

HONORABLE ROBERT A. JONES

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

WASHINGTON ELECTION INTEGRITY) Case No. 3:21-cv-05746

COALITION UNITED, a Washington)

State Nonprofit Corporation; BRETT)

SIMPSON; BONNIE GRIECO; JONETTE)

MOLYNEUX; ROSS MERRITT;)

TAMARA SHAW; HARLYN THOMPSON;))

MOTION TO REMAND

KIMBERLEE ELBON; ROBERT WARD;)

CONSTANCE COOKE; DOREEN ROSE;)

SHIRLEY MOZENA; JAMES MOZENA;)

28 U.S.C. §1447(c)

MICHELLE DAWSON; LINDSEY)

NICHOLS; JOSEPH KENT; ROXANNE)

PEARCE; DAVID MACHADO; JOSHUA)

BRADLEY; BENNETT ESRAEL; JAKE)

NOTE ON MOTION CALENDAR:
NOVEMBER 19, 2021

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.)

1 Plaintiff Washington Election Integrity Coalition United (“WEiCU”), without appearance,
2 and with full reservation of rights, respectfully brings this Motion to Remand.¹ (28 U.S.C.
3 §1447(c) [motion to remand based on defect must be made within 30 days after the filing of the
4 notice of removal].)

5
6 A. Defendants’ Notice of Removal Is Defective

7 Defendants filed for removal under 28 U.S.C. §1441(a) which permits removal for any
8 action brought in a state court “of which the district courts of the United States have original
9 jurisdiction. . . .” (Defendants’ Notice of Removal, Page 2, ¶ 3.)

10 Defendants do not cite to or address 28 U.S.C. §1441(c) for Complaints involving both
11 federal law claims and state law claims, as is the case here:

12
13 (c) Joinder of Federal Law Claims and State Law Claims.

14 (1) If a civil action includes –

15 (A) a claim arising under the Constitution, laws, or treaties of the
16 United States . . . , and

17 (B) a claim not within the original or supplemental jurisdiction of the
18 district court or a claim that has been made nonremovable by statute, the entire
19 action may be removed *if the action would be removable without the inclusion of*
20 *the claim described in subparagraph (B).*

21 (2) Upon removal of the action described in paragraph (1), the district court
22 shall sever from the action all claims described in paragraph (1)(B) and shall
23 remand the severed claims to the State court from which the action was
24 removed. . . .

(28 U.S.C. §1441(c) [emphasis added].)

25 ¹ WEiCU’s original Motion to Strike, and Plaintiffs’ joinder therein, were filed with this Court
26 and served on October 14, 2021. Those pleadings were subsequently stricken by the Court on
27 grounds that WEiCU had yet to retain counsel. By Minute Order, WEiCU was granted until
28 November 1, 2021 to obtain counsel. WEiCU respectfully requests that the Court take
judicial notice of its original Motion to Strike and the Joinder filed by Plaintiffs herein,
incorporated herein by this reference.

1 Plaintiffs are a Washington State public interest nonprofit corporation and thirty-four (34)
2 Clark County residents. The action was filed in Clark County Superior Court on September 16,
3 2021 seeking remedies under state law against the County Auditor and County arising out of
4 Clark County election irregularities and a refusal by Clark County officials to produce public
5 records.
6

7 Of the ten (10) causes of action in the Superior Court Complaint, seven (7) are brought
8 under state law, namely, RCW Chapters 29A and 42.56; two (2) are mixed State Constitutional
9 and US Constitutional causes of action, with one cause of action, for civil damages, brought
10 under federal law.
11

12 Per 28 U.S.C. §1441(c)(1)(B), Plaintiffs' Superior Court Complaint contains seven (7)
13 causes of action that are not within the original or supplemental jurisdiction of this Court, and as
14 a result, the entire action may be removed only if the action would be removable without the
15 inclusion of the seven (7) state-based claims.
16

17 In this instance, the action would not be removable without the inclusion of the seven (7)
18 state-based claims because the state-based claims form the evidentiary and statutory support for
19 the pendent federal related claims. In other words, if the first seven (7) causes of action (IV-X in
20 the Complaint) were removed the Complaint, there would be no factual or evidentiary support
21 for the federal claims. The mixed State Constitution (ART. I, § 1, § 2, § 3, § 12, §19, §29; ART.
22 VI, §6) and US Constitution (First and 14th Amendment violations) causes of action (XI-XII) in
23 the Complaint) and the final claim for Civil Damages (XIII in the Complaint) stem purely from,
24 and hinge upon, the findings and evidence obtained from election irregularities and the public
25 records action of the first seven (7) state law causes of action.
26
27
28

1 Defendants filed a Notice of Removal under an incorrect section of the removal statute,
2 their Notice should be stricken, and the case remanded accordingly. (28 U.S.C. §1441(c); 28
3 U.S.C. §1447(c).)

