The Honorable Ricardo S. Martinez

THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

PAUL LEHTO, et al.,

Plaintiffs,

v.

SEQUOIA VOTING SYSTEMS, INC., et al.,

Defendants.

Case No. C-05-0877 RSM

DEFENDANT SEQUOIA'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION FOR REMAND TO STATE COURT

Noted on Motion Calendar: July 8, 2005

I. INTRODUCTION

The Court has federal jurisdiction over the Complaint filed by Plaintiffs Paul Lehto and John Wells ("Plaintiffs") for two independent reasons. First, the Complaint pleads a federal claim based on alleged violations of the Magnuson-Moss Warranty Act ("MMWA"), 15 U.S.C. § 2301, *et seq.*, and demands relief in excess of $5 million. Second, the Complaint pleads a federal claim based on alleged violations of the Help America Vote Act of 2002 ("HAVA"), 28 U.S.C. § 15301, *et seq*.

In addition, the Court has supplemental jurisdiction over the remaining state law claims because they are part of the same case or controversy as the federal claims. For these reasons, federal jurisdiction exists and removal is proper.

Faced with this unavoidable conclusion, and in a desperate attempt to avoid federal jurisdiction, Plaintiffs concoct a hyper-technical argument challenging the propriety of a signature on Defendant Snohomish County's Joinder in Notice of Removal. The signature is perfectly proper. Moreover, even if Plaintiffs could show some irregularity (which they cannot), it would have no impact on federal jurisdiction.

Accordingly, Defendant Sequoia Votings Systems, Inc. ("Sequoia"), and Snohomish County (the "County") through their Joinder filed concurrently, respectfully request that the Court deny Plaintiffs' Motion to Remand to State Court.

II. PROCEDURAL HISTORY

Plaintiffs originally filed this action in King County Superior Court. The Complaint is a general protest against the Legislature's decision to authorize electronic voting in Washington State.

The Eighth Cause of Action in the Complaint alleges that Sequoia's electronic voting machines violate the federal Magnuson-Moss Warranty Act ("MMWA"), 15 U.S.C. § 2301, *et seq.,* and demands relief under this Act in excess of $5 million. The Tenth Cause of Action alleges that Sequoia's electronic voting machines violate the federal Help America Vote Act of 2002 ("HAVA"), 28 U.S.C. § 15301, *et seq*.

Based on these two federal claims, the County and Sequoia jointly decided to remove the case to federal court. Sequoia filed a timely Notice of Removal. And the County filed a timely Joinder in Notice of Removal. As nothing in the Complaint states a valid claim, Defendants filed Motions to Dismiss which presently are pending before the Court.

Thereafter, to prevent this Court from addressing the substance of the Complaint, Plaintiffs filed this Motion to Remand. However, as demonstrated below, Plaintiffs cannot avoid federal jurisdiction and cannot avoid this Court's review of the merits.[1]

III. ARGUMENT

A. PLAINTIFFS' EIGHTH CAUSE OF ACTION FOR VIOLATIONS OF THE MAGNUSON-MOSS WARRANTY ACT ("MMWA"), 15 U.S.C. § 2301, *ET SEQ.*, RAISES A FEDERAL QUESTION

A federal question arises under the Magnuson-Moss Warranty Ac ("MMWA"), 15 U.S.C. § 2301, *et seq.*, whenever the amount in controversy exceeds "the sum or value of $50,000." U.S.C. § 2310(d)(3)(B). In the Eighth Cause of Action, Plaintiffs claim that they "are entitled to all remedies under the Magnuson-Moss Warranty Act including attorneys fees, costs, and all legal, equitable and restitutionary remedies." (Complaint ¶ 7.9.5) Plaintiffs' own allegations establish that the value of these legal, equitable and restitutionary remedies exceeds $5 million – no less than one-hundred times greater than the jurisdictional limit.

