UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NEW YORK COMMUNITIES FOR CHANGE, MARIA JORDAN AWALOM, MONICA DIAZ, LISA ORTIZ, and GUILLERMO VANETTEN, Plaintiffs, v. COUNTY OF NASSAU, THE NASSAU COUNTY LEGISLATURE, THE NASSAU COUNTY BOARD OF ELECTIONS, BRUCE BLAKEMAN, in his official capacity as Nassau County Executive, MICHAEL C. PULITZER, in his official capacity as Clerk of the Nassau County Legislature, HOWARD J. KOPEL, in his capacity as Presiding Officer of the Nassau County Legislature, and JOSEPH J. KEARNY and JAMES P. SCHEUERMAN, in their official capacity as commissioners of the Nassau County Board of Elections, Defendants.	Civil Action No. 2:24-cv-08779-JMA-LGD
HAZEL COADS; STEPHANIE M. CHASE; MARVIN AMAZAN; SUSAN E. COOLS; SUZANNE A. FREIER; CARL R. GERRATO; ESTHER HERNANDEZ-KRAMER; JOHN HEWLETT JARVIS; SANJEEV KUMAR JINDAL; HERMIONE MIMI PIERRE JOHNSON; NEERAJ KUMAR; KAREN M. MONTALBANO; EILEEN M. NAPOLITANO; OLENA NICKS; DEBORAH M. PASTERNAK; CARMEN J. PINEYRO; DANNY S. QIAO; LAURIE SCOTT; RAJA KANWAR SINGH; MARY G. VOLOSEVICH; and the NASSAU COUNTY DEMOCRATIC COUNTY COMMITTEE, Plaintiffs, v. NASSAU COUNTY; the NASSAU COUNTY LEGISLATURE; the NASSAU COUNTY BOARD OF ELECTIONS; JOSEPH J. KEARNY, in his official capacity as a	Civil Action No. 2:24-cv-08780-JMA-LGD

commissioner of the Nassau County Board of Elections; and JAMES P. SCHEUERMAN, in his official capacity as a commissioner of the Nassau County Board of Elections, Defendants.	

DEFENDANTS NASSAU COUNTY, THE NASSAU COUNTY LEGISLATURE, BRUCE BLAKEMAN, MICHAEL C. PULITZER, AND HOWARD J. KOPEL'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION TO REMAND

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INTRODUCTION

At the start of trial on December 17, 2024, the trial court permitted Plaintiffs to pursue a new theory: that the Nassau County Legislature violated state law because its adopted map violates Section 2 of the Voting Rights Act ("VRA"), 52 U.S.C. § 10301. Understanding that adding this theory at this late stage would prejudice Defendants, the court permitted Defendants to submit supplemental expert reports on *just* this federal theory by January 3, 2025. Further, because Plaintiffs' belatedly raised Section 2 theory relies upon so-called "coalition districts," the trial court directed the parties to submit briefing on whether such districts are permissible under Section 2 of the VRA. This supplemental briefing will unquestionably implicate a substantial federal issue, one on which there is a widely acknowledged circuit split. It is hornbook law that introducing such a substantial federal issue into a state-law case makes that case removable.

While Plaintiffs fill their motion with baseless speculation as to Defendants' motives for removal, their rhetoric is just a thin cover for the weaknesses in their remand arguments.

On whether Defendants have satisfied the four elements for removal under the substantial-federal-question doctrine, Plaintiffs concede by silence that Defendants have satisfied three of those elements as to the federal circuit split on whether coalition districts are permissible under the VRA. Their *only* dispute as to these elements is whether their new theory "necessarily raises" this federal issue. Of course it does. Plaintiffs have presented *only* a coalition theory. This means that Plaintiffs' Section 2-based theory "necessarily raises" the question of whether such a theory is permitted under Section 2 of the VRA, ***which is precisely why the trial court directed the parties to submit briefing on this issue for first time in its December 17 oral order***.

Plaintiffs next claim that Defendants removed this case too late, ***but they do not cite a single allegation in their pleadings or in any of their 14 expert reports in this case that put forward the theory that the Nassau County Legislature violated state law because its adopted***

map violates the standards in Section 2 of the VRA. Rather, the only filing below that Plaintiffs point to is their opposition to Defendants' motion for summary judgment. But it is well-established New York law that raising a new theory in summary judgment briefing does not make that theory part of the case. *Troia v. City of New York*, 162 A.D.3d 1089, 1092 (2d Dep't 2018); *see infra* Part III (collecting many cases). And the trial court confirmed its understanding that the theory was not part of the case at the summary judgment stage by unambiguously holding in its summary judgment ruling that it was "declin[ing] to consider whether all three *Gingles* preconditions have been met by Plaintiffs because there is no authority for superimposing any of the preconditions[, which are part of Section 2 of the VRA,] that are not already written into the [state] statute." ECF No.1-14 at 23.[1] Plaintiffs' Section 2-based theory only became part of the case on December 17, which is why the trial court on December 17 permitted supplemental expert reports to address that theory and directed the parties to brief the circuit split that this theory implicates.

Plaintiffs' final basis for requesting remand is that certain nominal-defendant election officials did not join Defendants' notice of removal. But nominal parties do not need to join a removal petition, and the trial court below expressly noted that these are nominal parties in permitting them not to attend trial. While Plaintiffs note that they sought relief against these election officials, "a statement of the relief sought does not shed light on whether the non-consenting defendants are nominal. When one additionally considers that the non-consenting defendants have not taken steps that conflict with plaintiffs' position, however, their nominal status becomes abundantly clear." *Norman v. Cuomo*, 796 F. Supp. 654, 658 (N.D.N.Y. 1992) (en banc). Here, the election officials have taken no position on any merits issue. Plaintiffs' theory here is also irreconcilable with *Lincoln Property Co. v. Roche*, 546 U.S. 81 (2005), as explained below.

[1] All citations to ECF filings refer to Civ. Action No.2:24-cv-08779 unless otherwise stated.

But to answer Plaintiffs' legally irrelevant speculation about Defendants' motives, Defendants do have very serious concerns that if this Court remands this matter, they will be unable to get a fair resolution of this case, including as to the federal issue that the trial court has now permitted into the case. Even though Plaintiffs filed their lawsuits in Nassau County, the cases were transferred to a court outside of the County, over Defendants' objections, while the administrator who made the transfer refusing to provide any justification for the transfer. Thereafter, *inter alia*, the trial court to which the case was transferred permitted Plaintiffs to introduce a new federal theory into the case after the beginning of trial—a theory that the trial court's summary judgment ruling makes clear the court did not believe was in the case before. Then, after Defendants on December 20 raised the possibility that this could well lead to removal, the trial court threatened Defendants' counsel that it was "pretty clear what went on" and that he would "blow the lid off this thing" if Defendants did not settle—all before having heard any of Defendants' evidence.

Defendants thus sensibly decided to invoke their right to seek a federal forum to resolve the newly raised federal issue in these cases. There can be no serious dispute that the trial court last week permitted Plaintiffs to introduce a major federal issue into this case, one on which there is a significant circuit split. There is also no genuine dispute that the trial court did not believe this issue was in the case at the time it issued its summary judgment ruling, which is confirmed both by that ruling itself and by the fact that the court permitted briefing on the circuit split immediately after permitting Plaintiffs to introduce the federal theory. A neutral application of the removal statute and basic principles of fairness require denial of Plaintiffs' remand motion.

BACKGROUND

A. Statutory Background

Section 2 of the federal VRA has numerous "exacting requirements." *Allen v. Milligan*, 599 U.S. 1, 30 (2023). In particular, *Thornburg v. Gingles*, 478 U.S. 30 (1986), provides a two-step framework for adjudicating Section 2 claims. *See id.* at 50–51. The first *Gingles* step requires a Section 2 plaintiff to establish three "necessary preconditions." *Id.* at 50. First, "[t]he minority group must be sufficiently large and compact to constitute a majority in a reasonably configured district." *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 402 (2022). Second, "the minority group must be politically cohesive." *Id.* And third, "a majority group must vote sufficiently as a bloc to enable it to usually defeat the minority group's preferred candidate." *Id.* If a plaintiff satisfies the *Gingles* preconditions, the second mandatory *Gingles* step "considers the totality of circumstances to determine 'whether the political process is equally open to minority voters.'" *Id.* (quoting *Gingles*, 478 U.S. at 79).

The federal circuit courts are split on whether a so-called "coalition district"—that is, a district where multiple racial minority groups combine to form a majority—can satisfy the *Gingles* preconditions. The Fifth Circuit recently held in an en banc decision that Section 2 does not permit coalition district claims. *See Petteway v. Galveston County*, 111 F.4th 596, 599 (5th Cir. 2024) (en banc). Likewise, the Sixth Circuit has also held in an en banc decision that Section 2 does not authorize minority coalition vote-dilution claims. *Nixon v. Kent County*, 76 F.3d 1381, 1387 (6th Cir. 1996) (en banc). Meanwhile, the Eleventh Circuit has held the opposite. *See Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm'rs*, 906 F.2d 524, 526 (11th Cir. 1990). Several circuits, including the Second Circuit, have examined coalition district claims without deciding whether such claims are permissible. *See Petteway*, 111 F.4th at 603 (collecting cases).

The New York Voting Rights Act ("NYVRA") differs from Section 2 of the VRA in its standards and safeguards, and explicitly rejects several of Section 2's standards. Most significantly for the issues in dispute here, the NYVRA expressly permits combining minority groups into coalition districts, N.Y. Elec. L. § 17-206(2)(c)(iv), which contrasts with the approach taken by the Fifth and Sixth Circuits regarding Section 2 of the VRA, *see Petteway*, 111 F.4th at 603.

Section 34 of the Municipal Home Rule Law, in turn, provides in relevant part that "[d]istricts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minority groups to participate in the political process or to diminish their ability to elect representatives of their choice," Mun. H. R. L. § 34(4)(b), or "discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties," *id.* § 34(4)(e).

B. Factual Background

The Nassau County Legislature is responsible for adopting local laws, including those related to redistricting, and initiated the redistricting process after the 2020 census. *See* Nassau Cnty. Charter, §§ 102–104, 112–114. It established the Temporary Districting Advisory Commission, but that body failed to reach a consensus, resulting in competing partisan maps. *Id.* § 113(2). The Presiding Officer of the Legislature then decided to develop his own map for the Legislature's consideration. Declaration of Bennet J. Moskowitz dated Dec. 29, 2024 ("Moskowitz Decl."), Ex. A at 4. The Presiding Officer's process involved consulting with legislators from both parties and the incorporation of public and legislative feedback, ensuring compliance with constitutional and statutory requirements. *Id.* at 1. The Presiding Officer sought advice from legal counsel and redistricting experts to ensure the map met all legal standards. *Id.*; *see also* Moskowitz Decl., Ex. B at 17–19, 32–33, 46. On February 16, 2023, the Presiding Officer presented the map to the Legislature, explaining that the map complied with all legal requirements.

Moskowitz Decl., Ex. B at 10–12, 19–20, 274-75; *see generally* Moskowitz Decl., Ex. A. Despite praise from both parties for addressing many concerns, Democratic legislators raised specific criticisms and proposed additional changes. Moskowitz Decl., Ex. B at 13–14, 17, 51–54, 78, 96, 106–07, 109, 111, 112, 133–34. The Presiding Officer then presented a revised map on February 27, 2023, incorporating four of the five significant suggestions from Democratic legislators. Moskowitz Decl., Ex. C at 1–2. The Legislature thereafter adopted the map, and the County Executive signed Local Law 1 into law on February 28, 2023.[2]

C. Procedural Background

1. Two groups of Plaintiffs filed separate lawsuits challenging Local Law 1. In the first case, *Coads, et al. v. Nassau County, et al.*, Index No.611872/2023 ("*Coads*"), the Plaintiffs allege that Local Law 1 violates Section 34 of the Municipal Home Rule Law. In the second case, *New York Communities for Change, et al. v. County of Nassau, et al.*, Index No.602316/2024 ("*NYCC*," and together with *Coads*, the "State Court Actions"), the Plaintiffs allege that Local Law 1 violates Section 34, as well as the NYVRA. ECF No.1-1 ¶¶ 1, 168–69. ***Not a single word in either complaint states—either expressly or even implicitly—that Plaintiffs were alleging a theory that the Nassau County Legislature violated any of those state laws because its adopted legislative map violates the standards in Section 2 of the federal VRA***. The State Court Actions name the removing defendants, who have each participated fully in the State Court Actions to date. In addition, the State Court Actions name as nominal defendants certain election administration

[2] Available at https://www.nassaucountyny.gov/DocumentCenter/View/40335/Local-Law-1-2023 (all websites last visited Dec. 29, 2024).

officials and entities.[3] Those entities, however, have not participated in the substance of the State Court Actions, as explained further below. *See infra* Part III.

