

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

OCT -3 AM 8:58
FOR THE
OF THE

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.

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

Cause Number: 45D02-0810-PL-00190

2 08 CV 287

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §1443(2), Defendant, Lake County Election Board (“LCEB”), gives notice of the removal of this action to the United States District Court for the Northern District of Indiana from the Superior Court of Lake County, and in support hereof states:

1. On or about October 2, 2008 an action was commenced against the Lake County Election Board in the Superior Court of Lake County, Cause No: 45D02-0810-PL-00190, by the issuance of a Summons and Complaint. Removal of this action is therefore proper and timely.

2. LCEB files with this Notice of Removal a copy of all process, pleadings and orders served upon it thus far in this action.

3. Written notice of the filing of this Notice of Removal will be served on all parties and a copy will be filed with the Clerk of the Lake Superior Court pursuant to the requirements of 28 U.S.C. §1446(d).

4. The actions of the LCEB which Plaintiffs claim violate Indiana law were premised in part upon the LCEB's understanding of its obligations under Section 2 of the Voting Rights Act of 1965, 42 U.S.C. §1973(a) and (b), which prohibits any voting standard, practice or procedure which results in the denial or abridgment of the right of any citizen of the United States to vote on account of race or color.

5. Prior to the May 2008 primary election, the LCEB pursuant to I.C. §3-11-10-26.3(b) and by a unanimous vote of its five members established early voting sites in Gary, East Chicago and Hammond in order to facilitate absentee voting by the residents of those cities, a substantial percentage of whom are members of racial and ethnic minority groups, to provide them an equal opportunity as voters who reside in or near Crown Point, Indiana to cast an early absentee ballot.

6. The accessible location of polling places is necessary to a fair process in which all citizens can cast a vote and is subject to regulation by the Voting Rights Act of 1965, as amended. *Shirt v. Hazeltine*, 336 F. Supp. 2d 976 (U.S. Dist. S.D., 2004).

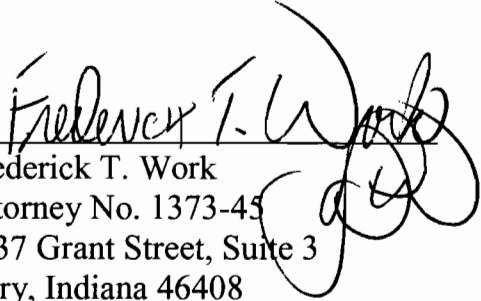
7. The requirement of a unanimous vote under I.C. §3-11-10-26.3(b) is highly unusual under Indiana law. It does not allocate government power under the basis of any general principle but imposes an unusual burden on minority voter interests under *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457 (1982), and *Hunter v. Erickson*, 393 U.S. 385 (1969). Minorities would benefit most from an expansion of voting locations, from adding voting locations in other communities, and from compliance with the Voting Rights Act.

8. Placing an early voting site in predominantly white Crown Point, Indiana, but not in predominantly African-American and Hispanic communities such as Gary, East Chicago and Hammond, and requiring members of racial and ethnic minority groups to travel to Crown Point in order to cast an early absentee ballot, would lessen the opportunity of those protected minority class members to participate in the political process by creating severely unequal opportunities to exercise their right to vote early by absentee ballot, in violation of 42 U.S.C. §1973(a) and (b). *Smith v. Meese*, 821 F.2d 1484, 1490 (11th Cir. 1987) (“The constitutional protection for the right to vote encompasses...voting with absentee ballots”.)

8. Because there exists a colorable conflict between Indiana law and the LCEB’s obligations under Section 2 of the Voting Rights Act, a law requiring equal voting rights for all citizens irrespective of their race, and because defendants are accused of refusing to comply with a state statute that is inconsistent with federal statutory and constitutional law, removal of this case is proper under 28 U.S.C. §1443(2), commonly known as the “refusal clause”, which may be invoked whenever defendants make a colorable claim that they are being sued for not acting pursuant to a state law which, though facially neutral, would produce or perpetuate a racially discriminatory practice as applied. *Greenburg v. Veteran*, 889 F.2d 418, 421(2nd Cir. 1989)(citing *White v. Wellington*, 627 F.2d 582, 586 (2nd Cir. 1980)); *Alonzo v. City of Corpus Christi*, 68 F.3d 944, 946 (5th Cir. 1995).

Respectfully submitted,
Frederick T. Work & Associates

By:


Frederick T. Work
Attorney No. 1373-45
3637 Grant Street, Suite 3
Gary, Indiana 46408
(219) 884-6000