

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RONALD MURRAY,
Plaintiff,

vs.

Case No. 05-1308-JTM

MARK FRAME,
Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the motion of pro se plaintiff Ronald Murray, an inmate of the State of Kansas penitentiary system, to remand the action to Edwards County, Kansas District Court. Murray sued defendant County Attorney Mark Frame in his individual capacity, alleging violations of 42 U.S.C. § 1983 and Murray's rights under the First and Fourteenth Amendments to the United States Constitution. Frame removed the matter to his court.

Murray argues, first, that although he does indeed advance federal claims against Frame, concurrent jurisdiction remains appropriate in Kansas courts; second, that federal jurisdiction is absent because both he and Frame are citizens of Kansas; third, that his choice of forum should be respected; and fourth, that Frame as County Attorney would be protected by Eleventh Amendment Immunity in federal court.

Murray's arguments in favor of remand are without merit. Murray's original complaint alleges federal questions, and federal questions only. Removal is therefore appropriate under 42 U.S.C. § 1331 and § 1343, notwithstanding plaintiff's preference for trial in state court. Because the

sole basis for jurisdiction is the federal questions presented, the lack of complete diversity is irrelevant. And the mere fact the potential Eleventh Amendment defenses exist does not in and of itself prevent removal. *See Wisconsin Dept. of Corrections v. Schacht*, 524 U.S. 318, 389 (1998) (noting that "[t]he Eleventh Amendment, however, does not automatically destroy original jurisdiction.")

IT IS ACCORDINGLY ORDERED this 2d day of February, 2006 that the plaintiff's Motion to Remand (Dkt. No. 6) is hereby denied.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE