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**

vs. **Case No. 4:22-cv-00368-KGB**

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**

Defendants' Combined Response in Opposition to Motion for Remand and Response to Motion for Stay

The Constitution vests state legislatures with the authority to regulate federal elections, including apportionment decisions. Plaintiffs filed suit in state court, arguing for a radical reinterpretation of various state constitutional provisions to require the General Assembly to adopt a congressional map deliberately drawn on the basis of race in order to secure their preferred political outcome. They seek an end-run around the state legislature's constitutional authority to refuse to impose an unconstitutional congressional map. Whether Plaintiffs can succeed is ultimately a matter of federal law.

Defendants removed the case to federal court on two important grounds. First, federal law allows state officers to remove cases like this where they refuse to enforce state law in a way that would violate federal civil-rights law, including the Equal Protection Clause of the

Fourteenth Amendment. Defendants refuse to impose the sort of race-based congressional map that Plaintiffs seek, and they are entitled to a federal forum in determining whether the relief Plaintiffs seek would violate federal law. Second, the extent to which the various state constitutional provisions on which Plaintiffs rely may be stretched to usurp the General Assembly's authority to regulate federal elections pursuant to the Elections Clause is necessary to deciding Plaintiffs' state-law claims. This case thus arises under federal law and is properly within this Court's jurisdiction.

For the reasons explained below, this Court should deny Plaintiffs' Motion to Remand and stay this case pending disposition of the considerably earlier filed, substantially similar case in *Simpson v. Hutchinson*, No. 4:22-cv-00213-JM-DRS-DPM. And as explained below, should the Court ultimately determine that remand is warranted, it should deny Plaintiffs' baseless fee request.

BACKGROUND

This case involves challenges to modest revisions to Arkansas's four congressional districts. The federal Constitution's Elections Clause provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . . ." U.S. Const. art. I, sec 4, cl. 1. Consistent with that federal requirement, Arkansas law provides that the Arkansas General Assembly is responsible for reapportioning congressional districts after the Census. *See* Ark. Code Ann. 7-2-101 *et seq*.

Following the receipt of official census data last fall, the General Assembly reconvened in September to consider reapportionment legislation. (Compl. ¶ 45.) In that process, the General Assembly considered a number of maps and eventually settled on House Bill 1982 and Senate Bill 743, which were numbered as Acts 1114 and 1116. (Compl. ¶ 52.) The Acts were

adopted on October 6, 2021, the maps "became law on November 4, 2021," (Compl. ¶ 78), and the maps became "effective on January 14, 2022." (Compl. ¶ 79.)

No plaintiff sued to block the use of the current maps for the 2022 election cycle. In fact, Plaintiffs did not file this lawsuit until March 21, 2022, nearly five months after the congressional map became law, and long after any relief would have been possible for the next election. *See Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (staying injunction of Alabama's congressional districts on the ground that the election was too close for court intervention on February 7, 2022). And Plaintiffs were not the first group to sue over the congressional map. This case is a follow-on to *Simpson v. Hutchinson*, No. 4:22-cv-00213-JM-DRS-DPM (E.D. Ark.), which was filed on March 7, 2022, two weeks before this case. Despite this case involving the General Assembly's regulation of a federal election, Plaintiffs filed suit in Pulaski County Circuit Court.

Plaintiffs' Complaint purports to state two claims under four provisions of the Arkansas Constitution. The factual basis for those claims is the same. They claim that "[b]y separating counties with the largest Black populations among two or more congressional districts, the General Assembly has subdivided the state in such a way that the Black vote has been systematically diluted since at least 1961." (Compl. ¶ 24; *see also id.* ¶ 99 (arguing that "the 2021 Map like its predecessor maps since the Jim Crow era in Arkansas, dilutes the vote of Black Arkansans").) At bottom then, Plaintiffs seem to attack not what the 2021 congressional map did, but the fact that ever since Arkansas has had four congressional districts, "Jefferson and Pulaski Counties . . . have never been in the same congressional district, and neither county has ever been drawn together in a district that includes the eastern and southeastern portions of the state." (Compl. ¶ 3.) Thus, while Plaintiffs don't specify a remedy beyond their vague request

