

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

|                               |   |                              |
|-------------------------------|---|------------------------------|
| MAINE MUNICIPAL ASSOCIATION,  | ) |                              |
| CITY OF PORTLAND, and CITY OF | ) |                              |
| WESTBROOK, et. al.            | ) |                              |
|                               | ) |                              |
| Petitioners                   | ) |                              |
|                               | ) |                              |
| v.                            | ) | CIVIL ACTION                 |
|                               | ) | Docket No. 1:14-CV-00311-JAW |
|                               | ) |                              |
| MAINE DEPARTMENT OF HEALTH    | ) |                              |
| AND HUMAN SERVICES, and       | ) |                              |
|                               | ) |                              |
| MARY MAYHEW, COMMISSIONER,    | ) |                              |
| MAINE DEPARTMENT OF HEALTH    | ) |                              |
| AND HUMAN SERVICES,           | ) |                              |
|                               | ) |                              |
| Respondents                   | ) |                              |

PROPOSED INTERVENORS' MOTION AND MEMORANDUM OF LAW IN  
SUPPORT OF PETITIONERS' MOTION TO REMAND

Proposed-Intervenors Rehma Rebecca Juma and Suavis Furaha support the Petitioners' Motion to Remand. Remand to Maine Superior Court is appropriate in this case for the reasons articulated by Petitioners, and for the following additional reasons:

1. For over one-hundred years, the "well-pleaded" complaint rule has directed that the basis for federal jurisdiction—whether originally or for removal purposes—must be found within the four corners of the complaint and may not be based upon the Respondent's defenses or counterclaims. *See Taylor v. Anderson*, 234 U.S. 74, 75-76 (1914) ("[W]hether a case is one arising under

the Constitution or a law or treaty of the United States, in the sense of the jurisdictional statute, ... must be determined from what necessarily appears in the plaintiff's statement of his own claim in the bill or declaration, unaided by anything alleged in anticipation of avoidance of defenses which it is thought the defendant may interpose.”).

2. Here, the complaints of the Petitioners and the Proposed-Intervenors only allege violations of Maine State law. Specifically, Proposed-Intervenors' cause of action in this case is created by Maine statute and the Maine constitution.
3. Contrary to the suggestion of Defendants, made in their Notice of Removal (¶ 3), Proposed-Intervenors have not alleged a violation of the federal constitution or any federal statute. The Equal Protection clause that defendants are alleged to have violated is the one found in Article I, Section 6-A of the Maine Constitution, not the one in Amend. XIV of the United States Constitution.
4. Under the well-pleaded complaint rule, federal question jurisdiction arises only when the complaint alleges, on its face, either that (1) federal law creates the cause of action, or (2) that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law. *Franchise Tax Bd. v. Construction Laborers Vacation Trust of Southern California*, 463 U.S. 1, 27-28 (1983).

5. Resolution of proposed-intervenors' complaint does not necessarily depend on resolution of a substantial question of federal law. In fact, resolution of proposed-intervenors' complaint only depends on resolution of two purely state law questions: first, did the Department of Health and Human Services comply with the Maine Administrative Procedures Act (APA) when it changed the eligibility rules for General Assistance, e.g. is the "guidance" in dispute in this case a "rule" as defined by 5 M.R.S. § 8002 (9), and, if so, it must go through the state APA notice and comment process; and second (if the Department complied with the APA), did the Department and Health and Human Services comply with the Maine Constitution's equal protection clause.
6. The category of state law cases in which the right to relief necessary depends on resolution of a substantial question of federal law—thus, conferring federal question jurisdiction—is extremely small, and this case does not fall within it.
7. Those rare cases depend on the existence of a federal law question deeply embedded within a state law question. *See Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308 (2005). A claim falls into the "deeply embedded" category when four requirements regarding a federal issue are met: the issue must be 1) necessarily raised; 2) actually disputed; 3) substantial; and 4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress. *See id.* at 313-14, *see also*

*Gunn v. Minton*, 133 S.Ct. 1059, 1065 (2013) (holding that the federal patent law issue embedded in the state law malpractice claim was insufficient to confer exclusive federal subject matter jurisdiction).

8. “Deeply embedded” cases are rare. *See, e.g., Puerto Rico Tel. Co., Inc. v. SprintCom, Inc.*, 662 F.3d 74, 86 (1st Cir. 2011) (calling this class of federal cases “rare”); *Alberto San, Inc. v. Consejo De Titulares Del Condominio San Alberto*, 522 F.3d 1, 5 n.3 (1st Cir. 2008) (calling this a “limited exception”); *Cambridge Literary Properties, Ltd. v. W. Goebel Porzellanfabrik G.m.b.H. & Co. KG*, 510 F.3d 77, 93 (1st Cir. 2007) (referring to this exception as “narrow”).
9. Here the federal issue is neither part of the Petitioners’ nor the Proposed – Intervenor’s legal claims. To the extent that the Respondents attempt to make it an issue, it simply is not. To resolve the Petitioners’ claims does not call upon this Court to resolve “any controversy respecting . . . the validity, construction or effect” of the federal law. *Grable*, 545 U.S. at 315, n. 3 (quoting *Shulthis v. McDougal*, 225 U.S. 561, 570, 56 L. Ed. 1205, 32 S. Ct. 704 (1912)). What this Court is faced with is nothing more than whether the “guidance” issued by the Defendant violates the Maine Administrative Procedures Act.

Respectfully submitted, this 22nd day of August, 2014,

/s/ : Zachery Heiden

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Zachary L. Heiden  
American Civil Liberties Union  
of Maine Foundation  
121 Middle Street, Suite 301  
Portland, Maine 04103  
zheiden@aclumaine.org  
phone: (207) 774-5444  
fax: (207) 774-1103

/s/ : Jack Comart

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Jack Comart  
Robyn Merrill  
Maine Equal Justice Partners, Inc.  
126 Sewall Street  
Augusta, Maine 04330  
phone: (207) 626-7058, ext. 202  
fax: (207) 621-8148  
jcomart@mejp.org

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2014, I electronically filed the foregoing PROPOSED INTERVENORS' MOTION AND MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS' MOTION TO REMAND with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered counsel of record as follows:

Clifford H. Ruprecht  
Roach Hewitt Ruprecht Sanchez & Bischoff, P.C.  
66 Pearl Street, Suite 200  
Portland, ME 04101  
Tel. 207.747.4874  
[cruprecht@roachruprecht.com](mailto:cruprecht@roachruprecht.com)

Russell B. Pierce, Jr.  
James D. Poliguin  
Peter DeTroy  
Norman, Hanson & DeTroy, LLC  
Two Canal Plaza

P.O. Box 4600  
Portland, ME 04112-4600  
(207) 774-7000  
rpierce@nhdlaw.com