

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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STATE OF NEW MEXICO, <i>ex rel.</i> ,))
MARCO WHITE, MARK MITCHELL,))
and LESLIE LAKIND,))
)) Case No.
Plaintiffs,))
))
))
v.))
))
COUY GRIFFIN,))
))
Defendant.))
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DEFENDANT GRIFFIN’S MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)

Defendant Couy Griffin, through his counsel, moves the Court to transfer venue from this Court to the United States District Court for the District of Columbia. Defendant Griffin was tried on March 21 on two misdemeanor charges in the transferee district. He was acquitted of one charge and convicted of the other. Griffin has yet to be sentenced. In the middle of his trial, Plaintiffs and their lawyers announced this lawsuit against Griffin to bar him from holding office under federal law as a result of his conviction. But even though Plaintiffs seek to impose a penalty on Griffin on account of the matter currently being litigated in the District of Columbia, they filed their claims in a court across the country. Plaintiffs are forum shopping. The court in D.C., which heard the evidence in Griffin’s criminal case and which will impose a penalty on him, is the appropriate venue to resolve Plaintiffs’ claims.

I. Background: Griffin’s Related Case in the District Court for the District of Columbia

Griffin is a member of the County Commission for Otero County, New Mexico. Between March 21 and 22, 2022, he was tried on two misdemeanor charges in the United States

District Court for the District of Columbia. *United States v. Couy Griffin*, 21-cr-92-TNM (D.D.C. 2021). Specifically, on January 6, 2021, Griffin walked on the steps of the west front of the U.S. Capitol Building and led a prayer there. He did not enter the building. For this he was charged with entering an area restricted for the protection of a U.S. Secret Service protectee, 18 U.S.C. § 1752(a)(1), and engaging in disorderly conduct there. § 1752(a)(2).¹ Judge Trevor N. McFadden presided over the bench trial. On March 22, the Court entered a judgment of acquittal on the disorderly conduct charge and a judgment of guilt on the unlawful entry count.

In the middle of the trial, lawyers for the Plaintiffs announced the lawsuit in this case. See *Lawsuit Filed to Remove Couy Griffin From Office*, CREW, Mar. 21, 2022 (“CREW Press Release”), available at: <https://www.citizensforethics.org/legal-action/lawsuits/lawsuit-filed-to-remove-couy-griffin-from-office/>. The lawsuit was filed by a 501(c)(3) organization called Citizens for Responsibility and Ethics in Washington (CREW). CREW filed the Complaint on behalf of three residents of New Mexico who, in turn, assert the right to represent the State of New Mexico as relators. See Griffin Notice of Removal, Exh. 1.

Originally filed in the First Judicial District Court, Santa Fe County, the Complaint seeks “quo warranto” relief, an action that Plaintiffs claim may be brought “when any person shall unlawfully hold. . .any public office” in the State, NMSA 1978 § 44-3-4(A), or “when any public officer, civil or military, shall have done or suffered an act which, by the provision of law, shall work a forfeiture of his office.” § 44-3-4(B). The gravamen of the Complaint is that Griffin has allegedly violated these New Mexico State officeholder statutes by virtue of Section Three of the Fourteenth Amendment to the United States Constitution, known as the Disqualification Clause.

¹ Out of the hundreds of January 6 protesters charged under § 1752, Griffin was the only one who neither entered the Capitol Building nor committed a felony offense outside it. He was in a charging category of one.

The Complaint and CREW’s press releases make clear that Plaintiffs’ entire case turns on the facts established in Griffin’s criminal trial in the District of Columbia. Griffin, Plaintiffs say, must be “removed from office and disqualified from holding future public office under Section 3 of the 14th Amendment to the United States Constitution based on his participation in the January 6, 2021 insurrection. . .” CREW Press Release. Plaintiffs’ factual predicate for its quo warranto claim rests on facts that were (or were not) established in Griffin’s criminal case in the District of Columbia. *See* Griffin Notice of Removal, Exh. 1, Compl., pp. 4-23.

There is no fact alleged in Plaintiffs’ Complaint that was not the subject of fact-finding by the Honorable Trevor N. McFadden in the District Court for the District of Columbia. *See* Griffin Notice of Removal, Exh. 1, Compl., pp. 4-23.

In announcing this lawsuit, CREW’s President explicitly linked Plaintiffs’ claim here to the facts established in the proceeding in the District Court for the District of Columbia. He stated:

Couy Griffin breached the Capitol grounds on January 6th as a part of an organized effort to halt the certification of a free and fair election. Under the Constitution, those office holders who, like Griffin, violated their oath by participating in or aiding an insurrection, must be barred from public office. . . His actions on January 6th were part of and contributed to an insurrection, and his tenure in government continues to be a threat to our democracy. It’s time for Couy Griffin to be removed from office.

CREW Press Release.

However, instead of filing this lawsuit in the district court where all the relevant factual issues were decided and found, CREW lodged its claims in state court in Santa Fe, New Mexico.

II. Legal Standard Governing Venue Transfer

“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. . .” 28 U.S.C. § 1404(a). A civil action may be brought, among other places, in “a judicial

district in which a substantial part of the events or omissions giving rise to the claim occurred. . .” 28 U.S.C. § 1391(b)(2).

The district court has discretion under § 1404(a) to adjudicate motions to transfer based upon a case-by-case review of convenience and fairness. *Chrysler Credit Corp. v. County Chrysler, Inc.*, 928 F.2d 1509, 1516 (10th Cir. 1991). The factors that a court must consider when deciding whether to transfer an action under § 1404(a) are:

the plaintiff’s choice of forum; the accessibility of witnesses and other sources of proof, including the availability of compulsory process to insure attendance of witnesses; the cost of making the necessary proof; questions as to the enforceability of a judgment if one is obtained; relative advantages and obstacles to a fair trial; difficulties that may arise from congested dockets; the possibility of the existence of questions arising in the area of conflict of laws; the advantage of having a local court determine questions of local law; and, all other considerations of a practical nature that make a trial easy, expeditious and economical.

Chrysler Credit Corp, 928 F.2d at 1516 (citing *Tex. Gulf Sulphur Co. v. Ritter*, 371 F.2d 145, 147 (10th Cir. 1967)).

“The purpose of the transfer of venue statute is to prevent the waste of time, energy, and money, and to protect litigants, witnesses, and the public against unnecessary inconvenience and expense.” *In re Mannatech, Inc., Sec. Litig.*, 2007 U.S. Dist. LEXIS 105219, at *5 (D.N.M. Jan. 29, 2007) (citing *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964)). “To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different district courts leads to the wastefulness of time, energy and money that § 1404(a) was designed to prevent.” *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26 (1960).

This Court routinely transfers matters when the “the non-party witnesses, the documents, and related litigation are all located in the proposed transferee forum” and not in this district. *In re Mannatech, Inc., Sec. Litig.*, 2007 U.S. Dist. LEXIS 105219, at *12. Courts in this circuit routinely transfers matters when the defendant’s complained of conduct wholly occurred in the

transferee district. *E.g., Assoc. Wholesale Grocers, Inc. v. Koch Foods, Inc.*, 2018 U.S. Dist. LEXIS 155877, at *18-19 (D. Kan. Sept. 13, 2018).

III. All the Relevant Factors Weigh in Favor of Transfer to the District of Columbia

As shown above, Plaintiffs' entire case rests on allegations concerning Griffin's conduct on January 6, 2021 in the District of Columbia. *See* Griffin Notice of Removal, Exh. 1, Compl., pp. 4-23. All those factual questions have been resolved or will be resolved in a related case pending now in the District Court for the District of Columbia. *United States v. Couy Griffin*, 21-cr-92-TNM (D.D.C. 2021). Litigating the matter anew in a court hundreds of miles away is not in the interest of justice for a number of reasons.

First, it is supremely inefficient. A federal court has recently presided over a bench trial concerning the very issues on which Plaintiffs' lawsuit is based. The court in the District of Columbia is intimately familiar with all the facts alleged in Plaintiffs' case. There is simply no sense in expensively educating another district court on the same issues when they can be handled with greater efficiency by the court in the District of Columbia. *Continental Grain Co.*, 364 U.S. at 26; *Assoc. Wholesale Grocers, Inc.*, 2018 U.S. Dist. LEXIS 155877, at *18-19 (existence of closely related matters in transferee district weighs heavily in favor of transfer); *HiTex, LLC v. Vorel*, 2021 U.S. Dist. LEXIS 227356, at *17 (D.N.M. Nov. 26, 2021) ("interest of justice" factor is concerned with "judicial efficiency and the avoidance of conflict between coordinate courts"); *Biotronik, Inc. v. Lamorak, Ins. Co.*, 2015 U.S. Dist. LEXIS 74485, at *5 (D.N.M. June 3, 2015) (same).

Second, litigating Plaintiffs' matter here risks creating inconsistent factual findings in two federal courts and, indeed, in two different federal circuits. *HiTex, LLC*, 2021 U.S. Dist. LEXIS 227356, at *17; *Biotronik, Inc.*, 2015 U.S. Dist. LEXIS 74485, at *5.

Third, Plaintiffs do not allege that Griffin's complained-of conduct occurred in this district. All the alleged actions that purportedly warrant his disqualification from office occurred in the District of Columbia. Courts have consistently held that the locus of operative facts is where the defendant's allegedly improper conduct occurred. *See, e.g., Chicken Kitchen USA, LLC v. Tyson Foods, Inc.*, No. 17-21503-CIV, 2017 U.S. Dist. LEXIS 177475, 2017 WL 6760811, at *4 (S.D. Fla. Oct. 4, 2017) (“[T]he ‘locus of operative facts is the initially chosen forum if acts of . . . unfair competition occurred in that forum.’” (quoting *CYI, Inc. v. Ja-Ru, Inc.*, 913 F. Supp. 2d 16, 19 (S.D.N.Y. 2012))); *see also Fox News Network, LLC v. Time Warner, Inc.*, No. 96-CV-4963, 1997 U.S. Dist. LEXIS 6940, 1997 WL 271723, at *3 (E.D.N.Y. May 16, 1997) (transferring case to the Southern District of New York because, among other things, “[t]he locus of the operative facts in this case is primarily in Manhattan, where Manhattan-based Time Warner acquired Turner Broadcasting, as well as where the defendants allegedly conspired to prevent Fox News from entering cable markets generally and the Manhattan market specifically.”).

Fourth, the question of whether Griffin's conduct was “disorderly”—a predicate for Plaintiffs' claim that his alleged lawbreaking on January 6 results in his disqualification from federal office—turns on “questions of local [D.C.] law.” *Chrysler Credit Corp.*, 928 F.2d at 1516. Specifically, because § 1752 does not contain any evidence of a congressional intent to preempt the field, “disorderly conduct” under that statute is interpreted in a manner consistent with local laws and ordinances. Local D.C. law, not New Mexico law, determines the nature of the “disorderly conduct” at issue on January 6. D.C. Code, § 22-1321. The district court in the District of Columbia is better placed to interpret D.C. law.

Fifth, the district court for the District of Columbia is a forum more convenient for the Defendant and relevant witnesses. Griffin prefers the District of Columbia because he has already litigated virtually the same matter there, his lawyer practices there, and his sentencing will occur there in the future. Similarly, all but one of the trial witnesses are based in the District of Columbia, not New Mexico. Litigating Plaintiffs' matter in this district would require multiple law enforcement officers who work and reside in the District of Columbia to travel hundreds of miles to this courthouse. Conversely, there are no witnesses in this district or State whatsoever.

Finally, Plaintiffs' relief would impose a penalty on Griffin for the same conduct that is the subject of the criminal proceeding in D.C. But Griffin has yet to be sentenced in that court. Beyond all the other reasons, this matter should be transferred to the District of Columbia to ensure that Griffin's penalties are consistent and imposed by a single decision maker. *Chrysler Credit Corp*, 928 F.2d at 1516; 18 U.S.C. § 3553(a)(3) (sentencing court "shall consider" all the types of penalties available).

Conclusion

For all the foregoing reasons, the Court should transfer this matter to the Honorable Trevor N. McFadden of the District Court for the District of Columbia.

Dated: April 17, 2022

Respectfully submitted,

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Certificate of Service

I hereby certify that on the 17th day of April, 2022, I filed the foregoing filing with the Clerk of Court using the CM/ECF system, and counsel of record were served by electronic means.

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