that this Court order "the adoption of a valid congressional plan that does not unconstitutionally dilute the vote of Black voters in Arkansas" (Compl. ¶ 24), they apparently want this Court to order a map drawn explicitly based on race. (*See* Compl. ¶¶ 81-84 (discussing assigning counties to districts based on their racial demographics to create a so-called cross-over district.) Indeed, underscoring that they seek an order commanding the General Assembly to draw a map based explicitly on race, they cite the various bills proposed in the General Assembly that combined Pulaski and Jefferson Counties into a single district—bills Plaintiffs do not (and could not) allege meet basic redistricting criteria, like population equivalence. (*See* Compl. ¶¶ 46-49.)

As the legal basis for their request that this Court order the creation of districts based explicitly on race, Plaintiffs claim that the 2021 congressional map unconstitutionally dilutes "the votes of Black voters like Plaintiffs relative to other members of the electorate." (Compl. ¶ 88; *see also id.* ¶ 99 (alleging that the 2021 map "dilutes the votes of Black Arkansans").) They claim that various provisions of the Arkansas Constitution require the race-based relief they seek.

Because Plaintiffs are challenging Defendants' refusal to use a race-based congressional map, and because Plaintiffs' state-law claims necessarily implicate the contours and limits of the General Assembly's power to regulate federal elections under the Elections Clause, Defendants timely removed this case from state court. Plaintiffs' subsequent remand motion lacks merit.

ARGUMENT

I. This case was properly removed.

Removal was proper under both Section 1443(2)'s "refusal clause" and Section 1441. Plaintiffs' motion must therefore be denied.

Federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given [to] them." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817

(1976). This includes cases, like this, that are removed from state court, and under that standard removal is proper here for two reasons. *First*, removal is proper under the "refusal" clause of 28 U.S.C. § 1443(2). Under that provision, removal is proper if a state official is subject to a civil action "for refusing to do any act on the ground that it would be inconsistent with" a federal "law providing for equal rights." That is clearly Plaintiffs' claim here, and it is a basis for removal. *Second*, removal is proper under 28 U.S.C. 1441. The provision permits removal of a case involving state-law claims where "a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn v. Minton*, 568 U.S. 251, 258 (2013). The General Assembly's authority under the Constitution's Elections Clause is such a federal issue. This Court should deny Plaintiffs' remand motion.

A. Removal is proper under Section 1443(2)'s "refusal clause."

Under Section 1443(2), a civil action "commenced in State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending," if the defendant is either "act[ing] under color of authority derived from any law providing for equal rights, or . . . refusing to do any act on the ground that it would be inconsistent with such law." State officials may invoke that so-called "removal clause" of Section 1443(2) by identifying a "colorable conflict between state and federal law leading to the removing defendant's refusal to follow plaintiff's interpretation of state law because of a good faith belief that to do so would violate federal law." *White v. Wellington*, 627 F.2d 582, 587 (2d Cir. 1980) (quotation omitted).

Plaintiffs seek an "[o]rder" requiring "the adoption of a valid congressional plan that does not unconstitutionally [under state law] dilute the vote of Black voters in Arkansas." (Compl. at 24.) They are not seeking the adoption of congressional districts drawn in a generally race-

neutral manner. On the contrary, Plaintiffs' Complaint makes clear that the only sort of congressional map they believe would be "valid" under state law is one that combines Pulaski and Jefferson Counties "together in a district that includes the eastern and southeastern portions of the state, where the state's most predominantly Black counties are located." (Compl. ¶ 3; *see also id*. ¶ 47 (suggesting that Sen. Elliot's map "addressed historic Black vote dilution in Arkansas by joining Pulaski and Jefferson Counties in one congressional district and combining them with other heavily Black counties").) Plaintiffs acknowledge that Pulaski and Jefferson Counties "have never been in the same congressional district." (Compl. ¶ 3.) Indeed, that is precisely why they argue that every congressional map "since at least 1961" has violated state law by diluting the voting strength of black voters. (Compl. ¶ 24; *see also id.* ¶ 99 (arguing that "the 2021 Map like its predecessor maps since the Jim Crow era in Arkansas, dilutes the vote of Black Arkansans").)