2. The State Court Actions were assigned and reassigned to several different justices of the Supreme Court of Nassau County within just a few weeks of *NYCC* being filed in early February 2024. *See generally* Order, *Coads* (Aug. 24, 2023), NYSCEF No.19; Order, *Coads* (Feb. 15, 2024), NYSCEF No.61.[4] Three of those justices recused themselves, but one Nassau County justice, Hon. Gary F. Knobel, did not recuse—rather, the State Court Actions were administratively transferred away from his docket without any explanation. Administrative Order, *Coads* (Feb. 22, 2024), NYSCEF No.76.[5] Ultimately, First Deputy Chief Administrative Judge, Hon. Norman St. George, administratively assigned Hon. Paul I. Marx of Westchester County to oversee the State Court Actions. Letter to Hon. St. George, *Coads* (Feb. 28, 2024), NYSCEF No.82.[6] Defendants' counsel immediately sought "information regarding the basis and authority for assigning" the State Court Actions to a non-Nassau County jurist, especially given that "within-county jurists [were] handling local and county-level redistricting challenges to local maps throughout the State." *Id.* Hon. St. George's response simply stated that the assignment of an out-of-county justice was "appropriate and authorized" given some alleged, unexplained circumstances, with no legal authority to support those "circumstances." Letter from Court, *Coads*

[3] Nominal defendant Joseph J. Kearny is no longer the commissioner on the republican side and was replaced by James V. Moriarity. Moskowitz Decl., Ex. S at 21:24–22:3.

[4] Available at https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=y55S/pkCqnM_PLUS_bOmYkdNd7A== and at https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=vHzY/eZTd/R6_PLUS_KrA8lejIA==.

[5] Available at https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=okVOZb_PLUS_px7bFGBOcqw_PLUS_jvw==.

[6] Available at https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=U8tHzK7i/XZsUj3d7Yh_PLUS_Ig==.

(Mar. 1, 2024), NYSCEF No.86.[7] This left a justice with no ties to Nassau County to decide complex legal issues squarely affecting the County's residents, in a trial held in Westchester County. Justice Marx consolidated the State Court Actions on March 7, 2024. *See* ECF No.1-2 at 2.

3. The parties completed expert discovery just over two months before trial, engaging nine experts and exchanging comprehensive expert reports. Not one of Plaintiffs' 14 expert reports addressed the federal theory they now assert, as this Court can see from review of these reports, which can be found at Exhibits D through Q of the Moskowitz Declaration.

4. In October 2024, Defendants moved for summary judgment on all claims asserted by Plaintiffs in the State Court Actions. As relevant, Defendants argued that the *NYCC* Plaintiffs' NYVRA district-based vote-dilution claim could not stand because the NYVRA is unconstitutional, or, in the alternative, because Plaintiffs had not presented any evidence that met the standards in the NYVRA. Moskowitz Decl., Ex. R at 11–19. Defendants' summary judgment motion did not address Section 2 of the federal VRA except to provide context for the unconstitutionality of the NYVRA. In fact, Defendants noted that "Plaintiffs do not even attempt to argue that they meet conditions necessary to establish a vote-dilution claim under Section 2 of the VRA . . . so the Court need not decide whether the NYVRA would be constitutional as applied to a situation where it was just requiring what the VRA requires." *Id.* at 14–15.

In their opposition to Defendants' motion for summary judgment, Plaintiffs argued, as relevant, that the NYVRA was constitutional to the extent that it could be read to track the requirements of Section 2 of the VRA. Plaintiffs then argued that they had "adduced evidence to

[7] Available at https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=lAt/dQX9gkwV02SVhnlNyw==.

make out a [federal VRA] Section 2 claim" by satisfying the *Gingles* preconditions, while pointing to expert reports that did not even mention *Gingles*. ECF No.1-16 at 26–27.

In their Reply Brief, Defendants explained that it was not proper for Plaintiffs to raise this Section 2-based theory of liability for the first time in their opposition to Defendants' motion for summary judgment. ECF No.1-17 at 11–12. As Defendants explained, "Plaintiffs' reliance upon a new *Gingles*-based theory for the first time at the summary judgment stage" is too late. *Id.* at 11 (citing *Troia*, 162 A.D.3d at 1092). Further, Defendants noted that Plaintiffs "d[id] not come close to establishing the third *Gingles* precondition" as Plaintiffs' experts "did not perform" the required analysis of "each new majority-minority district that Plaintiffs claim should be created" in the County. *Id.* at 11–12.

In denying Defendants' motion for summary judgment, the trial court refused to decide whether Plaintiffs had presented sufficient evidence to show a violation of Section 2 of the VRA. The trial court instead explicitly and unambiguously "decline[d] to consider whether all three *Gingles* preconditions ha[d] been met by Plaintiffs because there is no authority for superimposing any of the preconditions[, which are part of Section 2 of the VRA,] that are not already written into the [state] statute." ECF No.1-14 at 23.

5. When trial commenced on December 17, Plaintiffs in their opening statement argued that they intend to prove at least some of their state-law claims by establishing that the challenged map violates Section 2 of the VRA. ECF No.1-18 at 119:9–15. Following Plaintiffs' opening statements, counsel for Defendants objected vehemently and repeatedly to Plaintiffs' untimely effort to inject a federal question into the State Court Actions, explaining that Plaintiffs' effort to raise these issues in opposition to Defendants' summary judgment motion was untimely and did not make them part of the case. *Id.* at 110:2–13; 129:19–23. Defendants' counsel explained that

had this federal theory been part of the State Court Actions, Defendants would have removed the matters to federal court "as soon as [the State Court Actions were] filed." *Id.* at 97:13–16. Defendants thus requested that the court enter an order making clear that Plaintiffs' Section 2 theory—that is, their theory that they could prove their state-law claims by proving a violation of Section 2 of the federal VRA—was in fact not part of the case. ECF No.1-19 at 676:6–10.

