

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

DEBORAH SPRINGER SUTTLAR, JUDY GREEN, FRED LOVE, in his individual and official capacity as State Representative, KWAMI ABDUL-BEY, CLARICE ABDUL-BEY, and PAULA WITHERS,

Plaintiffs,

v.

JOHN THURSTON, in his official capacity as the Secretary of State of Arkansas and in his official capacity as the Chairman of the Arkansas State Board of Election Commissioners; and SHARON BROOKS, BILENDA HARRIS-RITTER, WILLIAM LUTHER, CHARLES ROBERTS, WENDY BRANDON, JAMIE CLEMMER and JAMES HARMON SMITH III, in their official capacities as members of the Arkansas State Board of Election Commissioners,

Defendants.

Case No. 4:22-cv-368-KGB

**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION TO STAY**

## INTRODUCTION

Plaintiffs filed a short motion to stay these proceedings on May 6, 2022 (Dkt. No. 11). They file this short supplemental brief to further explain why a stay is appropriate in this matter until the Court is able to resolve Plaintiffs' Motion for Remand (Dkt. No. 9).

As set forth in Plaintiffs' Motion for Remand, this Court lacks subject-matter jurisdiction over Plaintiffs' Complaint, which *only* alleges violations of the Arkansas Constitution and exclusively seeks injunctive relief against Arkansas state officials in their official capacities. Under similar circumstances, courts routinely issue stay orders, to enable the court to first determine whether it has jurisdiction to proceed and to guard against prejudice to a plaintiff. *See, e.g., Curry v. Pleasurecraft Marine Engine Co.*, No. 13-03139-CV-S-GAF, 2013 WL 12205046, at \*1 (W.D. Mo. May 28, 2013) (granting plaintiff's motion to stay pending resolution of motion to remand because "[w]hether the [c]ourt has subject-matter jurisdiction should be addressed before the [c]ourt decides the merits of [p]laintiff's [p]etition"). This Court should do the same here. Plaintiffs have already been prejudiced by Defendants' improper decision to remove this case from the Pulaski County Circuit Court. Shortly after removal, Defendants filed a motion to dismiss (Dkt. No. 6).

This Court cannot properly reach the merits of this case—much less determine whether Plaintiffs' Complaint should be dismissed—if it lacks subject-matter jurisdiction, and until this Court has made that determination, there is no reason for this case to proceed any further. Absent a stay, Plaintiffs will be forced to expend time and resources to respond to Defendants' Motion to Dismiss by this Friday, May 13. If this Court finds it lacks jurisdiction, the resources that Plaintiffs have to expend to respond to that motion will have been unnecessarily wasted.

For each of these reasons, and those that follow, Plaintiffs respectfully request that this Court issue an order staying the matter pending resolution of the Motion to Remand.

### **PROCEDURAL HISTORY**

Plaintiffs allege that the 2021 Map dilutes the voting power of Arkansas's Black population by systemically cracking Black voters residing in Pulaski County, Arkansas among three different congressional districts. (Dkt. No. 10-1 ¶ 5). Plaintiffs are six Black Pulaski County voters who live in the impacted districts and who filed a lawsuit to challenge the 2021 Map in the Pulaski County Circuit Court on March 21, 2022. *Id.* ¶¶ 14-19. Plaintiffs' Complaint alleges that the 2021 Map violates two provisions of the Arkansas Constitution – the Free and Equal Elections Clause and the Equal Protection Clause. *Id.* ¶¶ 85-102; Ark. Const. art II, § 3; Ark. Const. art. II, §§ 2, 3, and 18. Plaintiffs do not allege any federal constitutional claims or any other federal claims.

Defendants' answer to Plaintiffs' Complaint was due on or around April 27, 2022. But just days before that deadline, Defendants filed a notice of removal and removed this action to this court. (Dkt. No. 1). Defendants subsequently filed a motion to dismiss on April 29, 2022 (Dkt. No. 6). Plaintiffs' response to the motion to dismiss is due this Friday, May 13. The Court issued an initial scheduling order on May 2, 2022, under which discovery would begin next month. (Dkt. No. 8). Because Defendants have no basis for removal, Plaintiffs filed a motion for remand on May 6, 2022. (Dkt. No. 9). Plaintiffs now file this supplemental brief in support of their motion to stay all proceedings pending this Court's resolution of Plaintiffs' motion for remand.

### **ARGUMENT**

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Cottrell v. Duke*, 737 F.3d 1238, 1248 (8th Cir. 2013). This Court should

stay all proceedings while it considers Plaintiffs' motion for remand. The Supreme Court has recognized the need for a court to ensure that it has jurisdiction before it addresses the merits of a case: "For a court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101-02 (1998).

As this Court is well aware, the issue of the Court's subject-matter jurisdiction is a threshold matter that must be resolved prior to any consideration of the merits. Plaintiffs do not allege any claims under the U.S. Constitution or federal law; their claims arise only under the Arkansas Constitution. Defendants' removal of this case is therefore baseless; there simply is no plausible basis for federal subject-matter jurisdiction in this case. (Dkt. No. 10, at 5-14). Before this Court may consider Defendants' Motion to Dismiss, which goes to the merits of Plaintiffs' case, it must first find that it has subject-matter jurisdiction. *Curry*, 2013 WL 12205046, at \*1.