Thus, the relief Plaintiffs ultimately seek in this case is the adoption of a congressional map that includes "Jefferson and Pulaski Counties . . . in the same congressional district, . . . together" with "the eastern and southeastern portions of the state." (Compl. ¶ 3.) Plaintiffs' stated reason for drawing the congressional lines in that way is that "Jefferson and Pulaski Counties . . . have large numbers of Black voters," and "the eastern and southeastern portions of the state" are "where the state's most predominantly Black counties are located." (*Id.*) In other words, Plaintiffs argue that the Arkansas Constitution requires the adoption of a map drawn on racial lines to group as much of the state's black population in a single district as possible.

"Under the Equal Protection Clause, districting maps" like that, which "sort voters on the basis of race[,] 'are by their very nature odious.'" *Wis. Legislature v. Wis. Elec. Comm'n*, 142 S. Ct. 1245, 1248 (2022) (quoting *Shaw v. Reno*, 509 U.S. 630, 643 (1993)). The legislature was

presented with maps that drew the sort of race-based lines that Plaintiffs seek and refused to adopt them. (*E.g.*, Compl. ¶ 47 (showing Sen. Elliot's proposed map). And Defendants now "refus[e]" to enforce such a map because it "would be inconsistent with" Equal Protection Clause. 28 U.S.C. 1443(2). That "refusal" to enforce a racially discriminatory map, which Plaintiffs argue is mandated by the state Constitution, makes removal proper under Section 1443(2).

1. Plaintiffs argue that they are challenging the "enactment and enforcement" of a state law, not a "refusal to act" by Defendants. (Br. at 5.)[1] Yet their Complaint seeks an order requiring Defendants to take specific action—"the adoption of a congressional plan" that combines Pulaski and Jefferson Counties, along with the counties in the eastern and southeastern portions of the state where the black population is the highest. (Compl. ¶ 24.) Plaintiffs' entire basis for their lawsuit is Defendants' refusal to take that action—which they say is mandated by the Arkansas Constitution—rather than enforce the congressional map approved by the General Assembly.

The three-judge court in *Cavanagh v. Brock*, 577 F. Supp. 176 (E.D.N.C. 1983), dealt with a strikingly similar situation. There, the plaintiffs challenged North Carolina's redistricting plans for violating a state constitutional provision prohibiting county splitting. The state defendants "asserted as a defense to the state constitutional claim that the action challenged was compelled by the Voting Rights Act and the equal protection clause." *Id.* at 180. The court held that this was a "colorable federal defense" sufficient "to make removal . . . proper pursuant to" Section 1443(2). *Id.* The court ultimately did not resolve whether enforcement of the state

[1] Of course, Plaintiffs cannot actually challenge the "enactment" of a state law; courts have the power to enjoin enforcement of statutes, not undo their passage. *See* Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 VA. L. REV. 933 (2018).

constitutional provision would have violated federal law because it held the constitutional provision was not enforceable as a matter of state law. *Id* at 181-82. But the state's refusal to enforce the constitutional prohibition on county splitting was nevertheless a sufficient basis for removal under Section 1443. The court in *Stephenson v. Bartlett*, 180 F. Supp. 2d 779 (E.D.N.C. 2001), confronted a similar issue. Though it granted remand due to "confusion" over the federal question at issue—whether certain state constitutional provisions were precleared under Section 5 of the Voting Rights Act— it treated the choice not to implement the plaintiffs' view of state law into a redistricting plan as a refusal of sorts, acknowledging that the issue was a "close call." *Id.* at 785.

Plaintiffs challenge a similar "refusal" by Defendants. If Plaintiffs are correct that the Arkansas Constitution requires the type of racially discriminatory map they seek, Defendants' refusal to use such a map due to its conflict with federal equal-protection law is a sufficient basis for removal under Section 1443(2). The non-redistricting cases cited by Plaintiffs (*see* Br. at 6) are inapposite on this point because Plaintiffs seek the adoption of a specific sort of congressional map that would, at the very least, create a colorable conflict with the Equal Protection Clause.

Common Cause v. Lewis, 358 F. Supp. 3d 505 (E.D.N.C. 2019), upon which Plaintiffs rely, is easily distinguishable. There, four state legislators who were defendants in a redistricting challenge sought to remove the case based on Section 1443(2)'s refusal clause. The court held removal was improper for three reasons, none of which apply here. First, the "state court action [was] not brought against the [legislators] for refusing to do anything" because it sought to "enjoin [the] defendants from . . . using the" challenged redistricting plans, "which is not a legislative activity." *Id.* at 510-11 (emphasis and quotations omitted). But Plaintiffs have sued

Defendants because—as Plaintiffs chose to frame their allegations—they allege they *are* charged with implementing the 2022 congressional plans. Second, the court similarly held that removal was improper because the state legislators had "only a legislative role, rather than a law enforcement role," and the refusal clause "was intended to apply to state officers who refused to enforce state laws." *Id.* at 510 (emphasis and quotations omitted). Again, Defendants are the officials Plaintiffs—in their Complaint—allege are responsible for enforcing the 2022 congressional map in Arkansas elections.[2] Third, the court held that it was speculative as to whether the "plaintiffs attempt to enforce the provisions of the North Carolina constitution would run afoul of federal voting law" because the North Carolina Supreme Court had held that any state constitutional provision that ran afoul of federal law was invalid under state law. *Id* at 511-13. Here, Plaintiffs are seeking a racially drawn map that would violate the Equal Protection Clause on the basis that it is (allegedly) required under the Arkansas Constitution.

2. Plaintiffs claim that there is no colorable conflict between the Equal Protection Clause and the relief they seek under the Arkansas Constitution because that "it is possible for a remedial map to consider race while complying with both state and federal law." (Br. at 16.) They argue that "it is proper for legislatures to consider race where doing so is narrowly-tailored to ensure compliance with laws prohibiting practices such as vote dilution." (*Id.*) But in reality, federal law prohibits race-based decision-making of the sort Plaintiffs demand.

First, Plaintiffs are incorrect that race-based maps can ever serve a compelling state interest. The Supreme Court has only ever assumed (without holding) that "complying with the [Voting Rights Act] is a compelling state interest." *Wis. Legislature*, 142 S. Ct. at 1248. But

[2] The Fourth Circuit affirmed solely on the ground that state legislators who lack authority to enforce state law cannot make use of Section 1443(2)'s removal clause. *Common Cause v. Lewis*, 956 F.3d 246 (4th Cir. 2020).

even a state relying on Voting-Rights-Act compliance as a justification for a race-based map must have "a strong basis in evidence for concluding that the Voting Rights Act *required* its action." *Cooper v. Harris*, 137 S. Ct. 1455, 1464 (2017) (emphasis added). Plaintiffs don't claim that Arkansas's black population meets the *Gingles* preconditions such that Arkansas could be required to draw a majority-minority congressional district. Rather, they seek a "crossover" district (Compl. ¶ 81), which is not "mandate[d]" even by the VRA. *Bartlett v. Strickland*, 556 U.S. 1, 23 (2009) (plurality opinion).[3] And in any case, the Supreme Court has never held that compliance with *state* law could serve as a compelling interest for race discrimination otherwise barred by the Equal Protection Clause.

