

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

John B. Curley, as Chairman of the Lake County,
Indiana, Republican Central Committee, and as a
registered voter, and Jim B. Brown as member of
the Lake County Board of Elections and
Registration and as a registered voter,

Plaintiffs,

v.

Case No. 2:08 cv-00287-JVB

Lake County Board of Elections and Registration,
and the Honorable Thomas Philpot, not
individually but as Lake County Clerk,

Defendants.

Linda Peterson, Roosevelt Phillips, Mary Aaron,
Service Employees International Union, and
Indiana State Conference of National Association
for the Advancement of Colored People Branches,

Proposed Intervenor-Defendants.

PROPOSED INTERVENOR-DEFENDANTS' MOTION TO ENJOIN PENDING STATE COURT PROCEEDINGS, DECLARE STATE COURT TRO VOID, AND ENJOIN PLAINTIFFS FROM ENFORCING VOID TRO

Proposed Intervenor-Defendants Linda Peterson, Roosevelt Phillips, Mary Aaron, Service Employees International Union, and Indiana State Conference of National Association for the Advancement of Colored People Branches, hereby move for an injunction preventing the Lake County Superior Court from conducting further proceedings in this case, a declaration that the temporary restraining order (“TRO”) issued by the state court after the removal petition was filed is void, and an injunction preventing Plaintiffs from attempting to enforce the void TRO.

Proposed Intervenor-Defendants make this motion on the grounds that the Defendant Board of Elections fulfilled the procedural requirements under the removal statute, 28 U.S.C. §1446(d), thus transferring jurisdiction to this Court and divesting the Indiana Superior Court of jurisdiction over the matter. Section 1446(d) states: “Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and *the State court shall proceed no further* unless and until the case is remanded.” (Emphasis added.) Having received proper notice of the removal, the Lake County Superior Court nonetheless continued to conduct hearings on the removed cause and issued a TRO, despite lacking jurisdiction to do so. *See National S.S. Co. v. Tugman*, 106 U.S. 118, 122 (1882) (holding that, after removal petition was filed, “the jurisdiction of the state court absolutely ceased, and that of the circuit court of the United States immediately attached. The duty of the state court was to proceed no further in the cause. *Every order thereafter made in*

that court was coram non iudice, unless its jurisdiction was actually restored.”) (Emphasis added.)

The pending state court proceedings and the TRO issued after the removal petition was filed are void. This Court has authority to enjoin the state court from conducting further proceedings in this matter under §1446(d) and to enjoin Plaintiffs from enforcing the void TRO. *Kansas Public Employees Retirement System v. Reimer & Koger Associates, Inc.*, 77 F.3d 1063, 1069 (8th Cir. 1996) (“This language [in the removal statute] has been considered express authorization to stay state court proceedings; therefore, injunctions to stay state proceedings in removed cases come within the first exception to the Anti-Injunction Act.”) (citing *Mitchum v. Foster*, 407 U.S. 225, 234 & n. 12 (1972); *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 640 (1977)); *E. D. Systems Corp. v. Southwestern Bell Tel. Co.*, 674 F.2d 453, 458 (5th Cir. 1982) (“A state court judgment in a case that has been removed may not foreclose further federal proceedings in the removed case and the federal court may enjoin a party from enforcing the state court judgment.”).

WHEREFORE, Proposed Intervenor-Defendants request that this Court enjoin the pending state court proceedings, declare the state court TRO void, and enjoin Plaintiffs from enforcing the void TRO.

Dated: October 3, 2008

Respectfully submitted,

/s/Barry A. Macey

Barry A. Macey
Attorney No. 8964-49
MACEY SWANSON AND ALLMAN
445 N. Pennsylvania Street, Suite 401
Indianapolis, IN 46204
(317) 637-2345
Fax: (317) 637-2369
bmacey@maceylaw.com

Stephen P. Berzon
Jonathan Weissglass
Danielle Leonard
Anne Arkush
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
(415) 421-7151
Fax: (415) 362-8064
jw@altber.com

Mary Joyce Carlson
MOTLEY RICE LLC
28 Bridgeside Blvd.
Mount Pleasant, SC 29464
(843) 216-9000
Fax: (843) 216-9450
mjcarlson@motleyrice.com

Attorneys for Intervenor-Defendants