In response, Plaintiffs' counsel articulated their federal theory as follows: they "could prove a violation of the Municipal Home Rule Law by proving that the standards for racial vote dilution that are incorporated into the Municipal Home Rule Law are met and those standards are the standards of Section 2 of the Voting Rights Act as well as the New York Voting Rights Act." ECF No.1-18 at 119:9–15. Although Plaintiffs had in their prior summary judgment opposition briefing suggested that their NYVRA evidence satisfied *Gingles* (prompting Defendants to explain that the Section 2 standards were not properly part of this case), *see supra* pp.8–9, during opening statements, Plaintiffs' counsel now asserted that their claim under Section 34 of the Municipal Home Rule Law incorporated the standards of Section 2 of the VRA, ECF No.1-18 at 119:9–15.

Thereafter, the trial court entered an oral order allowing Plaintiffs to pursue this federal theory as part of their state-law claims, but to eliminate "a potential claim of prejudice," allowed Defendants to submit supplemental expert reports that perform a *Gingles* analysis under Section 2 of the VRA, ECF No.1-18 at 141:8–25, and gave the parties the "opportunity to brief the issue of the propriety of aggregating the minorities" in an effort to resolve a significant existing circuit split on this question of federal law, *id.* at 141:16–24. Three days later, on December 20, the trial court entered an order stating that Plaintiffs would be permitted to prove their state-law claims by meeting the standards of Section 2 of the VRA. ECF No.1-19 at 676:11–17, 677:10–15, 678:9–17, 679:9–18. As Defendants explained at that time, "if there [is] any suggestion . . . that [ ] a state

law claim involves a federal issue . . . where you have to prove federal elements to succeed on it . . . that is a basis for removal" and Defendants were "considering removing the case." *Id.* at 680:7–23.

6. Later on December 20, 2024, as the parties were packing up to leave after a trial day, and after many had already left the courtroom, the trial court summoned one of Defendants' trial counsel to the bench for a private conversation. Declaration of Mary "Molly" S. DiRago, Esq., dated December 29, 2024, ¶ 4. Upon approaching, the trial court instructed counsel to "get the case settled" and questioned, "what the hell are those guys doing?"—which Defendants' counsel understood to refer to Defendants. *Id.* ¶ 5. In discussing his belief that Defendants should settle the State Court Actions, the trial court remarked that it was "pretty clear what went on" and threatened that he would "blow the lid off this thing" if Defendants did not settle. *Id.* ¶ 6.

7. Plaintiffs have not yet concluded their presentation of their case in chief, which was scheduled to resume on January 6, 2024, at 9:30 a.m. prior to Plaintiffs injecting a substantial federal issue into this state-law litigation, thereby leading to this removal proceeding. *See, e.g.*, ECF No.1-19 at 891:3–7. The parties recessed during the holidays, during which time Defendants have made a supplemental document production and provided Plaintiffs with a detailed privilege log. *See* ECF No.1-19 at 675:10–19. Defendants are also actively working with their experts to address Plaintiffs' new federal theory in court-ordered supplemental expert reports, due on January 3, 2025. *See* ECF No.1 ¶ 18; *see also* ECF No.14 at 2.

ARGUMENT

I. Plaintiffs' Belatedly Raised Theory That The Nassau County Legislature Violated The Municipal Home Rule Law By Violating Section 2 Of The Federal VRA Requires Resolution Of An Acknowledged Circuit Split, Making This A Clear Application Of The Substantial-Federal-Question Doctrine

Federal courts have a "virtually unflagging" obligation to "hear and decide" cases where "[j]urisdiction exist[s]." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (citation omitted). This Court, in turn, has "original jurisdiction" over any "civil action[ ] arising under" federal law. 28 U.S.C. § 1331. A state-law claim will trigger this Court's original jurisdiction when the "vindication of a right under state law necessarily turn[s] on some construction of federal law." *D'Allessio v. N.Y. Stock Exchange, Inc.*, 258 F.3d 93, 99 (2d Cir. 2001) (citation omitted). Under this "substantial federal question" doctrine, a state-law claim "arise[s] under" federal law when it presents a "federal issue" that 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); *New York ex rel. Jacobson v. Wells Fargo Nat'l Bank, N.A.*, 824 F.3d 308, 315–16 (2d Cir. 2016).

Each of the four *Gunn* factors is met here, and this Court therefore can and must hear this dispute. *See Sprint Commc'ns, Inc.*, 571 U.S. at 77. Plaintiffs do not even dispute three of the four factors. *See* Mot.12–15. They instead focus only on the first prong of the substantial-federal-question analysis—whether a federal issue is "necessarily raised"—but fail to grapple with their own counsel's statements on the record that Plaintiffs' state-law voting rights claims incorporate the elements of Section 2 of the *federal* VRA, or the existing circuit split on a significant federal issue that the trial court will now need to resolve in ruling on Plaintiffs' new Section 2-based theory. This new federal theory, which the trial court permitted into this case after the start of trial, necessarily raises a substantial federal issue for the reasons explained below. *See infra* Section

I.A. And so, while Plaintiffs falsely describe Defendants' removal theory as "frivolous," *see* Mot.2, it is Plaintiffs who have no meritorious defense to removal.

A. Plaintiffs' New Theory "Necessarily Raises" An Acknowledged Circuit Split

1. The first prong of the substantial-federal-question analysis asks whether a federal issue is "necessarily raised." *Gunn*, 568 U.S. at 258. This factor is satisfied if the "very success [of the state-law claim] depends on giving effect to a federal requirement." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 384 (2016); *see City of Rome v. Verizon Commc'ns, Inc.*, 362 F.3d 168, 176 (2d Cir. 2004) (the "question of federal law" must be "a necessary element of one of the well-pleaded state claims" (citation omitted)). "In other words, federal jurisdiction exists if a court must apply federal law to the plaintiff's claim in order to decide the case." *Tantaros v. Fox News Network, LLC*, 12 F.4th 135, 141 (2d Cir. 2021).

New York v. Arm or Ally, LLC, 644 F. Supp. 3d 70 (S.D.N.Y. 2022), is instructive on this point. There, the plaintiff alleged that the defendant violated N.Y. Gen. Bus. L. § 898-b, which applies to "gun industry member[s]" who sell a "qualified product." *Id.* at 78 (alteration in original). The state statute incorporated federal law to define "qualified product," stating that this term has "the same meaning as defined in 15 U.S.C. section 7903(4)." *Id.* (quoting N.Y. Gen. Bus. L. § 898-a(6) (2023)). The court thus held that a claim under Section 898-b of the GBL "necessarily raises a federal question," because the court would need to interpret federal law to rule on that state-law claim. *Id.* at 78–79. As the court explained, the plaintiff's claim, "although nominally brought under state law, present[ed] a 'substantial federal question,' most notably whether the products at issue qualify as 'firearms' or 'component parts' thereof within the meaning of a federal law that is incorporated, in turn, into the relevant New York law." *Id.* at 73.

2. Here, Plaintiffs' new theory necessarily raises an acknowledged federal circuit split on whether Section 2 of the federal VRA permits minority coalition vote-dilution claims like the ones

in this case, and so easily satisfies the first substantial-federal-question factor. *See Gunn*, 568 U.S. at 258; *Tantaros*, 12 F.4th at 141; *Arm or Ally, LLC*, 644 F. Supp. 3d at 78–79. Plaintiffs' counsel stated on the record during trial that Plaintiffs intend to "prove a violation of the Municipal Home Rule Law by proving that the standards for racial vote dilution that are incorporated into the Municipal Home Rule Law are met ***and those standards are the standards of Section 2 of the Voting Rights Act***." ECF No.1-18 at 119:9–14 (emphasis added). And so, just like the state-law claim that the court considered in *Arm or Ally, LLC*, Plaintiffs' new theory is that Section 34 of the Municipal Home Rule Law "incorporate[s]" the "federal" standards of Section 2 of the VRA, *see* 644 F. Supp. 3d at 78–79, which means that the court will necessarily need to "apply" those federal standards to determine whether Plaintiffs have presented evidence sufficient to prove their state-law claim, *see Tantaros*, 12 F.4th at 141.

Most obviously, the trial court will need to resolve—and has already recently ordered supplemental briefing on—the federal issue of whether Section 2 permits coalition districts. ECF No.1-18 at 141:8–25. The Fifth and Sixth Circuits have held that Section 2 does not allow coalition districts, *Petteway*, 111 F.4th at 599; *Nixon*, 76 F.3d at 1387, whereas the Eleventh Circuit has authorized minority coalition vote-dilution claims like the ones in this case, *see Concerned Citizens of Hardee Cnty.*, 906 F.2d at 526. It will be impossible for the trial court to avoid resolving this federal issue here because Plaintiffs have only brought minority-coalition claims. *See supra* pp.6, 8. In other words, if the trial court does not resolve the federal question of whether Section 2 permits coalition districts in Plaintiffs' favor, their Section 2-based theory claim will necessarily lose. Accordingly, the "very success" of that theory will depend on the court's interpretation of federal law, and thus the first prong of the substantial-federal-question doctrine is easily satisfied. *See Merrill Lynch, Pierce, Fenner & Smith Inc.*, 578 U.S. at 384.

3. Plaintiffs' counterarguments are meritless and only demonstrate why there is clearly federal jurisdiction here. Plaintiffs do not even argue that the trial court will be able to resolve their new theory without first resolving the significant federal circuit split on whether Section 2 allows for minority coalition vote-dilution claims. *See* Mot.12–15. That is because this point is indisputable: because Plaintiffs' new theory is that Section 34 of the Municipal Home Rule Law "incorporate[s] . . . the standards of Section 2 of the Voting Rights Act," *see* ECF No.1-18 at 119:9–14, the court will necessarily need to decide whether Section 2 permits coalition districts before it can determine whether Plaintiffs can prevail, given that Plaintiffs have only brought coalition claims. That is why the trial court has ordered supplemental briefing on this very issue. *See* ECF No.1-18 at 141:8–25. Moreover, because Plaintiffs' new theory is that Section 34 of the Municipal Home Rule Law "incorporate[s] . . . the standards of Section 2 of the Voting Rights Act," *see* ECF No.1-18 at 119:9–14, the trial court will need to "apply" those standards in determining whether Plaintiffs have met their burden of proof, *see Tantaros*, 12 F.4th at 141—which is why the trial court has also permitted Defendants to submit supplemental expert reports on this issue, *see* ECF No.1-18 at 141:8–25. Although Plaintiffs appear to half-heartedly run away from their new theory that Section 34 of the Municipal Home Rule Law incorporates Section 2's federal standards, *see* Mot.14, what they told the court below was that Section 34 of the Municipal Home Rule Law "incorporate[s] . . . the standards of Section 2 of the Voting Rights Act" and that they were going to prove up that theory at trial, *see* ECF No.1-18 at 119:9–14.

Plaintiffs further argue that removal is improper because their Municipal Home Rule Law theory is not premised on "a violation of federal law," Mot.14–15, but that is not the standard for determining whether a federal issue is "necessarily raised" under the substantial-federal-question doctrine. Rather, a state-law claim necessarily raises a federal issue when a court "must apply

federal law to the plaintiff's claim in order to decide the case," *Tantaros*, 12 F.4th at 141, or where a state law "incorporate[s]" federal law, *Arm or Ally, LLC*, 644 F. Supp. 3d at 73, 78–79. Such is the case here under Plaintiffs' new theory, for the reasons explained above. *Supra* pp.13–15.

While Plaintiffs assert that this case is distinguishable from other cases where the Supreme Court has applied the substantial-federal-question doctrine, *see* Mot.15 (citing *Smith v. Kan. City Title & Tr. Co.*, 255 U.S. 180 (1921), and *Gunn*, 568 U.S. 251), that these cases differ factually from the present matter in no way suggests that the substantial-federal-question doctrine does not apply here. Indeed, the cases applying this doctrine are highly fact-specific, as they depend on a careful analysis of whether the plaintiff's specific state-law claim will require the court to "apply federal law . . . in order to decide the case." *See Tantaros*, 12 F.4th at 141. Of course, that analysis is easy here, given that Plaintiffs have stated on the record their new theory that Section 34 of the Municipal Home Rule Law "incorporate[s] . . . the standards of Section 2 of the Voting Rights Act," *see* ECF No.1-18 at 119:9–14, and the trial court has now ordered supplemental briefing to resolve the federal circuit split as to whether Section 2 permits coalition districts, as well as supplemental expert reports to address the federal standards of Section 2, *see id.* at 141:8–25.

