UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 08-21243-CIV-ALTONAGA/Brown

League of Women Voters of Florida, *et al.*,	:
Plaintiffs,	:
vs.	:
Kurt S. Browning, in his official capacity, and Donald L. Palmer, in his official capacity,	:
Defendants.	:

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, TO TRANSFER ACTION TO THE NORTHERN DISTRICT OF FLORIDA

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This action was properly brought in the Southern District of Florida and should remain here. Defendants' motion to dismiss for improper venue is unsupported by any applicable law and is premised on a distorted view of the facts and the rights Plaintiffs' seek to redress. This district was the site of extensive proceedings over the earlier version of the challenged statue, and this case was filed as a related matter. This district is also the site of a substantial portion of the constitutionally protected voter registration activity this suit seeks to preserve. Venue is thus proper here, and the motion to dismiss should be denied.

PRELIMINARY STATEMENT

This action was properly brought in the Southern District of Florida and should remain here. Defendants' motion to dismiss for improper venue is unsupported by any applicable law and is premised on a distorted view of the facts and the rights Plaintiffs' seek to redress. This district was the site of extensive proceedings over the earlier version of the challenged statue, and is the site of a substantial portion of the constitutionally protected voter registration activity this suit seeks to preserve. Venue is thus proper here, and the motion to dismiss should be denied.

Defendants' motion to transfer venue to the Northern District also runs a foul of established law and incontrovertible facts. *None* of the factors that are weighed on such motions support transfer here. Defendants have not identified a single witness they intend to call; nor have they proffered, as the law requires them to, specific, supported allegations about how witnesses would be inconvenienced and why their testimony is material. Defendants' assertions in support of other factors are equally out of line with the facts and established law.

Because none of the factors cited by Defendants favors transfer, the only notable impact of venue transfer would be a delay in the disposition of this action, beginning with Plaintiffs' Motion for Preliminary Injunction. The central thrust of this action is the need to obtain timely relief that will allow Plaintiffs' voter registration activities—which lie at the core of the First Amendment's protection—to proceed in this presidential election

year. Defendants' venue transfer motion, if granted, would yield none of the benefits a transfer is intended to achieve and would instead work a fundamental prejudice on the merits of the case.

ARGUMENT

I. Venue Is Proper In This District.

Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiffs' claims—namely, the chilling effect of Florida's third-party voter registration law on Plaintiffs' constitutionally protected voter registration activities—have occurred and will occur in this district.

Contrary to Defendants' assertion, this fact is more than adequately pled in the Complaint and made abundantly clear elsewhere in the record. The Complaint expressly and repeatedly states that Plaintiffs engage in protected voter registration efforts throughout the state, and makes clear that the Amended Law has affected and will seriously damage those efforts. (*See, e.g.*, Compl. ¶¶ 6-10, 16, 19, 36, 38-47, 81-82, 94-106.) The declarations submitted in support of Plaintiffs' Motion for a Preliminary Injunction also make clear that a significant portion of the injury this suit seeks to redress has been and will be felt in the Southern District. (*See* Declaration of Cynthia Hall, dated May 14, 2008 ("Hall Decl.") ¶¶ 4, 6, 7, 8, 16, 21, 25, 28, 30; Declaration of Dianne Wheatley Giliotti, dated May 13, 2008 ("Giliotti Decl.") ¶¶ 8, 10, 13, 16, 17, 33, 37-40, 42, 43.) "In considering a motion to dismiss for improper venue, 'the court may consider matters outside the pleadings such as affidavit testimony.'" *BP Prods. N. Am., Inc. v. Super Stop 79, Inc.*, 464 F. Supp. 2d 1253, 1256 (S.D. Fla. 2006) (quoting *Wai v. Rainbow Holdings*, 315 F. Supp. 2d 1261, 1268 (S.D. Fla. 2004)).

For instance, the Declaration of Dianne Wheatley Giliotti states that approximately 30 percent of the state League's members—the people who conduct the voter registration activities at issue in this litigation—live in counties within the Southern District, and the League makes a particular effort to bolster its registration efforts in those counties. (Giliotti Decl. ¶ 16.) The Declaration of Cynthia Hall states that approximately

153,000 of the AFL-CIO's members—the people who both conduct registration drives and are enfranchised by them—reside in this District, and 132 of its 450 local unions are based here. Hall Decl. ¶ 16. The decisions cited by Defendants in support of that argument, *Corley v. Osprey Ship Mgmt., Inc.*, 2007 U.S. Dist. LEXIS 5083, at *4-5 (S.D. Fla. Jan. 24, 2007), and *Biener Nissan, Inc. v. Nissan N. Am., Inc.*, 2004 U.S. Dist. LEXIS 2756, at *2-3 (S.D.N.Y. Feb. 25, 2004), are distinguishable, as in both of those cases, the plaintiff failed to allege a single event that occurred in the forum district.

