IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KHARY PENEBAKER, MARY ARNOLD, and BONNIE JOSEPH, et al.,

Plaintiffs,

v.

Case No. 3:22-cv-00334

ANDREW HITT, ROBERT F. SPINDELL, JR., BILL FEEHAN, KELLY RUH, CAROL BRUNNER, EDWARD SCOTT GRABINS, KATHY KIERNAN, DARRYL CARLSON, PAM TRAVIS, MARY BUESTRIN, JAMES R. TROUPIS, and KENNETH CHESEBRO,

Defendants.

PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO REMAND

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In their opening memorandum, Dkt. 13, in support of their Motion to Remand, Dkt. 12, Plaintiffs demonstrated that the key question to be resolved was whether their Complaint necessarily presented an embedded federal question sufficient to invoke this Court's original jurisdiction. As is clearly established, "the plaintiff is the master of the complaint" and "the plaintiff may, by eschewing claims based on federal law, choose to have the cause heard in state court." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 398-99 (1987). For the claim to proceed in federal court, it must unambiguously fall within the "exceedingly slim" category of cases that meet the test laid out in *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005), and *Gunn v. Minton*, 568 U.S. 251 (2013). *See E. Cent. Ill. Pipe Trades Health & Welfare Fund v. Prather Plumbing & Heating, Inc.*, 3 F.4th 954, 962 (7th Cir. 2021).

In their responses, Defendants concede, as they must, that Plaintiffs have pled no federal cause of action. *See, e.g.*, Def. Troupis' Br. in Opp'n to Pls.' Mot. to Remand ("Dkt. 33") at 6. Instead, they argue that the Complaint is "rooted" in federal law, Fraudulent Electors Opp'n ("Dkt. 28")[1] at 6, or that it is "permeat[ed]" by "[o]ne core federal question," Dkt. 33 at 6, and that therefore removal to federal court was proper.[2] This is not the law. As explained below, Defendants' argument amounts to no more than the assertion of a federal defense. But the existence of a federal defense does not give rise to federal jurisdiction. *Caterpillar, Inc.*, 482 U.S. at 393 ("[I]t is now settled law that a case may *not* be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's

[1] Dkt. 28 is the Memorandum in Opposition to the Motion to Remand filed by Defendants Hitt, Spindell, Feehan, Ruh, Brunner, Grabins, Kiernan, Carlson, Travis, and Buestrin, who are referred to herein, as in the Complaint, as the "Fraudulent Elector Defendants."

[2] Defendant Chesebro filed a one-page "Opposition to Motion to Remand, and Joinder in Legal Arguments of Co-Defendants." Dkt. 38. In this filing, he "adopt[ed], and . . . incorporate[d] by reference, the legal grounds for dismissal [sic] advanced in the opposition filed by" the Fraudulent Elector Defendants. As Defendant Chesebro made no other substantive response to the Plaintiffs' Motion to Remand, this Reply does not otherwise reference Defendant Chesebro, but every argument raised in response to those made by the Fraudulent Elector Defendants (as well as to those made by Defendant Troupis, whose legal argument Defendant Chesebro apparently did not adopt and incorporate) are equally applicable to Defendant Chesebro.

complaint, and even if both parties concede that the federal defense is the only question truly at issue."). Defendants have failed to show that any federal issues raised by Plaintiffs' Complaint meet the prerequisites to federal jurisdiction. In particular, Defendants have failed to show that any federal issues are "necessarily raised, . . . substantial, *and* [] capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn*, 568 U.S. at 258 (emphasis added). Each prerequisite must be met, and in their absence, this Court lacks jurisdiction, and remand is required.

ARGUMENT

I. No Federal Question Is "Necessarily Raised" and Defendants Assert Only a Federal Defense, which Does Not Support Removal.

