IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*, MARCO WHITE, MARK MITCHELL, and LESLIE LAKIND, Plaintiffs, v. COUY GRIFFIN, Defendant.	Civil Action No. 22-284 WJ-JFR

REPLY IN SUPPORT OF PLAINTIFFS' MOTION TO REMAND

INTRODUCTION

Defendant's opposition confirms he cannot establish federal jurisdiction, especially given this Court's duty to "strictly construe[]" removal jurisdiction and resolve "all doubts" in favor of remand. *Fajen v. Found. Rsrv. Ins. Co.*, 683 F.2d 331, 333 (10th Cir. 1982). Defendant concedes Plaintiffs lack an Article III injury in their own right. Instead, he claims Plaintiffs have so-called "relator standing" on the incorrect theory that the State of New Mexico has suffered Article III injuries from Defendant's forfeiture of office and has, through the *quo warranto* statute, "partially assigned" a claim to redress those injuries to private plaintiffs. *See* Opp. 2–12. Defendant's theory is based on a fundamental misunderstanding of Article III standing doctrine and the *quo warranto* statute, and cannot sustain his burden to establish federal jurisdiction.

Indeed, Defendant cites no *quo warranto* case adopting his "partial assignment" theory of Article III standing, because there are none. He instead relies on *Vermont Agency of Natural Resources v. U.S. ex rel. Stevens*, 529 U.S. 765, 773 (2000), which held that *qui tam* relators

have Article III standing to seek monetary bounties under the federal False Claims Act ("FCA") because the "FCA can reasonably be regarded as effecting a partial assignment of the Government's damages claim" to *qui tam* relators. Defendant mischaracterizes *Vermont Agency* as creating a "body" of Article III standing doctrine for *any* suit brought *ex relatione* in the name of a government. Opp. 3–4. In reality, *Vermont Agency* is limited to *qui tam* claims for damages and courts have refused to stretch it beyond that context, declaring instead that *qui tam* standing under *Vermont Agency* is a "narrow" and "'well-established exception' to the traditional Article III analysis." *Magadia v. Wal-Mart Assocs.*, 999 F.3d 668, 674 (9th Cir. 2021) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1552 n.* (2016) (Thomas, J., concurring)); *see also Hollingsworth v. Perry*, 570 U.S. 693, 709–10 (2013).

No such "well-established exception" applies to *quo warranto* actions challenging a public official's title to office. Federal case law instead shows that *quo warranto* plaintiffs, like all private plaintiffs, must allege a particularized injury sufficient to satisfy Article III. Because Plaintiffs indisputably have no such injury, nor any financial injury "partially assigned" by the State under *Vermont Agency's* theory of *qui tam* standing, this Court lacks jurisdiction.

Defendant likewise fails to establish this case fits the "exceedingly narrow" and "small category" of state-law claims over which the *Grable* doctrine permits federal-question jurisdiction. He fails entirely to address the third and fourth prongs of the *Grable* test, which by itself requires remand. He also erroneously dismisses the State's weighty interest in adjudicating the constitutional qualifications of local officials as irrelevant to the *Grable* test—an argument that disregards binding precedents applying *Grable* and the significant federalism concerns motivating that doctrine. The Court should grant Plaintiffs' motion to remand.

ARGUMENT

I. Defendant Has Failed to Establish Plaintiffs Have Article III Standing.

A. *Vermont Agency* Only Addressed the Article III Standing of *Qui Tam* Relators to Pursue Damages Claims, and Courts Have Refused to Expand It Beyond that Limited Context.

In *Vermont Agency*, the Supreme Court held that "a *qui tam* relator under the FCA has Article III standing" to sue for damages arising from false claims for payment made to the federal government. 529 U.S. at 771–78. The Court explained federal *qui tam* suits involve two "injur[ies] to the United States": (1) the "injury to its sovereignty arising from violation of its laws (which suffices to support a criminal lawsuit by the Government)," and (2) "the proprietary injury resulting from the alleged fraud." *Id.* at 771. The Court then held that the second of these governmental injuries—the "proprietary" or financial injury—supplied a basis for *qui tam* relators' standing. As it explained, an "adequate basis for the relator's suit for his bounty is to be found in the doctrine that the assignee of a claim has standing to assert the injury in fact suffered by the assignor," because the "FCA can reasonably be regarded as effecting a partial assignment of the Government's damages claim" to a *qui tam* relator. *Id.* at 773.[1] The Court cited cases involving private, contractual assignments of proprietary claims, which it deemed analogous to the FCA's partial assignment of damages claims. *Id.* at 773–74. And the Court's holding was "confirmed" by the "well nigh conclusive" tradition of private *qui tam* relator actions for damages in English and American courts. *Id.* at 774, 777.

Later cases have confined *Vermont Agency* to *qui tam* actions for damages and refused to

[1] As explained *infra*, the FCA effects a "partial" rather than a "full" assignment of the government's damages claim because the government retains significant authority to control a *qui tam* suit even after it declines to pursue the action itself.

read it as creating any broader doctrine of "representational" or "relator" standing, contrary to Defendant's arguments. In *Hollingsworth*, the Supreme Court held that private parties lacked standing to assert California's interests in defending a voter-enacted proposition. 570 U.S. at 709–10. Although state law authorized the plaintiffs "to appear and assert the state's interest in the validity of Proposition 8," the Court held none of its precedents "come[] close to establishing that mere authorization to represent a third party's interests is sufficient to confer Article III standing on private parties with no injury of their own." *Id.* The Court deemed *Vermont Agency* "readily distinguishable" since it involved the FCA's explicit "partial assignment of the Government's damages claim" to private parties. *Id.* at 711. And the Court stressed that States lack power to confer Article III standing on private parties, explaining "standing in federal court is a question of federal law, not state law"; "the fact that a State thinks a private party should have standing to seek relief for a generalized grievance cannot override our settled law to the contrary"; and "States cannot alter" federal courts' limited jurisdiction "simply by issuing to private parties who otherwise lack standing a ticket to the federal courthouse." *Id.* at 715.

In *Magadia*, the Ninth Circuit held that a claim under California's Private Attorneys General Act ("PAGA") for labor-law violations did not fall within *Vermont Agency*'s "narrow" Article III standing "'exception' [for] *qui tam* actions." 999 F.3d at 674. The court cautioned that "in the modern era, the [Supreme] Court has rejected several attempts by States to bypass the individualized-injury requirement of Article III by authorizing private plaintiffs to represent the States' interests." *Id.* at 675 (citing *Hollingsworth*, 570 U.S. at 707–13). It then explained that while the PAGA had "several features consistent with traditional *qui tam* actions," it "diverge[d] from *Vermont Agency*'s assignment theory of *qui tam* injury" and "the traditional criteria of *qui*

tam statutes" in key respects. *Id.* at 675–78. A critical difference was that the PAGA effected a "permanent, *full* assignment of California's interest," under which the State lacked authority "to intervene in a case" once it declined to take enforcement action against the purported wrongdoer. *Id.* at 677. This contrasts with the FCA, which effects only a "'a *partial* assignment' of the Government's claim" in that the "government can intervene in a suit, can settle over the objections of the relator, and must give its consent before a relator can have the case dismissed." *Id.* (quoting *Vt. Agency*, 529 U.S. at 773). Because the PAGA "lack[ed] the 'procedural controls' necessary to ensure that California—not the [private plaintiff] … —retain[ed] 'substantial authority' over the case," *Vermont Agency*'s partial assignment theory of *qui tam* injury did not apply. *Id.*; *see also id.* at 678 (citing cases holding that "comparable statutes are not *qui tam* for purposes of Article III" because they gave "'the government none of the procedural safeguards to manage or direct an action' traditionally afforded").

The case law thus makes clear that *Vermont Agency* does not apply outside of the *qui tam* relator context, and, even in that context, only applies when the statute at issue adheres closely to the criteria for traditional *qui tam* actions, as codified in the FCA.

B. Plaintiffs Do Not Have An Article III Injury to Assert Their *Quo Warranto* Claim Under *Vermont Agency's* Theory of *Qui Tam* Relator Standing

No court has applied *Vermont Agency*'s "narrow" Article III standing "'exception' [for] *qui tam* actions" to a *quo warranto* claim. To the contrary, federal courts have uniformly required *quo warranto* plaintiffs to demonstrate a particularized injury sufficient to satisfy Article III, without hinting they could assert any governmentally-assigned injury. *See, e.g.*, *Wynn ex rel. Alabama v. Philip Morris, Inc.*, 51 F. Supp. 2d 1232, 1249 (N.D. Ala. 1999) (*quo warranto* relator suing in the name of the state lacked Article III standing because he alleged "no

injury particular to himself"); *Sibley v. Obama*, 2012 WL 6603088, at *1 (D.C. Cir. Dec. 6, 2012) (dismissing, for lack of Article III standing, *quo warranto* petition challenging President Obama's eligibility for office since plaintiff's interest could have been asserted by "any citizen").