B. The Coalition-District Circuit Split Is "Actually Disputed"

The second factor of the substantial-federal-question analysis—whether the federal issue is "actually disputed," *Gunn*, 568 U.S. at 258—is also satisfied, and Plaintiffs do not argue otherwise, *see* Mot.12–15. A federal issue is "actually disputed" if it is a "central point in dispute." *Jacobson*, 824 F.3d at 316 (citations omitted). Given Plaintiffs' new theory that the Municipal Home Rule Law "incorporate[s]" the "standards of Section 2 of the Voting Rights Act," ECF No.1-18 at 119:9–14, the federal circuit split over whether Section 2 authorizes minority coalition vote-dilution claims like Plaintiffs' Municipal Home Rule Law claim here is now "central" to this dispute, which is why the trial court ordered supplemental briefing and expert reports on this issue,

see id. at 141:8–25. And it is plain that there is an actual dispute between the parties as to this substantial federal issue: Plaintiffs' counsel has stated on the record that Plaintiffs disagree with Defendants on whether coalition districts are permissible under Section 2 of the federal VRA, and the parties will join issue on this dispute in their briefing on the circuit split. *Id.* at 132:4–11.

C. The Coalition-District Circuit Split Is A Substantial Federal Issue

There also can be no dispute that the federal issue the trial court will now need to resolve—namely, whether Section 2 of the VRA permits coalition districts—is "substantial" under the third prong. *See Gunn*, 568 U.S. at 258. A state-law claim involves a "substantial" federal issue when it "present[s] a legal issue that implicates a serious federal interest in claiming the advantages thought to be inherent in a federal forum." *Jacobson*, 824 F.3d at 316; *see NASDAQ OMX Grp., Inc. v. UBS Sec., LLC*, 770 F.3d 1010, 1024 (2d Cir. 2014). Here, there is an acknowledged federal circuit split on the coalition-district issue and a "serious federal interest" in the federal courts resolving that issue. *See supra* pp.4, 14–15. Plaintiffs do not argue otherwise.

D. The Federal-State Balance Favors Federal Courts Deciding This Substantial Federal Issue

Finally, the fourth factor is also satisfied here because exercising federal jurisdiction over the State Court Actions will not upset the "balance of federal and state judicial responsibilities." *NASDAQ OMX Grp., Inc.*, 770 F.3d at 1030 (quoting *Gunn*, 568 U.S. at 264). "Absent a special state interest in a category of litigation, or an express congressional preference to avoid federal adjudication, federal questions that implicate substantial federal interests will often be appropriately resolved in federal rather than state court." *Jacobson*, 824 F.3d at 316. Here, the "traditional forum" for Section 2 issues is federal court, given that Section 2 claims arise under federal law. *See id.* Moreover, holding that this case is removable will not "affect[ ]" a significant "volume of cases," in light of the specific need here for the federal courts to address the circuit

split identified in *Petteway*. *See id.*; *see also Petteway*, 111 F.4th at 603. Again, Plaintiffs do not make any argument at all on this factor.

II. The Trial Court's December 17 And December 20 Orders First Introduced This Federal Theory—Including The Need To Resolve The Circuit Split—Into This Case

A. Even if a claim as stated in an initial pleading is not removable, the case may later become removable where there is "an amended pleading, motion, order or other paper" from which a federal issue "may first be ascertained." 28 U.S.C. § 1446(b)(3); *Hyperion Med. P.C. v. UnitedHealthcare Ins. Co. of N.Y.*, 2021 WL 568302, at *1, *33 (S.D.N.Y. Feb. 15, 2021) (notice of removal filed eight months after the complaint was timely where the initial complaint did not explicitly set forth a basis for federal jurisdiction). "The information supporting removal in a copy of an amended pleading, motion, order or other paper . . . ***must be unequivocally clear and certain*** to start the time limit running." *Morgan v. Huntington Ingalls, Inc.*, 879 F.3d 602, 608–09 (5th Cir. 2018) (citation omitted; emphasis added). Removal may be effectuated within 30 days of that "amended pleading, motion, order or other paper," 28 U.S.C. § 1446(b)(3), even if it causes a delay of trial, *see Dempster v. Lamorak Ins. Co.*, 435 F. Supp. 3d 708, 713–14, 731 (E.D. La. 2020) (granting removal one day before trial).

B. Here, this case became removable on December 17, 2024, the date on which the trial court permitted Plaintiffs to pursue their Section 2-based theory and ordered supplemental briefing and expert reports specifically to address this theory. *See* 28 U.S.C. § 1446(b)(3). On that date, Plaintiffs asserted that they could prove their state-law claims by proving a violation of Section 2 of the federal VRA, *see* ECF No.1-18 at 119:9–15—despite the trial court previously ruling that Plaintiffs' state-law claims in this case do not incorporate the federal standards of Section 2 of the VRA, *see* ECF No.1-14 at 23. Defendants stated on the record that had this theory been part of the State Court Actions, Defendants would have removed the case to federal court "as soon as it

was filed," ECF No.1-18 at 97:13–16, and so requested that the court enter an order making clear that Plaintiffs' Section 2 theory was not part of the case, ECF No.1-19 at 676:6–10.[8] But the court instead entered an oral order allowing Plaintiffs to bring this federal theory as part of Plaintiffs' state-law claims, while also permitting Defendants to submit supplemental expert reports performing a *Gingles* analysis under Section 2 and giving the parties the "opportunity to brief the issue of the propriety of aggregating the minorities," in an effort to resolve the existing circuit split on this question of federal law. ECF No.1-18 at 141:8–25. At Defendants' request, the court further ordered on December 20 that, although Plaintiffs had not filed a standalone Section 2 claim, they could still prove their state-law vote-dilution claims by meeting the standards of Section 2. *See* ECF No.1-19 at 676:11–17, 677:10–15, 678:9–17, 679:9–18.

Notably, neither Plaintiffs' pleadings nor any of their 14 expert reports suggested that such a theory was part of the case. As noted above, none of the pleadings in the State Court Actions suggested on their face that Plaintiffs were relying on any federal theory to prove that Local Law 1 violates state law. *Supra* p.6. Accordingly, there was no "unequivocally clear and certain" information that would have allowed Defendants to remove this case prior to Plaintiffs' statements and the court's actions at trial. *See Morgan*, 879 F.3d at 608–09. Only at that time could it "first be ascertained," 28 U.S.C. § 1446(b)(3), that Plaintiffs' state-law claim arose under federal law pursuant to the substantial-federal-question doctrine, *see supra* Part I.