Defendants devote the majority of their briefs in opposition to Plaintiffs' Motion to Remand cataloguing the various ways in which federal law speaks to what presidential electors are supposed to do. But this misses the point. The point of Plaintiffs' Complaint is that the Fraudulent Elector Defendants "purported to exercise the powers reserved for the duly elected presidential electors for the State of Wisconsin," even though they "were not, and knew then that they were not, the duly elected presidential electors for the State of Wisconsin." Compl., Dkt. 4, Ex. 1, at ¶¶ 184, 185. It is Wisconsin state law, not federal law, that sets the requirements for electing the State's presidential electors. *See, e.g.*, Wis. Stat. §§ 5.10, 7.70(5)(b), 7.75, 8.18, 8.25(1) (2022); *see also Trump v. Wis. Elections Comm'n*, 983 F.3d 919, 927 (7th Cir. 2020) (matters relating to Wisconsin's appointment of presidential electors are "in the main matters of state law" that "belong . . . in the state courts").[3] *See generally Chiafalo v. Washington*, 140 S. Ct. 2316, 2324 (2020) ("Article II, § 1's appointments power gives the States far-reaching authority over presidential electors, absent some other constitutional

[3] The Court of Appeals found federal question jurisdiction in *Trump. v. Wisconsin Elections Commission*, "despite its anchoring in alleged violations of state law," only because "we can decide whether [the Commission's] interpretation of state law violated a provision of the federal Constitution." 983 F.3d at 925. No such question is raised here.

constraint."). Indeed, Defendant Troupis appears to concede that the Fraudulent Elector Defendants were not duly elected under Wisconsin law. *Compare* Wis. Stat. § 7.70(5)(b) (establishing the procedure by which certificates for presidential electors are issued, including that the Governor shall deliver six such certificates to one of the presidential electors who had been elected), *with* Dkt. 33 at 2 ("[A]t the time of each meeting, only the Biden-Harris electors had received the six certificates . . . from the Governor . . . .").

Defendants' arguments in opposition to remand attempt to answer the wrong question. Defendant Troupis frames that question as: "Under the Electoral Count Act, could the Defendant Electors have held out to federal officials to be acting as presidential and vice-presidential electors, entitled to have their votes immediately counted, without having tried to produce and transmit the Governor's certification of ascertainment, and without the Governor having transmitted that certificate of ascertainment to the United States Archives?" Dkt. 33 at 6; *see also id.* at 9 (describing "the heart of this case" as "whether an elector commits an unlawful act when he or she makes and transmits a vote to the designated federal officials under the Electoral Count Act"). The Fraudulent Elector Defendants similarly argue that the Complaint "necessarily pertains to the rights, obligations, and procedure for the meeting of Presidential Electors and the submissions of such votes to, among others, the United States Congress." Dkt. 28 at 6.

But this is not the question posed by the Complaint. That question is: Did the Fraudulent Electors purport to exercise the powers reserved for the duly elected presidential electors for the State of Wisconsin? And, if so, did they have the authority to act as presidential electors under Wisconsin law? To these questions, Defendants provide no answers. While Defendants may argue that their actions were authorized by federal law notwithstanding the fact that they had not been duly elected under Wisconsin law, that is a federal defense. Such defenses must be litigated on the

merits rather than on a jurisdictional motion, and they are insufficient to justify the removal of this case from Plaintiffs' chosen forum in state court.

Defendants also argue that "resolution of Plaintiffs' state-law claims will require analysis and application of federal law." Dkt. 33 at 8; *see also* Dkt. 28 at 8 ("Plaintiffs will have to prove that Defendants violated 18 U.S.C. §§ 371, 494, and 1512(c)(2) in connection with their conspiracy claim as alleged."). As Plaintiffs explained in their opening memorandum, this is not true. The Complaint's conspiracy count and public nuisance counts rely not only on alleged violations of federal law, but also on alleged violations of Wisconsin law. As the cases cited by Plaintiffs establish, in these circumstances, any federal question is not necessarily raised. *See* Dkt. 13 at 5-6 (citing cases). Defendants do not distinguish this decisional law.

More importantly, even if true that questions of federal law are likely to be decided in the course of establishing a conspiracy or a public nuisance under state law, this does not create federal jurisdiction. It is, instead, a task fully within the competence of the state court. *See Hays v. Bryan Cave LLP*, 446 F.3d 712, 714 (7th Cir. 2006) ("[T]here is nothing unusual about a court having to decide issues that arise under the law of other jurisdictions; otherwise there would be no field called 'conflict of laws' and no rule barring removal of a case from state to federal court on the basis of a federal defense."). The fact that a court might have to reach questions of federal law, even when "it might be predictable at the outset that most of the time and the other resources consumed in the litigation would be devoted to those defenses," *id.* at 713, does not transform a case that arises under state law, as Plaintiffs' does, into one arising under federal law. In *Hays*, the Court of Appeals considered a state law legal malpractice claim that depended on whether the defendant had provided effective assistance of counsel in a federal criminal case. Even though "issues concerning the

meaning of [federal] law [we]re quite likely to arise," they would do so only as a federal defense to the plaintiff's state law claims and were therefore inadequate to support removal. *Id.* at 713-14.

Defendants argue no more here, i.e., that issues of federal law are likely to arise in their defense of the claims that Plaintiffs have brought under state law. As in *Hays*, this is inadequate to support federal jurisdiction. *See Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 701 (2006) ("[I]t takes more than a federal element to open the arising under door." (internal quotation marks omitted)); *Bennett v. Sw. Airlines Co.*, 484 F.3d 907, 909 (7th Cir. 2007) (noting that "a federal issue, even an important one, usually is insufficient for [arising under] jurisdiction," and citing *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804 (1986), as a "good example" where "[t]he Supreme Court granted the premise—that a court must apply federal law to determine whether the drug had been labeled properly—but denied the conclusion that this made the plaintiff's claim 'arise under' federal law").

The cases cited by Defendants—*Sarauer v. International Ass'n of Machinists & Aerospace Workers, District No. 10*, 966 F.3d 661 (7th Cir. 2020), and *Evergreen Square of Cudahy v. Wisconsin Housing & Economic Development Authority*, 776 F.3d 463 (7th Cir. 2015), *see* Dkt. 33 at 8—do not help them on this point. *Sarauer* concerned a question arising under labor law, an area of law described by the Court of Appeals as "governed almost exclusively by federal law," 966 F.3d at 667, where the court first attempted to determine whether "the federal interest in uniform contract formation rules . . . is enough . . . to displace entirely Wisconsin's interest" in enforcing state law, *id.* at 672—in other words, whether the federal statutory scheme was so comprehensive as to be completely preemptive. It found that question to be "difficult," so alternatively found that the federal issue raised—whether state law overrode the terms of a collective bargaining agreement entered into under federal law where the only question was when the agreement became binding as a matter of federal law—met all four factors of the *Grable* test. *Id.* at 672, 675. In *Evergreen Square*, the court confronted a breach of contract action where the contracts in issue were "ones to which HUD, a federal agency, prescribes

both the form and content," and where the "contracts must be approved by HUD and their terms are administered pursuant to federal laws and regulations." 776 F.3d at 468. These cases are a far cry from the statutory scheme at issue here, where the Wisconsin State Legislature has prescribed laws governing the appointment of presidential electors, which the Court of Appeals has accurately described as "in the main matters of state law" that "belong . . . in the state courts." *Trump*, 983 F.3d at 927.

Instead, the issues of federal law that may need to be resolved here place this case within the mine-run of cases where federal courts have found themselves without jurisdiction notwithstanding the presence of an issue of federal law and, accordingly, have surrendered the case back to the States. *See, e.g.*, *Gunn*, 568 U.S. at 264-65 (no federal jurisdiction where state law malpractice claim raised issues of federal patent law); *Merrell Dow*, 478 U.S. at 817 (no federal jurisdiction where state law tort claim raised issues of federal drug labeling laws); *Mayor & City Council of Balt. v. BP P.L.C.*, 31 F.4th 178, 211 (4th Cir. 2022) (no federal jurisdiction where state law public nuisance claim raised issues of federal environmental law); *Bennett*, 484 F.3d at 910-11 (no federal jurisdiction where state law tort claim raised issues of federal transportation law); *Hays*, 446 F.3d at 714 (no federal jurisdiction where state law malpractice claim raised issues of federal criminal law); *Wisconsin v. Abbott Lab'ys*, 390 F. Supp. 2d 815, 823-24 (W.D. Wis. 2005) (no federal jurisdiction where state law consumer protection and fraud claims raised issues of federal healthcare law); *see also Grable*, 545 U.S. at 318 (noting that "in garden variety" state tort law, "[t]he violation of federal statutes and regulations is commonly given negligence per se effect in state tort proceedings"). As in these cases, the state court has the power to decide questions of federal law, and this Court lacks jurisdiction.

