In The United States District Court
For The Southern District Of Ohio
Eastern Division

Ohio Republican Party, et al.,

Plaintiff,

vs. **Case No. 2:08-cv-913**

Jennifer Brunner, **Judge Smith**
Ohio Secretary of State,

Defendants. **Magistrate Judge King**

Motion To Transfer Venue And To Consolidate

Now comes Defendant Secretary of State Jennifer Brunner and, pursuant to 28 USC 1404(a), asks this Court to issue an order transferring this case to the United States District Court for the Northern District of Ohio, Eastern Division, Cleveland branch. Secretary Brunner further requests that, upon transfer to the Northern District, this case be consolidated with *Project Vote, et al., v. Madison County Board of Elections, et al.*, Case No. 1:08-cv-2266. A memorandum in support is attached.

Respectfully submitted,

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Memorandum In Support

On Wednesday, September 24, 2008, several organizational and individual plaintiffs brought suit against Secretary of State Jennifer Brunner and the Madison County Board of Elections in the US District Court for the Northern District of Ohio. *See,* Case No. 1:08-cv-2266, attached as Exh. A. The lawsuit alleged that any interpretation of Ohio law that would prohibit a voter from receiving an absentee ballot within 30 days of registering to vote violates federal law. The Plaintiffs asserted that Directive 2008-63 (issued to Ohio county boards of elections by Ohio Secretary of State Jennifer Brunner allowing voters to both register to vote and contemporaneously request and receive an absentee ballots) is consistent with federal law. The Plaintiffs have asked for a temporary restraining order and Judge Gwin has already issued a briefing schedule and set a hearing on the motion for temporary restraining order. The hearing is scheduled to take place Monday, September 29, 2008 at 12:30 pm. *See,* Order, attached as Exh. B.

Two days later, on Friday, September 26, the Plaintiffs filed this lawsuit, alleging that any interpretation of Ohio law that would allow a newly registered voter to obtain an absentee ballot within 30 days of registering to vote violates federal law.[1] The plaintiffs assert, in direct

[1] Although the Plaintiffs in the case currently pending in this court have brought two additional claims, the main purpose of this litigation appears to prevent any newly registered voter from obtaining an absentee ballot within 30 days of their registration.

contradiction to the claims of the plaintiffs in the Northern District case, that Directive 2008-63 is inconsistent with federal law.

In order to insure that there is a uniform interpretation of federal law, and to further preserve the limited resources of federal courts, Secretary Brunner asks this Court to transfer its case to the Northern District of Ohio so that all issues may be tried to a single judge at the same time. Such a transfer assures uniform adjudication of identical issues presented in both of these cases, furthers the interest of judicial economy, and will provide convenience to the parties and witnesses who otherwise may need to participate in court proceedings in two different courts at the same time.

28 USC 1404(a) provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." The purpose of this statute "is to prevent waste of 'time, energy and money' and 'to protect litigants, witnesses and the public against unnecessary inconvenience and expense…" *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) *quoting Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26-27 (1960). Thus, in ruling on a motion to transfer venue under this statute, the court must consider the private interests of the parties as well as public interests such as systemic integrity and fairness, which is commonly referred to as the interests of justice. *Moses v. Business Card Express, Inc.* 929 F.2d 1131, 1137 (6th Cir. 1991). While the burden on this motion rests with the Secretary, she has satisfied that burden in this case.

The claims brought by the plaintiffs in the Northern District case are nearly identical in their legal scope to the claims brought by the plaintiffs in this case. The plaintiffs in the Northern District argue that any decision prohibiting a newly registered voter from obtaining an

absentee ballot within 30 days of registration violates Section 202 of the Voting Rights Act (claim one), violates the National Voter Registration Act (count two), violates the Civil Rights Act of 1964 (count three), and violates the First and Fourteenth Amendments (count four), violates the due process and equal protection clauses (count five). Meanwhile, the plaintiffs in this Court's case allege that Directive 2008-63 (recognizing that that individuals who register to vote are entitled to contemporaneously obtain and return an absentee ballot during an identified time period) violates Section Two of the Voting Rights Act (count three), violates the National Voter Registration Act (count four), and violates the due process and equal protection clauses of the United States Constitution (count five).[2]

In *Hooker v. Burson*, 960 F. Supp. 1283 (M.D. Tenn. 1996), the district court was faced with a situation that is similar to the litigation presented in our case. In *Hooker*, there was an issue concerning whether a judicial election should be a contested election or a retention election. One candidate sued in the Western District of Tennessee while the other candidate later sued in the Middle District of Tennessee. Both plaintiffs named the same defendant. The Middle District Court began its opinion by announcing that it was transferring its case to the Western District. The Court recognized that "transfer is necessary to avoid actual and potential conflicts between the United States District Courts in Tennessee…." *Id.* at 1284. The Court recognized that the plaintiffs bringing the two actions "cannot both prevail. The issues, therefore, should be decided before a single court to avoid possibly conflicting rulings between the United States District Courts." *Id.* Thus, the court concluded its introductory comments by stating "[t]he parties, as well as the voters and candidates … are entitled to have the United

[2] Although the Plaintiffs in this Court's case bring additional claims under Article II, Section 1, Clause 2 of the US Constitution (count one) and the Help America Vote Act (count two), these differences are minor and should not be the basis for rejection of this motion.

States District Courts … speak with one voice on a single matter of great importance. The strong public interest in the orderly administration of justice and elections compels this result." *Id.*

The *Hooker* court recognized that, pursuant to 28 USC 1404(a), a district court has the power to transfer a case to another federal district where a claim could have been brought if the interests of justice so require. *Id.* at 1291. Because the plaintiffs in the Ohio Republican Party case could have brought this case in the Northern District, 28 USC 1391(b), the Secretary has met requirement of showing venue in the Northern District.

The *Hooker* case then recognized that courts have long held that the interests of justice alone can dictate transferring actions to another federal district court.[3] *Hooker*, 960 F. Supp. at 1291 *citing Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 220 (7th Cir. 1986).

> The federal courts have long recognized that the principle of comity requires federal district courts – courts of coordinate jurisdiction and equal right – to exercise care to avoid interference with each other's affairs … "As between federal district courts, … the general principle is to avoid duplicative litigation." …The concern manifestly is to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result.

Id. quoting West Gulf Maritime Assoc. v. ILA Deep Sea Local 24, 751 F.2d 721, 728-29 (5th Cir. 1985). Courts of Appeals have even found that district courts have abused their discretion in denying motions to transfer venue when issuing injunctions that conflict with other injunctions issued by other courts. *Carver v. Knox County, Tennessee*, 887 F.2d 1287, 1289-93 (6th Cir.

[3] Similarly, courts in the Southern District have recognized the problem of having potentially different rulings in election cases and have transferred subsequently filed election cases to the judge who obtained jurisdiction over the first case. *See,* Order in *Northeast Ohio Coalition for the Homeless v. Blackwell*, Case No. 2:06-cv-896, attached as Exh. C.

1989); *Feller v. Brock*, 802 F.2d 722 (4th Cir. 1986). Such rulings force a defendant to choose which court order to violate.[4]

Conclusion

For the foregoing reasons, this Court should transfer this case to the Northern District of Ohio. Once transferred, the Secretarh respectfully requests that this case be consolidated with *Project Vote v. Madison County*, Case No. 1:08-cv-2266.

Respectfully submitted,

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[4] The likelihood of a transfer in this case should not come as a surprise to the Plaintiffs. See *GOP sues in federal court over absentee voting*, Columbus Dispatch, Sept. 27, 2008, http://www.dispatchpolitics.com/live/content/local_news/stories/2008/09/27/copy/another_suit.ART_ART_09-27-08_B3_7FBEN3C.html?adsec=politics&sid=101, attached as Exh. D, in which Plaintiff's counsel in the case at bar is quoted as having anticipated the possibility of consolidation of the instant case with the first-filed case in the Northern District.

Certificate of Service

This is to certify a copy of the foregoing was served upon all counsel of record by means of the Court's electronic filing system on this 27th day of September, 2008.

/s Richard N. Coglianese
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