

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

THE HISPANIC LEADERSHIP FUND,
INC.,

Plaintiff,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civil Case Number:
4:12-cv-00339-JAJ-TJS

ORDER

This matter comes before the Court pursuant to the Hispanic Leadership Fund, Inc.’s (“Plaintiff”) Motion for Declaratory and Injunctive Relief filed on July 30, 2012. [Dkt. No. 2.] The Federal Election Commission (“Defendant”) filed a response on August 8, 2012. [Dkt. No. 22.] On August 6, 2012, the Defendant filed a Motion to Transfer Venue. [Dkt. No. 16.] The Plaintiff filed a Response to the Motion to Transfer on August 6, 2012 and the Defendant filed a Reply on August 7, 2012. [Dkt. Nos. 17–18.] The Court heard oral argument on August 8, 2012. The Motion to Dismiss is **GRANTED** and the Motion to Transfer Venue is **DENIED**.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Defendant is the independent agency of the United States government vested with statutory authority over the Federal Campaign Act and other federal campaign finance statutes. The Defendant’s office is in Washington D.C. The Defendant maintains a process through which organizations may submit an “Advisory Opinion Request” (“AOR”) in order to obtain the Defendant’s opinion as to whether certain actions and advertisements comply with federal regulations. 2 U.S.C. § 437F (2012). The statute requires a majority—or four member vote—for all decisions. *Id.* at § 437C(c).

On April 18, 2012, the American Future Fund (“AFF”) filed an AOR with the

Defendant requesting the Commission issue an opinion finding eight television advertisements would not constitute “electioneering communications” under 2 U.S.C. § 434(f)(3)(A). On June 13, 2012, the Defendant issue an advisory opinion, finding that two of the advertisements referred to clearly identified candidates and one did not. The Defendant did not issue an opinion as to the remaining ads.

On July 30, 2012, the Plaintiff—with headquarters in Alexandria, Virginia—filed the instant complaint and moved for preliminary and permanent injunction. [Dkt. Nos. 1, 2.] Plaintiff intends to run the advertisements at issue in the State of Iowa and argues that the Defendant erred as a matter of law by not granting AFF’s AOR as to these advertisements. The Defendant responded to these motions and has filed a Motion to Dismiss or Transfer Venue. Defendant argues that the “events or omissions” giving rise to the Plaintiff’s complaint took place in either Washington D.C. or Virginia and that Plaintiff’s plans to run the advertisements in Iowa do not satisfy the requirements for proper venue under 28 U.S.C. § 1391(e)(1).

II. MOTION TO TRANSFER VENUE

The Defendant argues that this Court should either (1) dismiss the case pursuant to 28 U.S.C. § 1406(a) or (2) transfer the case pursuant to 28 U.S.C. § 1404(a) or § 1406(a) to either the United States District Court for the District of Columbia or the United States District Court for the Eastern District of Virginia.

A. Standard for Motion to Transfer Venue

Where no “special” venue statute is applicable, the general venue statute, 28 U.S.C. § 1391, applies. In this case, the defendant is an “officer or employee of the United States” and, as such, 28 U.S.C. § 1391(e) applies. The statute reads as follows:

- (e) Actions where defendant is officer or employee of the United States--
 - (1) In general.--A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a

defendant in the action resides, (B) 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 (C) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

(2) Service.--The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

Id. Section 1391(e)(1)(B) expressly requires a determination of whether the chosen forum is one in which “a substantial part of the events or omissions giving rise to the claim occurred . . .” Id. “The Eighth Circuit Court of Appeals has clarified that the district in which ‘a substantial part of the events or omissions giving rise to the claim occurred,’ within the meaning of § 1391(a)(2), means where the events giving rise to the action occurred, not where the events giving rise to the plaintiff’s damages occurred.” Catipovic v. Turley, 2012 WL 2089552, at * 14 (N.D. Iowa June 8, 2012) (analyzing section 1391 subsection (a)(2)). The Court has also made it clear that this Court must focus on the relevant activities of the defendant, not the activities of the plaintiff. Woodke v. Dahm, 70 F.3d 983, 985 (8th Cir. 1995); see also Quality Improvement Consultants, Inc. v. Williams, 2003 WL 543393, at *8 (D. Minn. Feb. 24, 2003) (noting, in the context of 1391(b)(2), “the Court must determine whether a substantial part of the defendants’ allegedly wrongful acts or omissions occurred in this district”). This Court sees no reason to analyze the identical language of § 1391(e) in a different manner.

If the Court finds venue is appropriate in the Southern District of Iowa, the Court may transfer venue in compliance with 28 U.S.C. § 1404. If the Court finds venue is inappropriate in the Southern District of Iowa, the Court shall dismiss the claim or, “if it be in the interest of justice,” the Court may transfer the case to a jurisdiction in which

proper venue exists.

B. Discussion

Plaintiff claims that venue is proper in the Southern District of Iowa because the Plaintiff intends to broadcast the advertisements in Iowa and is unable to do so due to the failure of the Defendant to issue an advisory opinion. The Plaintiff also directs the Court's attention to the fact that the Defendant has not challenged venue in a number of other cases. Defendant argues that the events giving rise to this claim—the failure to issue an opinion —occurred in Washington D.C. The Defendant further argues that the damages of the Plaintiff—the inability to broadcast the advertisements in Iowa—are not relevant for this Court's venue determination.

The Eighth Circuit Court of Appeals has made it clear that, when determining whether venue is appropriate, this Court should look to the defendant's activities or omissions. Here, the Plaintiff claims the Defendant failed to properly issue an advisory opinion as to certain advertisements. All of the Defendant's activities took place in either Washington D.C. The Defendant's activities have little or no connection with Iowa. It certainly cannot be said that a "substantial part" of *any* activities giving rise to this cause of action, let alone the Defendant's activities, occurred in Iowa. The only connection to Iowa is the Plaintiff's desire to broadcast the advertisements at issue.¹

With these facts, it is clear to this Court that the Plaintiff has failed to satisfy the venue requirements of 28 U.S.C. § 1391(e)(1) in order to bring these claims in the Southern District of Iowa. When venue is improper in the Court in which a case is brought, the Court looks to 28 U.S.C. § 1406(a). Section 1406 directs the Court to dismiss the case or, "if it be in the interest of justice," to transfer the case to a district or

¹The Plaintiff has provided an agreement and plan for these advertisements, but it is unclear to the Court whether these documents existed at the time the Defendant challenged venue. However, as this plan is an act of the Plaintiff and represents the Plaintiff's potential damages, it is not the focus of this Court's venue determination.

division in which the case could have been brought. While it is clear that this is not a proper venue for the Plaintiff's claims, the Court does not find a compelling reason nor does the Court have sufficient facts to transfer this case to another district. Accordingly, the Motion to Dismiss is **granted** and the Motion to Transfer is **denied**.

III. CONCLUSION

The Court finds that the venue requirements of 28 U.S.C. § 1391(e)(1) are not satisfied in this case. The Motion to Dismiss is **granted** and the Motion to Transfer Venue is **denied**. The case is dismissed without prejudice.

IT IS SO ORDERED

DATED this 9th day of August, 2012.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA