

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

**KING-LINCOLN BRONZEVILLE
NEIGHBORHOOD ASSN., ET AL.,**

Plaintiffs,

v.

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

Defendants.

1:08MC105
CASE NO. 2:06-cv-745
(Southern District of Ohio)

JUDGE ALGENON L. MARBLEY

MAG. JUDGE TERRENCE KEMP

JUDGE OLIVER

FILED
2008 OCT 17 PM 3:59
NORTHERN DISTRICT OF OHIO

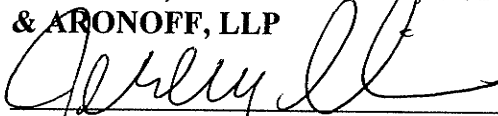
NON-PARTY MICHAEL CONNELL'S MOTION TO QUASH

Now comes Michael Connell ("Mr. Connell"), a non-party to the above captioned action, by and through his counsel, and respectfully moves the Court, pursuant to Rule 45(c)(3)(A) and Rule 45(c)(3)(B) of the Federal Rules of Civil Procedure, for an Order granting his Motion to Quash the Subpoena issued by Plaintiffs King Lincoln Bronzeville Neighborhood Assn., et al. (collectively "Party-Plaintiffs"), for the stated purposes of: 1) commanding Mr. Connell to appear on October 15, 2008 at 9:00 a.m. in Akron, Ohio to have his deposition taken, and 2) commanding Mr. Connell to produce and permit for inspection and copy at his deposition on October 15, 2008 at 9:00 a.m., an "Architecture Map . . . for the Ohio Secretary of State's computer system . . . for use in the 2004 and 2006 general election." See Subpoena in a Civil Case – Northern District of Ohio, issued October 8, 2008, incorporated by reference herein. Mr. Connell moves the Court for this Order because Party-Plaintiffs' subpoena is untimely and does not permit Mr. Connell reasonable time to comply, seeks to require Mr. Connell to disclose confidential or otherwise protected matter, information, and/or materials, and subjects to Mr. Connell to undue burden, in violation of the Federal Rules of Civil Procedure and case law.

The reasons for Mr. Connell's Motion to Quash are more fully set forth below in the accompanying Memorandum in Support.

Respectfully submitted:

**BENESCH, FRIEDLANDER, COPLAN
& ARONOFF, LLP**



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Counsel for Michael Connell

MEMORANDUM IN SUPPORT

I. INTRODUCTION & SUMMARY OF CASE

The present matter arises from an original complaint filed on August 31, 2006 by King Lincoln Bronzeville Neighborhood Association, The Ohio Voter Rights Alliance for Democracy, The League of Young Voters/Columbus, Willis Brown, Paul Gregory, Miles Curtiss, Matthew Segal, and Harvey Wasserman, individually and as representatives of a class of persons similarly situated (collectively the “Original Plaintiffs”), against Ohio Secretary of State J. Kenneth Blackwell, individually and in his official capacity, as well as John Does 1-100 (collectively the “Original Defendants”), alleging civil rights violations under the First, Thirteenth, Fourteenth, and Fifteenth Amendments through the Equal Protection Clause (the “Original Complaint”). *See* Original Complaint, incorporated by reference herein. On October 9, 2006, the Original Plaintiffs filed an Amended Complaint. *See* Doc. 10, incorporated by reference herein. The Amended Complaint added new party plaintiffs, Rainbow Push Coalition, Columbus Coalition for the Homeless, and Gloria Kilgore (collectively the Original Plaintiffs and the added plaintiffs are referred to as the “Party-Plaintiffs”), and added new party-defendants, the Ohio Republican Party, Robert T. Bennett, Matthew W. Damschroeder, Samuel Hogsett, and Daniel Bare (collectively all defendants named in the Amended Complaint are referred to as “Party-Defendants”). *See* Doc. 10.