1. Plaintiffs Demand More Than $5 million in Restitution

Plaintiffs demand that Sequoia pay restitution in an amount exceeding $5 million. As specifically stated in Paragraph 7.12: "Plaintiffs ask that the Contract be declared void, restitution ordered against Sequoia in the amount of $5,054,649, payable to Snohomish County upon return of the Sequoia AVC Edge machines in their present condition." This allegation, by

[1] Contrary to Plaintiffs' suggestion, the failure to state any cognizable claim does not mean the Court lacks jurisdiction to rule as much. As one court put it, defendants can "tow the ship into 'the federal harbor' " only to "sink" it once it gets there. *La Buhn v. Bulkmatic Transport Co.*, 644 F.Supp. 942, 948 (N.D.Ill.1986).

itself, establishes that the actual amount in controversy exceeds $5 million, and confers jurisdiction on the court.

2. Plaintiffs Demand Rescission and Invalidation of a $5 Million Contract

In addition to restitution, Plaintiffs seeks other equitable remedies including rescission, declaratory relief and injunctive relief. The amount in controversy for equitable relief is determined by either the potential value to the plaintiff *or* the potential cost to the defendant, whichever is greater. *Sanchez v. Monumental Life Ins. Co*., 102 F.3d 398 (9th Cir. 1996). "In other words, where the value of a plaintiff's potential recovery . . . is below the jurisdictional amount, but the potential cost to the defendant of complying with the injunction exceeds that amount, it is the latter that represents the amount in controversy for jurisdictional purposes." *In re Ford Motor Co./Citibank (South Dakota), N.A*., 264 F.3d 952, 958 (9th Cir. 2001). Here, the cost to Defendants is astounding.

Plaintiffs demand that the court rescind and invalidate the $5 million contract between Sequoia and the County for the purchase of voting machines. They allege, "Plaintiffs herein ask that the Contract be rescinded, be deemed void *ab initio*[.]" (Complaint ¶ 7.12) Plaintiffs also seek a "Declaration of the invalidity of the Contract *ab initio* and *in toto*." (Id. at ¶ 8.1) Plaintiffs then request an injunction against the use the $5 million worth of voting machines. (Complaint ¶¶ 7.11 & 8.4). And Plaintiffs confirm in their moving papers that they rely on the Magnuson-Moss Warranty Act as a basis for "voiding the contract." (Motion to Remand, 20:2-6) [2]

As Plaintiffs seek the rescission and invalidation of a contract with a value over $5 million, the amount in controversy is over $5 million. *See Rosen v. Chrysler Corp.,* 205 F.3d 918 (6th Cir.2000) ("In cases where a plaintiff seeks to rescind a contract, the contract's entire

[2] The suggestion that MMWA merely establishes a standard of care for state law claims is baseless. Plaintiffs admit they are seeking damages and other affirmative relief under the Act. (Motion to Remand, 20:7-16) Moreover, the Complaint categorically states that Plaintiffs "are entitled to all remedies under the Magnuson-Moss Warranty Act." (Complaint ¶ 7.9.5).

value, without offset, is the amount in controversy"); *Savarese v. Edrick Transfer & Storage, Inc.*, 513 F.2d 140, 142 (9th Cir.1975). The equitable remedies Plaintiffs seek under MMWA dwarf the amount in controversy requirements. As such, Plaintiffs have pleaded a federal question, the court has jurisdiction, and removal is proper.[3]

3. Plaintiffs Demand the Disclosure of Sequoia's Confidential, Proprietary Source Codes

Plaintiffs also request an order under MMWA allowing them to test and examine Sequoia's voting machines. They claim that Defendants' purported violations of the Act "have been used to justify denial of access to plaintiff Lehto for the right to conduct any testing of the Sequoia machines, and similarly denies the public any right to observe or verify election results." (Motion to Remand, 20: 12-16). To conduct this testing, Plaintiffs demand that the court order Sequoia to disclose its confidential, proprietary source codes. (See, e.g., Complaint ¶ 4.12)

