

UNITED STATES DISTRICT COURT  
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, )  
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, )

Intervenor-Defendants. )

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO VACATE**  
**THIS COURT'S OCTOBER 7 ORDER**

Plaintiffs 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 as a registered voter (collectively "Plaintiffs"), through their counsel, respectfully submit this Opposition to Defendants Motion to Vacate this Court's October 7 Order ("Mot. to Vacate").

## BACKGROUND

On October 2, 2008, Plaintiffs commenced an action against the Lake County Board of Elections and Registration and the Honorable Thomas Philpot, not individually but as Lake County Clerk (collectively “Defendants”) in the Superior Court of Lake County. Plaintiffs sought a temporary restraining order and permanent injunction enjoining Defendants from establishing satellite voting offices without a unanimous vote of the Board of Elections and Registration (“Board”). On October 3, 2008, Defendants removed this case to the United States District Court for the Northern District of Indiana pursuant to 28 U.S.C. § 1443(2). This Court conducted a hearing that same day during which the parties agreed and the Court approved that the Board would not open satellite offices at least until October 10, 2008, allowing the parties time to prepare for a hearing on the motion for a temporary restraining order.

Despite the existence of the First Action before the Superior Court, four days later, on October 6, 2008, United Steelworkers District 7; Hammond Teachers Federation, Local 394, American Federation of Teachers; Earline Rogers, and Roxanna Lugo filed a cause of action against the Board in the Lake County Circuit Court, requesting a temporary restraining order directing the Board to establish early voting sites in the Cities of Gary, Hammond, and East Chicago. On the same day, Judge 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.” *See* Circuit Court Order at 5 (Oct. 6, 2008). The issuance of Judge Arredondo’s temporary restraining order was brought to this Court’s attention on the evening of October 6, 2008. A telephonic status conference was held the very next day between this Court and the parties in the instant matter. Following arguments on the issues this Court found that the Circuit Order: (1) directly contradicted the agreement of the parties in this case, which was approved by this Court, to keep the satellite offices from opening through Thursday, October 9, 2008 and (2) indicated its awareness of the agreement and that the instant case was pending before this Court. *See* District Court Order at 3 (Oct. 7, 2008). As a result, this Court issued an Order vacating the Circuit Order pursuant to 28 U.S.C. § 1651 and § 2283, finding that

“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.” *Id.*

On October 9, 2008, Defendants filed a Motion to Vacate This Court’s October 7 Order and Memorandum of Law In Support Thereof. Defendants contend that this Court’s order enjoining the Circuit Court was invalid insofar as is constituted a violation of the Anti-Injunction Act, 28 U.S.C. § 2283. For the reasons discussed below, Defendants arguments are without merit and this Court’s decision to vacate the Lake County Circuit Court’s temporary restraining order and to enjoin the Circuit Court is wholly supported by the All Writs Act and further authorized by the Anti-Injunction Act. Accordingly, Defendants’ motion should be denied.

## ARGUMENT

### **This Court Has Authority to Enjoin State Actions That Interfere With Its Jurisdiction.**

The All Writs Act empowers federal courts to issue “all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). Courts have recognized that the Act authorizes injunctions barring state court actions that could impinge upon a federal court’s “jurisdiction or authority over an ongoing matter.” *In re Baldwin-United Corp.*, 770 F.2d 328, 335 (2d Cir. 1985). Plaintiffs readily acknowledge that the Anti-Injunction Act serves as a check on the broad authority recognized by the All Writs Act, 28 U.S.C. §1651(a). This statutory “check” prohibits a federal court from utilizing its power to enjoin proceedings in state court unless the requirements of one of three exceptions are met. The United States Supreme Court has long recognized that a federal court may enjoin a state court proceeding “in aid of jurisdiction” when necessary “to prevent a state court from so interfering with a federal court’s consideration or disposition of a case as to seriously impair the federal court’s flexibility and authority to decide that case.” *Atl. Coast Line R.R. Co. v. Brotherhood of*

*Locomotive Eng'rs*, 398 U.S. 281, 295 (1970). Despite Defendants' protestations to the contrary, the federal court's determination to protect every citizen's right to cast a valid, registered vote in accordance with state and federal election laws most certainly falls under the auspices of the "in aid of jurisdiction" exception.

Courts have upheld a federal court's injunction predicated on the "necessary" and "in aid of its jurisdiction" exception in multiple contexts. Most often, this exception is applied in the context of in rem proceedings. *See, e.g., Negrete v. Allianz Life Ins. Co. of N. Am.*, 523 F.3d 1091, 1101 (9th Cir.2008); *In re Diet Drugs*, 282 F.3d 220, 234 (3d Cir. 2002). Relevant to the circumstances in the instant matter, moreover, this exception applies "where enjoining the state court proceeding is necessary to protect an earlier federal court injunction." *Burr & Forman v. Blair*, 470 F.3d 1019, 1029 (11th Cir. 2006) (quoting *Wesch v. Folsom*, 6 F.3d 1465, 1470-71 (11th Cir. 1993)); *see also United States v. Fisher*, 864 F.2d 434, 436 (7th Cir. 1988) ("[W]hen a court issues an injunction, it automatically retains jurisdiction to enforce it.").

