relief to the plaintiffs' claim. Neither of
24 those --

25 THE COURT: Well, you do though if the Court were to

1 determine whether or not this was void for vagueness, right?

2 MR. KATZ: No.

3 THE COURT: Why?

4 MR. KATZ: 1373 and 1644, if you look at those
5 statutes, are statutes that prohibit one government from
6 preventing another government from either exchanging or
7 receiving information from the INS. Those two statutes have
8 been decided, have been interpreted in two cases, one case
9 involving an interpretation by the Second Circuit and a second
10 case involving an interpretation by the District of Kansas. In
11 those cases the courts held as follows: First, that those
12 statutes do not create a private right of action. Second,
13 that those statutes apply exclusively to governmental actors
14 and not to private parties. The statute at issue in this case
15 is an effort by Riverside to try to regulate the activities of
16 private parties. And third, that those statutes don't impose
17 any affirmative obligation on the governmental entities. Those
18 statutes have absolutely nothing to do with anything that's
19 involved in plaintiffs' challenge in this case.

20 Plaintiff is challenging the right of Riverside to
21 regulate and restrict the actions of private parties, private
22 landlords and private businesses and those statutes, once
23 again, your Honor, if anything, that would be a defense. You
24 need to distinguish between matters which are a defense and --
25 even such as preemption may be a defense and complete

1 preemption. And the Third Circuit has been very clear on what
2 constitutes complete preemption. First, there is only three
3 statutes that have been recognized as constituting complete
4 preemption, one is the Labor-Management Relations Act, the
5 second is ERISA and the third is the National Bank Act. Those
6 are the only three federal statutes that have been recognized
7 as establishing complete preemption. The immigration acts are
8 not one of those statutes.

9 Second, if you look at the Third Circuit's analysis
10 of what you need to establish complete preemption as set forth
11 in the Railway Labor Act case, you'll find you'll need two
12 things. First, you need specific evidence from Congress that
13 it intended federal courts to have jurisdiction over the
14 matter; and second, you need a civil enforcement provision
15 within the statute that establishes the right of a plaintiff
16 to bring the matter in federal court. Neither of those are
17 remotely offered by the two statutes which the defendants have
18 pointed to in this case.

19 If you look to how federal questions have been
20 resolved, substantial federal questions "arising under
21 jurisdiction," it is very narrowly construed. And the fact
22 that there may be a federal statute lurking in the background
23 certainly is not grounds, particularly in this case where
24 plaintiffs can receive all of the relief to which they are
25 entitled to based on state court grounds alone. And if, your

1 Honor, it is sufficient even on the single count of the
2 complaint to grant plaintiffs' relief, this Court does not
3 have jurisdiction.

4 What you may be thinking of are situations where
5 there are multiple complaints and one of those complaints has
6 a federal cause of action. That's not the case here. If
7 plaintiffs can receive complete relief based on the first
8 count of their complaint, which is that this municipality does
9 not have the authority under state law to legislate in areas
10 of immigration, then we submit that this Court does not have
11 jurisdiction over the matter and there is no "arising under
12 jurisdiction."

13 THE COURT: You want to keep avoiding my void for
14 vagueness concern.

15 MR. KATZ: I'm not avoiding it.

16 THE COURT: I don't know how, I want you to explain to
17 me how it is that the plaintiffs can get a finding of relief
18 that the ordinance is void for vagueness without a resolution
19 of federal law, i.e., the contradiction with the federal
20 statute, i.e., the definition of certain terms, etcetera, and
21 that's where I'd like you to focus your arguments.

22 MR. KATZ: Well, first of all, your Honor, if we're
23 able to obtain relief on the first count of the complaint,
24 there is no need even to reach the void for vagueness. Second,
25 you don't require the resolution of federal law in order to

1 resolve the void for vagueness issue. The question -- there is
2 a whole host of reasons why this statute and ordinance is void
3 and one of them is there is no definition anywhere in the
4 statute of an illegal alien, so there is no federal question
5 that needs to be resolved.