The source codes are the line-by-line programming instructions for Sequoia's confidential, proprietary software and firmware upon which its electronic voting machines operate. Over the past decade, Sequoia has spent more than $10 million to develop, maintain and certify the software and firmware, a cost which Sequoia recoups in part through licensing fees. For example, the County here paid an initial $200,000 licensing fee and pays an annual $40,000 fee thereafter. (Declaration of Peter McManemy in Support of Opposition to Remand ("McManemy Dec.") ¶¶ 6, 7, 8, 9 & 10)

Maintaining the secrecy of the source code is an essential component of preventing election fraud, hacking and tampering. Disclosure of the source code would severely compromise the security of the voting system and the integrity of election results. Consequently,

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[3] Plaintiffs disingenuously state that Defendants must prove by a "legal certainty" that the amount in controversy exceeds the jurisdictional limit, citing two cases from Alabama, *Matthews v. Fleetwood Homes*, 92 F.Supp.2d 1285 (S.D. Ala. 2000); *Grubbs v. Pioneer Housing Inc.*, 75 F.Supp. 2d 1323 (M.D. Ala. 1999). The Ninth Circuit, however, makes clear that the removing party need only establish this fact "by a preponderance of the evidence." *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 839 (9th Cir. 2002). In any event, Sequoia has established that the amount in controversy exceeds the jurisdictional limit by a legal certainty.

disclosure would greatly diminish the value of Sequoia's voting systems and Sequoia's ability to compete and succeed in the market. In addition, it would allow competitors to reap the benefits of the millions of dollars Sequoia spent to develop, produce and certify their software and firmware. (McManemy Dec. at ¶ ¶ 11, 12 & 13)

Presently, Sequoia has an approximate 30% market share in the billion dollar electronic voting industry. The company's projected revenue over the next three years exceeds $500 million. Therefore, if source code were disclosed, Sequoia likely would lose tens of millions of dollars in revenue and certainly would lose more than $1 million. (McManemy Dec. at ¶ ¶ 5, 14).

As such, there can be no question that Plaintiffs' MMWA claim exceeds the $50,000 amount in controversy. *See, e.g., Union Pacific R. Co. v. Mower*, 219 F.3d 1069, 1071 fn.1 (9th Cir.2000) (holding that "value to [company] of protecting its confidential information from disclosure far exceeded the requisite jurisdictional amount").[4] Accordingly, the Eight Cause of Action raises a federal question and removal is proper.

B. PLAINTIFFS' TENTH CAUSE OF ACTION FOR VIOLATIONS OF THE HELP AMERICA VOTE ACT OF 2002 ("HAVA), 28 U.S.C. §15301, *ET SEQ*., RAISES A FEDERAL QUESTION.

Plaintiffs' Tenth Cause of Action alleges violations of the Help America Vote Act of 2002 ("HAVA"), 28 U.S.C. § 15301, *et seq.* Specifically, the claim states that "Sequoia touch-screens do not comply with the requirements of Help America Vote Act of 2002 ("HAVA), 42 U.S.C. §15301 *et seq*. and the technical standards incorporated therein, in that Sequoia touch screens lack the ballot accuracy required[.]" (Complaint ¶ 7.10.2) In addition, Plaintiffs allege

[4] Plaintiffs cannot avoid federal jurisdiction by simply claiming that Plaintiffs' "personal damages for not being able to test the Sequoia machines are less than $50,000.00." (Motion to Remand, 20:17-18) Plaintiffs' MMWA claim, as pleaded in their Complaint, in no way limits itself to Plaintiffs' personal damages. Rather, it plainly seeks "all remedies under the Magnuson-Moss Warranty Act including attorneys fees, costs, and all legal, equitable and restitutionary remedies." (Complaint ¶ 7.9.5). As established above, the equitable and restitutionary remedies far exceed the jurisdictional amount.

that Washington State did not obtain a proper waiver of these federal HAVA requirements from the appropriate federal authorities. They claim that the voting machines "can only be used in elections under the questionable waiver of the Washington State Secretary of State of compliance with these requirements." *Id.* Based on these alleged violations of federal law, *intel alia*, Plaintiffs seek a declaration that the Contract "is contrary to the statutory scheme for elections" and, therefore, invalid and illegal. (Complaint ¶ 7.10).

As Plaintiffs' Tenth Cause of Action explicitly alleges violations of HAVA and seeks remedies based on those violations, the Complaint raises a federal question. *See, e.g., Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 572 (6th Cir. 2004) (federal claims brought under HAVA); *Florida Democratic Party v. Hood,* 342 F.Supp.2d 1073, 1077 (N.D. Fla. 2004) (same). As such, jurisdiction is proper on this independent basis**.**

1. Plaintiffs' Position That HAVA Creates No Federal Rights Is Mistaken

Plaintiffs attempt to avoid federal jurisdiction by arguing that their federal claim is essentially a sham and should be disregarded. Specifically, Plaintiffs assert that parties cannot even bring federal claims under HAVA, citing *Florida Democratic Party v. Hood,* 342 F.Supp.2d 1073, 1077 (N.D. Fla. 2004). That case, however, established just the opposite.

In *Hood*, the plaintiffs sought an injunction based on HAVA violations. The defendants argued that parties cannot bring federal claims for HAVA violations. The court rejected the argument. It held that HAVA "clearly creates a federal right enforceable under [42 U.S.C.] § 1983." *Id.* at 1078. The court explained, "There is nothing precatory about [HAVA]; Congress clearly imposed a mandate and the mandate is one that is readily subject to judicial interpretation and enforcement, much like the many other rights that are the subject of litigation in federal

courts every day. *Id*; *see also Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 572 (6th Cir. 2004) (HAVA creates federal right).

Therefore, just as in *Hood*, Plaintiffs' HAVA claim here assert a federal right.

2. Plaintiffs Cannot Defeat Jurisdiction By Clothing Federal Violations As a State Declaratory Relief Claim

Plaintiffs also attempt to avoid federal jurisdiction by alleging federal HAVA violations as a Washington's declaratory relief claim. However, whether a party invokes a state or federal declaratory relief statute has no bearing on the question of jurisdiction. Declaratory relief is merely a procedural device for presenting a dispute to the court. *See Skelly Oil Co. v. Phillips Petroleum Co*. 339 US 667 (9th Cir.1950); *Janakes v. United States Postal Service* 768 F2d 1091, 1094 (9th Cir. 1985). In such actions, federal jurisdiction exists if the underlying dispute alleges federal violations. *Id.* Here, the Tenth Cause of Action explicitly alleges that Plaintiffs are entitled to declaratory relief because Defendants violated HAVA. As such, the claim raises a federal question.

None of the cases cited by Plaintiffs allow a party to defeat federal jurisdiction through the simple expedient of alleging federal violations as a state declaratory relief action. Rather, in those cases, the alleged federal violation supported an element of a *substantive* state law claim. *See Rains v. Criterion Systems, Inc*. 80 F.3d 339, 344 (9th Cir. 1996) (federal and state law established public policy for state wrongful termination claim); *Green v. General Motors Corp.* 261 F.Supp.2d 414, 416 (W.D.N.C. 2003) (federal violation borrowed for purposes of state claim for unfair business practices).[5]

[5] In other cases cited by Plaintiffs, the complaint allege no federal violations whatsoever. *See ARCO Envtl. Remediation, LLC v. Dept. of Health and Envtl. Quality of Montana,* 213 F.3d 1108, 1113 (9th Cir. 2000) (state claim for disclosure of public documents); *Hill v. Marston*, 13 F.3d 1548, 1550 (11th Cir. 1994) (state claims for negligence, breach of contract, and violation of state securities laws).

