

**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  
as Secretary of State of the State of Florida; and  
**DONALD L. PALMER**, in his official capacity as  
Director of the Division of Elections within the  
Department of State of the State of Florida,

Defendants.

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**ORDER**

**THIS CAUSE** came before the Court upon Defendants' Motion to Dismiss for Improper Venue or, in the Alternative, Motion to Transfer Action [D.E. 20], filed on May 8, 2008. Defendants move to dismiss this action pursuant to Federal Rule of Civil Procedure 12(b)(3) for improper venue under 28 U.S.C. § 1391. In the alternative, Defendants seek transfer of this action to the Northern District of Florida pursuant to 28 U.S.C. § 1404. The undersigned has carefully considered the parties' written submissions, the record, and applicable law.

**I. BACKGROUND**

Plaintiffs are nonprofit organizations and a private citizen engaged in third-party voting registration in Florida. They filed this suit challenging the constitutionality of Florida's recently enacted statute regulating third-party voter registration. *See* Fla. Stat. §§ 97.021(36), 97.0575.

Plaintiffs, League of Women Voters of Florida ("League of Women Voters" or "League") and Florida AFL-CIO ("AFL-CIO"), are headquartered in Tallahassee, which is located in the

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Northern District of Florida. Plaintiff, Marilyn Wills, is also a resident of Tallahassee. The League of Women Voters of Florida has “25 local Leagues and two member-at-large units located in cities and counties throughout Florida, including Miami-Dade County. Local Leagues and individual League members sometimes do voter registration on their own initiative, without other League members’ assistance, collecting and submitting forms on their own.” (*Compl.* [D.E. 1] at ¶ 16). About 30 percent of the League’s members and volunteers live in the Southern District of Florida, and the League is engaged in a specific effort to register Hispanic citizens in this district due to historical under-representation of the group in the political process. (*See Am. Decl. of D. Gilotti* [D.E. 24-2] at ¶ 16). The Florida AFL-CIO is a voluntary association of trade unions comprised of “approximately 450 local unions throughout the state and represents more than 500,000 active and retired Florida workers living in the state.” (*Compl.* at ¶ 19). Of these local unions, 132 are located in the Southern District and about 153,000 of the AFL-CIO’s active and retired workers live in the District. (*See Am. Decl. of C. Hall* [D.E. 24-3] at ¶ 16).

Defendant, Kurt S. Browning, the Secretary of State of Florida, is the state’s chief elections officer. (*See Compl.* at ¶ 27). He is responsible for implementing and enforcing the voter registration laws. (*See id.*). Defendant, Donald L. Palmer, is the Director of the Division of Elections of the Florida Department of State. Under the statute challenged by Plaintiffs, the Division of Elections is charged with enforcing and administering the law. (*See id.* at ¶ 28). The offices of both Browning and Palmer are located in Tallahassee.

Under the challenged law, the State will impose a fine for each registration application submitted to a third-party that is received by the Division of Elections “more than 10 days after the

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applicant delivered the completed voter register application” to the third-party. Fla. Stat. § 97.0575(3). The law establishes further penalties for registration applications submitted to the Division by third-parties after the “book closing deadline” for the election, for applications not submitted at all, and for willful conduct. *Id.* Plaintiffs allege the vagueness of the law and the potential fines associated with continuing voter registration activities have chilled Plaintiffs’ exercise of their First Amendment rights. (*See Compl.* at ¶¶ 74-93). Plaintiffs also allege members of the League of Women Voters “who registered voters in previous years, and who would like to register voters in 2008, have been forced by the challenged law to refrain from participating in the League’s voter registration activities out of fear of personal financial liability.” (*Id.* at ¶ 101). The Florida AFL-CIO similarly suspended voter registration activities due to the new law.<sup>1</sup> (*See id.* at ¶ 106).

A previous version of the statute Plaintiffs challenge in this case was found unconstitutional in a case litigated in this district before Judge Seitz. *See League of Women Voters of Florida v. Cobb*, 447 F. Supp. 2d 1314 (S.D. Fla. 2006).

