

Electioneering Communications

Hispanic Leadership Fund

v. Federal Election Commission

*(John A. Jarvey, S.D. Iowa 4:12-cv-339) and
Hispanic Leadership Fund, Inc. v. Federal Election
Commission (T.S. Ellis III, E.D. Va. 1:12-cv-893)*

A group wishing to run a political advertisement filed a federal complaint against the Federal Election Commission in the Southern District of Iowa because the Commission's advisory to another group suggested that the Commission might not approve the plaintiff's advertisement. Ten days after the complaint was filed, the district court dismissed the action, determining that it should have been filed in Washington, DC. Following the filing of a second complaint in the Eastern District of Virginia, the second district court decided on October 4 that three of five draft advertisements were electioneering communications subject to regulation because they referred to the presidential candidate for reelection.

Subject: Campaign activities. *Topics:* Corporate electioneering; campaign materials; case assignment; campaign finance.

The Hispanic Leadership Fund filed a federal complaint in the Southern District of Iowa on July 30, 2012, to seek the court's blessing of proposed advertisements that the Fund wanted to air, including during the presidential election period beginning on August 4, expressing concern that an advisory issued to another group on June 13 suggested that the Federal Election Commission might not approve the Fund's advertisements.¹ With its complaint, the Fund filed a motion for preliminary and permanent injunctions.²

The court originally assigned the case to Senior Judge Harold D. Victor, but he withdrew from the case, so the court assigned it to Judge John A. Jarvey, who, on August 2, set the case for hearing on August 8.³ On August 6, the Commission moved to transfer the case to the Eastern District of Virginia or the District of Columbia.⁴

On the day after the hearing, Judge Jarvey dismissed the complaint for improper venue.⁵

All of the Defendant's activities took place in . . . 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 Defendants activities, occurred in Iowa. The only

1. Complaint, *Hispanic Leadership Fund v. Federal Election Comm'n*, No. 4:12-cv-339 (S.D. Iowa July 30, 2012), D.E. 1; *see* *Hispanic Leadership Fund, Inc. v. Fed. Election Comm'n*, 897 F. Supp. 2d 407, 415, 418–20 (E.D. Va. 2012).

2. Motion, *Hispanic Leadership Fund*, No. 4:12-cv-339 (S.D. Iowa July 30, 2012), D.E. 2.

3. Docket Sheet, *id.* (July 30, 2012); *see* Minutes, *id.* (Aug. 8, 2012), D.E. 24.

4. Transfer Motion, *id.* (Aug. 6, 2012), D.E. 16.

5. Opinion, *id.* (Aug. 9, 2012), D.E. 26.

connection to Iowa is the Plaintiff's desire to broadcast the advertisements at issue.⁶

The fund filed a federal complaint in the Eastern District of Virginia on August 10.⁷ The fund also filed a motion for a preliminary injunction.⁸

Judge T.S. Ellis III heard the parties on August 17⁹ and ordered them to submit by August 24 a proposed discovery and trial schedule for a consolidated merits trial and motion hearing.¹⁰ The parties agreed to waive discovery, and they agreed with the court to hold a proceeding on August 31.¹¹ Judge Ellis agreed to let the Campaign Legal Center participate as an amicus curiae.¹² Another proceeding was held on September 20.¹³

Judge Ellis ruled on October 4.¹⁴ He determined that the essence of the case was whether the advertisements referred to a clearly identified candidate, namely the President running for reelection.¹⁵ Three of five draft advertisements at issue were electioneering communications because they referred to candidate Barack Obama.¹⁶

6. *Id.* at 4.

7. Complaint, *Hispanic Leadership Fund, Inc. v. Fed. Election Comm'n*, No. 1:12-cv-893 (E.D. Va. Aug. 10, 2012), D.E. 1; *Hispanic Leadership Fund, Inc. v. Fed. Election Comm'n*, 897 F. Supp. 2d 407, 414–15 (E.D. Va. 2012).

8. Preliminary Injunction Motion, *Hispanic Leadership Fund, Inc.*, No. 1:12-cv-893 (E.D. Va. Aug. 10, 2012), D.E. 2.

9. Minutes, *Hispanic Leadership Fund, Inc.*, No. 1:12-cv-893 (E.D. Va. Aug. 17, 2012), D.E. 20.

10. Order, *id.* (Aug. 17, 2012), D.E. 21.

11. Order, *id.* (Aug. 22, 2012), D.E. 23; Notice, *id.* (Aug. 22, 2012), D.E. 22; *see* Minutes, *id.* (Aug. 31, 2012), D.E. 30.

12. Order, *id.* (Aug. 29, 2012), D.E. 29; *see* Motion, *id.* (Aug. 29, 2012), D.E. 28.

13. Minutes, *id.* (Sept. 20, 2012), D.E. 38.

14. *Hispanic Leadership Fund, Inc. v. Fed. Election Comm'n*, 897 F. Supp. 2d 407 (E.D. Va. 2012).

15. *Id.* at 426; *see* 52 U.S.C. § 30104(f)(3)(A)(1)(I) (2015), *formerly* 2 U.S.C. § 434(f)(3)(A)(1)(I) (2012).

16. *Hispanic Leadership Fund, Inc.*, 897 F. Supp. 2d at 415, 429–33; *see* Order, *Hispanic Leadership Fund, Inc.*, No. 1:12-cv-893 (E.D. Va. Dec. 11, 2012), D.E. 55 (denying the commission's motion for reconsideration).