The Amended Complaint sought relief in the form of declaratory judgment, preliminary and permanent injunction, and appointment of a special master. *Id.* The Party-Plaintiffs’ claims set forth in the Amended Complaint’s are based upon various violations of their civil rights, rights to vote, and disenfranchisement as voters, under both federal and state law. *Id.*

Between October 9, 2006 and December 11, 2006, the parties engaged in motion practice regarding various issues. *See* Court's Docket, incorporated by reference herein. Further, between December 11, 2006 and the filing of this Motion, the Party-Plaintiffs and Party-Defendants have filed various pleadings. *Id.* However, the Court has not set forth a case schedule, discovery schedule, trial date, or other dispositive deadlines. *Id.* Based upon a plain reading of the Court's docket, this matter has been ongoing for two years in various forms of pre-discovery advocacy. And at no time has Michael Connell ("Mr. Connell") been named as a party to the action.

On December 11, 2006, Defendant Blackwell filed a Motion to Dismiss the Amended Complaint as Moot. *See* Doc. 21. On or about January 1, 2007, Jennifer Brunner was sworn in as the new Ohio Secretary of State.¹ On February 5, 2007, a joint motion was filed to stay all proceedings until April 9, 2007. *See* Doc. 26. The February 5, 2007 joint motion to stay all proceedings was granted on February 15, 2007. *See* Doc. 27. On April 3, 2007, the parties filed a second joint motion to stay all proceedings until June 8, 2007. *See* Doc. 29. The second joint motion to stay all proceedings was granted on April 6, 2007. *See* Doc. 31. On June 8, 2007, the parties filed a third motion to stay all proceedings until August 10, 2007. *See* Doc. 32. On August 10, 2007, Party-Plaintiffs filed a separate motion to extend the stay of all proceedings. *See* Doc. 33. On August 15, 2007, the Court granted the Plaintiffs' motion to extend the stay. *See* Doc. 34.

On July 17, 2008, Party-Plaintiffs filed a Motion for Relief from Stay. *See* Doc. 39. In the Party-Plaintiffs' Motion for Relief from Stay (Doc. 39), the Party-Plaintiffs do not mention Non-Party Michael Connell's name, or make any reference to needing or requiring either his

¹ Jennifer Brunner was substituted into the Amended Complaint as the newly elected Ohio Secretary of State.

testimony, or his disclosure and/or production of documents, as a basis for its motion. In fact, Mr. Connell is not mentioned anywhere within the Motion for Relief from Stay; Mr. Connell's name is first stated by Party-Plaintiffs in their Reply filed on September 17, 2008 (Doc. 62). On August 11, 2008, Defendant Brunner filed her Memorandum in Opposition. *See* Doc. 48.

After several extensions of time to file their Reply, Party-Plaintiffs' Reply was filed on September 17, 2008. *See* Doc. 62. On September 19, 2008, the Court entered an Order lifting the stay in this matter for the purposes of taking Mr. Connell's deposition. *See* Doc. 65.

On September 22, 2008, party-Plaintiffs issued a Subpoena commanding Mr. Connell "to appear [at] Court Reporters of Akron, Canton and Cleveland . . . [on] September 25, 2008 [at] 9:00 a.m." *See* Subpoena in a Civil Case – Southern District of Ohio, issued September 22, 2008, attached as **Exhibit A** ("First Subpoena"). Additionally, the Subpoena commanded Mr. Connell to "produce and permit inspection and copying of . . . [t]he Architecture Map, as designed, for the Ohio Secretary of State's computer system, including but not limited to its connection to the Smartech server, for use in 2004 and 2006, at your deposition or as soon as possible thereafter, . . . but not later than October 9, 2008 at 5:00 p.m." *Id.* The First Subpoena was given to Mr. Connell in the late afternoon on September 22, 2008.

Party-Plaintiffs' counsel, counsel for the Ohio Secretary of State, and Mr. Connell's counsel engaged in discussions to address the September 25, 2008 First Subpoena deadlines, and whether an alternative date could be established. A resolution was not reached; however, it was understood among all legal counsel that the September 25, 2008 deposition would not go forward, and the October 9, 2008 disclosure deadline would not be observed. On September 25, 2008, Mr. Connell filed a Motion to Quash the First Subpoena.