6 THE COURT: Well, I don't think the defendant's going
7 to be agree with you, they're going to say, you know, look at
8 it in whole and illegal alien is defined under Title 8.

9 MR. KATZ: And that's a defense. And that's precisely
10 my point, your Honor, that it is a defense to a plaintiff's
11 complaint. And defenses, even if they're anticipated, are not
12 grounds to establish federal jurisdiction. That's precisely my
13 point, that that will be their rejoinder, but that is the very
14 thing which the courts have repeatedly said does not establish
15 federal jurisdiction.

16 THE COURT: Well, you argue that it's a rejoinder,
17 they argue that's the prong upon which they removed the case.

18 MR. KATZ: Well, I didn't see that, your Honor, I
19 didn't see that anywhere in their papers. They never make
20 that argument.

21 THE COURT: Well, I'll hear from Mr. Saponaro on it.
22 That's how I understood it, but maybe I'm wrong. Okay. Thank
23 you, Mr. Katz.

24 MR. KATZ: Thank you, your Honor.

25 THE COURT: Mr. Saponaro.

1 MR. SAPONARO: Yes, your Honor, thank you. I'm going
2 to do my best to argue this, still getting caught up with the
3 case. But essentially, Judge, as Mr. Heinold, my predecessor,
4 had argued, the complaint itself, although it doesn't frame it
5 as a cause of action under the artful pleading doctrine,
6 essentially raises federal questions. And I'm going to try to
7 focus on the void for vagueness issue that your Honor brought
8 up. That's exactly what needs to be done in this case, which
9 is a case of first impression. At some point in time the Court
10 is going to be called on to make certain definitions in the
11 case, and the definitions are going to have to come from
12 federal law in this. I'm not quite sure what other questions
13 you had of me, I'm going to try and just answer the Court's
14 questions because Mr. Heinold --

15 THE COURT: Focus on the complete preemption
16 doctrine. Do you agree with Mr. Katz that there is no
17 complete preemption here? Is it an issue I need to resolve?
18 Because, I don't want to prejudge it, but I am inclined to
19 agree with them on that. And I don't see in your paper
20 anywhere where you've argued complete preemption.

21 MR. SAPONARO: We haven't, Judge. And I would tend to
22 agree with him on that. You know, candidly, I don't want to
23 waste the Court's time with issues I don't think are
24 necessary.

25 The point in the case though is, and I think your

1 Honor also signed -- I think we had a conference through Judge
2 Donio, there is another case that was filed here. I did want
3 to bring this point up, your Honor, which I think is
4 important. Riverside is a defendant not only on this case but
5 it's in another case, it's entitled The Assembly of God case,
6 which was filed in federal court, and the same issues are
7 going to be decided. This gives the Court the opportunity to
8 address the issues. And you know, I think in the future a
9 motion will be filed to perhaps consolidate the two matters if
10 it stays in federal court.

11 THE COURT: Well, I agree with you, Mr. Saponaro, but
12 that's not really an appropriate issue for me to look at in
13 terms of removal. In other words, I'm limited to the facts in
14 front of me, I'm limited to the facts of this case. And while
15 it certainly would make sense to all the parties involved
16 under the rubric of judicial economy, it makes sense for one
17 court to decide all the matters, if the plaintiffs choose to
18 craft their complaint in such a way to avoid my jurisdiction,
19 there is not much I can do about it.

20 MR. SAPONARO: But I think that's exactly what they
21 were attempting to do in the artful pleading doctrine that was
22 eluded to in the papers, and such. And by doing that, Judge,
23 the reason I bring it up and I know it doesn't -- it's not --
24 it doesn't exactly fit in with this motion entirely, but I
25 bring it up because, you know, Riverside Township, I'm not

1 going to say that I have the tiny guy as a client here,
2 obviously we're a township, they have resources, but we stand
3 here as defendants and it's -- I forget the term if we want to
4 use it, but basically we're getting hit from all angles on
5 this to make Riverside essentially back-down from the
6 ordinance. And I think that will come up in the future. But
7 it's putting us in a position where we're defending it in
8 state court and defending it in federal court and if we have
9 two courts deciding the issue, where is it going to end up in
10 the end when in essence the plaintiffs in this case and the
11 plaintiffs in the other case are seeking the same type of
12 relief, and that relief being eventfully, going back to the
13 vagueness argument, certain definitions which only come under
14 federal law. However you want to craft the complaint --

15 THE COURT: Do you have an argument, do you have a
16 defense of federal preemption if this were to be remanded back
17 to state court? Would you then be in a position to argue that
18 that case doesn't belong in state court but should belong in
19 federal court under the doctrine of federal preemption, not
20 complete preemption, but federal preemption?

21 MR. SAPONARO: Judge, candidly, I'm not prepared to
22 address that here today at this point in time, I'd have to --

23 THE COURT: It seems to me if you were successful on
24 that, then that would take care of your concerns because at
25 the end of the day the plaintiffs are back before me,

1 presumably.

2 MR. SAPONARO: I believe that's where it's going,
3 Judge, but I don't want to speak too soon, candidly. Whether
4 it gets here or not, I'm not sure in the end, quite frankly,
5 there is -- it's not before the Court today, but, you know,
6 I've started to have discussions with Mr. Katz where the case
7 is hopefully eventually going to be going. Judge, I really
8 would prefer, unless you have any other questions, prefer to
9 rely on the papers. I don't know if your Honor would like to
10 have a conference afterwards so that we can at least advise
11 the Court in general, if your Honor keeps the case, of course,
12 what Riverside's position is on this because there has been
13 various news reports. But if your Honor thinks it's wise, I'm
14 glad to do so and prepared.

15 THE COURT: Well, let's see how my ruling is. And I
16 certainly don't pay attention to news reports. Okay, thanks,
17 Mr. Saponaro.

18 Mr. Katz.

19 MR. KATZ: I have one comment. I actually want to
20 respond to the question that you posed to defendant's counsel
21 because I think it's the right question. The question is if
22 this case returns to state court whether they would have a
23 defense based on federal law. That would not return the case
24 to your Honor, that would give them a defense under federal
25 law to the claim. And in fact, the Third Circuit has dealt

1 with that.

2 THE COURT: No, I understand, but what I was asking
3 Mr. Saponaro was that if they raise the claim of federal
4 preemption in state court and were successful, then it seems
5 to me that plaintiffs' relief then is to refile in federal
6 court.

7 MR. KATZ: No, with all due respect, your Honor. If
8 they raise the claim of federal preemption in state court,
9 which is the difference between -- there is two different
10 types of preemption. There is complete preemption and there
11 is simply preemption as a defense. They are entitled to raise
12 preemption as a defense in state court and that would be a
13 defense on the merits to plaintiffs' action and would allow
14 the state court, if they were successful, to find against the
15 plaintiffs. And it's exactly what the Third Circuit says in --

16 THE COURT: Mr. Katz, I think we're saying the same
17 thing. You are such a skeptic, however. What I am saying is
18 if this case were to go back to state court, Mr. Saponaro on
19 behalf of his client, it seems to me, could in fact raise the
20 doctrine of federal preemption in state court.

21 MR. KATZ: Absolutely.

22 THE COURT: And could be successful and the plaintiffs
23 lose.

24 MR. KATZ: Right, that would resolve the question.

25 THE COURT: Correct. Stop.

1 MR. KATZ: Yup.

2 THE COURT: Once the plaintiffs lose, it seems to me
3 the plaintiffs' only other forum is back here.

4 MR. KATZ: I'm not as confident as you are, I think --
5 I actually think it would resolve the case.

6 THE COURT: Okay.

7 MR. KATZ: That's the difference.

8 THE COURT: Well, you might be right. But in any
9 event, let's just say perhaps we're both right on that issue.
10 I wasn't referring to the defense of federal preemption as a
11 basis for removal, I was talking about should the case get
12 remanded.