3. HAVA Does Not Merely Provide Standards for Interpreting State Law

Plaintiffs argue that the alleged HAVA violations merely establish standards for interpreting Washington State election laws and, therefore, they cannot support federal jurisdiction. As pleaded, the Complaint never limits itself in this manner. To the contrary, the Complaint alleges separate violations of HAVA. (Complaint ¶ 7.10.2) Moreover, it alleges violations of HAVA *in its entirety*, along with all the national standards established pursuant to HAVA, without limitation to any specific provision. (Id.) Likewise, the Complaint alleges that Washington State failed to obtain a proper waiver of HAVA requirements from federal authorities. (Id.)

In light of the above, Plaintiffs have no basis for suggesting that the Washington election code simply duplicates the voluminous provisions of HAVA and its concomitant technical standards, especially considering that HAVA may preempt certain state election laws. *See Sandusky County v. Blackwell*, 339 F.Supp.2d 975, 989 (N.D. Ohio 2004) (*reversed* on other grounds in *Blackwell*, 387 F.3d 565).

In addition, even if Plaintiffs had alleged HAVA violations as an element of an actual substantive state law claim (which they have not), Plaintiffs still could not escape federal jurisdiction because the alleged HAVA violations raise "a substantial, disputed question of federal law." "Even where . . . state law creates the cause of action, and no federal law completely preempts it, federal jurisdiction may still lie if it appears that some substantial, disputed question of federal law is a necessary element of one of the well-pleaded state claims." *Franchise Tax Board of State of California v. Construction Laborers Vacation Trust For Southern California* 463 U.S. 1, 13 (1983).

For example, in *Sable v. General Motors Corp*., 90 F.3d 171, 174 (6th Cir. 1996), federal jurisdiction existed over a state trespass claim because, as an element of that claim, plaintiffs

alleged that defendants breached of a duty created by federal law. Likewise, in *Marcus v. AT&T,* 138 F.3d 46, 56 (2d Cir. 1998*),* federal jurisdiction existed because the plaintiffs' state law breach of warranty claim sought to enforce rights created by federal law.

The exact same is true here. As an element of Plaintiffs' state law claim for declaratory relief, Plaintiffs allege violations of duties created by federal law, namely, the duty to comply with HAVA and the duty to obtain a proper waiver from HAVA. Having raised substantial questions of federal law in their Complaint, Plaintiffs' attempt to "defeat removal by clothing a federal claim in state garb" ultimately must fail. *See Marcus v. AT&T,* 138 F.3d 46, 56 (2d Cir. 1998) (internal quotation marks omitted).

For the above reasons, Plaintiffs' Tenth Cause of Action for violations of HAVA independently establishes jurisdiction in this Court.

C. ALL PARTIES JOINED IN THE REMOVAL AND, THEREFORE, THE REMOVAL IS PROPER

Case law interpreting the federal removal statutes requires all defendants to consent to the removal. *See Parrino v. FHP, Inc*., 146 F.3d 699, 703 (9th Cir. 1998). To satisfy this requirement, Sequoia stated in Paragraph 5 of the Notice of Removal that, "All other defendants who have been served with the Summon and Complaint have joined in this Notice of Removal as evidenced by the joinder of Defendant SNOHOMISH COUNTY filed concurrently herewith." The County's Joinder in Notice of Removal of Action states that "Defendant SNOHOMISH COUNTY hereby joins in Defendant SEQUOIA VOTING SYSTEMS, INC.'s Notice of Removal to this Court of the state court action described in the Notice of Removal."

Sequoia's Notice of Removal and the County's Joinder make clear that Sequoia and the County, the only defendants in the action, consented to the removal. As such, Defendants have fully and unequivocally satisfied the requirement of unanimity as well as all the other removal procedures.

1. The Signature on the County's Joinder Is Perfectly Proper

In a last-ditch scramble to stave off dismissal, Plaintiffs concoct a strained, procedural argument to make the incredible claim that the County did *not* in fact consent to the removal. Indeed, this hyper-technical, non-jurisdictional argument is the centerpiece of Plaintiffs' Motion to Remand.