After additional discussions between Party-Plaintiffs' counsel, and Mr. Connell's counsel, a new date and time to take Mr. Connell's deposition was not reached. The First Subpoena was subsequently withdrawn by Party-Plaintiffs. *See* Doc. 71, filed October 7, 2008. On October 8, 2008, Party-Plaintiffs issued a second Subpoena out of the United States District Court for the Northern District of Ohio, seeking to compel Mr. Connell's deposition and production of documents on October 15, 2008. *See* Subpoena in a Civil Case – Northern District of Ohio, attached hereto as **Exhibit B**. Mr. Connell was not served with the current Subpoena until Monday, October 13, 2008. *See* Affidavit of Michael Connell at ¶ 3, attached hereto as **Exhibit C**.

II. LAW & ARGUMENT

A. STANDARD OF REVIEW

“[T]he right to discovery is not unlimited, and does have ‘ultimate and necessary boundaries.’” Allen v. Howmedica Leibinger, GmhH, 190 F.R.D. 518 (W.D. Tenn. Nov. 22, 1999), *citing* Hickman v. Taylor, 329 U.S. 495, 497 (1947). And in that regard, “[t]he trial court has the right to control the discovery schedule.” Hina v. Anchor Glass Container Corp., 2008 U.S. Dist. LEXIS 41577 (S.D. Ohio May 22, 2008), referencing Kennedy v. Cleveland, 797 F.2d 297, 300-01 (6th Cir. 1986). Moreover, the power to quash a subpoena lies with the issuing court. *See* Fed. R. Civ. P. 45(c)(3)(A). Rule 45(c)(3)(A) of the Federal Rules of Civil Procedure provides that a Court **must** quash a subpoena if: “(i) it fails to allow reasonable time for compliance; . . . or (iv) subjects a person to undue burden.” Fed. R. Civ. P. 45(c)(3)(A)(i), (iv). Moreover, Rule 45(c)(3)(B)(i) provides that a court may quash a subpoena if the subpoena “requires disclosure of a trade secret or other confidential research, development, or commercial information” Fed. R. Civ. Pr. 45(c)(3)(B)(i). A subpoena fails to allow reasonable time for

compliance when the subpoena requires compliance less than fourteen (14) days after service of the subpoena. *See Donahoo v. Ohio Dept. of Youth Services*, 211 F.R.D. 303, 306 (N.D. Ohio 2002) (Reasonable time for compliance is fourteen (14) days after service of the subpoena). Thus, a court is required to quash a subpoena that fails to conform with the Rule 45.

B. PARTY-PLAINTIFFS' SUBPOENA DOES NOT ALLOW FOR REASONABLE TIME FOR COMPLIANCE IN VIOLATION OF FED. R. CIV. P. 45(c)(3)(A)(i) AND MUST BE QUASHED AS A MATTER OF LAW

Party-Plaintiffs' subpoena does not permit Mr. Connell with reasonable time for compliance in violation of Fed. R. Civ. P. 45(c)(3)(A)(i), and must be quashed as a matter of law. The current subpoena issued to Mr. Connell is dated October 8, 2008, and signed by Party-Plaintiffs' counsel, lead attorney Clifford O. Arnebeck, Jr. *See* Exhibit B. Mr. Connell was not served with the subpoena until Monday, October 13, 2008. *See* Exhibit C at ¶ 3. The subpoena seeks to command Mr. Connell to appear for a deposition on October 15, 2008, which is two days after he received the subpoena. *See* Exhibit B. Furthermore, the subpoena commands Mr. Connell to produce documents, information, and/or materials at the October 15, 2008. *Id.* Neither the date for the deposition nor the deadline for production of documents provides Mr. Connell with 14 days as required by the Federal Rules. The failure of Party-Plaintiffs to provide Mr. Connell with reasonable time to comply requires that the Court quash the subpoena. *See* Fed. Civ. R. P. 45(c)(3)(A)(i); *see also Donahoo, supra*; *see also Mann v. University of Cincinnati*, 824 F.Supp 1190, 1202 (S.D. Ohio 1993)(One week's notice seeking disclosure of medical file was unreasonable and violated rule because there was no urgency justifying such short notice). Therefore, Party-Plaintiffs' subpoena should be quashed as a matter of case.