13 MR. KATZ: Absolutely. I've nothing further, your
14 Honor.

15 THE COURT: All right. Let's take a five-minute
16 break. I'll be back.

17 THE DEPUTY CLERK: All rise.

18 (Short recess)

19 THE COURT: Okay, you may be seated.

20 This matter comes before the Court upon plaintiffs'
21 motion for remand to the Superior Court of New Jersey in
22 Burlington County. Plaintiffs, a coalition of business persons
23 and residents of Riverside Township, brought this complaint in
24 state court alleging that the town ordinance was unlawful
25 under the constitution and statutes of New Jersey. The

1 defendant, the Township of Riverside, removed this action to
2 this Court on the basis that the complaint raised a question
3 of federal law. Plaintiffs now move to remand. The plaintiffs
4 also seek an award of costs and attorney's fees involved in
5 having to file the motion for remand.

6 The facts in this case are not in dispute and
7 therefore the Court will not reiterate them. They are set
8 forth in the parties' moving responding papers.

9 The plaintiffs argue that this Court lacks the
10 subject matter jurisdiction over the complaint, and thus this
11 Court should remand to state court. The plaintiffs' complaint
12 raises five cause of action: First, the ordinance in question
13 is ultra vires because New Jersey law precludes municipalities
14 from regulating a business's employment decisions. Second, the
15 ordinance violates the substantive due process guarantees of
16 New Jersey's constitution. Next, the ordinance is void for
17 vagueness under the New Jersey constitution. Next, the
18 ordinance violates New Jersey's Law Against Discrimination by
19 allowing employment and housing discrimination based on
20 national origin. Finally, the ordinance violates the
21 procedural due process guarantee of the New Jersey
22 constitution.

23 Defendant argues that this Court has jurisdiction
24 because the plaintiffs' claims cannot be resolved without
25 deciding the question or questions of federal law. Thus, the

1 defendant asserts that these claims arise under federal law
2 and jurisdiction in this court is proper.

3 Federal courts are courts of limited jurisdiction
4 possessing only the power authorized by the Constitution and
5 Congress. Kokkonen vs. Guardian Life Insurance Company, 511
6 U. S. 375, 377 (1994). A party may remove the state action to
7 federal court only if the case could have originally been
8 brought in that federal forum. City of Chicago vs.
9 International College of Surgeons, 522 U. S. 156, 163 (1997)
10 The facts supporting jurisdiction are evaluated according to
11 the plaintiffs' pleading at the time of the petition for
12 removal and the removing party carries the burden of
13 establishing jurisdiction and the propriety of removal.
14 International College of Surgeons, 522 U. S. at 163. The
15 limited scope of federal jurisdiction demands that the removal
16 statutes be strictly construed and, in close questions, that
17 doubts be resolved in favor of remand. Monmouth-Ocean
18 Collection Service, Inc. vs. Klor, 46 F. Supp. 2d 385, 387
19 (D.N.J. 1999).

20 The defendant Township of Riverside argues that
21 jurisdiction is proper in this Court because the controversy
22 arises under federal law. Title 28 U.S.C. Section 1331
23 provides the district courts with original jurisdiction over
24 all civil actions arising under the Constitution, laws or
25 treaties of the United States. The defendant relies on the

1 Supreme Court's opinions in Grable & Sons Metal Products, Inc.
2 vs. Darue Engineering & Manufacturing, 545 U. S. 308 (2005),
3 and Empire Healthchoice Assurance, Inc. Vs. McVeigh, 126 S.
4 Ct. 2121 (2006) .

5 In Grable, the unanimous Court held that federal
6 jurisdiction existed notwithstanding the absence of a federal
7 cause of action. There, the Internal Revenue Service seized
8 real property belonging to Grable & Sons Metal Products, Inc.
9 to satisfy Grable's tax delinquency. The IRS gave notice of
10 the seizure via certified mail, received and acknowledged by
11 Grable. After the property was seized and sold to a
12 third-party, Darue Engineering and Manufacturing, Grable
13 brought suit in state court to quiet title. Grable argued
14 that the federal statute authorizing the seizure required
15 personal service, not service via certified mail, and
16 therefore the seizure and subsequent sale were invalid. Darue
17 removed the action to federal court because the claim of title
18 depended on the interpretation of the notice statute in the
19 federal tax law.

20 The Supreme Court concluded that federal court
21 jurisdiction on this ground was appropriate. Central to its
22 decision was the fact that while there was no federal cause of
23 action, the meaning of the federal statute was the only legal
24 or factual issue contested in the case. The Court framed the
25 question for federal jurisdiction over state law claims

1 purportedly arising under federal law as whether:

2 "A state law claim necessarily raises a stated
3 federal issue actually disputed and substantial, which a
4 federal forum may entertain without disturbing any
5 congressionally approved balance of federal and state judicial
6 responsibilities."

7 The Court declined to adopt a bright-line rule that
8 the absence of a federal cause of action precludes federal
9 jurisdiction. Rather, it reconciled earlier decisions on this
10 question as recognizing that questions of jurisdiction over
11 state law claims require careful judgments about the nature of
12 the federal interest at stake. See Grable at 317.

13 In Empire Assurance, the Court had an opportunity to
14 expand upon the significance of Grable and the "special and
15 small category" of federal jurisdiction it recognized. Empire
16 arose out of a claim for reimbursement by Empire Healthchoice
17 Assurance, Inc., which insured federal employees through an
18 agreement with the Office of Personnel Management and governed
19 by the Federal Employees Federal Health Benefits Act. A
20 federal employee insured by Empire was injured in an accident
21 and subsequently received benefits under the Empire plan.
22 After the insured died, his estate brought a tort claim
23 against parties alleged to have caused the insured's injuries.
24 The insured's estate settled the claims and Empire filed suit
25 in federal court to recover for the benefits it paid out. The

1 issue before the Court was whether there was federal
2 jurisdiction over Empire's state law reimbursement claim.

3 The Court confronted two arguments for finding
4 federal jurisdiction in the absence of a federal cause of
5 action: That the reimbursement claim was essentially a
6 federal claim because the insurance policy was a federal
7 contract governed by the Federal Employee Health Benefit Act
8 and that the claim arose under federal law because federal
9 law, the Federal Employee Health Benefit Act, is a necessary
10 element of the claim. The Court's consideration on the second
11 argument is applicable to the instant motion.

12 The question of whether a claim arises under federal
13 law must be determined by reference to the well-pleaded
14 complaint. Merrell Dow, 478 U. S. 808. As plaintiffs correctly
15 argue, a defense that raises a federal question is inadequate
16 to confer federal jurisdiction. Merrell Dow, 478 U. S. 808.
17 In other words, preemption as a defense is not a sufficient
18 basis for removal. Gaming Corporation of America, 88 F.3d at
19 542, 543.

20 Here, the defendant argues that the complaint which
21 seeks relief under state law requires resolution of a
22 substantial question of federal law in dispute between the
23 parties. Plaintiffs' argue that the complaint, on its face,
24 raises a substantial question of federal law. Specifically,
25 defendant points out that the complaint at pages 10 and 11

1 from Paragraphs 28 through 32 set forth an important overview
2 of immigration law, that the portion of the complaint
3 references the Immigration and Nationality Act, 8 U. S. C.
4 Section 1101, et seq. and the Immigration Reform and Control
5 Act, 8 U. S. C. Section 824(a). The defendant contends that in
6 reality the claims the plaintiffs are making require
7 resolution of the federal issues raised on the face of its
8 complaint. The defendant cites to 8 U. S. C. Section 1373 and
9 8 U. S. C. Section 1644. Specifically, the defendant argues
10 that the plaintiffs' claim in their complaint that the
11 ordinance is ultra vires, is an issue that necessarily
12 requires a determination whether the township possess the
13 authority under Title 8 U. S. C. Section 1373 and 1644,
14 notwithstanding any provision of the New Jersey constitution
15 or state law. Defendant further argues that the due process
16 argument raised by the plaintiffs again require a
17 determination whether Title 8 U. S. C. Sections 1373 and 1644
18 as a whole prohibit the plaintiffs from exercising a right to
19 due process under the Constitution.