To support this claim, Plaintiffs point to nothing other than the fact that Malcolm S. Harris ("Harris"), *with the County's express, prior authorization*, signed the County's Joinder in Notice of Removal on behalf on the County's attorney, Gordon W. Sivley ("Sivley"). The unanimity rule merely requires that "there must be some timely filed written indication from each served defendant, or from some person or entity purporting to formally act on its behalf in this respect and to have authority to do so, that it has actually consented to such action." *Getty Oil Co v. Insurance Co. of N. Am*, 841 F.2d 1254, 1262 n.11 (5th Cir. 1988), cited by Plaintiffs.

Here, it is undisputed that the County's Joinder is a writing and was timely filed. Likewise, it cannot be seriously disputed that, by signing the Joinder with the words, "Gordon Sivley, by MSH," Harris was purporting to sign on behalf of Sivley. (See Declarations of Douglas J. Morrill, Gordon W. Sivley, and Malcolm S. Harris in Opposition to Motion to Remand).[6]

It is also undisputed that the County authorized Harris to sign the Joinder on the County's behalf. After counsel for the County reviewed the Joinder, and before it was filed, County counsel expressly informed Harris that he had authority to sign on its behalf. (See Morrill,

[6] Although Plaintiffs feign ignorance as to the meaning of the signatures in the County's Joinder, such unawareness is beyond belief. The document clearly indicates that Harris was signing on behalf of Sivley – an act that could only be undertaken with express authorization. Indeed, signing an official court filing without such approval would have ethical and legal implications beyond mere removal issues.

Sivley, and Harris Decs). Finally, it is undisputed that the County "actually consented" to the removal. In fact, both Sequoia and the County together decided to remove the Complaint to federal court more than a week in advance. (Id.) As such, there can be no dispute that Defendants have fully satisfied the unanimity rule.[7]

Moreover, courts have found compliance with the unanimity rule under far less compelling circumstances. For example, in *Collins v. Baxter Healthcare Corp.,* 949 F. Supp. 1143 (D.N.J. 1996), the removing defendant obtained, *by telephone*, consent to removal from several other defendants. One defendant then filed a notice of removal stating all defendants consented. The other defendants did not file a timely, separate joinder in the removal. The Court nevertheless held that the statements in the notice of removal, combined with the late-filed joinders and the opposition to the motion to remand, satisfied the unanimity rule. *Id.* at 1146. Here, not only did Sequoia state in its Notice of Removal that all defendants consented, but the County submitted a timely, separate Joinder.

For this same reason, all the cases upon which Plaintiffs rely (including improperly cited, unpublished cases) have no application. Each of those cases simply held that a statement in a notice of removal indicating that all defendants consented is insufficient. None of the defendants in those cases filed a separate joinder, as the County did here. Nor did any of the defendants in those cases specifically authorize counsel to sign a separate joinder on their behalf.[8] Indeed, in

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[7] Indeed, the local rules for this Court expressly allow one party to obtain authorization from another party to sign on their behalf for electronic filings. *See* U.S. District Court for the Western District of Washington, Electronic Filing Procedures for Civil and Criminal Cases, § III. J. (noting that in the case of documents requiring multiple signatures "the filing party . . . shall obtain either physical signatures or authorization for the electronic signatures of all parties on the document").

[8] *See Production Stamping Corp. v. Maryland Casualty Co.,* 829 F. Supp. 1074 (E.D. Wisc. 1993) ("bald assertion of [the other's] consent, contained in the notice of removal itself" is not sufficient); *Baker v. Ford Motor Co.,* 1997 WL 88260 (N.D. Miss. 1997) (notice of removal stated co-defendant joined in removal); *Creekmore v. Food Lion, Inc.,* 797 F. Supp. 505, 507

Smith v. Union National Life Ins. Co., 187 F.Supp.2d 635, 643 (S.D. Miss. 2001), from which Plaintiffs quote extensively, the defendant not only failed to file a separate joinder, the notice of removal did not even recite that all defendants had consented.