C. PARTY-PLAINTIFFS' SUBPOENA IMPOSES AN UNDUE BURDEN UPON MICHAEL CONNELL IN VIOLATION OF FED. R. CIV. P. 45(c)(3)(A)(i) AND MUST BE QUASHED AS A MATTER OF LAW

Party-Plaintiffs' subpoena imposes an undue burden upon Mr. Connell in violation of Fed. R. Civ. P. 45(c)(3)(A)(iv), and must be quashed as a matter of law. Rule 45(c)(3)(A)(iv) states that "a court must quash . . . a subpoena that . . . subjects a person to undue burden." *Id.* Even if the discovery sought is relevant, which Mr. Connell believes it is not, production of such documents should be denied if it is unduly burdensome. *Id.*, see also Allen v. Howmedica Leibinger, Inc., 190 F.R.D. 518, (W.D. Tenn. 1999). Party-Plaintiffs' subpoena, and its Motion for Relief from Stay, provide no definitions, explanations, scope, or context of the information or context sought to be produced by Mr. Connell. The subpoena is very broad and provides no scope as to what is an "Architecture Map," which "Ohio Secretary of State[] computer system," or what is a "Smartech server." See Exhibit B. Further, since Mr. Connell is not, and has never been, a party to the action, there is no context as to why or how he is relevant to this matter. And even if a party to the action, without Party-Plaintiffs being more specific and limited in what they are seeking, Mr. Connell cannot respond. Party-Plaintiffs are asking Mr. Connell to guess at what they want. Such conduct is unfair and burdensome upon Mr. Connell. Moreover, even assuming Mr. Connell could guess at what Party-Plaintiffs are seeking, which he cannot, gathering, acquiring, or compiling electronic or hard documentation related to a computer system used by a State agency in 2004 and 2006 is not something that can be easily achieved, and it cannot be accomplished in two days (October 15, 2008). Thus, Party-Plaintiffs' subpoena should be quashed.

Party-Plaintiffs' subpoena seeks documents and information related to a computer system used by the Ohio Secretary of State in 2004 and 2006. See Exhibit B. Such information is likely

maintained by the Office of the Ohio Secretary of State as a public record, and is more easily and readily ascertainable through public records request or some more convenient source. Party-Plaintiffs have had, and have, every opportunity to make a public records request, or take alternative steps to acquire the information they seek straight from the source, the Ohio Secretary of State. Party-Plaintiffs' subpoena asking for information that it can acquire more easily through other sources than Mr. Connell, places an undue burden on Mr. Connell. Therefore, Party-Plaintiffs' subpoena must be quashed as a matter of law.

D. PARTY-PLAINTIFFS' SUBPOENA SHOULD BE QUASHED BECAUSE IT SEEKS TRADE SECRETS, AND CONFIDENTIAL AND/OR PROPRIETARY INFORMATION

Party-Plaintiffs' subpoena should be quashed because it seeks confidential, trade secrets, and/or proprietary information. The primary issue in Party-Plaintiffs' Amended Complaint is whether voters were disenfranchised by and because of the alleged conduct of the Party-Defendants in manipulating the voting process in 2004, including, but not limited to, manipulations of electronic computer systems. *See* Doc. 10 - Amended Complaint at ¶¶ 1-9, 47-50, 56, and 57. The Party-Plaintiffs identify Mr. Connell as an individual with an IT background who "handles information technology" for various entities including, but not limited to, the United States Department of Justice, the United States Department of Energy, and the United States Congress House Judiciary Committee. *See* Doc. 62 - Party-Plaintiffs' Reply Brief, pg. 1. Mr. Connell's contractor or business relationship with any of these listed parties, or any party for whom he contracts with to provide services, typically, and in almost all instances, involves contract terms and conditions that include confidentiality agreements, protection of trade secrets, and non-disclosure of proprietary information. *See* Exhibit C at ¶ 8. The broad scope and unlimited nature of the Party-Plaintiffs' subpoena does not take into account such factors, and

seeks to expose such guarded business secrets, processes, and data. *See* Fed. R. Civ. P. 45(2)(B).²

