

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION**

**KING LINCOLN BROWNSVILLE
NEIGHBORHOOD ASSOCIATION, *ET AL.***

CASE NO. 2:06-CV-745

PLAINTIFFS,

V.

**JUDGE MARBLEY
MAGISTRATE JUDGE KEMP**

**OHIO SECRETARY OF STATE
JENNIFER BRUNNER, ET AL.**

**PLAINTIFFS' REPLY TO STATE OF OHIO MEMORANDUM CONTRA PLAINTIFFS'
MOTION FOR RECONSIDERATION OF THE MAGISTRATE JUDGE'S DECISION
AND ORDER QUASHING PLAINTIFF' SUBPOENA TO THE OHIO CHAMBER OF
COMMERCE**

Introduction

This is a discovery matter. Neither the merits of plaintiffs' case, nor their document hold notices in anticipation of a possible organized crime count in a second amended complaint, are at issue at this time. In reply to the Ohio Attorney General's Memorandum Contra Plaintiffs' Motion for Reconsideration of the Magistrate Judge's Decision presented on behalf of defendant the State of Ohio, the State of Ohio again does not contradict plaintiffs' trial attorney's verified assertions of fact that he was directed by Ohio Secretary of State Jennifer Brunner to communicate directly with her in regard to matters of fraud in a current election, and that in such communications

Ohio Secretary of State Jennifer Brunner agreed to and authorized the discovery deposition of Karl Rove and records subpoenas to the Chamber of Commerce.¹

Plaintiffs' Verified Representations of Fact

Plaintiffs' trial attorney's verified assertions of fact were presented in his initial November 2, 2010, Memo Contra the Chamber's Motion to Quash filed on November 1, 2010.

The factual premises presented in both the Plaintiffs' Memo Contra the Chamber's Motion to Quash and Plaintiffs' Motion for Reconsideration of the Magistrate Judge's Decision granting a motion to quash, were obscured by the Attorney General's responses on behalf of the State of Ohio to the effect that the Ohio Secretary of State merely "had no objection" to the discovery.

In the November 2, 2010, telephone conference among the plaintiffs' trial counsel, Brad Smith as counsel for the Ohio Chamber and Assistant Attorney General Richard Coglianese on behalf of the State of Ohio, Assistant Attorney General Coglianese confirmed that plaintiffs' trial attorney was authorized to communicate directly with Ohio State Secretary of State Jennifer Brunner at the meeting referred to above.

Plaintiffs' requests were framed as discovery with respect to impending election fraud activity by Rove and the Chamber of Commerce. That is the basis upon which they were agreed to, and the basis upon which plaintiffs' counsel was authorized to directly communicate with the Secretary of State.

¹Permission of counsel for communication with a person is not required as to matters in which counsel has not been engaged.

Coordinated Expenditures

Coordinated third-party spending was part of the fraud of the 2004 presidential election. Swift Boat Veterans for Truth, in which both Connell and Rove were involved, is an example of such spending in the 2004 election. But this activity in 2004 was minimal compared to what occurred in the 2010 election cycle in which Rove and the Chamber took *Citizens United v Federal Elections Commission*, 130 S. Ct. 876 (2010), as license to create an avalanche of pro-Republican/anti-Democratic commercial advertising--most of it using front groups in which the names of contributors and amounts of contributions were concealed both from election authorities and the public. This spending was illegal because it was coordinated by Rove, acting *defacto* as the national campaign coordinator for the Republican Party candidates, and the Chamber and its various manifestations.

Plaintiffs have presented evidence on the basis of which they have reason to believe the Chamber's expenditures in 2010 were coordinated with Karl Rove. The requested discovery is necessary and relevant to proving that is the case and that such spending is integral to the ongoing civil rights conspiracy plaintiffs have alleged.

The Assistant Attorney General's statement that he did not give his consent for plaintiffs' trial attorney to communicate with Secretary of State Jennifer Brunner outside his presence ignores the fact that Ohio Secretary of State Jennifer Brunner, as the Constitutional Chief Election Law Enforcement Officer of the State, stated in effect that she was not authorizing the Attorney General to represent her with respect to complaints of election fraud in regard to a current

election. And, further she, in the presence of the Ohio Attorney General, was directing outside counsel to communicate directly with her in regard to fraud in a current election.