II. Any Federal Issue Raised by Plaintiff's Complaint Is Not Substantial under the Relevant Standard.

As Plaintiffs stated in their opening memorandum, under *Grable*, a question is substantial, "in the relevant sense," *Gunn*, 568 U.S. at 260, when its resolution would be "both dispositive of the

case and would be controlling in numerous other cases," *Empire Healthchoice*, 547 U.S. at 700; when it is "a nearly 'pure issue of law' . . . 'that could be settled once and for all,'" *id.*; or when the Federal "Government . . . has a direct interest in the availability of a federal forum to vindicate its own administrative action," *Grable*, 545 U.S. at 315.

None of these is true here, and Defendants make no attempt to argue otherwise. They point to no other cases that might be controlled by the disposition of this one, they identify no federal administrative action that requires vindication, and they make no argument that the issues raised by this case are "pure issues of law."[4] To the contrary, they point to numerous facts—relating, for example, to the timing of court proceedings challenging the results of the 2020 election, the Governor's issuance of election certificates, and the motivation and knowledge of the Fraudulent Electors, *see* Dkt. 33 at 1-3—as critical to the resolution of Plaintiffs' claims. *But see Bennett*, 484 F.3d at 910 (when there is "a fact-specific application of rules that come from both federal and state law rather than a context-free inquiry into the meaning of a federal law," the issue is not substantial, and jurisdiction is lacking).

The Fraudulent Elector Defendants cite no relevant decisional law and argue only that federal questions are "central." Dkt. 28 at 10. But, as explained above, that is not the test. Defendant Troupis cites again to *Evergreen Square* for the proposition that the questions here are substantial in the relevant sense because "Congress, had it thought about the matter, would have wanted the question to be decided by federal courts applying a uniform principle." Dkt. 33 at 16 (quoting *Evergreen Square*, 776 F.3d at 467). But state laws governing the appointment of electors are not uniform—they have never been uniform, and they are not required to be uniform. *See Chiafalo*, 140

[4] Defendant Troupis makes much of the fact that, in various other contexts, questions regarding the interpretation of the Electoral Count Act are currently being litigated in federal courts, including with respect to "the issue of alternate electors." Dkt. 33 at 17. Troupis does not, however, contend that any of these other cases would be controlled, as required to demonstrate substantiality under the *Grable* test, by the disposition of this case applying Wisconsin state law, even if it ultimately involves an interpretation of the Electoral Count Act.

S. Ct. at 2321-22 (noting that 32 States and the District of Columbia have "pledge" laws that prohibit "faithless electors," and 15 States have backed up their pledge laws with some kind of sanction); *see also Lyman v. Baker*, 954 F.3d 351, 364 (1st Cir. 2020) ("State legislatures have utilized a variety of appointment mechanisms [for presidential electors] since the framing of the Constitution . . . ."); *id.* at 361 (noting that 47 other States (in addition to Massachusetts, where the case arose) plus the District of Columbia use a winner-take-all system for determining the slate of presidential electors).[5] The manner of appointment of presidential electors is a matter committed to the States; there is simply no requirement of uniformity.

The other cases cited by Defendant Troupis are similarly unavailing. Defendant Troupis cites *Chiafalo* in support of his assertion that cases raising issues relating to the appointment of electors are routinely litigated in federal courts. Dkt. 33 at 17. But that case originated in state court and was taken to the U.S. Supreme Court on certiorari from a decision of the state supreme court. 140 S. Ct. 2322-23. *See* 28 U.S.C. § 1257 ("Final judgments . . . rendered by the highest court of a State . . . may be reviewed by the Supreme Court . . . where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States . . . ."); *see also Penobscot Nation v. Georgia-Pacific Corp.*, 254 F.3d 317, 324 (1st Cir. 2001) ("The Supreme Court is entitled to review a state court decision that decides a federal issue even if the action is one that could not have been brought in a federal district court under statutory 'arising under' jurisdiction."). If anything, *Chiafalo* reinforces the conclusion that claims regarding a State's appointment and regulation of electors may be properly litigated in state court. Defendant Troupis also cites *Carson v. Simon*, 978 F.3d 1054 (8th Cir. 2020) (per curiam), as a case "finding federal jurisdiction for Minnesota electors' challenges to state action." Dkt. 33 at 17. But the question

[5] Maine and Nebraska do not use a winner-take-all system, but instead appoint electors based on the popular votes in each congressional district. *Distribution of Electoral Votes*, Nat'l Archives, https://www.archives.gov/electoral-college/allocation (last visited Aug. 11, 2022).

presented in that case, as in *Wisconsin Elections Commission*, discussed *supra* note 3, was whether the action of a state agency violated the Federal Constitution, a claim that clearly meets the "arising under" test. That finding of jurisdiction is unhelpful here.