Mr. Connell's businesses have created, possess, and implement proprietary information, business plans, business techniques, processes, technical information, electronic information, and client/customer databases that include, but are not limited to, names, addresses, and telephone numbers (collectively the "trade secrets"), that are utilized to further and carry out the businesses' activities. *See* Exhibit C at ¶¶ 5, 7, and 9. Those trade secrets have independent economic value and are a primary factor in the generation of income and profit. *Id.* at ¶ 11. Further, the trade secrets are not known to the public, or even to non-designated personnel within or working for Mr. Connell's business. *Id.* at ¶¶ 12. The trade secrets are kept confidential from the public, and are kept confidential using encrypting technology and other electronic safeguards; the trade secrets are maintained and protected by secured systems, passwords, and protections so that their value cannot be obtained by the public or non-designated personnel. *Id.* at ¶¶ 13. The trade secrets are not readily ascertainable by any proper means such that their economic value can be obtained and used. *Id.* at ¶ 14. And Mr. Connell takes all reasonable efforts to maintain the secrecy and security of the trade secrets. *Id.* at ¶ 15.

Mr. Connell's companies, New Media Communications and Govtech Solutions, have been competitive entities in the IT business market for some time. *Id.* at ¶ 6. Their growth and success has been predicated in significant part on building a strong customer/client base, perfecting unique systems and methodologies related to the services it provides, and having specialized knowledge and expertise in various areas for which its business operates; all of these factors are brought to bear on behalf of its private and public clients. *Id.* at ¶ 7. The Party-

² Mr. Connell, by and through his counsel, has served written objections upon Party-Plaintiffs' lead trial counsel, Clifford O. Arnebeck, Jr., objecting to the subpoena's command to produce documents for inspection and/or copying, and command to appear for deposition.

Plaintiffs' subpoena seeks to obtain such information, or at least expose such information in a manner that is extremely burdensome and detrimental to Mr. Connell, and, which if permitted, would provide an unfair competitive and economic advantage to Mr. Connell's competitors; the Court should take notice that Party-Plaintiffs' primary expert, and the affiant that seeks to implicate or link Mr. Connell to the claims, is Stephen Spoonamore, who is in the same filed as Mr. Connell, and may have been a competitor at one time. *Id.* at ¶ 16; *see also* Party-Plaintiffs Reply Brief, Affidavit of Stephen Spoonamore at ¶¶ 1-5. *See In re Vitamins Antitrust Litig.*, 267 F. Supp 738 (S.D. Ohio 2003)(When party seeking production agreed that subpoena sought trade secrets, court would quash subpoena when party seeking materials was direct competitor of nonparty).

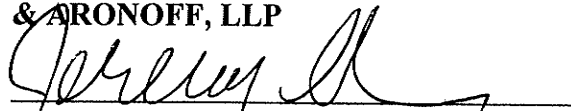
The broad nature of the subpoena, lack of definition or scope, and the purpose of the relief from stay (to prove "that this is not just 'conspiracy theory'"), clearly creates an irreversible harm toward Mr. Connell should the trade secrets be disclosed. Furthermore, and as discussed above, without some narrowing and limitation in the scope of the documents to be produced, Mr. Connell is in a precarious position to even make known what specific trade secrets, proprietary information, and confidential information he would have to seek the Court's protection on. Thus, the subpoena seeks to have Mr. Connell expose his trade secrets, business, and livelihood without any protection. *See also* Exhibit C at ¶ 17. Therefore, the subpoena issued by Party-Plaintiffs should be quashed as a matter of law.

III. CONCLUSION

For the foregoing reasons, Non-Party Michael Connell respectfully requests that the Court grant his Motion, and enter an Order to Quash Plaintiffs King Lincoln Bronzeville Neighborhood Assn., et al.'s civil subpoena.