2. Any Purported Defect in the Signature Has No Bearing on Federal Jurisdiction

Even if there were any basis for finding a defect in the signature (which there is not), any such defect would have no effect on jurisdiction. In fact, federal jurisdiction exists even when no timely-filed document indicates that all the defendants consented. *See, e.g., Shaw v. Dow Brands, Inc.*, 994 F.2d 364, 369 (court unwilling to punish defendant for "technicality that doesn't go to the heart of jurisdiction"); *Glover v. W.R. Grace & Co., Inc.,* 773 F.Supp. 964, 965 (E.D.Tex.1991) (late-filed joinder did not justify remand); *Hernandez v. Six Flags Magic Mountain, Inc.*, 688 F.Supp. 560, 562 (C.D.Cal.1988) (same).[9]

Case law applying Rule 11 confirms this conclusion. Irregularities in a signature under Rule 11 have no jurisdictional impact whatsoever. *See Casanova v. Dubois*, 289 F.3d 142 (1st Cir. 2002) (court had jurisdiction even though one plaintiff signed notice of appeal on behalf of all plaintiffs); *Thiem v. Hertz Corp*., 732 F.2d 1559 (11th Cir. 1984) (court had jurisdiction even though notice of appeal contained typed names, instead of signatures). "A bungled signature on a pleading is merely a technical defect and not a substantive violation of Rule 11[.]" *Edwards v. Groner*, 116 F.R.D. 578, 579 (D.V.I. 1987); *Grant v. Morgan Guar. Trust Co. of New York*, 638

(E.D. Va. 1992) (notice of removal stated that counsel "has authority to consent to this removal on behalf of [co-defendant] and does so consent"); *Getty Oil Corp. v. Ins. Co. of N. Am.,* 841 F.2d 1254 (5th Cir. 1988) (notice of removal stated that co-defendant "does not oppose and consents").

[9] *See also Parrino v. FHP, Inc.,* 146 F.3d 699, 703 (9th Cir.1998) (failure of all defendants to join removal not fatal to federal jurisdiction); *Soliman v. Philip Morris Inc.,* 311 F.3d 966, 970-71 (9th Cir. 2002) (same).

F.Supp. 1528, 1531 fn.6 (S.D.N.Y.1986 ("irregularities in pleadings may be treated as mere technical defects").

Indeed, the United States Supreme recently affirmed that pleadings with no signature whatsoever are sufficient to establish federal jurisdiction. *See Becker v. Montgomery*, 532 U.S. 757, 768 (2001) (unsigned notice of appeal sufficient to confer jurisdiction); *De Aza-Paez v. U.S.*, 343 F.3d 552 (1st Cir. 2003) (unsigned petition to vacate sufficient to confer jurisdiction).[10]

In the end, the County clearly consented to the removal of this action by authorizing the signature of the joinder papers on its behalf. Plaintiffs do not and cannot in good conscience contend such authorization was not actually given. Assent to the removal was clearly manifested in written form. Plaintiffs' arguments should be rejected and removal should be upheld as proper.

D. SUPPLEMENTAL JURISDICTION OVER PLAINTIFFS' REMAINING STATE LAW CLAIMS IS PROPER.

Pursuant to 28 U.S.C. § 1367(a), the Court has supplemental jurisdiction over Plaintiffs' remaining state law claims because they are part of the same case or controversy as the federal law claims. Plaintiffs do not dispute this conclusion.

Rather, in a two-sentence argument at the end of their brief, Plaintiffs suggest that the court should abstain from exercising supplemental jurisdiction on the purported grounds that those claims raise novel issues of state law.[11] In support, Plaintiffs offer nothing more than the

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[10] Plaintiffs argue that the Court has no jurisdiction because the Eleventh Amendment gives states immunity to federal jurisdiction. Of course, it is the state's prerogative to raise this defense. And the state entity here raises no such issue and, indeed, expressly consents to this Court's jurisdiction. (See County's Joinder in Notice of Removal, Joinder in Motion to Remand, Morrill Declaration and Sivley Declaration.)