The remainder of Defendant Troupis's Brief is focused on the straw man that he has constructed: that this case necessarily involves interpretation of the Electoral Count Act, that the Electoral Count Act provides all the relevant standards, and that cases involving the Electoral Count Act are legion in the federal courts and are, in fact, being litigated currently. The problem with this argument is that, as explained above, Defendant Troupis has skipped a step. This case is not about "what the prerequisites are for electors' votes to be credentialed and valid under the Electoral Count Act," or "the circumstances under which the Electoral College votes are recognized by Congress as official, binding actions." Dkt. 33 at 16. It is about whether the Fraudulent Electors *were duly elected* as electors, which is a question governed by Wisconsin law. And it is about whether, in the absence of being duly elected, they had any authority to act as they did—again a question to be resolved under Wisconsin law. Although Plaintiffs agree that certain provisions of the Electoral Count Act provide helpful context when analyzing Defendants' acts, and that certain violations of federal law may be used to demonstrate that Defendants engaged in the predicate acts necessary to support Plaintiffs' state law claims, at bottom, the Electoral Count Act does not set out the requirements for the election of any State's presidential electors. The responsibility for setting those rules falls squarely on the State of Wisconsin, and whether Defendants violated or conspired to violate those rules or any other rule governing the conduct of electors—a role to which the Fraudulent Elector Defendants were not duly elected—is fully within the competence of the state court to determine, as explained above.[6] Defendants have failed to demonstrate that Plaintiffs' Complaint meets the

[6] That federal courts, in completely unrelated proceedings, may also be determining whether federal laws might have been violated by the Fraudulent Elector Defendants or those individuals in other States who may be similarly situated, *see* Dkt. 33 at 17, is irrelevant. It is beyond peradventure that federal courts decide questions of federal law. It is similarly beyond peradventure that state courts decide questions of federal law in cases over which they have

requirement that there be a substantial question of federal law under the relevant standard and remand is required.

III. State Court Jurisdiction Would Not Disrupt the Federal-State Balance.

Beyond the arguments set out above, the only response Defendants make to the last factor of the *Grable* test is to point to the "clear need for uniformity." Dkt. 33 at 20. This argument is answered in full by the Supreme Court's discussion of the same point in *Merrell Dow*:

> [P]etitioner contends that there is a powerful federal interest in seeing that the federal statute is given uniform interpretations, and that federal review is the best way of insuring such uniformity. . . . [W]e do not agree with petitioner's characterization of the federal interest and its implications for federal-question jurisdiction. To the extent that petitioner is arguing that state use and interpretation of the [relevant federal law] pose a threat to the order and stability of the [federal] regime, petitioner should be arguing, not that federal courts should be able to review and enforce state . . . causes of action as an aspect of federal-question jurisdiction, but that the [relevant federal law] pre-empts state-court jurisdiction over the issue in dispute. Petitioner's concern about the uniformity of interpretation, moreover, is considerably mitigated by the fact that, even if there is no original district court jurisdiction for these kinds of action, this Court retains power to review the decision of a federal issue in a state cause of action.

478 U.S. at 815-16 (footnote omitted); *see also Grable*, 545 U.S. at 319 ("*Merrell Dow*'s analysis . . . fits within the framework of examining the importance of having a federal forum for the issue, and the consistency of such a forum with Congress's intended division of labor between state and federal courts."). As in *Merrell Dow*, if state court interpretation of the federal law at issue here is so problematic, then Defendants should be arguing that federal law "pre-empts state court jurisdiction

jurisdiction. Defendant Troupis's citation to *Eastman v. Thompson*, Case No. 8:22-cv-00099-DOC-DFM (C.D. Cal.), at Dkt. 356, is inexplicable. Yes, the court there considered the federal crimes outlined in 18 U.S.C. § 1512(c)(2) and 18 U.S.C § 371, but it did so in a different context, relating to a subpoena enforcement proceeding, and it made findings as to different defendants. Surely, too, federal courts were interpreting the relevant federal patent laws, drug labeling laws, environmental laws, transportation laws, criminal laws, and healthcare laws that were at issue in each of the cases Plaintiffs cite above. *See supra* at 7. But that federal courts may, at the same time, be applying the same laws in different cases—a completely unremarkable and natural consequence of concurrent jurisdiction—does not somehow operate to bestow federal jurisdiction in this case where there is none.

over the issue in dispute." 478 U.S. at 816. But Defendants explicitly disavow any preemption argument. Dkt. 33 at 20 ("[T]his is not an issue of preemption . . . .").