Respectfully submitted:

**BENESCH, FRIEDLANDER, COPLAN
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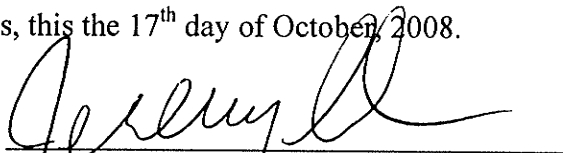
E-mail: Jervin@bfca.com

E-mail: Ajones@bfca.com

Counsel for Michael Connell

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served via electronic mail and/or ordinary mail to all *pro se* parties, this the 17th day of October, 2008.



Jeremy Gilman (#0014144)

James L. Ervin, Jr. (#0067016)

J. Allen Jones, III (#0072397)

Counsel for Michael Connell

Issued by the
UNITED STATES DISTRICT COURT
Southern District of Ohio

King Lincoln Bronzeville Neighborhood Assn., et al
V.

SUBPOENA IN A CIVIL CASE

Ohio Secretary of State Jennifer Brunner, et al

Case Number: 2:06 cv 745

TO: Michael Connell
NEW MEDIA COMMUNICATIONS/GOVTECH SOLUTIONS
3046 BRECKSVILLE RD
RICHFIELD, OH 44286-9399

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Court Reporters of Akron, Canton and Cleveland 221 Springside Dr., Akron, OH 44333	DATE AND TIME 9/25/2008 9:00 am
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

The Architecture Map, as designed, for the Ohio Secretary of State's computer system, including by not limited to its connection to the Smartech server, for use in 2004 and 2006, at your deposition or as soon as possible thereafter, at the location for your deposition, but not later than October 9, 2008 at 5:00 pm

PLACE	DATE AND TIME
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below

PREMISES	DATE AND TIME
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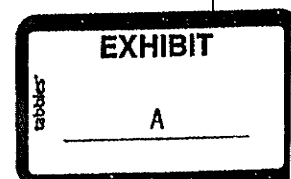
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6)

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>Clifford O. Amobeck, Jr. Atty. for Plaintiff</i>	DATE 9/22/2008
--	-------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Clifford O. Amobeck, Jr., 1021 E Broad St., Columbus OH 43205

(See Federal Rule of Civil Procedure 45(c), (d), (f), and (g), on next page)

If action is pending in district other than district of issuance, state district under case number



PROOF OF SERVICE

Form with fields for DATE, PLACE, SERVED, SERVED ON (PRINT NAME), MANNER OF SERVICE, SERVED BY (PRINT NAME), TITLE.

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct

Executed on _____ DATE

SIGNATURE OF SERVER _____

COURT REQUIRED WITNESS/MILEAGE FEES \$50.00 TENDERED

ADDRESS OF SERVER _____

Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:

(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA

(1) Avoiding Undue Burden or Expense: Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney's fees, on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition hearing in trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) The court may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Questioning or Modifying a Subpoena

(A) When Required. On timely motion the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
(ii) disclosing an unmetallurgical expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance in production under specified conditions if the serving party:

- (i) shows an essential need for the testimony or material that cannot be otherwise met without undue hardship; and
(ii) ensures that the subpoenaed person will be restorably compensated.

(d) TYPES OF RESPONDING TO A SUBPOENA

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information.

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily created, stored or reasonably accessible form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim, and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be exacted if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A).

ATTORNEY SERVICES
OF NORTHEAST OHIO, LLC
221 SPRINGSIDE DRIVE
AKRON, OH 44333
(330) 666-9800

9725

DATE 9/22/08

25 3-430

PAY
TO THE
ORDER OF

MICHAEL CONNELL

\$ 50⁰⁰—

Fifty

DOLLARS

VOID AFTER 180 DAYS

CHASE

JPMorgan Chase Bank, N.A.
Columbus, Ohio 43271
www.Chase.com

COURT REQUIRED
WITNESS/MILEAGE FEES
TENDERED



KING LINCOLN
FOR ARNEBERG

⑈009725⑈ ⑆044000037⑆ 659463020⑈

Issued by the
UNITED STATES DISTRICT COURT

Northern

DISTRICT OF

Ohio

King Lincoln Bronzerville Neighborhood Assn., et al.

