

STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

IN THE LAKE SUPERIOR COURT  
CIVIL DIVISION, ROOM NO. TWO  
SITTING AT EAST CHICAGO, INDIANA

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.

45002 0810 PL0 0190

Cause Number: \_\_\_\_\_

**Filed in Open Court**

OCT 03 2008

SUPERIOR COURT OF LAKE COUNTY  
CIVIL DIVISION, COURT ROOM 2

**TEMPORARY RESTRAINING ORDER**

Comes now the Plaintiffs, John B. Curley, as Chairman of the Lake County 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, having filed their verified Complaint for Temporary Restraining Order, Permanent Injunction, and Other Relief, and its Motion for Temporary Restraining Order without Notice and Preliminary Injunction.

Counsel further files Affidavit regarding Notification pursuant to Indiana Trial Rule 56(B).

Witnesses sworn and evidence heard.

The Court, having been duly advised in the premises now finds as follows:

**RECEIVED**

OCT 03 2008

*Thomas R. Philpot*  
CLERK LAKE SUPERIOR COURT

1. At all material times the Plaintiff, John B. Curley (hereinafter, "Curley"), has been the Chairman of the Lake County, Indiana, Republican Central Committee, and a registered voter in Lake County, Indiana.

2. At all material times the Plaintiff Jim B. Brown (hereinafter, "Brown") has been an appointive Republican member of the Lake County Board of Elections and Registration, and a registered voter in Lake County, Indiana.

3. At all material times the Defendant, the Lake County Board of Elections and Registration (hereinafter, "the Board") has been the duly constituted agency administering elections in Lake County, Indiana pursuant to I.C. 3-6-5.2, and consists of five (5) members, two members appointed by each chairman of each major political party, and the Circuit Court Clerk as ex officio member.

4. At all material times the Defendant, the Honorable Thomas Philpot (hereinafter, "the Clerk") has been the duly elected and serving Clerk of the Circuit and Superior Courts of Lake County, Indiana.

5. Offices for the Clerk of the Superior Courts of Lake County have been established at the county courthouses in the cities of East Chicago, Gary, and Hammond, pursuant I.C. §33-33-45-1. The Circuit Court Clerk serves as the Clerk of the Superior Courts of Lake pursuant to I.C. §33-32-2-1.

6. On February 29, 2008, the Board unanimously passed Resolution Number 2008-1 authorizing electronic voting by absentee ballot at its office.

7. On September 23, 2008, the Board voted on a proposed resolution to open satellite offices for absentee voting before an absentee voter board, pursuant to I.C. §3-11-10-26.3 (a) in the the cities of Gary, Hammond, and East Chicago, by a vote of three (3) to two (2)

8. The vote on the proposed resolution was three (3) members in favor, and two (2) members opposed. Brown cast one of the votes opposed.

9. I.C. §3-11-10-26.3(b) requires such a resolution to be adopted unanimously by the entire

membership of the Board in order to have effect. Thus, the resolution failed.

10. The Board then considered a motion to establish absentee voter boards pursuant to provisions of I.C. §3-11-10-26(a)(1) in the Clerk's offices in the cities of Gary, Hammond, and East Chicago. The vote on the proposed motion was three (3) members in favor, and two (2) members opposed. Brown cast one of the votes opposed.

11. Because voting in Lake County, Indiana, is governed by the said I.C.3-6-5.2, absentee ballots voted in person must be cast in the office of the Board, unless cast in satellite Board offices established pursuant to a unanimous vote of the Board pursuant to I.C. §3-11-10-26.3(a). Satellite Board offices can be established in places other than the Board's primary office, but must be established by unanimous vote of the Board. Thus, if the motion was to permit absentee voting in person in the Clerk's offices in the three cities, it was contrary to statute.

12. Even assuming *arguendo* that the Board could now conduct absentee voting in the office of the Circuit Court Clerk, there is no office of the Circuit Court Clerk in Hammond, Gary, or East Chicago Superior courthouses. Short of the legal establishment of satellite offices pursuant to I.C. §3-11-10-26.3, there is no legal authority to establish in-person absentee ballot voting at any office of the Superior Court Clerk.

