In The United States District Court
For The Southern District Of Ohio, Eastern Division

King Lincoln Bronzeville Neighborhood Association, *et al.*,

Plaintiffs,

vs. **Case No. 2:06-cv-745**

Jennifer Brunner, *et al.*, **Judge Marbley**

Defendants. **Magistrate Judge Kemp**

Memorandum Contra Plaintiffs' Motion for Reconsideration

This case was originally filed and raised a claim that the 2004 Presidential election in Ohio was stolen.[1] After filing this case, the Plaintiffs failed to do anything to advance it. In the hours before the 2008 election, the Plaintiffs' lawyers claimed they received various anonymous tips from individuals in positions of authority in the McCain campaign telling them they needed to take the deposition of Michael Connell. The Plaintiffs lawyers claimed that these inside sources were convinced that various unnamed individuals with ties to the Republican Party were going to steal the 2008 election for McCain but their sense of civic duty mandated they anonymously tell the Plaintiffs' lawyers so that the election theft could not be carried out.

[1] The lawyers in this also filed two different elections contests in the Ohio Supreme Court as a result of the 2004 elections. The first case was captioned *Moss v. Bush* and the second case was captioned *Moss v. Moyer*. In those cases, the Plaintiffs' lawyers claimed that the 2004 election for President and Supreme Court Chief Justice were stolen making the allegations in those cases identical to the allegations in this case. The eventually dismissed the case against Moyer. http://www.supremecourt.ohio.gov/Clerk/ecms/resultsbycasenumber.asp?type=3&year=2004&number=2106&myPage=searchbypartyname.asp The Plaintiffs dismissed their own case in *Bush*. When discussing the allegations, the late Chief Justice stated "I have little doubt that many informed Ohioans share the movants' assessment of the motives of these contestors [Plaintiffs] and disdain for their actions. The contestors indeed made multiple allegations in the complaint that are, at best, highly improbable and potentially defamatory, inflammatory, and devoid of logic." *Moss v. Bush*, 105 Ohio St.3d 1551, ¶ 4 (2005). He went on to note, "[b]y their conduct, contestors, their attorneys, and other persons who appeared to be more interested in their own notoriety than in the facts profoundly disserved Ohioans of both political parties who worked so hard to conduct a fair election." *Id.* at ¶ 16.

The Court in the Northern District of Ohio decided to enforce a subpoena for Michael Connell's deposition and the Plaintiffs' attorneys spent two hours examining him. That deposition consisted predominately of the Plaintiffs' lawyers asking Connell about the type of computer system and website he constructed for then Secretary of State Blackwell. The deposition had nothing to do with campaign finance issues or how various groups engaging in independent expenditures financed their advertisements.

After letting this case sit idle for almost two years, the Plaintiffs' attorneys decided that they needed to subpoena information from the Partnership for Ohio's Future and to take the deposition of Karl Rove. Counsel for the Plaintiffs had a conversation with Secretary of State Jennifer Brunner and asked for her consent to take the deposition of Rove. Arnebeck had that conversation with Brunner despite the fact that Brunner's counsel was not present.[2]

After filing a copy of a subpoena served upon Rove and issued from the District Court in Washington, D.C., Arnebeck then attempted to obtain documents from the Partnership for Ohio's Future ("The Partnership"). He first attempted to do so by filing a complaint with the Ohio Elections Commission. In that complaint, he alleged that The Partnership violated Ohio's campaign finance laws by engaging in a coordinated campaign to elect Supreme Court judges who were nominated by the Ohio Republican Party. He attempted to obtain documents from The Partnership in that case. Only after

[2] Arnebeck may well have violated Rule 4.2 of the Ohio Rules of Professional Conduct and Rule IV(B) of the Model Federal Rules of Disciplinary Enforcement as adopted by this Court in L.R. 83.3(g) in having this conversation with Secretary Brunner. Rule 4.2 of the Ohio Rules states "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer *knows* to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." Arnebeck did not have the consent of Brunner's lawyer to speak to her about this case.

the Ohio Elections Commission found no probable cause of an election law violation did Arnebeck issue a subpoena to The Partnership in this case. After The Partnership filed a motion to quash, the Magistrate convened a telephone conference and asked that briefing be submitted. The Magistrate, after reviewing the briefing in this case determined that discovery should not be had because, in part, none of the discovery proposed by the Plaintiffs had anything whatsoever to do with any claims they raised in their complaint. The Plaintiffs filed an objection to that report and recommendation.

Under 28 USC 636(b)(1), "[a] judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's [magistrate judge's] order is clearly erroneous or contrary to law." Thus, in order for the Plaintiffs objections to be successful, they must meet the heavy burden of showing that Magistrate Kemp's order was either clearly erroneous or contrary to law. They cannot achieve this heavy burden.

As an initial matter, the Plaintiffs never point to any specific legal error that they claim was made by the Magistrate. Instead, they simply allege that in a conversation they had with Secretary Brunner without her counsel present, she agreed to allow the deposition of Karl Rove to go forward. Although the Plaintiffs have claimed they need various documents from The Partnership in order to take Rove's deposition, this Court should note that the district court in Washington has vacated the deposition date.

Furthermore, Plaintiffs argue in their original motion and their objection that they need these documents – and by extension – the deposition of Karl Rove because various unnamed sources and other internet bloggers have informed them that this information will allow them to uncover an ungoing civil rights conspiracy. They also claim that "this

case involved a racketeering conspiracy under Ohio's liberal Corrupt Practices Act…."[3] R. 102 at 4. Plaintiffs' "sources" for this information and its pressing need include individuals such as Wayne Madsen.[4]

The Magistrate concluded that "there is simply no logical relationship between the plaintiffs' desire to take Mr. Rove's deposition on subjects broached at Mr. Connell's deposition and the documents plaintiffs have asked the movants to produce. Therefore, whether the relief-from-stay order is read narrowly or broadly, it does not permit this discovery." R. 101 at 11. In order for discovery to be had in any case the information sought must be relevant to a claim or defense and it must be reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1). The Magistrate noted that the stay entered into on this case only permitted discovery to proceed with the deposition of Michael Connell or any other information on which the parties agree arises from that deposition. The subpoenas in this case seek information about campaign finance issues from the 2010 general election – something that could not have and did not arise in the Connell deposition. Since none of the claims in the 61 page complaint in this case involve campaign finance, nothing that the Plaintiffs seek from The Partnership could reasonably lead to the discovery of admissible evidence.

Thus, for these reasons, Intervening Defendant State of Ohio asks this Court to affirm the decision of the Magistrate while Defendant Secretary of State Brunner takes no position on the Plaintiffs' objections.

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[3] This Court is without subject matter jurisdiction to hear any state law claim against the State defendants. *See*, *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984).

[4] Wayne Madsen is a blogger who likes to report various conspiracy theories and has authored articles claiming that Vice President Cheney orchestrated the September 11 terrorist attacks, http://www.sikharchives.com/?p=5426 that the H1N1 Swine Flu virus may have been engineered as a military-biological warfare agent. http://onlinejournal.com/artman/publish/article_4631.shtml and that President Obama had used various connections in Chicago to facilitate scandalous sexual relationships. http://www.scn.org/~mentifex/20100522.html

Respectfully submitted,

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Certificate of Service

This is to certify a copy of the foregoing was served upon all counsel of record by means of the Court's electronic filing system on this 17th day of December, 2010.

/s Richard N. Coglianese