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The Honorable Judge Lauren King

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

WASHINGTON ELECTION INTEGRITY  
COALITION UNITED, A WASHINGTON  
STATE NONPROFIT CORPORATION;  
BRETT SIMPSON; BONNIE GRIECO;  
JONETTE MOLYNEUX; ROSS MERRITT;  
TAMARA SHAW; HARLYN  
THOMPSON; KIMBERLEE ELBON;  
ROBERT WARD; CONSTANCE COOKE;  
DOREEN ROSE; SHIRLEY MOZENA;  
JAMES MOZENA; MICHELLE DAWSON;  
LINDSEY NICHOLS; JOSEPH KENT;  
ROXANNE PEARCE; DAVID MACHADO;  
JOSHUA BRADLEY; BENNETT ESRAEL;  
JAKE PARMER; RICH AUDETTE; MARIA  
BRUEMMER; JOSEPH GIBSON; ERIC  
HARGRAVE; WENDY KEELINE; PHILLIP  
HOGAN; MARILI HAAS; IKE HAAS;  
FRANK GMELIN; TRICIA SHOUP; JEN  
HOLBROOK; STEPHEN CLEMENTS;  
KIMBERLY ANDERSON; SUSAN  
AUDETTE,

Plaintiffs,

v.

GREG KIMSEY, CLARK COUNTY  
AUDITOR; CLARK COUNTY; AND DOES  
1-30, INCLUSIVE,

Defendants.

No. 3:21-cv-05746-LK

**DEFENDANTS' SUPPLEMENTAL  
RESPONSE RE REMAND**

1 Clark County Defendants properly removed this action to federal court based on  
2 Plaintiffs' assertion of various claims arising under the Federal Constitution and federal statutes.  
3  
4 See 28 U.S.C. §1441(a). This Court now asks if the parties will stipulate to remand of this matter  
5 and for the reasons below, the defendants do not so stipulate. While under 28 U.S.C. § 1447(c),  
6 the default is to remand a case lacking Article III standing, the Court may dismiss Plaintiffs'  
7 claims if it is "certain that a remand to state court would be futile." *e.g.*, *Polo v. Innovations*  
8 *Intn'l, LLC*, 833 F.3d 1193, 1198 (9th Cir. 2016) citing *Bell v. City of Kellogg*, 922 F.2d 1418,  
9 1425 (9th Cir. 1991) ("only when the eventual outcome of a case after remand is so clear as to be  
10 foreordained have we held that a district court may dismiss it.").

12 Like this case, *Bell* was a dispute over an election result. *Id.* at 1421. The Ninth Circuit  
13 affirmed dismissal of the federal claims for lack of standing and also dismissed the state law  
14 claims. *Bell*, 922 F.2d at 1421. The court explained "Because we are certain that a remand to state  
15 court would be futile, no comity concerns are involved." *Id.* at 1425. "District Court resolution  
16 of the entire case prevents any further waste of valuable judicial time and resources." *Id.* Although  
17 the Ninth Circuit has acknowledged that *Bell's* recognition of a futility exception is difficult to  
18 reconcile with "the literal words of § 1447(c), which, on their face, give no discretion to dismiss  
19 rather than remand an action," it has expressly declined to overrule *Bell*. *Polo*, 833 F.3d at 1197-  
20 98 (citation and internal quotation marks omitted); *see also Strojnik v. Super 8*, CV-21-00927-  
21 PHX-DWL, 2022 WL 613227, at \*3 (D. Ariz. Mar. 2, 2022) (dismissing rather than remanding);  
22 *Advocates for Individuals with Disabilities, LLC v. Midfirst Bank*, 279 F.Supp.3d 891, 892 (D.  
23 Ariz. 2017) (dismissing rather than remanding). As such, it must be followed here. *See Zuniga v.*  
24 *United Can Co.*, 812 F.2d 443, 450 (9th Cir. 1987) *citing Hasbrouck v. Texaco, Inc.*, 663 F.2d 930,  
25 933 (9th Cir. 1981) ("District courts are, of course, bound by the law of their own circuit, and "are  
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1 not to resolve splits between circuits no matter how egregiously in error they may feel their own  
2 circuit to be.”) This Court should apply *Bell* in this case, as it remains good law in the Ninth Circuit.

