

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

JOHN B. CURLEY et al.,)
)
 Plaintiffs,)
)
 v.)
)
 LAKE COUNTY BOARD OF ELECTIONS)
 AND REGISTRATION et al.,)
)
 Defendants.)

Case No. 2:08-CV-287 JVB

ORDER

On October 2, 2008, Plaintiffs John B. Curley, as Chairman of the Lake County, Indiana, Republican Committee, and as a registered voter; as well as Jim B. Brown, as member of the Lake County Board of Elections and Registration and as a registered voter; sued Defendants Lake County Board of Elections and Registration, and the Honorable Thomas Philpot, the Clerk of Lake County, in Lake County Superior Court. The Plaintiffs alleged that the Lake County Board of Elections and Registration was going to open satellite absentee voting offices in Gary, East Chicago, and Hammond on October 6, 2008, despite not having a unanimous resolution of the Board to open such offices, contrary to Indiana Code § 3-11-10-26.3. In addition, the Plaintiffs claimed that, even if unanimous vote of the Board were not required, the opening of the satellite offices would nevertheless be unlawful as no ten-day notice was given to the chairman of the Republican Party of Lake County, as required by Indiana Code § 3-11-10-37. Along with the complaint, the Plaintiffs moved for a temporary restraining order to keep the Board from opening the satellite offices on October 6.

The following day, on October 3, the Defendants removed the case to this Court. Having

received the case, the Court scheduled a hearing that same day regarding the Plaintiff's motion for a temporary restraining order. At the hearing, the Plaintiffs objected to this Court's subject matter jurisdiction and moved to remand the case. Pursuant to the parties' agreement that the Board would not open satellite offices at least until Friday, October 10, so that the parties could sufficiently prepare for a hearing on the motion for a temporary restraining order and to allow the Court to determine its subject matter jurisdiction, the Court took the motion to remand under advisement.

On October 6, United Steelworkers District 7; Hammond Teachers Federation, Local 394; American Federation of Teachers; Earline Rogers; and Roxanna Lugo sued the Lake County Board of Elections and Registration in the Lake County Circuit Court under cause number 45C010810PL00256. That same day, at 11:19 am, Circuit Judge Lorenzo Arredondo issued a temporary restraining order, directing the Board to "establish early voting sites in the cities of Gary, Hammond, and East Chicago, and to commence their operation forthwith." (Circuit Court's Order at 5.) In the order, the Circuit Court stated that without its order, "voting will not begin in Gary, Hammond, and East Chicago until at least October 10, 2008, and maybe not at all."¹ (*Id.* at 3.) The Circuit Court found that there is "a substantial likelihood that the failure to provide access to early voting to Gary, Hammond and East Chicago violates Article 2, Section 1 of the Indiana Constitution."

On the evening of October 6, the parties in the instant case brought to the Court's attention the Circuit Court order and requested a status conference. The Court set a telephonic

¹October 10 is the date agreed upon by the parties in the instant case until which no satellite offices would be open, pending the Court's ruling on the Plaintiffs motion for a temporary restraining order.

status conference for 12 o'clock noon, on October 7. Shortly before the conference, the Plaintiffs filed a motion seeking to vacate the Circuit Court's October 6 Order. At the conference, the Court heard the parties' arguments on the issue, and now finds as follows:

The Circuit Court's October 6 Order directly contradicts the agreement of the parties in this case, which was approved by the Court, to keep the satellite offices from opening through Thursday, October 9, 2008. The Circuit Court's Order indicates awareness of the agreement and awareness that the instant case was pending before the Court. (*See* Circuit Court's Order at 3.) Therefore, the Circuit Court's Order to open the satellite offices immediate directly interferes with this Court's jurisdiction and powers over the instant case. While the parties in this Court have agreed to keep the offices closed through Thursday, October 9, and the Court approved the agreement so that they could adequately prepare for a hearing on the Plaintiffs' motion for a temporary restraining order, the Circuit Court ordered the Board to contradict its agreement in the instant case. Furthermore, the Circuit Court's Order contemplates that the satellite offices must remain open regardless of the Court's ruling on the Plaintiff's motion for a temporary restraining order.

The principles of federalism dictate that a federal court should interfere with state court proceedings only under the most extraordinary circumstances. Unfortunately, in this instant, the Lake County Circuit Court, by issuing the October 6, 2008, Order in cause 45C010810PL00256 has intruded into the Court's authority to hear cases assigned to it. Accordingly, pursuant to 28 U.S.C. § 1651 and § 2283, the Court **vacates** the Circuit Court's October 6, 2008 Temporary Restraining Order, and **orders** the Lake County Circuit Court to stay any proceedings in cause 45C010810PL00256 insofar as they interfere with this Court's jurisdiction, authority, and power

over this case.

The Plaintiffs' Motion (DE 18) is **granted**.

The Court **further orders** that the United States Marshall immediately serve a copy of this Order upon Lake County Circuit Court, Lake County Circuit Court Clerk, and Lake County Board of Elections and Registration.

SO ORDERED on October 7, 2008, at 12:45 p.m., C.D.T.

S/Joseph S. Van Bokkelen

JOSEPH S. VAN BOKKELEN
UNITED STATES DISTRICT JUDGE