

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

THE HISPANIC LEADERSHIP FUND, INC.,)	
)	
Plaintiff,)	Civ. No. 4:12-339-JAJ-TJS
)	
v.)	
)	
FEDERAL ELECTION COMMISSION,)	REPLY IN SUPPORT OF MOTION TO TRANSFER VENUE
)	
Defendant.)	

**DEFENDANT FEDERAL ELECTION COMMISSION’S REPLY IN SUPPORT
OF MOTION TO TRANSFER VENUE**

Pursuant to Local Rule 7.g, Defendant Federal Election Commission respectfully submits this reply brief in support of its Motion to Transfer Venue (Docket No. 16). Plaintiff Hispanic Leadership Fund’s (“HLF’s”) opposition to the Commission’s motion contains three new and unanticipated assertions, each of which is misleading, irrelevant, or both.

First, plaintiff states — contrary to settled precedent in this Circuit for venue motions under 28 U.S.C. § 1406 — that “Defendant bears the burden of establishing that transfer of venue is proper.” (Pl.’s Resp. & Opp. to Def.’s Mot. to Transfer Venue at 1 (Docket No. 17) (“Pl.’s Venue Opp.”).) Although the Commission bears the burden of persuasion regarding the Commission’s *alternative* request to transfer venue for the convenience of the parties pursuant to 28 U.S.C. § 1404, that is *not* the standard for the Commission’s *primary* basis for transferring this case to cure improper venue pursuant to 28 U.S.C. § 1406. (FEC Venue Br. at 3-6.) To the contrary, “[o]nce a defendant raises the issue of proper venue by motion, *the burden of proof is placed upon the plaintiff to sustain venue.*” *Zamora Entm’t, Inc. v. William Morris Endeavor*

Entm'ts, LLC, 667 F. Supp. 2d 1032, 1036 n.3 (S.D. Iowa 2009) (emphasis added) (quoting 15 Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. § 3826 (3d ed. Supp. 2004), and noting Wright & Miller's description of "clear weight of authority" establishing that burden is plaintiff's); see, e.g., *Cohen v. Newsweek, Inc.*, 312 F.2d 76, 78 (8th Cir. 1963) (observing that district court properly found that plaintiff had burden of establishing venue in forum); *Transocean Group Holdings Pty Ltd. v. S. Dak. Soybean Processors, LLC*, 505 F. Supp. 2d 573, 578 (D. Minn. 2007) ("Where venue is challenged by a defendant, plaintiff bears the burden of proving that venue is proper in the forum state.") (internal quotations omitted); *Beckley v. Auto Profit Masters, LLC*, 266 F. Supp. 2d 1001, 1003 (S.D. Iowa 2003) (same).

Second — contrary to the Eighth Circuit's decision in *Woodke* — plaintiff claims that the propriety of venue in this District is supported by a new affidavit stating that HLF has received an offer to purchase advertising time in Iowa and would accept that offer "[i]f the nature of [HLF's] obligations under the Federal Election Campaign Act were clear." (Pl.'s Venue Opp. at 3 & Exh. 9.) But this statement is functionally identical to plaintiff's earlier and equally deficient allegation that it wished to advertise "in Iowa and other states" and is beside the point. (Compl. ¶ 46.) Plaintiff persists in conflating its own intentions and alleged injuries with the "events and omissions giving rise to [plaintiff's] claim." 28 U.S.C. § 1392(e)(2). But Eighth Circuit case law is to the contrary. Such "events and omissions" are the "relevant activities of the defendant, not of the plaintiff." *Woodke v. Dahm*, 70 F.3d 983, 985 (8th Cir. 1995) (emphasis added); see Def. FEC's Br. in Supp't of Mot. to Transfer Venue at 3-5 (Docket No. 16-1) (collecting cases).

Third, HLF notes that the Commission is currently defending lawsuits in various districts across the country and has not moved to transfer those matters. (See Pl.'s Venue Opp. at 5.) But

that is entirely irrelevant to the Commission's motion to transfer this case for improper venue under section 1406. And to the extent the Commission's other lawsuits are relevant to its *alternative* motion to transfer this case for the convenience of the parties under section 1404, the other suits demonstrate precisely why this case *should* be transferred: Each of the cases HLF cites was filed in the respective *plaintiff's home district*. See, e.g., *Conway for Senate v. FEC* (W.D. Ky. Civ. No. 12-244) (filed by former Kentucky candidate for U.S. Senate); *Koerber v. FEC* (E.D.N.C. Civ No. 08-39) (filed by North Carolina resident). HLF, by contrast, resides in Virginia and not in Iowa, and so it cannot reasonably claim that any convenience attaches to litigating in this District.

CONCLUSION

Venue is not properly laid in this District. Under Eighth Circuit precedent, the case must be dismissed or transferred to federal district court in the District of Columbia or in the Eastern District of Virginia.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2012, the foregoing Reply in Support of Defendant's Motion to Transfer Venue was filed electronically with the Clerk of Court through the Court's ECF system, which will send notification of this filing to the following recipients:

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