Second, Plaintiffs are incorrect that any potential conflict between their requested relief and federal law is "speculative." For one, their assertion that "there are a near-infinite number of possible congressional maps that simultaneously comply with state law banning racial vote dilution and with federal law protecting racial minorities" is premised on the notion that federal law countenances race discrimination if done in furtherance of state law. (Br. at 2.) As explained above, that is wrong. For another, Plaintiffs' claim of a "near-infinite" number of maps belies the relief sought in their Complaint, which quite clearly seeks a map that draws Pulaski and Jefferson Counties together with the large black populations in the southeastern and eastern portions of the state. And their motivations for pursuing such a map are predominantly racial. Though they claim that the map they seek would be "based on traditional redistricting criteria such as compactness and contiguity" (Br. at 11), they don't claim that Arkansas's current congressional map deviates from traditional race-neutral redistricting criteria. Indeed, their only

[3] As a three-judge court in this district has recognized, Justice Kennedy's opinion for the three-justice plurality is controlling under *Marks v. United States*, 430 U.S. 188, 193 (1977). *See Jeffers v. Beebe*, 895 F. Supp. 2d 920, 931 n.11 (E.D. Ark. 2012) (three-judge panel).

reason for pursuing a different congressional map is to change the racial makeup in a way they argue is required by the Arkansas Constitution.

Thus, Defendants have raised a colorable claim that the race-based relief sought by Plaintiffs would run afoul of the Equal Protection Clause. And at this stage, a colorable conflict is all that Defendants are required to show; whether that conflict ultimately manifests will be determined at a later stage. *See Sexson v. Servaas*, 33 F.3d 799, 803 (7th Cir. 1994); *Greenberg v. Veteran*, 889 F.2d 418, 421 (2d Cir. 1989). Defendants have shown a sufficient basis for removal to be proper under Section 1443(2), and this Court should therefore deny the motion for remand.

B. Removal is proper under Section 1441 because this case necessarily implicates the General Assembly's authority under the Elections Clause.

Federal jurisdiction is proper because this case necessarily implicates the extent to which the Elections Clause vests courts with any authority to countermand a state legislature's regulations of the manner of holding federal elections. That issue of federal law ought to be decided by a federal court.

The Elections Clause provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const. art. I, sec. 4, cl. 1. "The Constitution provides that state legislatures—not federal judges, not state judges, not state governors, not other state officials—bear primary responsibility for setting election rules." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 29 (2020) (Gorsuch, J., concurring in denial of application to vacate stay). "The Framers were aware of electoral districting problems and considered what to do about them. They settled on a characteristic approach, assigning the issue to the state

legislatures, expressly checked and balanced by the Federal Congress." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2496 (2019).

Plaintiffs sued in state court seeking to overturn the congressional maps adopted by the Arkansas General Assembly. This case thus "presents an exceptionally important and recurring question of constitutional law, namely, the extent of a state court's authority to reject rules adopted by a state legislature for use in conducting federal elections." *Moore v. Harper*, 142 S. Ct. 1089, 1089 (2022) (Alito, J., dissenting from denial of application for stay). That question "is one of federal not state law because the state legislature, in promulgating rules for congressional elections, acts pursuant to a constitutional mandate under the Elections Clause." *Id.* at 1091. The limits of the General Assembly's power under the Elections Clause are "necessarily raised" and "actually disputed" in this case because Plaintiffs seek to overturn the map it adopted. *Gunn*, 568 U.S. at 258. Four justices agreed in *Moore* that the issue is a "substantial" one. *Id.*; *Moore*, 142 S. Ct. at 1089 (Kavanaugh, J., concurring in denial of application for stay) ("I believe the Court should grant certiorari in an appropriate case . . . ."). And it is "capable of resolution" by this court because this case at bottom concerns the General Assembly's power under the federal Constitution to regulate federal elections and the extent to which that power can be curtailed by a radical interpretation of the state Constitution.[4]

In resolving Plaintiffs' claims, it will be necessary for the court—whether state or federal—to determine the extent to which the state constitution may constrain the authority vested in the General Assembly to regulate federal elections. Defendants are entitled to have that

[4] As Plaintiffs concede in their brief, *Pennhurst* and the Eleventh Amendment do not pose a barrier to this Court's jurisdiction where Defendants have removed the case from State court. (*See* Br. at 14 (citing *Church v. Missouri*, 913 F.3d 736 (8th Cir. 2019)).)

determination of federal law made by a federal court. Plaintiffs' motion for remand should therefore be denied.

