

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JOHN FRESHWATER

Plaintiff,

v.

Case No. 2:11-cv-190

JUDGE GREGORY L. FROST

Magistrate Judge Norah McCann King

**MOUNT VERNON CITY SCHOOL
DISTRICT BOARD OF EDUCATION,**

Defendant.

ORDER

On March 1, 2011, Defendant removed this action to this Court from the Common Pleas Court of Knox County, Ohio. In the complaint, Plaintiff alleges that he filed this action “pursuant to Ohio Revised Code [§] 3319.16, as a public school teacher affected by an order of termination of contract, to appeal to the court of common pleas of the county in which the school is located” (ECF No. 4 ¶ 1.) In its Notice of Removal, however, Defendant asserts that “[t]his case is subject to removal under 28 U.S.C. § 1441(a) and (b), because the district court has original jurisdiction over this action based on federal question jurisdiction under 28 U.S.C. §1331.” (ECF No. 1 ¶ 5.) Defendant contends that the complaint sets forth claims for violations of Plaintiff’s federal constitutional rights and that these constitutional claims were previously alleged in an action before this Court and were dismissed with prejudice. *Id.* ¶¶ 1, 4. Defendant claims that Plaintiff’s appeal of his termination is properly before this Court pursuant to 28 U.S.C. § 1367. *Id.* ¶ 6.

This Court, however, questions whether it has subject matter jurisdiction over this action

based upon § 3319.16 of the Ohio Revised Code and, if it does possess jurisdiction, whether it is proper to exercise it in view of the abstention doctrine. Thus, the Court is inclined to *sua sponte* remand this action. Defendants may have until March 28, 2011, to provide a brief explaining why this action should not be remanded.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE