

**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 a member of
the Lake County Board of Elections and
Registration and as a registered voter,

Plaintiffs,

v.

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

Defendants.

Case No. 2:08 CV-00287-JVB

**EMERGENCY MOTION TO VACATE TEMPORARY RESTRAINING ORDER ISSUED BY
THE LAKE COUNTY CIRCUIT COURT DIRECTING THE LAKE COUNTY BOARD OF
ELECTIONS TO ESTABLISH EARLY VOTING SITES AND COMMENCE VOTING**

Plaintiffs, by counsel, hereby submit this emergency motion to vacate the temporary restraining order issued by the Lake County Circuit Court directing the Lake County Board of Elections And Registration (the “Board”) to establish early voting sites and to commence voting operations. In support hereof, Plaintiffs state as follows:

1. On October 2, 2008, Plaintiffs filed their *Motion and Application for a Temporary Restraining Order without Notice and Preliminary Injunction* in Lake County Superior Court 2, East Chicago Division, under Cause Number 45D02 0810 PL00190. On October 3, 2008, Lake County Superior Court 2 granted the TRO Order ruling that in person absentee voting must take place in the office of the Lake County Board Of Elections And Registration unless satellite office are established pursuant to a unanimous vote of the Board pursuant to IC 3-11-10-26.3 and the

enjoining Defendants i) from establishing satellite voting offices until the 10 days' notice of the legal authorization of same had been given to the chairmen of the major political parties in Lake County; ii) from establishing satellite voting offices without a unanimous vote of the Lake County Board of Elections and Registration authorizing same; and iii) from conducting electronic voting at any legally established satellite voting offices without a unanimous vote of the Lake County Board of elections and registration authorizing same.

2. On October 3, 2008, Defendant, the Board, filed a *Notice of Removal* to this Court alleging federal issues concerning the absentee voting sites in Lake County. At a hearing on the removal issue of same date, the parties agreed that no early voting sites would be established and no absentee voting at any such locations would be commenced until Friday, October 10, 2008 – after a disposition of the matters pending before this court on removal. This Court made a docket entry in the nature of an agreed order setting forth the above agreement of the parties.
3. The TRO entered by Lake County Superior Court 2 is pending and has not been vacated by this Court.
4. On October 6, 2008, United Steelworkers District 7; Hammond Teachers Federation, Local 394, American Federation of teachers; Earline Rogers, and Roxanna Lugo, Plaintiffs, filed a second action against the Board in the Lake County Circuit Court, under Cause Number 45C01 0810 PL00256, seeking a TRO directing the Board to establish early voting sites in the Cities of Gary, Hammond, and East Chicago and to commence their operations forthwith.

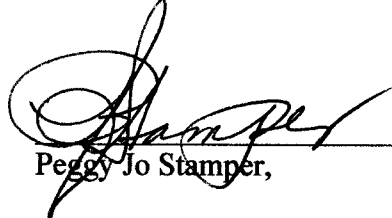
5. The Lake County Circuit Court, Judge Arredondo, granted this TRO in direct contravention of the TRO issued by Lake County Superior Court 2, and in direct contravention of the parties' agreement before this Court to stay any further action to establish early voting sites until after this Court's ruling on the removal issues as set forth herein above.
6. Importantly, the TRO issued by the Lake County Circuit Court was without notice; without the appropriate certificate pursuant to Rule 65 affirming the efforts made to contact the parties in interest; and without naming any real party in interest and/or the parties necessary for a just adjudication of the matter.
7. Given the intense publicity surrounding the TRO issued by Lake County Superior Court 2 and the removal to this Court, along with the fact that the attorneys for the Board and the Circuit Court Clerk are a matter of public record in both Lake County Superior Court 2 proceedings and the proceedings before this Court, it is inconceivable that the Plaintiffs could not determine or at least contact attorneys for the Board or the Circuit Court Clerk.
8. More importantly, the Board is hardly an adverse party to the action filed in Circuit Court. Indeed, the injunctive relief requested was merely for the Board to do what it already intended to do, as indicated in sworn testimony in Lake County Superior 2 and as admitted by attorneys for the Board and/or the Circuit Court Clerk in the action pending in this Court.
9. Plaintiffs in the litigation before this Court are a matter of public record and are the only real parties in interest with an adverse interest to Plaintiffs in the Circuit Court case. Not only did the Plaintiffs in the case pending before this Court get no

notice of the TRO hearing held by the Circuit Court, Plaintiffs were not named as parties. Without naming Plaintiffs in the matter pending before this Court, the TRO issued by the Circuit Court does not state or address a controversy. Plaintiffs in the matter pending before this Court were and are parties necessary to just adjudication pursuant to Trial Rule 12(B)(7).

10. A copy of the TRO issued by the Lake County Circuit Court is attached hereto as Exhibit A.
11. The chair of the Republican Party had not been notified more than 10 days prior to October 6, 2008, that in person absentee voting would occur in Gary, Hammond, and East Chicago.
12. Plaintiffs make this emergency request for the reason that conflicting TRO's have issued by the Superior Court and Circuit Court in Lake County; the hearing on the removal issues are pending before this Court and are set for hearing on Thursday, October 9, 2008; Plaintiffs will suffer irreparable harm if the Board proceeds to establish early voting sites and commences voting; and the Lake County Circuit Court will have usurped the jurisdiction of both this Court and Lake County Superior 2 in contravention of this 28 USC Section 1446 and Trial Rule 12(B)(8), respectively(the "Board").
13. Based on the foregoing, Plaintiffs request that the TRO issued by the Lake County Circuit Court be vacated and that a copy of this Court's Order be served upon the Lake County Circuit Court and the parties in Cause Number 45C01 0810 PL00256.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court vacate the TRO issued by the Lake County Circuit Court and for all other relief proper in the premises.


Respectfully,


Peggy Jo Stamper,

Attorney I.D. #2044-45
SENDAK & STAMPER
209 South Main Street
Crown Point, Indiana 46307
(219) 663-0015

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of October, 2008, service of a true and complete copy of the foregoing was made upon each party, or attorney of record, herein either electronically or by depositing the same in the United States Mail at Crown Point, Indiana, envelopes properly addressed to each of them and with sufficient first-class postage affixed.


Peggy Jo Stamper,