3 *Britton v. Cnty. of Santa Cruz*, No. 19-CV-04263-LHK, 2020 WL 4197609 (N.D. Cal. July  
4 22, 2020) does not direct a different result. In *Britton*, the Defendants did not raise the issue of  
5 “futility” in response to Plaintiff’s motion for remand. *Id.*, at \*4 (“Defendants merely respond  
6 without citation that, as long as “Plaintiffs’ 1983 cause of action is a law of the Unites States ...  
7 this Court has original jurisdiction over the claim.”) As a result, the *Britton* Court did not consider  
8 *Bell* in its decision, and it is therefore not helpful in the resolution of this case. Additionally,  
9 neither case addressed a frivolous state election challenge that raised federal constitutional  
10 violations that sought to undermine the confidence in the electoral process, as this case does.

11  
12  
13 If the Court finds Plaintiffs’ lack standing, dismissal is warranted under *Bell* because  
14 remand would be futile. First, the same standing issue that bars Plaintiffs’ action under Article III  
15 also precludes any state action. Second, Plaintiffs’ claims are untimely election contests which are  
16 barred by Washington State law. RCW 29A.68.013. In *Bell*, failure to comply with the Idaho  
17 election contest statute provided “absolute certainty” that supported outright dismissal. 922 F.2d  
18 at 1425. Like *Bell*, the Washington election contest statute is the exclusive remedy for challenging  
19 elections. *See* RCW 29A.68.020 (“All election contests must proceed under RCW 29A.68.011  
20 or 29A.68.013.”). RCW 29A.68.013 requires an elector to bring elections challenges within ten  
21 days of certification of the election. Plaintiffs’ complaint was filed nearly a year after certification  
22 of the 2020 election and fails to meet the other requirements. Thus, remand to the state court is  
23 necessarily futile and “foreordained”. To remand this case would prolong a decision in this case  
24 and would allow plaintiffs to continue to undermine the confidence in the Clark County electoral  
25 process for the upcoming 2022 election, as well as the 2020 election.  
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1 Third, as to Plaintiffs' PRA claim, Washington state law is clear that ballots and ballot  
2 images are categorically exempt from public disclosure. *See White III*, 199 Wash. App. at 934 (A  
3 PRA requestor "is *not entitled to disclosure of the requested [ballots]* because ... both RCW  
4 29A.60.110 and WAC 434-261-045 create an 'other statute' exemption that applies to election  
5 ballots even after the minimum 60-day retention period after tabulation."); *See also White II*, 188  
6 Wash. App. at 89 (denying PRA disclosure for electronic or digital image files of ballots used in  
7 the general election); *White I*, 188 Wash.App. at 627 (2015), *rev. denied*, 185 Wash.2d 1009 (2016)  
8 (holding pre-tabulated ballots are exempt from PRA disclosure). WEICU has no viable claim to  
9 access tabulated ballots.  
10

11  
12 Additionally, the Franklin and Lincoln County Superior Courts recently dismissed similar  
13 lawsuits brought by WEICU and other plaintiffs for multiple reasons, including the Plaintiffs' lack  
14 standing to bring their elections claims. *See* Appendices A and B ("Plaintiffs each lack standing to  
15 bring the elections claims alleged"; "Plaintiffs lack standing and have failed to state a claim upon  
16 which relief can be granted."). Finally, the majority of the Plaintiffs failed to address any of  
17 Defendants' arguments regarding standing response to the motion to dismiss. *See* Dkt. No. 29.  
18 Accordingly, remand to state court for purposes of dismissal would be futile and a "waste of  
19 valuable judicial time and resources."  
20

21  
22 This case is one of six federal cases wherein WEICU alleges nearly identical frivolous  
23 claims. Instead of one federal judge resolving these claims, if remanded, these cases would be  
24 assigned to state court judges across Washington after motions to dismiss have been pending for  
25 nearly a year. Accordingly, not only would remand to state court for purposes of dismissal be  
26 futile, but it would also be a "waste of valuable judicial time and resources." This action should be  
27 dismissed rather than remanded and Clark County Defendants do not stipulate to a remand.  
28  
29

Dated August 15, 2022.