Defendant asks this Court to be the first to apply *Vermont Agency* in a *quo warranto* action. The Court should decline. *Vermont Agency*'s partial assignment theory of *qui tam* standing does not apply to Plaintiffs' *quo warranto* claim for numerous reasons, amplified by this Court's duty to strictly construe removal jurisdiction and resolve all doubts in favor of remand. *See* Mot. 2 (citing cases). Defendant has not met his burden to show Article III standing.

1. Defendant first claims Plaintiffs have Article III standing based on the State's assignment of its "sovereign injury" caused by Defendant unlawfully holding office. Opp. 6–7. But such an injury is not assignable. *Vermont Agency* held only that the government's "*proprietary* injury"—redressable through a claim for money damages—could be "assigned" to a *qui tam* relator so as to confer Article III standing. 529 U.S. at 771–78 (emphasis added); *U.S. ex rel. Ritchie v. Lockheed Martin Corp.*, 558 F.3d 1161, 1173 (10th Cir. 2009) (Briscoe, J., concurring in part) (*Vermont Agency* "emphasized that [the FCA's] partial assignment was only 'of the Government's *damages claim*.'"). While the Court also identified the government's "sovereign injury" arising from "violation[s] of its laws," *Vt. Agency*, 529 U.S. at 771, it did not hold or even suggest that the government could assign *that* injury to private parties so as to confer standing. This makes sense, because under "traditional private law applications of assignment," only "property rights and the concomitant power to bring suit to enforce those rights are assignable; the right to enforce liberty or other non-monetary interests is not." Myriam E. Gilles, *Representational Standing: U.S. Ex Rel. Stevens and the Future of Public Law*

Litigation, 89 Cal. L. Rev. 315, 342 & nn. 154–55 (2001) (citing cases). Translated to the public law context, "assignment may form the basis of representational standing only where the … claim seeks to vindicate a proprietary injury." *Id.* at 342. A contrary rule would impermissibly allow States to expand the federal courts' limited jurisdiction "simply by issuing to private parties who otherwise lack standing a ticket to the federal courthouse" to litigate sovereign claims. *Hollingsworth*, 570 U.S. at 715.

2. Nor do Plaintiffs have Article III standing based on any assignment of the State's "financial or proprietary interests." Opp. 7–8 (incorrectly claiming this "issue is not even contested"). To begin, there can be no such assignment because the *quo warranto* statute limits any claim to recover "fees and emoluments" from the defendant only to a plaintiff who claims "to be entitled to the office." *See* NMSA 1978, § 44-3-6 ("Whenever such action shall be brought against a person for usurping an office" and "the person alleged to be entitled to the office should prevail, the defendant will repay to him all fees and emoluments of the office received by him and by means of his usurpation thereof…"); *id.* § 44-3-12 ("When the judgment is for the person so alleged to be entitled to the office, he may have included therein a money judgment against the defendant … for all fees and emoluments collected by him during the term … and may recover by separate action the damages which he shall have sustained by reason of the usurpation by the defendant of the office…"). The *quo warranto* statute does not vest this "fees and emoluments" damages remedy in any other plaintiff.

Here, Plaintiffs do not assert that they have a right to Defendant's office and thus do not bring a claim under Section 44-3-6 that Defendant has "usurped" an office that is rightfully theirs. Plaintiffs instead bring their claim for "forfeiture" of and "unlawfully holding" office

under Section 44-3-4. *See* Compl. ¶¶ 6, 8, 12, 93, 100 (all referencing Section 44-3-4 and not referencing Section 44-3-6). Since Plaintiffs claim no entitlement to Defendant's office, nothing in the statute "assigns" to them a damages claim against Defendant.[2]

Even if the statute did assign a damages claim to Plaintiffs (and it does not), Plaintiffs assert no such claim here. Plaintiffs' Complaint requests no monetary relief from Defendant; it seeks only declaratory and injunctive relief requiring Defendant's removal and disqualification from public office. *See* Compl., Prayer for Relief ¶¶ 1–5. Although the Complaint is clear on its own, Plaintiffs have also filed a Stipulation expressly disclaiming any intent to seek monetary relief in this action. *See* Stipulation ¶¶ 1–3; *cf. Padilla v. Am. Hallmark Ins. Co. of Texas*, 2020 WL 435457, at *2 (D.N.M. Jan. 28, 2020) ("post-removal stipulation" may serve as evidence confirming lack of federal diversity jurisdiction (citing cases)). Taken together, the Complaint and Stipulation decisively foreclose any possibility that Plaintiffs have Article III standing based on any "partial assignment" of the State's alleged "financial" injuries.[3]

The other statutory provisions cited by Defendant (Opp. 5–6) are irrelevant. Section 44-3-9 merely prevents a *quo warranto* action from becoming moot if the defendant's term of office ends before judgment—a condition that has not occurred here. Nothing in that provision creates

[2] Even assuming Section 44-3-6 were relevant here, Defendant is wrong that the Complaint's omission of the "name of the person rightfully entitled to [Griffin's] office" means it "fails to state a *quo warranto* cause of action." Opp. 5 n.2. *See State ex rel. Anaya v. McBride*, 1975-NMSC-032, ¶¶ 13, 43, 88 N.M. 244, 246, 252 (declining to dismiss *quo warranto* petition for this omission, noting that in some cases it is not "possible to make such an allegation").

[3] Glossing over this hole in his standing theory, Defendant inaccurately distills the inquiry to just two questions: "whether (a) the government has suffered an injury in fact and (b) the government assigned or partially assigned that claim to the relator." Opp. 6 (citing *Vt. Agency*, 529 U.S. at 773). But Defendant must also show Plaintiffs' claim actually asserts and seeks redress for the governmental injury allegedly assigned to it. *See infra* Part I.C.

an independent right to "fees and emoluments" damages; it only refers to those damages insofar as a plaintiff is otherwise entitled to them under Sections 44-3-6 and 44-3-12. *See Bishop v. Evangelical Good Samaritan Soc.*, 2009-NMSC-036, ¶ 11, 146 N.M. 473, 476–77 (courts must "consider the statutory subsection in reference to the statute as a whole and read the several sections together so that all parts are given effect"). And Section 44-3-11 merely authorizes prevailing parties to recover their costs. But "a plaintiff cannot achieve standing to litigate a substantive issue by bringing suit for the cost of bringing suit." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998); *Vt. Agency*, 529 U.S. at 773.

In sum, Plaintiffs cannot have Article III standing based on a damages claim they lack statutory authority to assert, have not alleged, and have expressly disavowed by stipulation.

3. *Vermont Agency* also does not apply here because New Mexico's *quo warranto* statute—to the extent it effects an "assignment" at all—effects a *full* assignment, not a partial one. *Contra* Opp. 4 (claiming statute effects partial assignment, citing no authority). In suits against county officials like Defendant, the *quo warranto* statute mandates no role whatsoever for the State. It does not require private plaintiffs to file a complaint with the Attorney General or a district attorney before filing suit. *See* NMSA 1978, § 44-3-4; *State ex rel. Martinez v. Padilla*, 1980-NMSC-064, ¶ 8, 94 N.M. 431, 434. It gives the State no mechanism to control the litigation, intervene in the suit, or object to a settlement or dismissal. Nor does it limit the binding nature of any final judgment as to the State. Thus, unlike the FCA in *Vermont Agency* and like the PAGA in *Magadia*, New Mexico's *quo warranto* statute "lacks the 'procedural controls' necessary to ensure that [New Mexico]—not the [private plaintiff] … —retains 'substantial authority' over the case," 999 F.3d at 677, precluding application of *Vermont*

Agency's partial assignment theory of standing.

4. Absent a valid assignment of the State's Article III injuries to Plaintiffs and a claim asserting those assigned injuries, *Sprint Communications Co. v. APCC Services*, 554 U.S. 269 (2008), is irrelevant. That case merely held that valid assignees do not lose standing when they contract "to remit the litigation proceeds" to a third party after the assignees receive them. *Id.* at 285–86; *see also id.* at 287 (noting assignees would recover money if they prevailed and it did not "matter what [they] do with the money afterward"). Unlike this case, *Sprint* involved no question about the validity of the assignment in the first instance, nor any dispute that the assignees actually sought money owed to the assignors. *Sprint* gets Defendant nowhere.

Defendant's various "agency" and "fiduciary" arguments (Opp. 10–12) are similarly foreclosed by *Hollingsworth* and, Defendant's own lead case, *Vermont Agency*. *See Hollingsworth*, 570 U.S. at 713 (proponents lacked agency relationship with California because, though state law authorized them to represent state's interests in litigation, "[a]gency requires more than mere authorization to assert a particular interest"; proponents exercised complete control over the litigation and owed no fiduciary duties to the "people of California"); *Vt. Agency*, 529 U.S. at 772 (federal *qui tam* relators lack agency relationship with the United States as to "portion of the recovery retained by the relator"). Defendant's non-binding and inapposite authority pre-dating *Hollingsworth* (Opp. 10–11) does not change the analysis.

C. A Favorable Decision for Plaintiffs Would Not "Redress" Any Financial Injury to the State Because Plaintiffs Seek No Financial Relief.

The "redressability" prong of Article III standing requires Defendant to show "a 'substantial likelihood' that [Plaintiffs'] *requested relief* will remedy the alleged injury in fact." *Vt. Agency*, 529 U.S. at 771 (emphasis added); *see also Sprint*, 554 U.S. at 287 (redressability

focuses on "the injury that a plaintiff alleges"). As discussed above, Plaintiffs neither allege a financial injury nor seek any financial relief from Defendant, *see* Compl., Prayer for Relief ¶¶ 1–5; Stipulation ¶¶ 1–3, and lack a statutory claim to seek such relief in any event. It follows that Defendant cannot show a "substantial likelihood" that Plaintiffs' "requested relief," if granted, would "redress" any alleged financial injuries to the State of New Mexico and, thus, Defendant cannot establish Article III standing.[4]

II. Defendant Has Failed to Establish Federal-Question Jurisdiction.

Defendant claims federal-question jurisdiction is "clear" and accuses Plaintiffs of "ignor[ing]" the relevant standards. Opp. 13–14. Yet it is Defendant who fails to even address the third and fourth elements of the *Grable* test: that the case not only depends on a federal question, but that the question is a "substantial" one of a "pure issue of law" that is not "fact-bound," and is "capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Bd. of Cty. Comm'rs of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1250, 1268 (10th Cir. 2022). Since it is Defendant's burden to establish jurisdiction and all doubts are resolved against removal, Mot. 2, this omission alone requires remand.

1. Citing outdated case law preceding *Grable*, Defendant asserts federal jurisdiction exists whenever a state-law claim "depends upon" a question of federal law. *See* Opp. 15–17 (citing *Country Club Estates, LLC v. Town of Loma Linda*, 213 F.3d 1001 (8th Cir. 2000); *Smith*

[4] Defendant is wrong that Plaintiffs waived challenges to causation and redressability by not raising them in their motion to remand. Opp. 12 n.4. It is Defendant's burden to establish Plaintiffs have Article III standing, Mot. 4–5, and his first attempt to do so was in his opposition to Plaintiffs' remand motion. *See* Mot. 7–8 (noting Notice of Removal did not address standing). Plaintiffs cannot be faulted for responding in this reply brief to a standing theory raised for the first time in Defendant's opposition. At any rate, Article III redressability is jurisdictional, so the Court must consider it. *See Murphy v. Derwinski*, 990 F.2d 540, 543 n.8 (10th Cir. 1993).

v. Kansas City Title & Trust Co., 255 U.S. 180 (1921)). But he ignores a later line of Supreme Court precedent—including *Grable*, *Empire*, and *Gunn*—rejecting that permissive standard.

Under current law, even a federal question that is "the central point of dispute" in a case is not necessarily "substantial." *Gunn v. Minton*, 568 U.S. 251, 259 (2013).[5] That a case depends on a federal question will "*always* be true when the state claim 'necessarily raises' a disputed federal issue, as *Grable* separately requires." *Id.* at 260. It is not enough that a case depends on a federal question; rather, the federal question must *also* be "controlling in numerous other cases." *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S.677, 700 (2006).

In other words, *Grable's* substantiality prong does not look to the importance of the question to the particular case, but "to the federal system as a whole." *Gunn*, 568 U.S. at 260. The question must be a "pure issue of law" that can be "settled once and for all and thereafter governor numerous … cases." *Boulder Cty.*, 25 F.4th at 1268. It cannot be "fact-bound" or "situation-specific," *id.*, as any such decision would be limited to the factual event before the court, *see Gunn*, 568 U.S. at 263.