20 As to the plaintiffs' void for vagueness allegation
21 in Count 3 of the complaint, the defendant argues again that
22 the Court will be required to determine the applicability of
23 Sections 1373 and 1644. The same is true with the plaintiffs'
24 fourth claim alleging a violation of the New Jersey Law
25 Against Discrimination and plaintiffs' fifth claim alleging

1 procedural due process claims under the New Jersey
2 constitution. In sum, the defendant argues that the
3 plaintiffs' claims cannot be resolved without regard to
4 consideration of the grant of federal authority provided for
5 in Title 8 U. S. C. Sections 1373 and 1644, which provide
6 summarily that notwithstanding any other provision of state or
7 local law, no state or local government entity may be
8 prohibited in any way from sending or receiving the
9 Immigration and Naturalization Service information regarding
10 the immigration status, lawful or unlawful, of an alien in the
11 United States. The ordinance at issue here requires
12 enforcement officials to contact the federal government to
13 verify, submit, and obtain information on the immigration
14 status of individuals in accordance with 8 U.S.C. Sections
15 1373 and 1644. Thus, the defendants really appear to be
16 arguing federal law preemption. That is, the role of federal
17 law requires the action to be brought in federal court. While
18 that may or may not be a defense to this action in state
19 court, it does not serve to give this Court jurisdiction over
20 the case, as I have stated earlier.

21 Federal question jurisdiction exists only if the
22 plaintiffs' right to relief depends necessarily on a
23 substantial question of federal law. Thus, to bring a case
24 within the removal statute, a right or immunity created by the
25 Constitution or laws of the United States must be an element,

1 and an essential one, of the plaintiffs' cause of action. The
2 essential element must be such that it will be supported if
3 the Constitution or laws of the United States are given one
4 construction or effect, and defeated if they receive another.
5 See Gully vs. First National Bank in Meridian, 299 U. S. 109
6 (1936). A suit to enforce a right which takes its origin in
7 the laws of the United States is not necessarily, or for that
8 reason alone, one arising under those laws, for a suit does
9 not so arise unless it really and substantially involves a
10 dispute or controversy respecting the validity, construction
11 or effect of such a law, upon the determination of which the
12 result depends. See Gully at page 114. This method of finding
13 federal court jurisdiction, as I've indicated, is a special
14 and small category of cases. Empire Healthchoice Assurance,
15 126 S. Ct. at 2136.

16 Here, the plaintiffs' complaint does not assert
17 separate federal claims, but state law claims. Contrary to the
18 defendant's argument, this Court finds that the plaintiffs can
19 receive their desired relief without a determination of
20 federal issues in this case. In other words, the result does
21 not depend on the determination of a substantial federal
22 question. While this Court agrees that the action will
23 necessarily involve reference to federal law, and I don't
24 think that the parties dispute that, that does not mean that
25 federal law is an essential element.

1 It is well established that federal jurisdiction is
2 not created by the fact that proof of a violation of a federal
3 statute is an element of the plaintiffs' state law cause of
4 action. See for example, Merrell Dow, 478 U. S. at 814; Jarath
5 vs. Dyer, 154 F.3d 1280 at 1283 (11th Cir 1998); Smith vs.
6 Industrial Valley Title Insurance, 957 F.2d 90 (3d Cir. 1992).
7 In Franchise Tax Board vs. Financial Laborers Vacation Trust,
8 463 U. S. 1, 13 (1983), the Supreme Court referred to two
9 situations where federal jurisdiction could be available even
10 though the plaintiff based its claim in state court on state
11 law. One, where it appears that some substantial disputed
12 question of federal law is a necessary element of one of the
13 plaintiffs' state claims. This is not like the case presented
14 in Grable because there is presently no substantial disputed
15 question of federal law and, any future disputes would be
16 ancillary, not central, to the state law claims presented.
17 Indeed, the defendant does not cite to any such issue, as was
18 the case in Grable. Or two, when it appears that plaintiffs'
19 claim is really one of federal law. A state claim which is
20 really one of federal law may be removed to federal court
21 because it is an independent corollary of the well-pleaded
22 complaint rule that a plaintiff may not defeat removal by
23 omitting to plead necessary federal questions in a complaint.
24 Franchise Tax Board, 463 U. S. at 22. In this regard, the
25 Supreme Court has held that a state cause of action is really