/s/ Amanda M. Migchelbrink

Amanda M. Migchelbrink, WSBA #34223  
Deputy Prosecuting Attorney  
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*Attorney for Defendants, Greg Kimsey and  
Clark County*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2022, I electronically filed the foregoing *DEFENDANTS' SUPPLEMENTAL REPOSE RE REMAND* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

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Vancouver WA 98686

Kimberlee Elbon  
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La Center WA 98629

Ross Merritt  
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Washougal WA 98671

Robert Ward  
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Tamara Shaw  
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Constance Alice Cooke  
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[connycooke@aol.com](mailto:connycooke@aol.com)

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1 Stephen Clements  
2 812 Z St  
3 Vancouver WA 98661

Susan Audette  
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Battle Ground WA 98604-4566

3 Kimberly Anderson  
4 9509 NE 135th Ct  
5 Vancouver WA 98682

7 DATED this 15<sup>th</sup> day of August, 2022.

9 /s/ Nichole Carnes  
10 Nichole Carnes, Legal Assistant

# APPENDIX A

ORIGINAL FILED

DEC 13 2021

MICHAEL J. KILLIAN  
FRANKLIN COUNTY CLERK  
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SUPERIOR COURT OF WASHINGTON FOR COUNTY OF FRANKLIN

WASHINGTON ELECTION INTEGRITY  
COALITION UNITED, a Washington State  
Nonprofit Corporation, ETHAN CARLSON,  
and FRED CARPENTER,

Plaintiffs,

v.

MATTHEW BEATON, Franklin County  
Auditor, FRANKLIN COUNTY, and DOES  
1-30, inclusive

Defendants.

Case No. 21-2-50572-11

**ORDER GRANTING MOTION TO  
DISMISS FIRST AMENDED  
COMPLAINT UNDER CIVIL RULE  
12(b)(6) AND MOTION TO STRIKE  
PLEADINGS UNDER CIVIL RULE  
11(a)**

~~PROPOSED~~

*CJM*

Having considered Defendants' Motion to Dismiss First Amended Complaint Under Civil  
Rule 12(b)(6) and Motion to Strike Pleadings Under Civil Rule 11(a), and the papers and pleadings  
on file, the Court finds that, for the reasons stated in Defendants' Motion, Plaintiffs lack standing  
and have failed to state a claim upon which relief can be granted. Alternatively, and independently  
of Plaintiffs' lack of standing and failure to state a valid claim, the Complaint is invalid on behalf  
of Plaintiff Washington Election Integrity Coalition United for lack of proper attorney signature.

Thus, it is hereby ORDERED that:

1. Defendant's Motion to Dismiss is GRANTED.
2. Defendant's Motion to Strike is GRANTED.

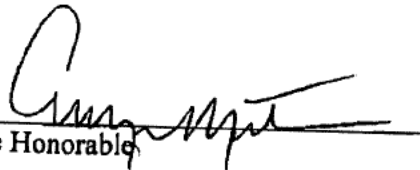
IT IS SO ORDERED.

[PROPOSED] ORDER GRANTING MOTION TO DISMISS  
FIRST AMENDED COMPLAINT UNDER CIVIL RULES  
12(b)(6) AND 11(a)- 1

119181.0002/8791012.1

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1420 FIFTH AVENUE, SUITE 4200  
P.O. BOX 91302  
SEATTLE, WASHINGTON 98111-9402  
206.223.7000 FAX: 206.223.7107


1 DATED this 13<sup>th</sup> day of December, 2021.

2  
3  
4   
The Honorable

**CAMERON MITCHELL**

5 Presented by:

6 LANE POWELL PC

7  
8 

9 By:

Callie A. Castillo, WSBA No. 38214

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Attorneys for Plaintiffs

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[PROPOSED] ORDER GRANTING MOTION TO DISMISS  
FIRST AMENDED COMPLAINT UNDER CIVIL RULES  
12(b)(6) AND 11(a)- 2

119181.0002/8791012.1

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# APPENDIX B

Superior Court of the State of Washington  
For the County of Spokane

Department No.

5

**Michael P. Price**  
Judge

1116 WEST BROADWAY • SPOKANE, WA 99260-0350  
(509) 477-4766 • FAX (509) 477-5714  
dept5@spokanecounty.org



SPOKANE COUNTY COURT HOUSE

March 28, 2022

Mr. Kevin Hamilton  
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Ms. Virginia Shogren  
Attorney at Law  
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Mr. Paul Triesch  
Keating, Bucklin & McCormack Inc, PS  
801 2<sup>nd</sup> Ave, Ste 1210  
Seattle, WA, 98104-1518

Mr. Jerry Schultz

**WASHINGTON ELECTION INTEGRITY COALITION UNITED et al vs. SCHUMACHER,  
CHANDRA et al  
Lincoln County No. 21-2-00042-22**

Dear Counsel and parties,

Please find enclosed an Order entered in this matter today.