13. Alternatively, if the Board's motion could be construed as one to establish satellite offices in the three cities, the motion failed. Even if I.C. §3-11-10-26(a)(1) might be interpreted in the alternative, there is clearly no option for the Board to do both, and the Board has already designated the its office for in person absentee voting in its resolution of February, 2008.

14. On information and belief, the Board's administrative staff and the Clerk are implementing the establishment of satellite offices for the purposes of allowing absentee voting in person in the Superior Court Clerk's offices in Gary, Hammond, and East Chicago, in order to commence operations and absentee voting on Monday, October 6, 2008.

15. Even if, *arguendo*, voting were to be permitted in said satellite offices, the Board has failed to comply with statutory requisites, namely I.C. § 3-11-10-37, which requires notice to the county chairmen of the

major political parties ten (10) days prior to absentee voting begins, of the number of absentee voter boards to be appointed, so that each county chairman can name members of the respective absentee voting boards for each satellite location.

16. Curley has received no notice regarding the number of absentee voter boards to be appointed. Therefore, as a matter of law absentee voting at satellite offices cannot commence for at least ten days from the issuance of such notice.

17. On information and belief, the administrative staff of the Board and the Clerk are preparing to implement election voting of absentee ballots in the Superior Court Clerk's offices in Hammond, Gary, and East Chicago Superior Courthouses commencing Monday, October 6, 2008.

18. Pursuant to I.C. 3-11-10-26.2, the Board may implement electronic voting systems only upon unanimous vote of the Board's entire membership. The Board has not done so, and therefore, as a matter of law, the Board is precluded from conducting electronic absentee voting at the Superior Courthouses in Hammond, Gary, and East Chicago.

19. The aforesaid conduct of the Defendants was done in complete and total disregard of the statutory law governing the establishment of satellite offices for absentee voting.

20. Unless retrained and enjoined by the Court, voters who would cast absentee ballots at the illegally established satellite voting sites risk having their votes held for naught and disallowed at a later date.

21. Because illegal absentee voting at unauthorized satellite offices is imminent and, once commenced, risks illegal dilution of otherwise valid votes in the November, 2008, General Election, including without limitation, the voting rights of each of the Plaintiffs as registered voters, an emergency exists, the Plaintiffs are without an adequate remedy at law, and injunctive relief should issue prohibiting the commencement of absentee voting operations at illegally established satellite voting until further order of the Court.

**NOW, THEREFORE, IT IS ORDERED AS FOLLOWS:**

1 The Defendants, Lake County Board of Elections and Registration, and the Honorable Thomas Philpot, not individually but as Lake County Clerk, and each of them, are hereby restrained and enjoined from establishing satellite voting offices until ten days' notice of the legal authorization of same has been given to the chairmen of the major political parties in Lake County and appointments by them to the respective absentee voter boards for each such office have been made according to statute;

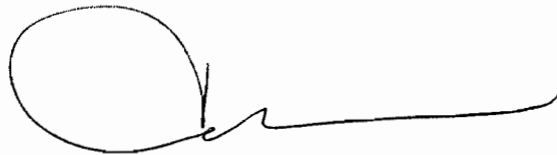
2. The Defendants Lake County Board of Elections and Registration, and the Honorable Thomas Philpot, not individually but as Lake County Clerk, and each of them, are further restrained and enjoined from from establishing of satellite voting offices without a unanimous vote of the Lake County Board of Elections and Registration authorizing same.

3. The Defendants Lake County Board of Elections and Registration, and the Honorable Thomas Philpot, not individually but as Lake County Clerk, and each of them, are further restrained and enjoined from 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.

4. Bond for issuance of this temporary restraining order is set in the penal sum of \$10,000.00.

5. Hearing on the Plaintiff's Motion for Preliminary Injunction is set for the 8<sup>th</sup> day of October, at 9:00 o'clock A.m, local time.

Date: 10-3-08



Judge, Lake Superior Court  
Civil Division, Room No. 2