SUBPOENA IN A CIVIL CASE

V.

Ohio Secretary of State Jennifer Brunner, et al.

Case Number: 2:08 cv 741 (SD of OH)

TO: Michael Connell
GovTech/New Media Communications
3046 Brecksville Rd.
Richfield, OH 44286-9399

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
Court Reporters of Akron, Canton & Cleveland (by videographic means) 221 Springside Dr., Akron, OH 44333	11/15/2008 9:00 am

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

The architecture maps, as designed, for the Ohio Secretary of State's computer system, including but not limited to its connection to the SmartTech server, for use in the 2004 and 2006 general elections.

PLACE	DATE AND TIME
Court Reporters of Akron, Canton & Cleveland 221 Springside Dr., Akron, OH 44333	11/15/2008 8:00 am

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

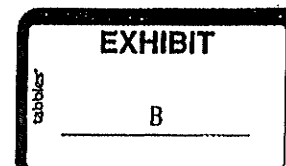
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
<i>Clifford O. Arnebeck, Jr., Atty for Plaintiff</i>	10/8/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Clifford O. Arnebeck, Jr., 1021 E. Broad St., Columbus, OH 43205 Tel:614-224-8771

(See Rule 45, Federal Rules of Civil Procedure, Subpoena (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district and/or case number.



PROOF OF SERVICE

DATE: October 13, 2008
TIME: 2:05 p.m.
PLACE: New Media Communications
3046 Brecksville Rd.
Richfield, Ohio 44286-9399
MANNER OF SERVICE: Served Michael Connell personally

SERVED BY (PRINT NAME): Michael Connell
TITLE: Served Michael Connell personally

DECLARATION OF SERVER
PRIVATE PROCESS SERVER
RESIDING AT OHIO, ALL COUNTIES

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on October 13, 2008
DATE

SIGNATURE OF SERVER: Joe Kuznarsky

COURT REQUIRED WITNESS/MILEAGE FEES PREVIOUSLY TENDERED WITH PRIOR SUBPOENA (#SD-08)

ATTORNEY SERVICES OF NORTHEAST OHIO
ADDRESS OF SERVER 221 Springside Drive
Akron Ohio 44333
330-666-9800

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PRIVILEGES SUBJECT TO SUBPOENA.
(1) A party or an attorney responding to the subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.
(2) (A) A person commanded to produce or permit inspection, copying, testing, or sampling of designated electronically stored information...
(3) (A) On timely notice, the court by which a subpoena was issued shall quash or modify the subpoena if:
(i) failure to allow reasonable time for compliance;
(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly conducts business...
(iii) requires disclosure of a privileged or other protected matter and no exception or waiver applies;
(iv) subjects a person to an undue burden.
(B) If a subpoena
(i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
(ii) requires disclosure of an unprepared expert's opinion or information not depending on the expert's or witness's discovery and recollection from the expert's study made not at the request of any party; or
(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise obtained without undue hardship and agrees that the person in whose behalf the subpoena is addressed will be reasonably compensated, the court may permit or conditionally allow specified compliance.
(d) DUTIES IN RESPONDING TO SUBPOENA.
(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
(2) (A) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.
(3) (A) A person responding to a subpoena need not produce the same or electronically stored information in admissible form.
(4) (A) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash the subpoena filed with a discovery request, the court may order that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, including the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.
(5) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation material, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to dispute the claim.
(6) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and of its basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information to the extent the claim is sustained. A receiving party may properly prevent the information from being sequestered, destroyed, or returned if the receiving party discloses the information before being notified, if it makes reasonable steps to preserve it, or if the person who produced the information must preserve the information until the claim is resolved.

(e) CONSEQUENCE: Failure of any person without an excuse to obey a subpoena served upon that person may be deemed a contempt of the court in which the subpoena is issued. An adequate cause for failure to obey exists when a subpoena imports a requirement to comply to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (1)(B)(A).

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

KING-LINCOLN BRONZEVILLE
NEIGHBORHOOD ASSN., ET AL.,

Plaintiffs,

v.