As always, I appreciate Counsel's continued assistance and professionalism.

Very truly yours,

Michael P. Price  
Superior Court Judge

mpp/cea  
CC: Lincoln County Court File  
Enclosure: Order

The Honorable Michael Price  
Noted For: March 25, 2022 at 11:00 AM  
With Oral Argument

COPY  
Original Filed

MAR 28 2022

TIMOTHY W. FITZGERALD  
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF LINCOLN

WASHINGTON ELECTION  
INTEGRITY COALITION UNITED, a  
Washington State Nonprofit  
Corporation; JERRY SCHULZ,

Plaintiffs,

v.

CHANDRA SCHUMACHER, Lincoln  
County Auditor; LINCOLN COUNTY,  
and DOES 1-30, inclusive,

Defendants,

and

WASHINGTON STATE DEMOCRATIC  
CENTRAL COMMITTEE,

Intervenor Defendant.

No. 212-00042 22

ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS

~~PROPOSED~~

THIS MATTER came before the court on Defendants' Motion to Dismiss. The Court considered Defendants' Motion to Dismiss and the records and files herein, including:

1. Defendants' Motion to Dismiss;
2. Documents cited therein subject to judicial notice;
3. Plaintiffs' Opposition to Defendants' Motion to Dismiss;
4. Intervenor-Defendant Washington State Democratic Central Committee's Response to Defendants' Motion to Dismiss (~~if any~~);

ORDER GRANTING DEFENDANTS' MOTION  
TO DISMISS - 1  
212-00042 22  
1476-00006/572095

KEATING, BUCKLIN & MCCORMACK, INC., P.S.  
ATTORNEYS AT LAW  
801 SECOND AVENUE, SUITE 1210  
SEATTLE, WASHINGTON 98104  
PHONE: (206) 623-8861  
FAX: (206) 223-6423

1 5. Defendants' Reply to Plaintiffs' Opposition to Defendants' Motion to Dismiss; and

2 6. The entire Superior Court file

3 The court also heard argument of counsel and was fully advised. WHEREFORE, *m.p.*

4 THE COURT FINDS that Plaintiffs' election claims are untimely and barred by statute  
5 and the equitable doctrine of laches, that the respective Plaintiffs each lack standing to bring  
6 the election claims alleged, and that Plaintiffs fail to state an election claim upon which relief  
7 may be granted. The court further finds that Plaintiffs fail to state a claim upon which relief  
8 may be granted under the Public Records Act.

9 THE COURT FINDS that Plaintiffs' claims are frivolous and advanced without  
10 reasonable cause, are not well grounded in fact or warranted by existing law or a good faith  
11 argument for the extension, modification, or reversal of existing law or the establishment of  
12 new law, and were interposed for improper purposes. WHEREFORE,

13 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Defendants' Motion  
14 to Dismiss is GRANTED and that Defendants shall be awarded their costs and reasonable  
15 attorney fees incurred herein, pursuant to RCW 4.84.185, RCW 29A.68.060, and CR 11. \* *m.p.*

16 Done in open court this <sup>th</sup> 28 day of March 2022.

17 \* Defendants shall file and serve an affidavit of all  
18 attorney fees and costs incurred in this matter  
19 within 10 days after Michael Price  
20 entry of this order. *m.p.*

21 Presented by:

22 KEATING, BUCKLIN & McCORMACK, INC., P.S.

23  
24 By: Paul J. Triesch  
25 Paul J. Triesch, WSBA #17445  
26 Attorneys for Defendants  
27

1 Approved as to form; Notice of presentation waived:

2 VIRGINIA P. SHOGREN, P.C

3

4 By: \_\_\_\_\_  
Virginia P. Shogren, WSBA #33939  
5 Attorney for Plaintiff WEICU

6

7 By: \_\_\_\_\_  
8 Jerry Schulz, Plaintiff *Pro Se*

9

PERKINS COIE LLP

10

11

12 By: \_\_\_\_\_  
Kevin J. Hamilton, WSBA #15648  
13 Amanda J. Beane, WSBA #33070  
Reina A. Almon-Griffin, WSBA #54651  
14 Nitika Arora, WSBA #54084  
Attorneys for Intervenor-Defendant

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[PROPOSED] - 3  
212-00042 22  
1476-00006/572095

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