Background

The intervention of the State of Ohio in this case was on behalf of the Senate Republicans acting under the policy direction of Karl Rove from his pivotal senior policy position in the White House. Plaintiffs amended their complaint, shortly followed by a similar claim by the Northeast Ohio Coalition of the Homeless, to assert the unconstitutionality of House Bill 3's voter ID requirements which were adopted on an entirely partisan basis. The Senate Republicans were concerned that Blackwell, then the Republican candidate for Governor would consent to a court order finding the partisan voter ID bill unconstitutional.

J. Kenneth Blackwell as Ohio Secretary of State had implemented voter suppression administratively in the 2004 election. Blackwell, individually, continues to be a defendant in this case represented by the office of the Ohio Attorney General.² Republican John Husted who will shortly become Secretary of State currently serves as an Ohio Senator, and, at the time of the passage of House Bill 3, served as Speaker of the Ohio House.³ Both the defendants for whom the Assistant Attorney General now appears to be speaking in regard to plaintiffs'

² Blackwell was a principal figure in the Buckeye Institute's involvement in the use of the Ohio Corrupt Practices Act to shut down ACORN and its grassroots work to counter the ongoing voter suppression activities in favor of the Republican candidates in the 2010 election cycle. *Miller v. Association of Community Organizations for Reform Now, Inc. a.k.a. ACORN et al.*, U.S. District Court SDOH Case No. 1:08-cv-797.

³ The voter suppression strategy of rejecting voters using drivers licenses with different addresses from those on their registration continued in the 2010 election—requiring those voters to either provide other forms of identification or to vote provisionally.

attempted discovery targeting fraud in the 2010 election are targets of the plaintiffs' civil rights complaint. They are also targets in the racketeering conspiracy asserted on July 17, 2008 in connection with the document hold notices that were issued in the name of the plaintiffs to the U.S. Attorney General's office in his capacity in representing the government in connection with Karl Rove's e-mails and to the United States Chamber of Commerce. Ohio Secretary of State Jennifer Brunner, a civil right hero and recipient of the Kennedy Profiles in Courage Award, is not.

A 2010 Election Heist

The 2010 election cycle may have been a bigger election heist than either that of the 2000 or 2004 presidential election. Control of the United States House of Representatives may have been stolen along with control, not just of state governments around much of the country, but also the reapportionment process by which districts for Congress and state houses will be determined for the next 10 years. This preliminary assessment is indicated by the exit polls monitored by the Election Defense Alliance. Exit polls, in spite of Karl Rove's campaign of defamation over the past decade, remain the international gold standard for detecting election fraud. Exit polls have continued to be conducted on a scientific basis and, in their unadjusted form, show that a "red shift" continued to operate in 2010.

If the preliminary assessment by Jonathan Simon, Executive Director of the Election Defense Alliance (See electiondefensealliance.org) is correct, then the avalanche of spending orchestrated by Rove and the Chamber of Commerce was sufficient only to bring the polls within a range that an applied margin of stealing was necessary to produce a landslide in the reported result for

Rove's Republican Party. The predominant coordinated spending was not sufficient by itself to produce the reported Republican victory.

Conclusion

This is a civil rights suit against an alleged "ongoing conspiracy" targeting African-Americans and young voters because of their demographic proclivity to vote for Democratic candidates.

The specific conduct of the members of the conspiracy – those known and unknown– was a moving target. The 2004 presidential election with respect to which two of plaintiffs' counsel and plaintiff Rainbow PUSH Coalition played a leading role in contesting in court, before the Congress, and in books and documentary movies, is but one example of an ongoing conspiracy that began before 2004 and continues through the most recent 2010 election.

Based upon the agreed order that lifted the stay for limited purposes, plaintiffs should be permitted to conduct the discovery they initiated with the agreement of Ohio Secretary of State Jennifer Brunner. That is the only issue now before the court.

The Magistrate's Opinion and Order denying plaintiffs' proposed discovery was the result of the mistaken impression that Ohio Secretary of State Jennifer Brunner had not agreed to it, which the Magistrate Judge correctly concluded was the essential prerequisite to further discovery beyond the deposition of Michael Connell under the court order agreed to by plaintiffs and Secretary of State Jennifer Brunner.

Respectfully submitted,
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CERTIFICATE OF SERVICE

A copy of the foregoing was served upon counsel for the parties and respondent through the court's electronic filing system, this 3rd day of January 2011.

/s/ Clifford O. Arnebeck, Jr.

Clifford O. Arnebeck, Jr.