

1 HONORABLE BENJAMIN H. SETTLE
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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE WESTERN DISTRICT OF WASHINGTON**
10 **AT TACOMA**

11 WASHINGTON ELECTION INTEGRITY) Case No. 3:21-cv-05787-BHS
12 COALITION UNITED, a Washington)
13 State Nonprofit Corporation; TAMBORINE)
14 BORRELLI; MARY ROSE WIEDRICH;)
15 TIFFANY NEVILS; BOBBIE LELAND;)
16 SHARON HUSTER; AMY BRITSAS;) MOTION TO REMAND
17 KEYRA PEREZ; TAMMIE CORBIN;)
18 ALLEN CORBIN; SHERIE SUTER;)
19 PEGGY NORMET; DIANE SCHMIDT;)
20 JORGE DELGADO; EUGENE) 28 U.S.C. §1447(c)
21 DELOZIER; FLORA HERNANDEZ;)
22 TAIZ CEPEDA; JOE KESLAR,)
23)
24 Plaintiffs,) NOTE ON MOTION CALENDAR:
25) NOVEMBER 19, 2021
26 v.)
27)
28 MARY HALL, Thurston County Auditor;)
THURSTON COUNTY, and DOES)
1-30, inclusive,)
Defendants.)
)

Plaintiff Washington Election Integrity Coalition United (“WEiCU”), without
appearance, and with full reservation of rights, respectfully brings this Motion to Remand this

action to Thurston County Superior Court, Case No. 21-2-01641-34. (28 U.S.C. §1447 (c)

[motion to remand based on defect must be made within 30 days after the filing of the notice of removal].)

A. Defendants' Notice of Removal Is Defective

Defendants filed for removal under 28 U.S.C. §1441 without specifying which subsection of the statute is proper for removal. (Defendants' Notice of Removal, Page 2, ¶ 2.) Defendants' Notice of Removal is defective as vague and ambiguous, should be stricken, and the case remanded accordingly.¹ (28 U.S.C. §1447(c).)

B. Defendants' Notice of Removal Obscures the Court's Mandatory Requirement to Sever State-Based Claims Under 28 U.S.C. §1441(c)

Defendants' Notice of Removal does not cite to or address 28 U.S.C. §1441(c) for civil actions involving both federal law claims and state law claims, as is the case here:

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

(1) If a civil action includes –

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

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

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

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

¹ Per Notices of Filing Deficiencies dated 10/27/21, Defendants' Notice of Removal also included an improperly submitted jury demand and improper signature by a Secondary Attorney, additional grounds for striking the removal as defective.

1 Plaintiffs are a Washington State public interest nonprofit corporation and seventeen (17)
2 Thurston County residents. The action was filed in Thurston County Superior Court on
3 September 21, 2021 seeking remedies under state law for conduct by the Thurston County
4 Auditor and County arising out of Thurston County election irregularities and failure by
5 Thurston County officials to produce public records.

6 Of the thirteen (13) causes of action in the Superior Court Complaint, ten (10) are
7 brought under state law, namely, RCW Chapters 29A and 42.56; two (2) are mixed State
8 Constitutional and US Constitutional causes of action, with one cause of action, for civil
9 damages, brought under federal law.

10 Per 28 U.S.C. §1441(c)(1)(B), Plaintiffs' Superior Court Complaint contains ten (10)
11 causes of action that are not within the original or supplemental jurisdiction of this Court, and as
12 a result, the entire action may be removed only if the action would be removable without the
13 inclusion of the ten (10) state-based claims.

14 In this instance, the action would not be removable without the inclusion of the ten (10)
15 state-based claims because the state-based claims form the evidentiary and statutory support for
16 the pendent federal related claims. In other words, if the first ten (10) causes of action were
17 removed from the Complaint, there would be no factual or evidentiary support for the federal
18 claims. The mixed State Constitution (ART. I, § 1, § 2, § 3, § 12, §19, §29; ART. VI, §6) and US
19 Constitution (First and 14th Amendment violations) causes of action in the Complaint and the
20 final claim for Civil Damages stem purely from, and hinge upon, the findings and evidence
21 obtained from election irregularities and the public records action of the first ten (10) state law
22 causes of action.

23 Assuming, for purposes of argument only, that this Court finds the Notice of Removal
24 adequate notice to Plaintiffs, Plaintiffs alternatively request that the Court sever causes of action

IV through XIII, and remand the state law causes of action to Thurston County Superior Court, 1 as required under 28 U.S.C. §1441(c). 2

3 **C. 28 U.S.C. §1441(c) Is Consistent with this Court's Limited Jurisdiction**

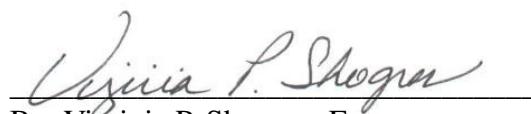
4 It is axiomatic that federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian*
5 *Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal Courts are limited by Congress and by
6 Article III of the Constitution in the subject matter of cases they may adjudicate. *Id.* State courts,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

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

13 Defendants' vague removal attempt appears to be an effort to put WEiCU and *pro se*
14 plaintiffs at a disadvantage with a Federal Court that cannot grant them the state-law based relief
15 requested, has no direct authority over County-level election irregularities, and has potentially
16 little experience with compelling state law Public Records Actions. The ten (10) causes of action
17 addressing election irregularities (RCW Chapter 29A) and the Public Records Action (RCW
18 Chapter 42.56), and the remedies requested, are based in state statutes and involve County
19 elected officials and County municipalities. This Motion to Remand should be GRANTED, and
20 the case remanded to State Superior Court for Thurston County, Case No. 21-2-01641-34.
21

22
23 VIRGINIA P. SHOGREN, P.C.

24 Dated: October 28, 2021
25


26 By: Virginia P. Shogren, Esq.
27 961 W. Oak Court
28 Sequim, WA 98382
WEiCUattorney@protonmail.com
Attorney for Plaintiff WEiCU

1 CERTIFICATE OF SERVICE
2

3 I hereby certify that on October 28, 2021, I electronically filed the following with the
4 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
following counsel of record and registered parties:

5 MOTION TO REMAND

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

7 Jane Futterman

8 Callie Castillo

9 (Counsel for Defendants)

10 Kevin Hamilton

11 Reina Almon-Griffin

12 Nitika Arora

Amanda Beane

13 (Counsel for Proposed Intervenor)

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

16 Tamborine Borrelli

17 Mary Rose Wiedrich

Tiffany Nevils

18 Bobbie Leland

Sharon Huster

19 Amy Britsas

Keyra Perez

20 Tammie Corbin

Allen Corbin

21 Sherie Suter

Peggy Normet

22 Diane Schmidt

Jorge Delgado

23 Eugene Delozier

Flora Hernandez

24 Taiz Cepeda

Joe Keeslar

25 (Pro Se Plaintiffs)

1 Dated this 28th day of October, 2021.



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3 961 W. Oak Court
4 Sequim, WA 98382
5 360-461-5551
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