Moreover, as discussed above, *supra* at 8-9, there is no requirement of uniformity associated with the various States' regulation of the appointment of electors. And there is no other overwhelming need for uniformity here that would warrant departure from the ordinary precept of concurrent jurisdiction between the state and federal courts when deciding issues of federal law, including, as in *Hays*, 446 F.3d at 713-14, issues of criminal law that may be raised when determining state law causes of action. *See supra* at 7 & note 6. Finally, as in *Merrell Dow*, any concern about disparity in interpretation of any relevant federal law is "considerably mitigated," 478 U.S. at 816, by the fact that the U.S. Supreme Court retains jurisdiction to review final actions from the highest state courts. State courts routinely apply federal law, with sometimes disparate results (indeed, federal courts, too, apply federal law, sometimes with disparate results). But that is not sufficient to invoke federal jurisdiction. *See Gunn*, 568 U.S. at 263 ("[T]he possibility that a state court will incorrectly resolve a state claim is not, by itself, enough to trigger the federal courts' . . . jurisdiction, even if the potential error finds its root in a misunderstanding of [federal] law.").

* * *

In conclusion, Defendants' arguments are seriously flawed as to each element of the *Grable* test discussed above. Yet, as noted, each element of the test must be met in order for the Court to find that it has jurisdiction here. *Gunn*, 568 U.S. at 258. It is Defendants' burden to show their entitlement to removal, and any doubt must be construed in favor of the Plaintiffs. *Schur v. L.A. Weight Loss Ctrs., Inc.*, 577 F.3d 752, 758 (7th Cir. 2009). And entitlement to removal is scarce: the *Grable* factors apply to only a "special and small category of cases," *Gunn*, 568 U.S. at 258 (internal quotation marks omitted), that is "exceedingly slim," *E. Cent. Ill. Pipe Trades*, 3 F.4th at 962, where the "inquiry rarely results in a finding of federal jurisdiction," *Evergreen Square*, 776 F.3d at 466. For

all the reasons stated above, Defendants have failed to meet that heavy burden here. This case must be remanded for lack of federal jurisdiction.

IV. Plaintiffs Are Entitled to Attorneys' Fees.

The Fraudulent Elector Defendants, who originated the removal action in this Court, make no meaningful argument in response to Plaintiffs' request for the fees incurred in seeking remand, citing only two cases that state the applicable standards. Defendant Troupis argues that fees should be denied because the removal was objectively reasonable and was not sought "nefariously to prolong litigation and drive-up costs." Dkt. 33 at 22. As demonstrated in Plaintiffs' opening memorandum and in this Reply, removal was not objectively reasonable. Controlling law from the Supreme Court and this Circuit clearly establishes that removal was improper and counsels that it will be a rare case where a complaint containing only state law claims that a plaintiff chooses to file in state court is properly within a federal court's original jurisdiction. Plaintiffs have incurred costs in opposing Defendants' removal attempt and, should remand be granted, Plaintiffs are entitled to reimbursement of those costs.

CONCLUSION

For the reasons stated, this Court must remand this case to state court and should require, as allowed by 28 U.S.C. § 1447(c), payment of just costs and actual expenses, including attorneys' fees, incurred by Plaintiffs as a result of Defendants' improper removal.

Respectfully submitted,

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Attorneys for Plaintiffs

Dated: August 12, 2022

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2022, I electronically filed a copy of the foregoing. Notice of this filing will be sent via email to all parties registered with the Court by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System. A courtesy copy of this filing was also provided by electronic mail on August 12, 2022, to Defendant Chesebro, who is not registered with the Court's electronic filing system; a hard copy will follow by U.S. mail to the address indicated in ECF.

/s/ Rupa Bhattacharyya
Rupa Bhattacharyya