

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION**

JAMES HUNTER; SHERI HUNTER;
BRADLEY HUTCHISON; KATHERINE
HUTCHISON; SUSAN KELLEY;
WILLIAM MCCONNELL; CINDY
O'HEARN; MICHAEL O'HEARN;
BARBARA OLIVER; JAMES RINE;
MARY RINE; STEPHANIE SHOLES

Petitioners,

v.

PAGE COUNTY, IOWA; BOARD OF
SUPERVISORS OF PAGE COUNTY,
IOWA; ALAN ARMSTRONG; JACOB
HOLMES; JAMES KING; CHUCK
MORRIS; CARL SONKSEN

Respondents.

Case No. 1:22-cv-17

**MOTION TO REMAND
OR, IN THE ALTERNATIVE
ABSTAIN, REMAND IN PART & STAY**

(Oral Argument Requested)

Petitioners submit this timely Motion to Remand or, in the alternative, Abstain, Remand in Part and Stay.

This case was originally filed by Petitioners in the Iowa District Court for Page County ("State Court") against the above named seven Respondents on September 19, 2022. All Respondents were served and/or appeared in State Court. Before answering the Petition, Respondents Page County, Iowa and Board of Supervisors of Page County, Iowa filed Notice of Removal on October 18, 2022 pursuant to 28 U.S.C. §§ 1441 and 1446. The Notice of Removal relied upon 28 U.S.C. § 1331 (federal question) based on Petition allegations arising under the United States Constitution, and requested the Court exercise supplemental jurisdiction under 28 U.S.C. § 1367 as to the other claims in the Petition, all of which arise under the laws of the State of Iowa.

Petitioners hereby move the Court to:

- (i) Remand the entire case back to the State Court based upon (a) lack of unanimity required by 28 U.S.C. § 1446(b)(2) and/or (b) lack of original jurisdiction necessary for removal under 28 U.S.C. § 1441(a) when removal is based solely upon federal issues arising out of a defense;
- (ii) Alternatively, (a) decline supplemental jurisdiction pursuant to 28 U.S.C. § 1367(b) and/or abstain under *Pullman*, (b) remand to the State Court all claims other than the federal due process void-for-vagueness claim, and (c) stay these federal proceedings pending resolution of the remanded State Court proceedings; and
- (iii) Pursuant to 28 U.S.C. § 1447(c), if remand is ordered for any reason, award Petitioners just costs and actual expenses, including attorney fees, incurred as a result of the removal.

This Motion is supported by the attached Brief.

Oral argument and hearing is requested based upon the importance of the constitutional, justiciability, and jurisdictional issues presented and the possible need to present testimonial evidence on factual issues related to thereto.

Dated: November 16, 2022

ATTORNEYS FOR THE PETITIONERS

/s/ Theodore Sporer (AT0007453)
Sporer Law Firm
108 Third Street, Suite 302
Des Moines, Iowa 50309-4758
Telephone (515) 989-6080
Facsimile (515) 414-7679
Email teddy@sporerlaw.com
Lead Attorney

/s/ Shawn Shearer (AT0014824)
The Shearer Law Office, P.C.
108 Third Street, Suite 302
Des Moines, Iowa 50309-4758
Telephone (214) 717-1828
Email shawn@shearerlaw.pro
Attorney to be Noticed

CERTIFICATE OF SERVICE

The undersigned certifies the foregoing document was electronically filed using the CM/ECF on November 16, 2022, which will send a notice of electronic filing to all registered counsel of record.

/s/ Shawn Shearer_____