Defendants' suggestion that venue is improper in this district because allegations of "future harm" cannot support venue, is contrary to the weight of the caselaw. *See Bishop v. Oklahoma ex rel. Edmondson*, 447 F. Supp. 2d 1239, 1254 (N.D. Okla. 2006) (venue in actions for "declaratory judgments or prospective injunctive relief regarding unconstitutional statutes" is proper where the injury alleged "has or will occur" (internal quotation marks omitted)); *Bay County Democratic Party v. Land*, 340 F. Supp. 2d 802, 808-09 (E.D. Mich. 2004); *Emison v. Catalano*, 951 F. Supp. 714, 721-22 (E.D. Tenn. 1996) (venue was proper where penalties under Tennessee Campaign Contribution Limits Act would be imposed); *Sheffield v. Texas*, 411 F. Supp. 709, 713 (N.D. Tex. 1976) (constitutional challenge to state statute properly brought where "injury alleged . . . has or will occur").

Defendants' assertion that venue in this district is premised on "tangentially related" events (Defs.' Motion at 5) also distorts the nature of Plaintiffs' injury and the central thrust of the case. Because of the Amended Law, Plaintiffs will be unable to conduct voter registration across the state. As a substantial portion of Plaintiffs' voter registration activity has occurred and would occur in this district, venue is proper here. Defendants' argument to the contrary appears to be that venue is proper only in the Northern District because the Amended Law was enacted in Tallahassee. That position has been roundly and routinely rejected by the courts. Suits against state officials alleging that enforcement of state law will infringe constitutional rights "may be brought in [a] district where the *effects of the challenged regulations are felt* even though the regulations were enacted elsewhere." *Bishop*, 447 F. Supp. 2d at 1254 (emphasis in

original) (internal quotation marks omitted); *see Sanchez v. Pingree*, 494 F. Supp. 68, 70 (S.D. Fla. 1980) ("[T]he effect of the statute is felt by Plaintiffs in the Southern District . . . . Therefore, the claim arose in the Southern District."). Courts have applied this rule specifically when entertaining challenges to state regulations of the election process. *See Emison*, 951 F. Supp. at 721-22 ("[S]uits challenging official acts may be brought in the district where the effects of the challenged regulations are felt even though the regulations were enacted elsewhere." (internal quotation marks omitted)); *Bay County Democratic Party*, 340 F. Supp. 2d at 809 (when effects of state directive implementing the Help America Vote Act were "felt statewide," venue was not limited to site of state government); *McClure v. Manchin*, 301 F. Supp. 2d 564, 569 (N.D. W.Va. 2003) (challenge to state law governing ballot access petitions was properly brought where plaintiff was injured).[1]

It is thus irrelevant whether the suit *could have* been brought in the Northern District, and any suggestion that that forum would somehow be more appropriate is incorrect. "[P]roper venues are not mutually exclusive. Indeed, venue is subject to the choice of the plaintiffs, not the defendant." *McClure*, 301 F. Supp. 2d at 569. Furthermore, a motion to dismiss on venue grounds should be denied where the action is brought in a district that "'has a substantial connection to the claim, *whether or not other forums had greater contacts.*'" *Bay County Democratic Party*, 340 F. Supp. 2d at 808-09 (quoting *First of Mich. Corp. v. Bramlet*, 141 F.3d 260, 263 (6th Cir. 1998)) (emphasis in *Bay County Democratic Party*).

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[1] Defendants' footnoted reference to Florida's "home venue privilege" should be disregarded. Venue in the federal courts is governed by federal law, not state law. *See Kerobo v. Sw. Clean Fuels, Corp.*, 285 F.3d 531, 542 (6th Cir. 2002) ("[F]ederal statutes concerning venue sufficiently occupy the field to trigger the application of federal law to all issues relating to where an action will be heard in federal court." (citation omitted)); *see also Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 32 (1988); *Pesaplastic, C.A. v. Cincinnati Milacron Co.*, 750 F.2d 1516 (11th Cir. 1985). It is thus not surprising that Defendants cannot cite a single decision applying 28 U.S.C. § 1391 to dismiss an action for improper venue based on Florida's home venue privilege, or even citing that privilege.