While some of the cases cited above involved injunctions entered in conjunction with some type of agreement, *i.e.*, consent decree, desegregation decree, the circumstances in this case vary only slightly. Specifically, the parties in this case pledged to honor an agreement among themselves and to this Court that the Board would not open satellite offices in Gary, East Chicago, or Hammond at least until Friday, October, 10, 2008, so that the parties could prepare for hearing on the temporary restraining order. Despite this agreement with the Court, the Board was prepared to open these very satellite offices in direct contravention to the Court's instructions. This would have constituted, absent this Court's order, a breach of an agreement (the force and effect of which is analogous to those agreements cited herein) sufficient to deem

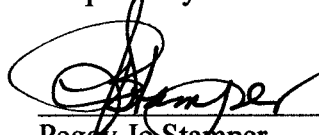
this Court's order an action "in aid of its jurisdiction" and thus immune from a challenge under the Anti-Injunction Act.<sup>1</sup>

In addition, were this Court to idly stand by and do nothing in the face of a competing, later-issued order from the Circuit Court, it would risk allowing competing court actions to proceed, further placing into jeopardy the validity of any and all votes cast during this "judicial race to final judgment." Such a situation would undoubtedly lead to further, unnecessary litigation and prolong the ultimate outcome of the election while casting voter doubt over the entire process. This Court took the steps necessary to protect its jurisdiction over this matter while simultaneously preventing the unwanted scenario described above.

**CONCLUSION**

For the reasons set forth herein, Defendants' Motion to Vacate This Court's October 7 Order should be denied.

Respectfully submitted,



---

Peggy Jo Stamper  
Timothy R. Sendak  
Sendak & Stamper  
45-2044  
209 S. Main Street  
Crown Point, IN 46307  
(219) 663-0015

---

<sup>1</sup> Incorporating Plaintiffs' arguments presented to this Court at the October 10th, 2008 hearing, Plaintiffs add that this Court's Order enjoining the Lake County Circuit Court was fully authorized because of "extraordinary circumstances." The complaint filed by Intervenor in Lake County Circuit Court contained the same defendant, indistinguishable questions of law and fact, and the same ultimate outcome sought by Intervenor in this case. This Court's decision to enjoin the state court proceeding was necessitated by the procedural posture in which Intervenor had placed this case. Moreover, this Court's Order avoided placing the Board with conflicting obligations between the state and federal courts.

Attorney for Plaintiffs,  
John B. Curley and Jim B. Brown

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of October, 2008, a copy of the foregoing “Plaintiffs’ Opposition to Defendants’ Motion to Vacate this Court’s October 7 Order was filed electronically. Notice of this filing will be sent to the following persons by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

David M. Brooks  
Bruner Brooks Koch Sorg & Gerkin  
615 Russell Avenue  
Indianapolis, IN 46225

Karl L. Mulvaney  
Nana Quay-Smith  
Shannon D. Landreth  
Bingham McHale LLP  
2700 Market Tower  
10 West Market Street  
Indianapolis, IN 46204

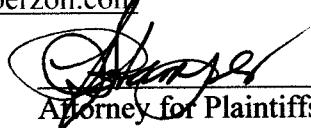
Peggy Jo Stamper  
Timothy R. Sendak  
Sendak & Stamper  
[pjstamper@ameritech.net](mailto:pjstamper@ameritech.net)  
[tsendak@ameritech.net](mailto:tsendak@ameritech.net)

Frederick T. Work  
Frederick T. Work & Associates  
[frederickwork@sbcglobal.net](mailto:frederickwork@sbcglobal.net)

Barry A. Macey  
Macey Swanson and Allman  
[bmacey@maceylaw.com](mailto:bmacey@maceylaw.com)

Stephen P. Berzon  
Jonathan Weissglass  
Danielle Leonard

Anne Arkush  
Altshuler Berzon LLP  
[sberzon@altshulerberzon.com](mailto:sberzon@altshulerberzon.com)  
[jweissglass@altshulerberzon.com](mailto:jweissglass@altshulerberzon.com)  
[dleonard@altshulerberzon.com](mailto:dleonard@altshulerberzon.com)  
[aarkush@altshulerberzon.com](mailto:aarkush@altshulerberzon.com)



---

Attorney for Plaintiffs,  
John B. Curley and Jim B. Brown