C. In their remand motion, Plaintiffs do not argue that their new Section 2-based theory was anywhere in the pleadings or in their many expert reports. *See* Mot.8–12. Instead, they argue

[8] In response, Plaintiffs' counsel explained their theory of their claims as follows: they "could prove a violation of the Municipal Home Rule Law by proving that the standards for racial vote dilution that are incorporated into the Municipal Home Rule Law are met and those standards are the standards of Section 2 of the Voting Rights Act as well as the New York Voting Rights Act." ECF No.1-18 at 119:9–15.

that their federal theory appeared for the first time in this case in Plaintiffs' opposition to Defendants' motion for summary judgment. Mot.8–9.

Plaintiffs are wrong because New York law holds—in the clearest terms imaginable—that advancing a new theory in opposition to a motion for summary judgment does not make that theory part of the case. New York caselaw makes it abundantly clear (over and over and over again) that "a plaintiff cannot defeat an otherwise proper motion for summary judgment by asserting, *for the first time in opposition to the motion*, a new theory of liability that was not pleaded in the complaint or bill of particulars." *Troia*, 162 A.D.3d at 109 (emphasis added); *see Berry v. City of New York*, 191 A.D.3d 589, 590 (1st Dep't 2021); *Rumyacheva v. City of New York*, 36 A.D.3d 790, 790–91 (2d Dep't 2007); *Sanchez v. City of New York*, 190 A.D.3d 999, 1001 (2d Dep't 2021); *Anonymous v. Gleason*, 175 A.D.3d 614, 617 (2d Dep't 2019); *Palka v. Village of Ossining*, 120 A.D.3d 641, 643 (2d Dep't 2014); *J.F. v. Brentwood Union Free Sch. Dist.*, 184 A.D.3d 806, 807 (2d Dep't 2020); *Mazurek v. Schoppmann*, 159 A.D.3d 814, 815 (2d Dep't 2018); *Mezger v. Wyndham Homes, Inc.*, 81 A.D.3d 795, 706 (2d Dep't 2011). Accordingly, Plaintiffs' decision to raise a new federal theory in their opposition to Defendants' summary judgment motion does not constitute the "unequivocally clear and certain" information necessary "to start the time limit running." *Morgan*, 879 F.3d at 608–09. And if any doubt remained, the trial court's summary judgment ruling confirms that there was no federal issue in this case at summary judgment. That ruling explicitly and unambiguously "decline[d] to consider whether all three *Gingles* preconditions have been met by Plaintiffs because there is no authority for superimposing any of the preconditions[, which are part of Section 2 of the VRA,] that are not already written into the [state] statute." ECF No.1-14 at 23.

Put another way, to hold that Defendants should have removed this case when Plaintiffs improperly raised their new theory of Section 2-based liability in their opposition to summary judgment would be akin to holding that a defendant must remove a case when a plaintiff untimely files an amended complaint in state court alleging a new federal theory, without seeking leave of the trial court under state rules of civil procedure. That is obviously not the law.

Finally, Plaintiffs' reliance on Defendants' counsel's February 16, 2023 memorandum and testimony, and Mr. Kopel's deposition, is misplaced. *See* Mot.10–11. Plaintiffs cite statements from these documents and testimony suggesting that the state statutes ***could*** be read as applying federal standards—and so they can. But Plaintiffs did not sue under those federal-law-based theories by including them in their complaints, which would have made the cases removable from the start. *See, e.g.*, *Gunn*, 568 U.S. at 258; *Tantaros*, 12 F.4th at 141; *Jacobson*, 824 F.3d at 315–16; *Arm or Ally, LLC*, 644 F. Supp. 3d at 78–79. That is precisely why Defendants' counsel stated in objecting to the trial court permitting Plaintiffs' federal law theory into the case that Defendants would have removed these matters had Plaintiffs included that federal theory from the start. *See supra* pp.9–10. But Plaintiffs did not put a federal theory in their pleadings or even in any of their expert reports, and their federal law theory only became part of this case when Plaintiffs convinced the trial court to add it on December 17, 2024, pairing the addition with granting Defendants permission to submit supplemental expert reports on that theory and ordering the parties to submit briefing on the federal circuit split. *See supra* pp.10–11.

III. The Election Commission Defendants Are Nominal Defendants And Thus Did Not Need To Be Part Of This Removal

A. While removal under Section 1441(a) ordinarily "requires the consent of all defendants," *In re Methyl Tertiary Butyl Ether Prods. Liab. Litig.*, 488 F.3d 112, 134 (2d Cir. 2007), there is an exception for "nominal or formal parties" in the removed action, *Snakepit Auto.*,

Inc. v. Superperformance Int'l, LLC, 489 F. Supp. 2d 196, 201–02 (E.D.N.Y. 2007); *see also* 14C Wright & Miller, *Federal Practice And Procedure* § 3730 (rev. 4th ed.). A "nominal defendant's consent is not required" to satisfy "[the rule of] unanimity," thus any lack of consent from that nominal defendant cannot defeat the federal court's jurisdiction over the sought-to-be removed case. *Zerafa v. Montefiore Hosp. Hous. Co.*, 403 F. Supp. 2d 320, 328 (S.D.N.Y. 2005).

A prototypical "nominal party" is one that has "no control of, impact on, or stake in the controversy." *Lincoln Prop.*, 546 U.S. at 92. In *Lincoln Property*, the Supreme Court explained that a state-official defendant "joined only as [a] designated performer of a ministerial act" plays no role in the federal jurisdictional analysis. *Id*. at 82. While *Lincoln Property* arose in the federal diversity jurisdiction removal context, there is no principled basis as to why the Supreme Court's explanation as to what type of parties are relevant for federal jurisdiction purposes would turn out any differently in the federal question removal context.

Another traditional form of nominal defendant is one that has made it "abundantly clear" that he "ha[s] not taken steps [in the litigation] that conflict with plaintiffs' position." *Norman*, 796 F. Supp. at 658–59. In other words, "non-consenting defendants' failure to assume a legal position that is hostile to plaintiffs' position" is a powerful indicator of those defendants' nominal or formal status, for purposes of this exception to the rule of unanimity. *Id.* at 659. Where a defendant takes no position on the merits of the litigation, whether the plaintiffs sought relief against that defendant does not change that defendant's nominal status. *Id.* at 658.

B. Here, defendants Nassau County Board of Elections and its commissioners are all only nominal or formal defendants. *Snakepit Auto., Inc.*, 489 F. Supp. 2d at 201–02. None of these defendants have any stake in the merits, but rather are named solely as the County officials who are the "designated performer[s] of [the] ministerial act," *Lincoln Prop.*, 546 U.S. at 92, of

administering elections in Nassau County under the County's redistricting map, ECF No.1-1 ¶¶ 18, 22, 23. In addition, it is "abundantly clear" that these defendants have no stake in this litigation and so are only formal or nominal parties, *Norman*, 796 F. Supp. at 658–59, as they took no part in the motion to dismiss proceedings, discovery, expert reports, summary judgment, or the first week of trial. As the trial court explained in excusing them from trial: "I do not anticipate requiring an appearance from either [counsel for defendants Nassau County Board of Elections and its commissioners] throughout the course of this trial . . . . As I see it, ***your clients are nominal parties and I don't see them taking an active role here at all***." Moskowitz Decl., Ex. S at 23:21–24:12 (emphasis added).

C. Plaintiffs try to resist this straightforward conclusion by noting that they sought to enjoin these defendants in their operative complaints from their ministerial duties of administering County elections under the challenged map, ECF No.1-1 at 34; *Coads*, ECF No.1-1 at 22. But the fact that Plaintiffs sought such relief against these defendants "[s]tanding alone . . . does not shed light on whether [they] are nominal"—especially considering their complete failure to mount any opposition to Plaintiffs' claims, *Norman*, 796 F. Supp. at 658. While Plaintiffs appear to suggest that naming these parties was necessary, New York redistricting cases do not always name the election officials charged with administering a map in lawsuits challenging the map. *See, e.g.*, *Wolpoff v. Cuomo*, 80 N.Y.2d 70 (1992) (no elections officials named as defendants); *Favors v. Cuomo*, 881 F. Supp. 2d 356 (E.D.N.Y. 2012) (same). In any event, even if Plaintiffs were required to name these nominal defendants to obtain full relief against the challenged map—which they did not need to do—that would merely make these defendants precisely the type of parties that are not relevant for federal jurisdictional purposes because they were "joined only as [a] designated performer of a ministerial act." *Lincoln Prop.*, 546 U.S. at 92.

Notably, the only authority that Plaintiffs cite in support of their position is the unpublished decision in *League of Women Voters of Pennsylvania v. Pennsylvania*, 2018 WL 1787211, at *4 (E.D. Pa. Apr. 13, 2018), but Plaintiffs fail to inform this Court that the Third Circuit expressly declined to affirm the district court on the reasoning on which Plaintiffs rely, *see League of Women Voters of Pa. v. Pennsylvania*, 921 F.3d 378, 384 n.4 (3d Cir. 2019). Instead, the Third Circuit noted only that there is an "unresolved question" as to whether "a party can be 'indispensable' because of its ministerial role in effecting a judgment, but nominal for removal purposes," while citing to the Supreme Court's *Lincoln Property* decision. *Id.* With all respect, the *League of Women Voters* district court decision cannot be reconciled with *Lincoln Property*, for the reasons noted above. But that would not matter here, in any event, because the election officials were not indispensable parties below, as shown by multiple challenges to maps in New York that do not name election officials as defendants. *See supra* p.23.

Finally, Plaintiffs do not dispute that these defendants did not oppose Plaintiffs' claims at any point during this case, arguing only that these defendants "appeared in these state court actions and advocated for [their] expeditious resolution to ensure that [they] had sufficient time to implement any remedy," citing only a *March 2024 status conference* as evidence of that limited involvement. Mot.17. A defendant requesting that the court quickly adjudicate a claim has not adopted a position that "conflict[s] with plaintiffs' position" or "assume[d] a legal position that is hostile to plaintiffs' position." *Norman*, 796 F. Supp. at 658–59.

IV. Plaintiffs Are Not Entitled To Attorneys' Fees

Plaintiffs incorrectly assert that if this Court remands this action, they are entitled to attorneys' fees under 28 U.S.C. § 1447(c). Mot.19–20. But as the Supreme Court has explained, "when an objectively reasonable basis [for seeking removal] exists, fees should be denied." *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 141 (2005); *see Little Rest Twelve, Inc. v. Visan*, 829 F.

Supp. 2d 242, 245 (S.D.N.Y. 2011) ("If a defendant's grounds for removal are not clearly barred by established federal law, then an award of attorney's fees and costs is improper."). Such is the case here, where—as discussed at length above—Defendants' basis for removal falls squarely within the substantial-federal-question doctrine and is fully consistent with both Supreme Court and Second Circuit precedent, *supra* Part I, the removal was timely and otherwise procedurally proper, *supra* Parts II & III, and Defendants acted in good faith, *see supra* pp.9–11.

Although Plaintiffs speculate that Defendants removed this case to avoid discovery and delay trial, *see* Mot.3, 19–20, these contentions are absolutely false. Defendants have worked to confirm with Plaintiffs the dates of the depositions of Mr. Tseytlin and Dr. Trende, which are scheduled for January 2 and 3, respectively. *See* ECF No.14 at 3 n.2; *see also* Mot.7 (citing Grossman Decl. ¶ 13). Moreover, Defendants have confirmed to Plaintiffs that they are committed to both depositions taking place on those dates regardless of whether or how this Court rules on Plaintiffs' remand motion. ECF No.14 at 3 n.2. Defendants have not shirked any discovery orders in these matters, as they have continued to produce documents to Plaintiffs as well as a line-by-line privilege log for recently produced documents. *See* ECF No.1-19 at 675:10–19. Plaintiffs' absolutely false claim that Defendants removed these matters for the purpose of delaying trial is belied by the fact that Defendants warned Plaintiffs on the record that introducing this federal issue would lead to removal. *See* ECF No.1 ¶ 16.

CONCLUSION AND RELIEF REQUESTED

The Court should deny Plaintiffs' Motion to Remand.

Dated: New York, New York
December 29, 2024

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CERTIFICATE OF SERVICE

I, Bennet J. Moskowitz, hereby certify that on December 29, 2024, I filed the foregoing using the Court's CM/ECF system, which electronically served all current counsel of record.

s/Bennet J. Moskowitz
Bennet J. Moskowitz