II. The Interests of Justice and Convenience of the Parties and Witnesses Favor Venue in the Southern District of Florida.

Defendants' motion in the alternative to transfer venue to the Northern District should also be rejected. Defendants argue that six factors support transfer: the convenience of witnesses; the location of relevant documents; the convenience of the parties; the relative means of the parties; the forum's familiarity with the controlling law; and the totality of circumstances.[2] None of these factors, when considered in light of actual governing law or the facts, weighs in favor of transfer. Defendants' motion is also procedurally inadequate in key respects and in other respects is based on incomplete or inaccurate recitations of the parties' dealings to date and the relevant facts. A change in venue would not serve the convenience of the witnesses and parties or the interests of justice. Its only notable impact would be to delay the proceedings—an impact that would fundamentally prejudice the very core of Plaintiffs' claims.

"The Eleventh Circuit has articulated a policy of being restrictive in transferring actions, stating that the plaintiff's choice of forum should not be disturbed unless the movant can show that it is clearly outweighed by other considerations." *Carl v. Republic Sec. Bank*, 2002 WL 32167730, at *5 (S.D. Fla., Jan. 22, 2002) (internal quotation marks and alterations omitted); *see Robinson v. Giarmarco & Bill, P.C.*, 74 F.3d 253, 260 (11th Cir. 1996).

A. Convenience of the Witnesses

For three reasons, Defendants have completely failed to meet their burden in asserting this factor as a basis for venue transfer. *First*, this factor looks principally to the convenience of *non-party* witnesses, not to the parties or their employees. *See Mason* at 1362-63; 15 Wright, Miller & Cooper, Fed. Practice & Proc. § 3851 (2008) (hereinafter

[2] Defendants effectively concede that the locus of operative facts and availability of process factors do not weigh significantly in determining whether transfer is appropriate, and while they half-heartedly attempt to suggest that Plaintiffs' own choice of forum "reveals no obvious benefit for Plaintiffs," they do not appear to actually claim that this factor weighs in favor of transfer.

"Wright & Miller"). Defendants have not identified any non-party witnesses or addressed potential inconvenience to them of forum choice. *Second*, in seeking transfer based on the alleged convenience of the witnesses, Defendants must "clearly specify the key witnesses to be called and particularly stat[e] the significance of their testimony." *Mason v. Smithkline Beecham Clinical Laboratories*, 146 F. Supp. 2d 1355, 1362 (S.D. Fla. 2001); *see also see also* Wright & Miller § 3851 ("The party seeking the transfer must specify clearly, typically by affidavit, the key witnesses to be called and their location and must make a general statement of what their testimony will cover."). They have made no such showing. *Third*, the convenience of the potential non-party witnesses who have been identified undeniably would be better served by denial of the motion. Defendants have not specifically identified a single witness they plan to call, let alone a non-party witness or one who would be inconvenienced by the current venue. Defendants state only that (*i*) Plaintiffs' witnesses do not reside in the Southern District of Florida; (*ii*) the Defendants and their staff reside in Tallahassee; and (*iii*) "it is likely that [Defendants] will call some employees, who are residents of Tallahassee." (Defs.' Mot. at 7.) None of these considerations are relevant or properly raised.

Plaintiffs' party witnesses – Cynthia Hall, Marilyn Wills, and Dianne Wheatley Giliotti[3] – have each selected the Southern District as their forum of choice, and each has determined that appearing in the Southern District would not be inconvenient. Ms. Giliotti, in any event, does not reside in the Northern District, so her residence cannot be invoked to support a transfer to that district.

The residence of Defendants is of little relevance to the "convenience of witnesses" analysis, which focuses mainly on the convenience of non-party witnesses. *See Mason*, 146 F. Supp. 2d at 131361; *Timberlake v. Synthes Spine Co., L.P.*, 2008 WL 1836676, at *3 (S.D. Tex. Apr. 23, 2008). Defendants in any event do not assert that they plan to designate either Mr. Browning or Mr. Palmer as a witness or specify the subject

[3] Alma Gonzales, who submitted a declaration in support of the TRO motion, is associated with AFSCME, which is no longer a party to this suit. It is not known at this time whether she will be called to testify at trial.

of any testimony they would give if called. In fact, Plaintiffs have requested to depose Mr. Browning, but Defendants have refused, going so far as to take the position that it is highly unlikely that Mr. Browning's deposition would *ever* be appropriate in this case. Dick Decl. ¶ 9.

Defendants state that they will "likely" call "some employees, who are residents of Tallahassee." (Defs.' Motion at 7.) This is their *only* indication of intent to call any witnesses, and it is a totally insufficient basis to move for transfer under § 1404(a). *See Mason*, 146 F. Supp. 2d at 1362-63 (S.D. Fla. 2001) ("generically identified 'other employees' should not be considered" on venue transfer motion). That statement is also inconsistent with representations made by Defendant during the parties' May 13, 2008 Rule 26(f) conference. Although that conference took place *after* defendants filed their venue motion, counsel made no mention of calling Tallahassee-based employees (or anyone else) as witnesses. *See* Dick Decl. ¶ 10. Defendants cannot legitimately seek to change venue for the convenience of witnesses whose existence they deny in discovery negotiations, whose identity and function they do not disclose in the motion, and the substance of whose testimony they do not even allude to.

Case after case has rejected venue transfer motions based on vague and unsupported assertions that witnesses will be inconvenienced. *See* Wright & Miller § 3851 (the "overwhelming majority of authority" holds that transfer will be denied where the moving party makes "general allegations" concerning witnesses "without identifying them and providing sufficient information to … determine what and how important their testimony will be"); *see also Mason,* 146 F. Supp. 2d at 1362; *Del Monte Fresh Produce Co. v. Dole Food Co., Inc.*, 136 F. Supp. 2d 1271, 1283 (S.D. Fla. 2001); *J.I. Kislak Mortg. Corp. v. Conn. Bank & Trust Co., N.A.*, 604 F. Supp. 346, 348 (S.D. Fla. 1985) ("Courts have been uniform" in denying motions for transfer based on "general allegation[s]" concerning witnesses). *See also Griffin Indus. Inc. v. Couch*, No. 1:05-cv-0684, 2006 U.S. Dist. LEXIS 17285, at *6-7 and n.1 (N.D. Ga. March 23, 2006) (rejecting declarations and affidavits submitted in reply papers where initial allegations

concerning witness convenience were insufficiently supported), *rev'd on other grounds*, 496 F.3d 1189 (11th Cir. 2007).

Plaintiffs have identified several potential non-party witnesses who reside in this District and whose testimony will be material. *See* Dick Decl. ¶¶ 3-4. Plaintiffs have also informed Defendants of their intent to seek depositions from several other non-party witnesses, including current and former employees in Miami-Dade and Broward Counties.[4] *Id.* ¶¶ 6, 7. (Plaintiffs had identified these potential witnesses before Defendants' venue motion was filed, yet the motion makes no mention of them.) Although it is not yet known whether these witnesses will be called to testify at hearing, the impact of venue on deponents weighs in the analysis. *Compare Hewlett-Packard Co. v. Byd:Sign, Inc.*, 2006 WL 2822151, at *12 (E.D. Tex., Sept. 28, 2006) (weighing cost of securing attendance of witnesses at depositions as factor in venue transfer motion); *Riviera Fin. v. Trucking Servs., Inc.*, 904 F. Supp. 837, 839-40 (N.D. Ill. 1995) (transfering venue to alternative forum where witnesses were primarily located).

Finally, Plaintiffs have designated two potential expert witnesses. *See* Dick Decl. ¶¶ 4, 5. Although neither resides in Florida (Prof. McDonald resides in Fairfax, Virginia and Prof. Green in New Haven, Connecticut), travel from their residences to the Northern District is more expensive, more time consuming, and less flexible than travel to the Southern District. *See* Declaration of Carol Anne O'Malley, dated May 16, 2008 ("O'Malley Decl.") ¶¶ 3-5.

B. Location of Relevant Documents

The location of documents does not favor transfer of venue. Neither party has indicated an unwillingness to exchange documents by mail or other delivery. The current

[4] Plaintiffs also wish to depose two Tallahasse-based staff members of the Division of Elections. The convenience of witnesses employed by a party is largely irrelevant to the venue analysis. *See* Wright & Miller § 3851

location of the documents is thus of no real import.[5] *Compare Ivax Corp. v. B. Braun of America, Inc.*, 2001 WL 253253, at *2 (S.D. Fla., Feb. 28, 2001) ("In the real world of computerization and electronic transfer of information," location of documents has little relevance).

