

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 23-cv-23851-BLOOM/Torres

DR. ROBIN STARKS,

Plaintiff,

v.

CITY OF MIAMI GARDENS, a
Florida Municipal Corporation, and
AND POLICE CHIEF DELMA-NOEL PRATT

Defendants.

ORDER TO REMAND

THIS CAUSE is before the Court upon Plaintiff Dr. Robin Stark’s (“Plaintiff”) Motion to Remand to State Court (“Motion”), ECF No. [61]. Defendant City of Miami Gardens filed a Response in Opposition (“Response”), ECF No. [67]. The Court has reviewed the Motion, the Response, the record in the case, and is otherwise fully advised. For the reasons that follow, Plaintiff’s Motion is granted.

I. BACKGROUND

Plaintiff initially filed her Complaint against Defendants City of Miami Gardens and the Police Chief Delma Noel-Pratt (“The City,” “Noel-Pratt,” together “Defendants”) in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. ECF No. [1-2]. The case was removed to the United States District Court for the Southern District of Florida, ECF No. [1]. On December 4, 2023, Starks filed her Amended Complaint, ECF No. [25], and alleged violations of Fla. Stat. § 112.3187 (the Florida Whistleblower Act), retaliation in violation of the U.S. Constitution, and a civil rights violation pursuant to 42 U.S.C. § 1983.. ECF No. [25]. Each

Defendant filed a Motion to Dismiss, and this Court entered its Omnibus Order granting in part and denying in part the Motions to Dismiss (“Order”) on May 24, 2024. ECF No. [54].

On June 14, 2024, Plaintiff filed her Second Amended Complaint (“Operative Complaint”) asserting only one claim, violation of Fla. Stat. § 112.3187. ECF No. [58]. No federal claims were asserted in the Second Amended Complaint. Plaintiff also alleges that she is a resident of Miami-Dade County, Florida, Miami Gardens “is a municipal government entity organized under the Constitution and laws of Florida,” and Noel-Pratt “is a resident of Broward County, and a Police Chief in the City of Miami Gardens.” *Id.* ¶¶ 11-13. There is no diversity of citizenship among the parties.

On June 28, 2024, Defendant The City filed its Answer and Affirmative Defenses on June 28, 2024, and the parties proceeded to mediation. ECF Nos. [58], [60]. The City took the deposition of Plaintiff on July 10, 2024, and Plaintiff took the deposition of Noel-Pratt— “the only deposition Plaintiff sought in this case” on September 17, 2024. ECF No. [67] at 3. After an unsuccessful mediation conference on September 18, 2024, Plaintiff filed her Motion seeking remand due to the lack of federal claims before this Court on October 4, 2024. *Id.*, ECF No. [61]. The City responds that the Motion should be denied due to considerations of judicial economy and fairness, as it would be prejudiced by an order to remand, and because remand is not reasonable at this point in the litigation. ECF No. [67] at 4.

II. LEGAL STANDARD

A. Jurisdiction

“Indeed, it is well settled that a federal court is obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking.” *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999). “The jurisdiction of a court over the subject matter of a claim. . . cannot

be waived or otherwise conferred upon the court by the parties.” *Id.* (quoting *Jackson v. Seaboard Coast Line R.R.*, 678 F.2d 992, 1000-01 (11th Cir. 1982)) (internal quotations omitted).

Further, a “district court may act *sua sponte* to address the issue of subject matter jurisdiction at any time.” *Herskowitz v. Reid*, 187 F. App’x 911, 912-13 (11th Cir. 2006) (footnote call numbers and citations omitted). This is because federal courts are “‘empowered to hear only those cases within the judicial power of the United States as defined by Article III of the Constitution,’ and which have been entrusted to them by a jurisdictional grant authorized by Congress.” *Univ. of S. Ala.*, 168 F.3d at 409 (quoting *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994)). Accordingly, “once a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue.” *Id.* at 410.

“The decision of whether a district court should exercise its power of supplemental jurisdiction is a matter of discretion.” *Comprehensive Pathology Assoc., P.A. v. UnitedHealthcare of Fla., Inc.*, No. 20-22117-Civ-Scola, 2020 WL 5228764, (S.D. Fla. Sept. 2, 2020) (citing *Business Realty Inv. Co., Inc. v. Insituform Tech., Inc.*, 564 Fed. App’x 954 (11th Cir. 2014)). “Courts are guided by *Gibbs* factors in helping them to exercise this discretion as to whether to exercise supplemental jurisdiction.” *Id.* (citing *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726-27 (1966)). “These factors include ‘considerations of judicial economy, convenience, fairness, and comity.’” *Id.* (citing *Tennant v. Florida*, 111 F. Supp. 2d 1326, 1337 (S.D. Fla. Jan. 13, 2000)). “‘Where federal claims ‘have dropped out of the lawsuit in its early stages and only state-law claims remain’ district courts are strongly encouraged to ‘decline the exercise of jurisdiction.’” *Id.* (quoting *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 350 (1988)). “Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law.” *Gibbs*,

383 U.S. 715, 726. “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

III. DISCUSSION

Plaintiff seeks an order of remand as “the federal claim that formed the basis for removal” is not in the Operative Complaint, and the sole count that remains “is governed exclusively by Florida state law. Specifically, plaintiff’s current case arises under Fla. Stat. § 112.3187(3)(a), Florida’s Whistleblower Statute, over which this Court lacks federal question jurisdiction. ECF No. [61] at 4-5. For that reason, Plaintiff argues remand is warranted pursuant to 28 U.S.C. § 1367(c)(3) and is in the interest of judicial economy and fairness. *Id.* at 6-7.

The City argues the Motion is not reasonable based on “what has transpired in the action” and that it will be prejudiced because Plaintiff seeks “backpay, front pay, and reinstatement” as part of her claim under the Florida Whistleblower Act. ECF No. [67] at 4-5. The City contends this case has been litigated for one year, and an order remanding the case to state court “serves no purpose other than to allow Plaintiff to delay the proceedings and claim additional back pay damages at some future-delayed trial.” *Id.* at 3, 6. Defendant also reasons that considerations of judicial economy and fairness do not weigh in favor of remand.

The Court finds that remand is warranted based on an analysis of the *Gibbs* factors, well-established jurisdictional principles, and the history and posture of the case. As conceded by The City, “there is no specific time limit within which a plaintiff must move for remand.” ECF No. [67] at 4. The codified provision for remand is clear: “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). Specifically, “[n]eedless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law.” *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966).

Defendant correctly argues that whether to exercise jurisdiction over the remaining state law claim should be done through consideration of the *Gibbs* factors: judicial economy, convenience, fairness, and comity. Defendant argues considerations of judicial economy and fairness do not weigh in favor of remand. The Court disagrees.

Judicial economy will be served by remand. When Defendants removed the case, Plaintiff made claims under the First Amendment to the United States Constitution. This Court then addressed two distinct motions to dismiss filed by the Defendants and dismissed the constitutional claims. While the Plaintiff was granted leave to amend, her Complaint asserting the constitutional claim was dismissed without prejudice. The Operative Complaint filed on June 14, 2024 asserts only a Florida law claim. As The City notes, that was four months ago, therefore the argument that this case has been litigated for over one year does not take into consideration that this case proceeded on a Florida state law claim recently. The question of remand is not based on the removal one year ago which The City heavily relies upon in its argument. Instead, Defendants have already received the benefit of the Court's ruling on Defendants' motions to dismiss, supporting that judicial economy weighs in favor of remand.

The cases The City relies upon are distinguishable and unpersuasive. In *Ameritox, Ltd. v. Millenium Laboratories, Inc.*, 803 F.3d 518 (11th Cir. 2015), the Eleventh Circuit found it was an abuse of discretion for the district court to take supplemental jurisdiction over state-law claims that “could have dismissed those claims once their novel nature became apparent” consistent with 28 U.S.C. § 1367(c). *Id.* at 520. The three-year “high-stakes” litigation in *Ameritox* included several years of discovery, and state law questions that were novel and “extraordinarily complex.” *Id.* A ten-day trial ensued on eleven claims and ten counterclaims. *Id.* at 528. After trial, an appeal

was filed to argue, in part, that the district court should not have retained jurisdiction over the supplemental state law claims. *Id.* at 530.

The Eleventh Circuit’s decision addressing concerns of judicial economy and fairness is instructive. Regarding judicial economy, the court found that although different district courts were involved over several years, the docket contained over seven hundred entries, a motion for summary judgment was ruled on, and a ten-day trial was presided over, “considerations of judicial economy [did] not favor retaining jurisdiction over the state-law claims.” *Id.* at 538. Whether “a court poured sufficient resources into a case” was not a proper basis for retaining jurisdiction. *Id.* at 539. The judicial resources in *Ameritox* were significantly greater than in this case and the Eleventh Circuit determined that judicial economy did not favor retaining jurisdiction, citing a fear of creating incentives to “sandbag cases. . . in the hope that courts spend enough resources to make decisions to exercise supplemental jurisdiction” that were otherwise not merited. *Id.* at 538. *Ameritox* certainly does not support retaining jurisdiction where there has been far less use of judicial resources.

Regarding considerations of fairness, the Eleventh Circuit observed “every litigant who brings supplemental claims in court knowingly risks the dismissal of those claims” and “must realize[] that the jurisdiction he invoked was pendent and possibly tentative.” *Id.* (quoting *Pitchell v. Callan*, 13 F.3d 545, 549 (2d Cir.1994)). Consequently, *Ameritox* does not support The City’s argument that remand weighs *against* considerations of fairness. Defendants sought dismissal of the constitutional claim after removal to this Court and this supports that, as in *Ameritox* and *Pitchell*, jurisdiction was always tentative. The City’s argument that it is directly prejudiced because any delay due to remand might enable Plaintiff — if she prevails — to be entitled to additional damages due to her demand for backpay, front pay, and reinstatement does not warrant

retaining jurisdiction. ECF No. [67] at 5. Moreover, The City based its argument that it will be directly prejudiced on having fully litigated the claims for over one year. However as discussed, it has been a far less time since the Operative Complaint was filed. For that reason, while this potential may weigh to a degree against remand, it is not enough on its own to warrant retaining jurisdiction of this case when balancing all considerations.

Regarding The City's argument that its participation in discovery weighs against fairness and judicial economy, the parties engaged in written discovery and depositions after the Operative Complaint was filed, proceeding only with the one claim pursuant to the Florida Whistleblower Act, Fla. Stat. § 112.3187. ECF No. [67] at 2. In *Ameritox*, a case involving complex, multi-year litigation, the court determined fairness concerns due to the completion of discovery “[did] not weigh in favor of retaining jurisdiction.” 808 F.3d at 540. Instead, “[b]oth parties are free to use evidence obtained during discovery to pursue their state-law claims in a proper forum.” *Id.* citing *Annulli v. Panikkar*, 200 F.3d 189, 203 (3rd Cir. 1999) (a litigant who “has spent a great deal of time engaged in discovery. . . can use this evidence to pursue his state law claims. . . and the factors for juridical economy and convenience support remand). Moreover, the question is not whether any discovery took place, but whether the parties have engaged in “substantial discovery” to consider when weighing judicial economy. *Comprehensive Pathology Assoc., P.A. v. UnitedHealthcare of Fla., Inc.*, No. 20-22117-Civ-Scola, 2020 WL 5228764, (S.D. Fla. Sept. 2, 2020). Here, there is no argument that substantial discovery was engaged in during the four months since the Operative Complaint was filed. The City argues that Plaintiff sought only one deposition which it conducted, The City took Plaintiff's deposition, and the parties engaged in written discovery. Consistent with *Ameritox*, *Annulli*, and *Comprehensive Pathology*, that level of discovery does not weigh against remand based on considerations of judicial economy.

Considering convenience, another *Gibbs* factor, *Ameritox* noted the ability to bring all claims in one forum weighed against remand of the state law claims. *Id.* at 539. Conversely, here, there is *only* one claim remaining, and it is a state law claim. Thus, unlike *Ameritox*'s analysis, considerations of convenience do not favor retaining jurisdiction. Instead, the absence of any federal claims weighs in favor of remand due to considerations of comity. *See Comprehensive Pathology Assoc., P.A. v. UnitedHealthcare of Fla., Inc.*, No. 20-22117-Civ-Scola, 2020 WL 5228764, (S.D. Fla. Sept. 2, 2020) (“in *Gibbs*, the Supreme Court noted that ‘needless decisions’ by federal courts over state law ‘should be avoided as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law.’” (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966))).

The Operative Complaint does not raise a federal question and there is no diversity between the parties. Consequently, this court lacks jurisdiction over this matter. “[O]nce a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue.” *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999). Upon a full consideration of the *Gibbs* factors, remand is appropriate pursuant to 28 U.S.C. § 1447(c).

IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. Plaintiff's Motion to Remand, ECF No. [61], is **GRANTED**.
2. The Clerk of the Court is directed to **REMAND** this case to the Eleventh Judicial Circuit in and for Miami-Dade County.
3. The Clerk of Court is directed to **CLOSE** this case.
4. To the extent not otherwise disposed of, any scheduled hearings are **CANCELED**, all pending motions are **DENIED AS MOOT**, and all deadlines are **TERMINATED**.

DONE AND ORDERED in Chambers at Miami, Florida, on October 11, 2024.

A handwritten signature in black ink, appearing to be 'JB' with a long horizontal stroke extending to the right.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

cc: counsel of record