C. Plaintiffs are not entitled to attorneys' fees under 28 U.S.C. 1447(c) if the Court determines remand is warranted.

An award of attorneys' fees under Section 1447(c) is appropriate "only where the removing party lacked an objectively reasonable basis for seeking removal." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). That is an exceptionally high bar, and the only case Plaintiffs cite in support involved a removal that was so frivolous the court held that it "fundamentally misconstrue[d] the basic principles of federal jurisdiction" and that "[e]ven a cursory review of basic jurisdictional principles would have counseled against removal." *TASA Grp. v. Mosby*, No. 4:05-CV-00938 GTE, 2005 WL 1922571, at *2 (E.D. Ark. Aug. 9, 2005). Where a party raises serious, even if ultimately unsuccessful arguments for removal, courts routinely decline to award fees. *See, e.g., Common Cause*, 358 F. Supp. 3d at 515 (ordering remand but finding that the State defendants "did not lack an objectively reasonable basis for seeking removal"); *Martin*, 546 U.S. at 140 ("[T]here is no reason to suppose Congress meant to confer a right to remove, while at the same time discouraging its exercise in all but obvious cases.). Plaintiffs' request for fees should therefore be denied.

II. The Court should stay this case pending the outcome in the first-filed challenge to Arkansas's congressional districts.

The same day Plaintiffs filed their Motion for Remand, they also asked the Court to stay the case pending resolution of that motion. (Doc. 11.) They argue that they ought not be required to expend the resources of responding to Defendants' Motion to Dismiss, and the parties ought not have to begin discovery at the end of this month, until the Court assures itself of its jurisdiction. (Doc. 12 at 2.) Plaintiffs separately requested an extension of their deadline to

respond to Defendants' Motion to Dismiss until the Court resolves their request for remand, and the Court granted that request. (Doc. 16.)

Defendants do not object to Plaintiffs' Motion for Stay, insofar as it asks the Court to hold all deadlines in abeyance pending the Court's decision on the Motion for Remand. However, the Court should stay the entire case pending resolution of the first case before this Court challenging Arkansas's 2022 congressional districts. *Simpson v. Hutchinson*, No. 4:22-cv-00213-JM-DRS-DPM, was filed on March 7, 2022—two weeks before this tagalong case was filed. The *Simpson* Plaintiffs challenge the congressional map on both federal- and state-law grounds, including Article II, section 3 of the Arkansas Constitution, one of the claims at issue in this case. *See Simpson*, Complaint, Doc. 1 at ¶¶ 151-56; Pls.' Compl. ¶¶ 95-102.

Simpson was assigned to Judge Moody and is now before a three-judge court convened pursuant to 28 U.S.C. 2284. The case has already proceeded to the discovery period, *see Simpson* Doc. 16 (Rule 26(f) report), and a hearing on the defendants' motion to dismiss has been scheduled for June 6. *Simpson* Doc. 26. *Simpson* is thus well ahead of this case. Because *Simpson* has common claims, issues, and defendants as this case, it would waste the Court's and the parties' time and resources to litigate this case in tandem.[5] Staying the later-filed case pending resolution of *Simpson* is therefore warranted.

[5] The three-judge court in *Simpson* has authority to preside over the case because it is "an action . . . challenging the constitutionality of the apportionment of congressional districts." 28 U.S.C. 2284(a). Because this case raises only state-law claims, rather than a federal constitutional challenge, it is unclear whether the *Simpson* court would have jurisdiction to hear this case were it consolidated with *Simpson*. *See Cavanagh*, 577 F. Supp. at 180 n.3.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' motion for remand and stay the case pending disposition of *Simpson v. Hutchinson*, No. 4:22-cv-00213-JM-DRS-DPM.

Respectfully submitted,

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