C. Locus of Operative Facts

Insofar as this matter has a single locus of operative facts, it is in the Southern District. As discussed, a substantial part of the events giving rise to the claim occurred in this district, which was also the forum for the prior iteration of this dispute. Moreover, the only potential non-party witnesses identified by either party are either in this district or can more readily travel here than to the Northern District.

D. Relative Means of the Parties

Defendants assert that venue transfer is justified in order to avoid the purported cost of "[h]iring separate Miami counsel." (Defs.' Motion at 8.) One need only note that Defendants make that assertion in this Court without the benefit of local Miami counsel to reject it out of hand. In fact, no local counsel has appeared on Defendants' behalf in this litigation or in the related prior litigation in this district (where Defense counsel have not one but three local offices). *See League of Women Voters of Fla. v. Cobb*, 447 F. Supp. 2d 1314, 1315 (S.D. Fla. 2006) (listing counsel appearances); "Gray Robinson Offices," http://www.gray-robinson.com/office.php. Thus, no "separate Miami counsel" is needed.

Defendants also seek to cast their venue preference as an effort to "protect[] taxpayer dollars." Yet they elected to hire and pay for private counsel even though the State's Department of Legal Affairs is required by statute to be available to represent state agencies and officials as needed, *see* Fla. St. § 16.015, including in "suits which challenge the constitutionality of the general laws of the state." *See*

[5] Plaintiffs will shortly be serving third-party document requests on county supervisors, which will include requests for on-site examination of documents located throughout the state.

<http://myfloridalegal.com /pages.nsf/>. The 2007-2008 budget for the State Attorney's office in Miami-Dade County was more than $78.5 million. *See* <http://www.ebudget.state.fl.us> ("The People's Budget" website, maintained by office of Governor Charlie Crist).

Plaintiffs, in contrast, are nonprofit organizations and a voter registration volunteer. The League has a total budget of approximately $81,000 for fiscal year 2008-2009. *See* Giliotti Decl. ¶ 11. The Florida AFL-CIO's 2008 budget allocates $40,000 to voter registration activities, one of which is voter registration. *See* Hall Decl. ¶ 6. Plaintiffs' counsel are all working on a pro bono basis, and in two instances are themselves nonprofit organizations.

It is true that Plaintiffs' counsel reside in Washington, D.C. and New York City, but the Southern District is nonetheless more convenient. There are no direct flights from those cities to Tallahassee. As noted, travel to the Southern District is faster, less expensive, and more flexible than to the Northern District. *See* O'Malley Decl. ¶¶ 2-5.

E. Convenience of the Parties

Defendants next argue that the Northern District would be a more convenient forum because "all parties reside in Tallahassee." (Defs.' Motion at 7.) In general, residence of the parties is given less emphasis than other factors on a motion under § 1404(a). *See generally* Wright & Miller § 3849. While Plaintiffs appreciate Defendants' concern for their convenience, they have expressed their preference for the Southern District and that choice reflects their view on the relative convenience of this district. *Cf. Cellularvision Technology & Telecomm., LP v. Cellco P'ship*, 2006 WL 2871858, at *3 (S.D. Fla., Sept. 12, 2006) ("Because Plaintiff chose to file in the Southern District it is difficult to argue that this forum is inconvenient to [them]."); *see* 15 Wright & Miller § 3849 ("That the plaintiff may be burdened by some inconvenience in its own choice of forum is not an argument that a defendant can make successfully in support of its own transfer motion.").

Although Defendants reside in the Northern District, that fact is entitled to little weight. Both defendants have a statutory obligation to perform their official duties,

including duties under the law at issue, not only in Tallahassee but throughout the state. *See* Fla. St. §§ 97.012(15), 97.0575(4)(b). Little weight should be given to argument that defendants will be unduly burdened by litigation concerning a statute in a venue in which they are, by virtue of the same statute, required to operate on a regular basis. *See Bay County Democratic Party*, 340 F. Supp. 2d at 809 (weighing statutory mandate to enforce election regulation throughout the state against transfer of venue to state officials' home district).

In any event, any potential inconvenience to Defendants is minimal. This Court has scheduled a one-day hearing on the preliminary injunction motion. Although too early to say, should a trial be necessary, it is unlikely to be so extensive as to pose a significant inconvenience.

F. Court's Familiarity with Controlling Law

Defendants assert, without any basis in law or logic, that the Northern District of Florida "may be" more familiar with U.S. constitutional law because it is the seat of Florida's government and because other disputes concerning the election code are pending there. (Defs.' Motion at 9.) If any forum has greater expertise relevant to this action, it is this district, in which the applicable area of constitutional law as applied to the facts in this case has already been litigated. Indeed, this was a driving factor behind Plaintiffs' decision to bring suit here.