Courts have recognized that when, as here, a plaintiff timely seeks remand on the grounds that the federal court lacks subject-matter jurisdiction, the matter should be stayed pending a ruling on the motion to remand because resolving subject-matter jurisdiction "prior to the further progression of the case will allow the parties to proceed in the proper forum and understand the nature of the action." *Woronec v. Zachry Indus., Inc.*, No. 8:18-CV-2244-EAK-AEP, 2019 WL 12518266, at \*1 (M.D. Fla. Apr. 12, 2019); *see also Coco v. Hexion, Inc.*, Civ. No. 20-661-BAJ-SDJ, 2021 WL 641378, at \*2 (M.D. La. Jan. 20, 2021) (granting plaintiffs' motion to stay the matter during pendency of their motion for remand); *Pierce v. Atl. Specialty Ins. Co.*, Civ. No. 16-829 KG/SCY, 2016 WL 10935024, at \*1 (D.N.M. Aug. 17, 2016) (granting plaintiffs' motion to stay all non-remand motions and non-jurisdictional proceedings pending the court's ruling on motions to remand) (citing *In re Bear River Drainage Dist.*, 267 F.2d 849, 851 (10th Cir. 1959)

(explaining that courts should rule first on motion to remand and, if granted, send motion to dismiss back to state court)).

Furthermore, a “[c]ourt may properly stay an action where the following criteria are met: (1) the stay does not prejudice the non-movant; (2) the movant would suffer hardship and inequity without a stay; and (3) the stay serves the interests of judicial economy and efficiency.” *Simpson v. Wright Med. Tech., Inc.*, No. 5:17-CV-00062 KGB, 2020 WL 3318001, at \*1 (E.D. Ark. June 18, 2020) (quoting *Adams v. Tyson Foods, Inc.*, 2007 WL 1539325, at \*1 (W.D. Ark. May 25, 2007)).

Each factor weighs in favor of a stay here. First, a stay will not prejudice Defendants. This case is in its infancy. No discovery has occurred; no trial date has been set; and the Rule 26 conference is over a month away. Issuing a stay pending adjudication of Plaintiffs’ motion for remand will not delay resolution of this case, as courts have found when granting stays early on the proceedings. *E.g.*, *ASCII Corp v. STD Ent. USA, Inc.*, 844 F. Supp. 1378, 1381 (N.D. Cal. 1994) (granting stay where “the parties are in the initial stages of the lawsuit and have undertaken little or no discovery” and the case has not been set for trial); *Card Tech. Corp. v. DataCard Corp.*, Civ. No.CIV 05-2546 MJD/SRN, 2007 WL 2156320, at \*4 (D. Minn. July 23, 2007) (finding no prejudice because case was in early stages). Defendants’ motion to dismiss does not change the analysis; if the Court denies the motion to remand, Defendants’ motion to dismiss may be briefed and decided at that point, and if the Court grants it, Defendants may move to dismiss in state court.

By contrast, the failure to issue a stay will cause significant hardship to Plaintiffs. Through their facially invalid removal, Defendants have *already* caused Plaintiffs to needlessly expend time and resources to remand this case to state court where it belongs. If this Court does not issue a stay while it determines whether to remand to state court, Plaintiffs will be forced to expend additional

resources and incur costs to litigate this action in federal court only to risk duplicating their efforts in state court if this Court remands. For example, if Plaintiffs are forced to respond to Defendants' Motion to Dismiss, and this Court later decides to remand this case to state court, then Plaintiffs will likely be forced to respond to a second motion to dismiss raising the same legal arguments in state court.

Courts in this Circuit often stay proceedings in order to avoid prejudice caused by duplicative work. *See, e.g., Tye v. St. Lukes's E. Anesthesia Servs., P.C.*, No. 4:19-CV-0294-DGK, 2019 WL 2189522, at \*2 (W.D. Mo. May 21, 2019) (granting motion to stay due to high likelihood that moving party would be prejudiced by duplication of work); *see also Handley v. Koninklijke Philips N.V.*, No. 4:22-CV-00220 KGB, 2022 WL 822924, at \*1 (E.D. Ark. Mar. 17, 2022) (granting motion to stay because moving party "plausibly allege[d] that they would suffer hardship and inequity if the Court does not stay the case by having to litigate matters in multiple venues"). Issuing a stay will avoid the possibility of duplicative motions practice in state and federal court, which would reduce the prejudice to Plaintiffs and the burden of litigation on the state and federal court systems. *See Coco*, 2021 WL 641378, at \*2.

Additionally, Plaintiffs risk further prejudice caused by the continued denial of their chosen forum. Plaintiffs are entitled to be masters of their complaint. *See Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 808 (1986). Unless Defendants' removal is determined to be valid (it was not), this Court should not compel Plaintiffs to formulate a response to Defendants' Motion to Dismiss, which plainly aims to manufacture federal jurisdiction where there is none. *See, e.g., Stephenson v. Bartlett*, 180 F. Supp. 2d 779, 785 (E.D.N.C. 2001). This Court should abstain from needless merits adjudication of questions of state constitutional law unless and until it conclusively

determines that it may exercise subject-matter jurisdiction over bedrock issues of state constitutional law.

Finally, a stay will promote judicial economy and allow the Court to control its docket. *See Coco*, 2021 WL 641378, at \*2 (granting plaintiffs’ motion to stay the matter during pendency of their motion for remand because “the interests of judicial economy will be served by staying this matter until it can be determined whether this Court has jurisdiction over this litigation”). This Court should not risk devoting judicial resources to unnecessary adjudication of merits questions before it conclusively determines the question of subject-matter jurisdiction posed by Plaintiffs’ motion for remand. Accordingly, a stay of proceedings is the most appropriate remedy at this stage for the purpose of avoiding potential mootness of merits evaluation absent subject-matter jurisdiction.

#### **CONCLUSION**

For all of the foregoing reasons, this Court should grant Plaintiffs’ motion and stay all proceedings in this Court pending resolution of Plaintiffs’ motion for remand.

Respectfully submitted,

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