4
5 B. 28 U.S.C. §1441(c) Is Consistent with this Court’s Limited Jurisdiction

6 It is axiomatic that federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian*
7 *Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal Courts are limited by Congress and by
8 Article III of the Constitution in the subject matter of cases they may adjudicate. *Id.* State courts,
9 in contrast, are not so limited. *See Tafflin v. Levitt*, 493 U.S. 455, 458-60 (1990). State courts are
10 not bound by the constraints of Article III. *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989).

11
12 As a result, a plaintiff may choose the court system in which they file suit – they are, as
13 the old maxim declares, “master[s] of [their] case.” (*See, e.g., Emrich v. Touche Ross & Co.*, 846
14 F.2d 1190, 1196 (9th Cir. 1988).)

15
16 As part of the state-law based complaint, Plaintiff WEiCU is asserting a Public Records
17 Action against the Clark County Auditor and Clark County to compel production of the already
18 cast, anonymous ballots from the 2020 Election. (RCW 42.56.) To date, both the Auditor and
19 Clark County have failed and refused to provide access to the admitted public records, claiming
20 the cast, anonymous ballots are absolutely and unequivocally ‘exempt’ from public review.
21 WEiCU is informed and believes that the individual plaintiffs have chosen to file their claims in
22 their state Superior Court to seek election integrity for their local County elections.

23
24 Defendants’ removal attempt appears to be an effort to put WEiCU and *pro se* plaintiffs at
25 a disadvantage with a Federal Court that cannot grant them the relief requested, has no direct
26 authority over County-level election irregularities, and has potentially little experience with
27 compelling state law Public Records Actions.

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2021, I electronically filed the following with the Clerk of the Court using the CM/ECF system which will send notification the listed counsel of record:

MOTION TO REMAND
DECLARATION OF VIRGINIA P. SHOGREN IN SUPPORT OF MOTION TO REMAND
[PROPOSED] ORDER GRANTING MOTION TO REMAND

Amanda Marie Migchelbrink
Counsel for Defendants

Kevin Hamilton
Reina Almon-Griffin
Nitika Arora
Amanda Beane
Counsel for Proposed Intervenor

And I hereby certify that I caused to be served the document via email provided by the following parties who are non CM/ECF participants:

Brett Simpson
Plaintiff, *Pro Se*

Bonnie Grieco
Plaintiff, *Pro Se*

Jonette Molyneux
Plaintiff, *Pro Se*

Ross Merritt
Plaintiff, *Pro Se*

Tamara Shaw
Plaintiff, *Pro Se*

Harlyn Thompson
Plaintiff, *Pro Se*

Kimberlee Elbon
Plaintiff, *Pro Se*

Robert Ward
Plaintiff, *Pro Se*

MOTION TO REMAND

1 Constance Cooke
2 Plaintiff, *Pro Se*

3 Doreen Rose
4 Plaintiff, *Pro Se*

5 Shirley Mozena
6 Plaintiff, *Pro Se*

7 James Mozena
8 Plaintiff, *Pro Se*

9 Michelle Dawson
10 Plaintiff, *Pro Se*

11 Lindsey Nichols
12 Plaintiff, *Pro Se*

13 Joseph Kent
14 Plaintiff, *Pro Se*

15 Roxanne Pearce
16 Plaintiff, *Pro Se*

17 David Machado
18 Plaintiff, *Pro Se*

19 Joshua Bradley
20 Plaintiff, *Pro Se*

21 Bennett Esrael
22 Plaintiff, *Pro Se*

23 Jake Parmer
24 Plaintiff, *Pro Se*

25 Rich Audette
26 Plaintiff, *Pro Se*

27 Maria Bruemmer
28 Plaintiff, *Pro Se*

Joseph Gibson
Plaintiff, *Pro Se*

MOTION TO REMAND

1 Eric Hargrave
2 Plaintiff, *Pro Se*

3 Wendy Keeline
4 Plaintiff, *Pro Se*

5 Phillip Hogan
6 Plaintiff, *Pro Se*

7 Marili Haas
8 Plaintiff, *Pro Se*

9 Ike Haas
10 Plaintiff, *Pro Se*

11 Frank Gmelin
12 Plaintiff, *Pro Se*

13 Tricia Shoup
14 Plaintiff, *Pro Se*

15 Jen Holbrook
16 Plaintiff, *Pro Se*

17 Stephen Clements
18 Plaintiff, *Pro Se*

19 Kimberly Anderson
20 Plaintiff, *Pro Se*

21 Susan Audette
22 Plaintiff, *Pro Se*

23 Dated: October 22, 2021

s/ Virginia P. Shogren
Virginia P. Shogren
Virginia P. Shogren, P.C.
961 W. Oak Court
Sequim, WA 98382
360-461-5551

24

25

26

27

28 MOTION TO REMAND

HONORABLE ROBERT A. JONES

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
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WASHINGTON ELECTION INTEGRITY)
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Case No. 3:21-cv-05746

DECLARATION OF VIRGINIA P.
SHOGREN IN SUPPORT OF
MOTION TO REMAND

28 U.S.C. §1447(c)

Plaintiffs,

v.

GREG KIMSEY, Clark County)
Auditor; CLARK COUNTY, and DOES)
1-30, inclusive,)

Defendants.

1 I, Virginia P. Shogren, do hereby declare:

2 1. I am counsel for Plaintiff Washington Election Integrity Coalition United
3 (“WEiCU”) in this matter and am fully familiar with all facts declared herein.

4 2. On October 22, 2021, I met and conferred telephonically with Amanda
5 Migchelbrink, counsel for Defendants Greg Kimsey and Clark County. We discussed
6 Defendants’ Notice of Removal brought under 28 U.S.C. § 1441(a). I brought to counsel’s
7 attention that the Notice of Removal had no citation to, or mention of, Section 1441(c) which
8 applies to actions involving a joinder of federal law claims and state law claims.
9

10 3. I asked counsel to either: 1) withdraw Defendants’ Notice of Removal and re-file
11 it under the correct removal statute subsection 1441(c); or, 2) stipulate that Section 1441(c)
12 applies to this action and ask this Court to sever the state claims and remand them to Superior
13 Court. Defendants’ counsel declined both options at this time, thereby necessitating the filing of
14 the present motion.
15

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Dated: October 22, 2021

18 s/Virginia P. Shogren
19 Virginia P. Shogren
20 Counsel for Plaintiff Washington Election Integrity
21 Coalition United
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23
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HONORABLE ROBERT A. JONES

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
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Case No. 3:21-cv-05746

[PROPOSED] ORDER GRANTING
MOTION TO REMAND

28 U.S.C. §1447(c)

Plaintiffs,

v.

GREG KIMSEY, Clark County)
Auditor; CLARK COUNTY, and DOES)
1-30, inclusive,)

Defendants.

1 Before the Court is Plaintiff Washington Election Integrity Coalition United's Motion to
2 Remand. (28 U.S.C. §1447(c).)

3 Having reviewed the papers filed in support of and in opposition to this Motion, having
4 considered any oral argument, and being fully advised, the Court finds that the Motion to
5 Remand is hereby GRANTED, and the matter is REMANDED to State Superior Court for Clark
6 County, Case No. 21-2-01775-06.
7

8 **IT IS SO ORDERED.**

9 Dated this _____ day of November, 2021
10
11

12 _____
13 The Honorable ROBERT A. JONES
14 UNITED STATES DISTRICT JUDGE
15

16 Prepared by:

17 VIRGINIA P. SHOGREN, P.C.

18 
19 _____

20 By: Virginia P. Shogren, Esq.
21 961 W. Oak Court
22 Sequim, WA 98382
23 360-461-5551
24 WEiCUattorney@protonmail.com
25 Attorney for Plaintiff WEiCU
26
27
28