The "depends upon" standard from *Smith* (Opp. 17) "has been subject to some trimming" and courts now "shy[] away from the expansive view that the mere need to apply federal law in a state law claim will suffice to open the 'arising under' door." *Grable & Sons Metal Prod. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 313 (2005). Rather, a question is "substantial" not because the case "depends upon" it, but because it is a pure issue of law important to the federal system

[5] As Defendant's own opposition confirms, more than federal questions will be in dispute in this case. *See* Opp. 5 (raising state law question of whether *quo warranto* complaint must name the "person rightfully entitled to the office.").

as a whole, such as "the constitutional validity of an act of Congress." *Gunn*, 568 U.S. at 261.[6]

Defendant complains this standard is too demanding, *see* Opp. 18, but *Grable* jurisdiction is intended to be "exceedingly narrow." *Gilmore v. Weatherford*, 694 F.3d 1160, 1171 (10th Cir. 2012); *Gunn*, 568 U.S. at 258 (*Grable* jurisdiction is "a special and small category"). Nor is the requirement to decline federal jurisdiction over "fact-bound" cases mere "dicta," Opp. 17, as both the Supreme Court and Tenth Circuit have held that it is necessary to establish a substantial federal question. *See Gunn*, 568 U.S. at 263 (recognizing federal question was determinative in case but was not "substantial" because its resolution was "fact-bound and situation-specific"); *Boulder Cty.*, 25 F.4th at 1268 ("fact-bound and situation-specific" questions are "insufficiently substantial"). Nor does the fact that this case is at the pleadings stage excuse Defendant's obligation to show the case is not fact-bound, Opp. 17, as the fact-bound requirement was itself established in a case at the pleadings stage, *Empire*, 547 U.S. at 688 (case arose from dismissal on the pleadings); *id.* at 690 (issue was whether "Empire's complaint raises a federal question"); *see also Boulder Cty.*, 25 F.4th at 1238 (based on pleadings).

Here, Defendant does not dispute that the central questions of whether he "engaged in" the January 6th insurrection or gave "aid or comfort" to insurrectionists are "highly fact-specific." Mot. 11; *see* Opp. 12–19. He thus fails to satisfy *Grable's* substantiality prong.

2. Defendant also fails to address the fourth *Grable* prong: that removal not "disrupt[]

[6] Even less relevant is Defendant's faulty Confederate Amnesty Act defense, Opp. 18–19, as jurisdiction cannot be "triggered solely by a federal defense." *Boulder Cty.*, 25 F.4th at 1257. The defense is meritless in any event. *See Greene v. Raffensperger*, 2022 WL 1136729, at *22–*25 (N.D. Ga. Apr. 18, 2022) (holding that the "1872 Act does not provide amnesty prospectively" and refuting contrary decision in *Cawthorn v. Circosta*, 2022 WL 738073 (E.D.N.C. Mar. 10, 2022)).

the federal-state balance approved by Congress." *Boulder Cty.*, 25 F.4th at 1250, 1265. This prong looks to the "appropriate 'balance of federal and state judicial responsibilities," *Gunn*, 568 U.S. at 264, and excludes from federal jurisdiction cases in which States have a "great" interest, *id.* Here, "[t]he State has obviously a great interest in … and a clear right to" determine "whether persons holding office under the authority of the State … are incompetent … by reasons of the disabilities imposed … by the Constitution of the United States." *Louisiana ex rel. Sandlin v. Watkins*, 21 La. Ann. 631, 632 (La. 1869); *accord Gregory v. Ashcroft*, 501 U.S. 452, 463 (1991) ("The authority of the … States to determine the qualifications" of their officers "lies at the heart of representative government.").

Given this interest and the significant federalism concerns at play, there is "no reason to suppose that Congress … meant to bar from state courts state [*quo warranto*] claims simply because they require resolution" of a federal question. *Gunn*, 568 U.S. at 264; *see also* Mot. 10 (citing cases of state enforcement contemporary to ratification of the Fourteenth Amendment). Rather, Congress's choice not to enact a federal "private right of action or preemp[t] state causes of action" shows Congress's intent to leave such matters to States and their courts. *Boulder Cty.*, 25 F.4th at 1267–68; *see also Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 814 (1986).

Defendant does not dispute that removal of a New Mexico action to determine the qualifications of a New Mexico official—and transfer to a federal judge 2,000 miles away, *see* ECF No. 2—would disrupt the federal-state balance. Remand is required.

CONCLUSION

Defendant has not met his burden of demonstrating that Plaintiffs have Article III standing or that this Court has federal-question jurisdiction. For either reason, the Court must remand the case back to New Mexico's First Judicial District Court.

Date: May 9, 2022

Respectfully Submitted,

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Certificate of Service

I hereby certify that on May 9, 2022, the foregoing was filed through the CM/ECF system, which caused counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Joseph Goldberg
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