## II. DISCUSSION

### A. Venue

In their Motion, Defendants contend venue in the Southern District of Florida is improper and seek dismissal of this action on that ground. Title 28 Section 1391(b) of the United States Code governs venue in actions alleging jurisdiction in federal court based on violations of federal law or

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<sup>1</sup> On April 30, 2008 the Court entered a Consent Order [D.E. 15] whereby Defendants agreed the challenged law will not be enforced until completion of a rulemaking proceeding, which will likely conclude in early July. It is not clear whether Plaintiffs’ voter registration activities have resumed in the interim.

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the United States Constitution and provides that those actions may be brought only in:

(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

Plaintiffs assert venue in this district based on subsection (2), arguing that a substantial portion of the events giving rise to their claims has occurred and will occur here.

“On a motion to dismiss based on improper venue, the plaintiff has the burden of showing that venue in the forum is proper.” *Wai v. Rainbow Holdings*, 315 F. Supp. 2d 1261, 1268 (S.D. Fla. 2004) (citations omitted). “The court must accept all allegations of the complaint as true, unless contradicted by the defendants’ affidavits, and when an allegation is so challenged the court may examine facts outside of the complaint to determine whether venue is proper.” *Id.* (citations omitted).

Defendants apparently agree that in an action seeking injunctive or declaratory relief alleging potential future harm, proper venue under Section 1391(b)(2) lies in a district where the future harm will occur.<sup>2</sup> (*See Reply* [D.E. 34] at 2). Defendants argue, however, any future harm to Plaintiffs in this case will occur only in the Northern District of Florida, because all Plaintiffs reside in that district. As stated, members of the League of Women Voters and the AFL-CIO reside in the Southern District and both organizations have conducted and plan to conduct voter registration drives in the district.

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<sup>2</sup> *See Bishop v. Oklahoma*, 447 F. Supp. 2d 1239, 1254 (N.D. Okla. 2006) (“In the context of declaratory judgments or prospective injunctive relief regarding unconstitutional statutes, it has been held that ‘suits challenging official acts may be brought in the district where the *effects of the challenged regulations are felt . . .*’”) (quoting *Emison v. Catalano*, 951 F. Supp. 714, 722 (E.D. Tenn. 1996)) (emphasis in *Bishop*); *Farmland Dairies v. McGuire*, 771 F. Supp. 80, 82 n.3 (S.D.N.Y. 1991) (“suits 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”) (citations omitted).

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Therefore, the harm Plaintiffs allege – the chilling of protected First Amendment rights – will occur in this district because the planned voter registration activities will be suspended in this district, just as they will be suspended in each judicial district in Florida. Because the events giving rise to Plaintiffs’ claims will occur in the Southern District of Florida, venue in this district is proper under Section 1391(b)(2).

B. Transfer

Defendants seek transfer of this action to the Northern District of Florida pursuant to 28 U.S.C. § 1404. Section 1404 provides: “For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” “The standard for transfer under section 1404(a) gives broad discretion to the trial court, which will be overturned only for abuse of discretion.” *Mason v. Smithkline Beecham Clinical Lab.*, 146 F. Supp. 2d 1355, 1358 (S.D. Fla. 2001) (citing *Brown v. Connecticut Gen. Life Ins. Co.*, 934 F.3d 1193, 1197 (11th Cir. 1991)). As the moving party, Defendants bear the burden of establishing that a change of forum is warranted. *See id.* at 1359. Defendants seeking transfer must prove with particularity the inconvenience caused by the plaintiffs’ choice of forum. *Id.* (citing *McEvily v. Sunbeam-Oster Co.*, 878 F. Supp. 337, 345 (D.R.I. 1994)).

Congress’ intent when enacting the transfer statute was to avoid unnecessary inconvenience to litigants, witnesses, and the public and to save time, energy, and resources. *See Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964). “Whether a transfer is appropriate depends on two inquiries: (1) whether the action ‘might have been brought’ in the proposed transferee court and (2) whether various factors are satisfied so as to determine if a transfer to a more convenient forum is justified.”