1 a federal cause of action which may be removed to federal
2 court if the federal cause of action completely preempts the
3 state cause of action. Franchise Tax Board at 463 U. S. at
4 24. This is known as the complete preemption doctrine. I agree
5 with the plaintiffs that there are only a few situations, and
6 the defendant so concedes, I believe, as it must, that there
7 are only a few situations in which the complete preemption
8 doctrine is applicable. And, this is not one of those cases.
9 There has been no indication by Congress that this area has
10 been completely preempted, etcetera, and because the
11 defendants have conceded this point, the Court will not go
12 into an exhaustive analysis of the complete preemption
13 doctrine.

14 In sum then, the Court finds that the defendant has
15 failed to meet its burden that the complaint arises under
16 federal law which was the basis for its removal, and the Court
17 will enter an order remanding this case to the Superior Court
18 from where it was originally initiated.

19 The final issue for the Court to decide is the issue
20 of plaintiffs' motion for attorney's fees and costs. 28 U.S.C.
21 Section 1447(c) provides that an order remanding the case may
22 require payment of just costs and any actual expenses,
23 including attorney's fees, incurred as a result of the
24 removal. The Supreme Court in Martin vs. Franklin, 546 U. S.
25 132 (2005) discussed at length when it is appropriate to award

1 costs after it has determined that the federal court lacked
2 jurisdiction. Fee shifting in remand cases is not automatic,
3 it is intended to deter removals sought for the purpose of
4 prolonging litigation and imposing costs on the opposing
5 party. See Martin vs. Franklin at 711. Awarding fees should
6 turn on the reasonableness of the removal. Absent unusual
7 circumstances, courts may award attorney's fees under 1474(c)
8 only where the removing party lacked an objectively reasonable
9 basis for seeking removal.

10 Here, the plaintiffs have not provided this Court
11 with any evidence that the defendant was motivated by a desire
12 to delay litigation or to impose additional costs on the
13 plaintiffs. Indeed, the township clearly, in this Court's
14 view, had an objectively reasonable basis for seeking removal.
15 In fact, I think that is evident by the fact that in order to
16 persuade this Court that remand was appropriate, it took the
17 plaintiffs and the defendant some time and some lengthy briefs
18 to brief the issue, which was not an easy issue in this
19 Court's view, and is somewhat a case of first impression, I do
20 agree with the defendant. The defendants did have
21 well-reasoned arguments in support of their notice of removal,
22 I find that they were made in good faith, and so I do not find
23 the defendants lacked an objectively reasonable basis for
24 seeking removal. Therefore, I will not award attorney's fees
25 or costs in favor of the plaintiffs. So that motion will be

1 denied.

2 Any questions about my ruling?

3 MR. SAPONARO: No, your Honor. Thank you.

4 MR. MAER: No, your Honor.

5 MR. KATZ: No, your Honor.

6 THE COURT: Okay, thank you, counsel.

7 THE DEPUTY CLERK: All rise.

8 (Proceeding then ended)

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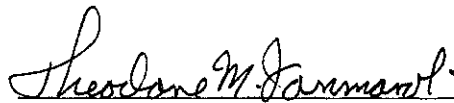
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I, Theodore M. Formaroli, C.S.R., Official United States Court Reporter and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel and that I am not financially interested in this action.



THEODORE M. FORMAROLI, C.S.R.

Certificate No. 433

Date: March 1, 2007