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

Defendants.

CASE NO. 2:06-cv-745

JUDGE ALGENON L. MARBLEY

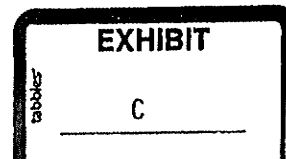
MAG. JUDGE TERRENCE KEMP

AFFIDAVIT OF MICHAEL CONNELL IN SUPPORT OF
MOTION TO QUASH PLAINTIFFS KING LINCOLN BRONZEVILLE
NEIGHBORHOOD ASSN., ET AL.'S SUBPOENA

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

Now comes Affiant, Michael Connell, being first duly cautioned and sworn, and states as follows:

1. I am over eighteen (18) years of age of sound mind and body, and have personal knowledge of the facts set forth herein.
2. I am making this Affidavit in support of my Motion to Quash the Subpoena of Plaintiffs King Lincoln Bronzeville Neighborhood Assn., et al.'s Subpoena issued to me on October 8, 2008, commanding me to appear for a deposition on October 15, 2008 and produce documents for copying and/or inspection on the same date, or no later than October 15, 2008.
3. I was not served with the October 8, 2008 Subpoena until Monday, October 13, 2008.



4. I am a principle in the businesses New Media Communications and Govtech Solutions (collectively the "Companies").

5. The Companies are involved, and have business interests, in the information technology ("IT") sector providing a wide array of IT services for both public and private clients that include, but are not limited to, data warehousing, electronic security systems analysis and configuration, electronic data management, design, implementation, maintenance, and management of electronic computer systems.

6. The Companies have been competitive entities in the IT business market for some time; almost 14 years in the case of New Media Communications, Inc.

7. The growth and success of the Companies has, and is, predicated in significant part on building a strong customer/client base, perfecting unique systems and methodologies related to the services they provide, and having specialized knowledge and expertise in various areas for which the businesses operate: all of these factors are brought to bear on behalf of the Companies' private and public clients.

8. For each of the contractor or business relationship that the Companies enter into there are always, or typically, contract terms and conditions that include confidentiality agreements, protection of trade secrets, and non-disclosure of proprietary information.

9. Through the growth of the Companies, I have created, devised, implemented, advanced, and manage various processes, business plans, business techniques, technical information, electronic information, software programs, databases, customer lists, electronic folders, files, and meta data, technical information, electronic information, and client/customer databases that include, but are not limited to, names, addresses, and telephone numbers

(collectively the "trade secrets") related to the function and services offered and provided by the Companies.

10. The trade secrets utilized by the Companies further and carry out their business activities.

11. The trade secrets have independent economic value and are a primary factor in the generation of income and profit for the Companies.

12. The trade secrets are not known to the public, or even to non-designated personnel within or working for the Companies.

13. The trade secrets are kept confidential from the public, and are kept confidential using encrypting technology and other electronic safeguards; the trade secrets are maintained and protected by secured systems, passwords, and protections so that their value cannot be legally obtained by the public or non-designated personnel.

14. The trade secrets are not readily ascertainable by any proper means such that their economic value can be obtained and used.

15. Both I, and the Companies, take all reasonable efforts to maintain the secrecy and security of the trade secrets.

16. I know Stephen Spoonamore on a professional basis, and as someone substantively involved in the IT business and profession. It is my belief and understanding that Mr. Spoonamore either through his employment, ownership, or other interests in various IT businesses or entities, or individually, has been a competitor to the Companies at various times and for various public sector contracts.

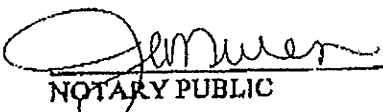
17. I believe the disclosure of the Companies' trade secrets would be extremely detrimental, burdensome, and harmful to the economic and professional well-being and position of the Companies within the marketplace.

FURTHER AFFIANT SAYETH NOT.



Michael Connell

Sworn to before me and subscribed in my presence, this 14 day of October, 2008.



NOTARY PUBLIC
Jennifer Muren
exp 3-2-2013