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*Del Monte Fresh Produce Co. v. Dole Food Co., Inc.*, 136 F. Supp. 2d 1271, 1281 (S.D. Fla. 2001) (citation omitted). Courts generally consider the following factors when analyzing convenience: (1) relative convenience of the parties and witnesses; (2) availability of compulsory process for witnesses; (3) relative ease of access to sources of proof; (4) location of relevant documents; (5) the cost of obtaining the presence of witnesses; (6) financial ability of the parties to bear the cost of the change; (7) public interest; and (8) all other practical problems that make trial of the case easy, expeditious, and inexpensive. *See, e.g., Meterlogic, Inc. v. Copier Solutions, Inc.*, 185 F. Supp. 2d 1292, 1300 (S.D. Fla. 2002); *Mason*, 146 F. Supp. 2d at 1359; *Jewelmasters, Inc. v. May Dept. Stores Co.*, 840 F. Supp. 893, 895 (S.D. Fla. 1993).

Ordinarily a “plaintiff’s choice of forum should not be disturbed unless it is clearly outweighed by other considerations,” *Robinson v. Giarmarco & Bill, P.C.*, 74 F.3d 253, 260 (11th Cir. 1996) (citation and quotation marks omitted), but when “a plaintiff has chosen a forum that is not its home forum, only minimal deference is required . . . .” *Cellularvision Technology & Telecommunications, L.P. v. Alltel Corp.*, 508 F. Supp. 2d 1186, 1189 (S.D. Fla. 2007) (citations omitted). “While a non-resident plaintiff’s choice is accorded less weight, a non-resident plaintiff’s choice is also not discounted completely.” *Carrizosa v. Chiquita Brands Int’l, Inc.*, Case No. 07-60821-CIV, 2007 WL 3458987, at \*3 (S.D. Fla. Nov. 14, 2007).

There is no dispute that this action could have been brought in the venue to which Defendants seek transfer, the Northern District of Florida. Because Defendants reside in that district, venue is proper there and personal jurisdiction exists. The parties differ, however, on the factors bearing on the convenience of continuing this litigation in the Southern District. Defendants’ principal argument

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supporting transfer is the inherent inconvenience associated with their residence being Tallahassee and this case pending in Miami. Defendants have not otherwise satisfied their burden of establishing the Southern District is an inconvenient forum.

Defendants have not identified specific third-party witnesses in Tallahassee or the Northern District who would be inconvenienced by having to appear in Miami for a hearing or trial. *See Del Monte Fresh Produce*, 136 F. Supp. 2d at 1282 (conclusory assertions regarding the convenience of unknown or unnamed witnesses insufficient to support transfer). Indeed, Defendants state that because this is a facial challenge to the constitutionality of a statute, the necessity of developing a factual record is minimal. (*See Reply* at 5). Plaintiffs identify one third-party witness they may seek to call who lives in this district and two expert witnesses who live outside Florida. (*See Decl. of G. Dick* [D.E. 31-2] at ¶ 3-5). Aside from arguing that all of their documents are located in Tallahassee, Defendants have not identified evidence or specific documents located in the Northern District that would cause inconvenience. Plaintiffs point out that they will seek documents from county supervisors located throughout the state. While Defendants argue that, due to travel expenses, this litigation will be more costly to them if it proceeds in Miami, Plaintiffs contend for their New York and Washington, D.C.-based counsel, travel to Miami is less expensive, faster, and more flexible than travel to Tallahassee.

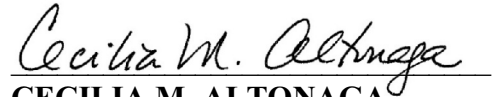
As stated, Plaintiffs' choice of venue is given less deference in this case because it is not Plaintiffs' home venue, although their selection of this district is not irrelevant to the analysis. League of Women Voters and AFL-CIO have local groups and many individual members in this district and thus do have a connection here. This is not a case where Plaintiffs' chosen forum is completely

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unrelated to the case. The individuals and organizations affected by the challenged law are located throughout the State of Florida, including this district. The case challenges an election law that may significantly impact the registration of voters in Florida during an important election year. Timely resolution of the case is highly relevant. In light of Plaintiffs' choice of venue, Defendants' insufficient showing of inconvenience, and delays that could potentially arise from transfer, the balance of transfer factors favors maintaining the case in this district. Accordingly, it is

**ORDERED AND ADJUDGED** that Plaintiffs' Motion [D.E. 20] is **DENIED**.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 29th day of May, 2008.

  
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**CECILIA M. ALTONAGA**  
**UNITED STATES DISTRICT JUDGE**

Copies provided to  
(1) Magistrate Judge Stephen T. Brown  
(2) Counsel of record