



permits and contractors to help Flowers Ministries, Inc. operate in Darlington. On February 17, 2017, this action was initiated in state court alleging causes of action for denial of First Amendment rights, abuse of process, and intentional actions to punish church leaders and members. [ECF #1-1]. The summons and complaint were served on Defendants on or about March 10, 2017. Defendants filed a notice of removal to federal court on April 3, 2017, on the basis of the federal question doctrine pursuant to 28 U.S.C. § 1441, arguing that Plaintiffs allege a violation of their First Amendment rights under the Constitution of the United States. Defendants also argue that this Court has supplemental jurisdiction over any perceived state court claims asserted by Plaintiffs pursuant to 28 U.S.C. § 1367.

On April 20, 2017, Plaintiffs filed a Motion to Remand, ostensibly on the basis that the single federal issue in this case (violation of First Amendment rights) is premised upon the alleged illegal actions of the Defendants, and Plaintiffs argue these actions are governed exclusively under state law. Defendants filed a reply on May 3, 2017, contending that removal is proper because the issues raised in the Complaint rest invoke federal question doctrine jurisdiction.

## **II. Standard of Review**

The party seeking to remove a case to federal court has the burden of establishing federal jurisdiction. *Mulcahey v. Columbia Organic Chem. Co., Inc*, 29 F.3d 148, 151 (4th Cir. 1994). Therefore, Defendants bears the burden in this instance. “Because removal jurisdiction raises significant federalism concerns, [the court] must strictly construe removal jurisdiction.” *Id.* (citing *Shamrock Oil & Gas Corp v. Sheets*, 313 U.S. 100 (1941)). “If federal jurisdiction is doubtful, a remand is necessary.” *Mulcahey*, 29 F.3d at 151. The removing party also bears the burden of showing compliance with 28 U.S.C. § 1446(b). *Andrews v. Daughtry*, 994 F.Supp.2d 728, 732 (M.D.N.C. 2014). A defendant has not complied with removal procedure where he does not remove the case in

a timely fashion. *Cades v. H. & R. Block, Inc.*, 43 F.3d 869, 873 (4th Cir. 1994). “A defect in removal procedure renders a case improperly removed.” *Link Telecommunications, Inc. v. Sapperstein*, 119 F.Supp.2d 536, 542 (D. Md. 2000) (citing *Huffman v. Saul Holdings Ltd. Partnership*, 194 F.3d 1072, 1076 (10th Cir. 1999)).

### **III. Discussion**

Defendants removed this case from state court pursuant to 28 U.S.C. §§ 1441 and 1446. Under § 1441(a), a defendant is permitted to remove a case to federal court if the court would have had original jurisdiction over the matter. Defendants base federal jurisdiction upon the fact that the complaint involves a federal question pursuant to 28 U.S.C. §§ 1331 and 1334,<sup>2</sup> as Plaintiffs allege Defendants have denied them their First Amendment rights under the Constitution of the United States. Defendants also assert that this Court has supplemental jurisdiction over any perceived state court claims pursuant to 28 U.S.C. § 1367. There appears to be no issue as to whether the case was removed in a timely manner.

Instead, Plaintiffs contend that the alleged illegal actions of Defendants are governed exclusively by state law. However, within Plaintiffs’ Complaint, the first cause of action is “Denial of First Amendment Rights” and in their brief, Plaintiffs provide a brief analysis of the history of the First Amendment free speech cases and religious freedom cases to argue that Defendants were punishing these Plaintiffs for exercising their First Amendment rights. In fact, Plaintiffs state: “[a]ll the actions taken by the County Fire Marshall on property located in the city limits were actions beyond his authority and in clear violation of the First Amendment Rights of the church and its members.” [ECF

---

<sup>2</sup> 28 U.S.C. § 1331 provides district courts should have original jurisdiction of all civil actions arising under the Constitution. 28 U.S.C. § 1334 concerns bankruptcy cases and proceedings which does not apply here.

#8-1, p. 7]. Plaintiffs do not otherwise provide a basis for finding that the issues raised in the Complaint center on purely state law issues or concerns. As Defendants provide in their reply, Plaintiffs assert that Defendants discriminated against them in violation of the First Amendment for the free practice or religion by taking allegedly discriminatory actions in enforcing certain city and county building codes. [ECF #10, p. 2]. Accordingly, Plaintiffs' claims alleging a violation of their First Amendment rights are issues involving a federal question, and therefore removal to federal court is proper.

#### **IV. Conclusion**

For the reasons stated above, this court **DENIES** Plaintiffs' Motion to Remand. [ECF #8].

**IT IS SO ORDERED.**

Florence, South Carolina  
July 27, 2017

s/ R. Bryan Harwell  
R. Bryan Harwell  
United States District Court Judge