G. Plaintiffs' Choice of Forum

As noted, the Eleventh Circuit's "restrictive approach" to venue transfer reflects the judgment that the plaintiff's choice of forum is entitled to "significant weight." *Carl*, 2002 WL 32167730, at *5. A plaintiff's choice of forum is entitled to deference even if the plaintiff is not a resident of the forum. *Id.*; *see Carrizosa v. Chiquita Brands Intern., Inc.*, No. 07-60821-CIV, 2007 WL 3458987, at *3 (S.D. Fla., Nov. 14, 2007).

This district remains the most logical and efficient forum even if the case remains before the judge to which it is now assigned. As discussed more fully below, this is a highly time-sensitive matter in which the proceedings relating to prompt injunctive relief

are well underway. Insofar as any of the other factors carry any weight on this motion, they tilt heavily in Plaintiffs' favor. In the complete absence of any factor that weighs in favor of venue transfer, Plaintiffs' initial choice of forum should remain undisturbed.

H. The Interests of Justice

Trial efficiency and the interests of justice would be far better served if the case remains in this District. There can be no dispute that the speed with which this matter can proceed to disposition, at least of the Preliminary Injunction motion, is critically important. Should the Amended Law become enforceable in July, when the Consent Order will likely expire, Plaintiffs will be forced to suspend all voter registration efforts—efforts which lie at the core of the First Amendment's protections and are critically impacted by timely planning and execution. This cessation would come just as those efforts become most crucial in the months leading up to the presidential election. Consent Order ¶ 1; Giliotti Decl. ¶ 37; Hall Decl. ¶¶ 3, 23.

Plaintiffs agreed to withdraw their earlier motion for a Temporary Restraining Order in explicit reliance on the understanding that the parties could proceed to hearing on the Preliminary Injunction motion on an expedited schedule to which Defendants agreed. This Court has already entered a Consent Order, set a briefing schedule and a hearing date. The parties have held their Rule 26(f) conference and negotiated extensively over the scope and timing of discovery. And all counsel have already been granted admission *pro hac vice*.

In addition, the Northern District has a busier docket than this court. *See* Federal Court Management Statistics, U.S. District Court - Judicial Caseload Profile, Florida Northern, http://www.uscourts.gov/cgi-bin/cmsd2007.pl (last visited May 16, 2008); Federal Court Management Statistics, U.S. District Court - Judicial Caseload Profile, Florida Southern, http://www.uscourts.gov/cgi-bin/cmsd2007.pl (last visited May 16, 2008). The average caseload of judges in the Northern District is 409, versus 309 in the Southern District. *See id.* The median time from filing to pretrial disposition is roughly 3.7 months longer in the Northern District than the Southern District. *See* Admin. Ofc. of U.S. Courts, "Federal Judicial Caseload Statistics" (March 31, 2007) (available at

http://www.uscourts.gov /caseload2007/contents.html). The Preliminary Injunction hearing is currently scheduled for June 19 in this Court. If this case were transferred and the median statistics for the two courts were to hold, the hearing or disposition of the Preliminary Injunction hearing could be delayed until mid-October—*after* the book-closing deadline for the upcoming general election.

Indeed, because none of the factors cited by Defendants favors transfer, delay would be the *only* material impact of granting Defendants' motion. A change in venue could thus predetermine, or at least significantly impact, the substantive outcome of the case, and thus violate the core premise of the venue statute.

Defendants bring this motion after having fully litigated and lost a Preliminary Injunction motion in the earlier proceeding; having induced Plaintiffs to withdraw their TRO motion by agreeing to prompt briefing and hearing of the new Preliminary Injunction motion; having had two chances to review Plaintiffs' petitions for injunctive relief without filing a substantive reply; having been informed that Plaintiffs seek to depose and potentially call to testify at the hearing several non-party witnesses within this District; and having declined, both in this motion and in the parties' Rule 26(f) conference and related discovery negotiations, to identify a single witness they intend to call, let alone a witness who may be inconvenienced by venue remaining in this District. Under these circumstances, the interests of justice and trial efficiency solidly favor denial of Defendants' motion.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court deny Defendants' motion to dismiss for improper venue and deny Defendants' motion to transfer venue to the United States District Court for the Northern District of Florida.

Dated: May 16, 2008

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