[11] To be clear, section 1367 does not permit the remand of properly removed, federal claims. At most, under limited circumstances, the section allows the court discretion to remand the state claims while maintaining jurisdiction over the federal claims. *See In Re City of Mobile* 75 F.3d 605 (11th Cir. 1996); *Borough of West Mifflin v. Landcaster*, 45 F.3d 780, 787 (3d Cir. 1995).

bare allegation that "the case implicates the Washington State Constitution." (Motion to Remand, 23:9-12) By declining to articulate any actual complex or novel issues of state law, Plaintiffs' essentially concede the argument is meritless.

Moreover, it is apparent that the Complaint raises no complex, novel issues of state law. As demonstrated in Defendants' Motion to Dismiss, a simple application of well-established principles of Washington law reveal that all Plaintiffs' state law claims fail as a matter of law and most are patently frivolous.

In addition, the provisions of the Washington Constitution, upon which Plaintiffs rely, provide no greater rights than the United States Constitution. Case law establishes that the Washington State Constitution provides no more extensive rights for challenging elections than the United States Constitution. *See Becker v. County of Pierce* (1995) 126 Wash.2d 11, 21. In addition, Article 1, Section 32 of the Washington State Constitution regarding "fundamental principles" provides no substantive rights at all. *See Brower v. State*, 137 Wash.2d 44, 69; *Becker,* 126 Wash.2d at 21. To confirm all of the above, Plaintiffs rely exclusively on federal cases interpreting the United States Constitution to support their constitutional arguments. (Plaintiffs' First Opposition to Motion to Dismiss, 19:18-21:20)

Nor does the Complaint raise complex, novel issues concerning Washington's statutes. Plaintiffs make clear that "Plaintiffs are NOT challenging certification" of Sequoia's voting system. (See Plaintiffs' First Opposition to Defendants' Motion to Dismiss, at 18:26 (*emphasis in original*)). To certify a voting system, the Washington Secretary of State must find that it

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Therefore, by invoking section 1367, Plaintiffs are requesting that the Court split the case into separate federal and state actions, thereby squandering the judicial resources of the federal and state courts as well as the resources of the parties. *See, e.g., Bensman v. Citicorp Trust, N.A.*, (S.D.Fla. 2005) 354 F.Supp.2d 1330 (exercising supplemental jurisdiction avoided unnecessary duplication of judicial resources).

complies with Washington election statutes regarding accuracy, reliability, verifiability and secrecy. RCW 29A.12.010, 29A.12.020 & 29A.12.080. As Plaintiffs cannot and do not challenge these findings, they cannot and do not raise any no complex, novel issue regarding Washington's statutes.

Finally, abstention is plainly improper when the state authority consents to federal jurisdiction. *See, e.g., Brown v. Hotel & Restaurant Employees & Bartender Intl. Union* (1984) 468 U.S. 491; *Ohio Bureau of Employment Services v. Hodory* (1977) 431 U.S. 471. Here, the only state party, the County of Snohomish, has joined the removal. No issue of comity or deference to the state can exist when the state entity itself requests a federal decision. *See, e.g., Neiberger v. Hawkins*, (D.Colo. 1999) 70 F.Supp.2d 1177, *affirmed* 6 Fed.Appx. 683, 2001 WL 227405 (supplemental jurisdiction appropriate when state defendant removed to federal court); *see also Acri v. Varian Associates*, 114 F.3d 999, 1001 (9th Cir. 1997) (comity relevant to exercising supplemental jurisdiction).

In light of the above, no grounds exist for splitting the action and remanding Plaintiffs' state law claims. Supplemental jurisdiction is indisputably proper.

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IV. CONCLUSION

For the above reasons, Defendants respectfully request that the Court deny Plaintiffs' Motion to Remand.

July 5, 2005 PIERCE & SHEARER, LLP

_____/s/_____
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July 5, 2005

HARRIS, MERICLE & WAKAYAMA, LLC

_____
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