UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BARBARA TULLY, KATHARINE BLACK, MARC BLACK, DAVID CARTER, REBECCA GAINES, ELIZABETH KMIECIAK, CHAQUITTA MCCLEARY, DAVID SLIVKA, DOMINIC TUMMINELLO, INDIANA VOTE BY MAIL, INC. individually, and on behalf of those similarly situated, Plaintiffs, v. PAUL OKESON, S. ANTHONY LONG, SUZANNAH WILSON OVERHOLT, ZACHARY E. KLUTZ in their official capacity as members of the Indiana Election Commission, CONNIE LAWSON in her official capacity as the Indiana Secretary of State, Defendants.	)	No. 1:20-cv-01271-JPH-DLP
DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, INC, Amicus. COMMON CAUSE INDIANA, INDIANA STATE CONFERENCE OF THE NAACP, Miscellaneous.	)	

ORDER DENYING MOTION TO CONSOLIDATE

Defendants have filed a motion to consolidate *Common Cause Indiana et al. v. Election Commission Members et al.*, No. 1:20-cv-2007-SEB-TAB, with this case. Dkt. 67. They argue that this Court should exercise its discretion to consolidate the cases to "ensure judicial efficiency and avoid potential confusion by separate rulings." *Id.* at 1. Plaintiffs in this case and in 1:20-cv-2007 oppose the motion, arguing that the "different plaintiffs, different counsel, different questions of both law and fact, different constitutional claims, and . . . distinct procedural postures" make consolidation inappropriate. Dkt. 69; *see* dkt. 70.

Federal Rule of Civil Procedure 42 grants the Court discretion to consolidate actions that "involve a common question of law or fact." *See Blue Cross Blue Shield of Mass. v. BCS Ins.*, 671 F.3d 635, 640 (7th Cir. 2011). Mere "similarities" between cases do "not render the district court's denial of consolidation an abuse of discretion." *Star Ins. Co. v. Risk Mktg. Grp.*, 561 F.3d 656, 660 (7th Cir. 2009).

Here, the similarities that Defendants identify are primarily superficial—some parties are the same, some counsel are the same, some discovery may overlap, and both cases involve constitutional issues surrounding COVID-19 and Indiana's general election. *See* dkt. 67. Defendants have not shown that many of the same facts will be relevant in both cases, or that the legal issues are substantially the same. *See id.* So, regardless of whether consolidation is permissible, it does not warrant the exercise of the Court's discretion. *See*

Owner–Operator Ind. Drivers Ass'n v. Mayflower Trans., No. 1:98-cv-457-SEB-JMS, 2007 WL 9770410 at *1–2 (S.D. Ind. Oct. 26, 2007).

The motion to consolidate is **DENIED**. Dkt. [67].

SO ORDERED.

Date: 8/20/2020

James Patrick Hanlon

James Patrick Hanlon
United States District Judge
Southern District of Indiana

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