

**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

**Defendants' Response To The
Plaintiffs' Attempt to Subpoena Karl Rove**

During a telephone conference on November 2, 2010, this Court asked counsel for the parties to file a position statement on whether or not they believe that the deposition of Mr. Karl Rove, currently scheduled for November 29, 2010, is allowable under the Court's stay order.

The Plaintiffs initially filed this litigation against then-Secretary Blackwell in his individual and official capacities. Also named, but not yet served, are the Ohio Republican Party, Robert Bennett, in his individual and official capacities as the chair of the Cuyahoga County Board of Elections, Matthew Damschroder in his individual and official capacities with the Franklin County Board of Elections, an individual in employee of a voting machine manufacturer, and a former director of the Clermont County Board of Elections. The amended complaint alleged that these individual defendants conspired with 100 unknown John Doe defendants to steal the 2004 presidential election in Ohio. Namely, the Plaintiffs alleged that these defendants conspired to allow fraudulent votes to be cast in 2004 for President Bush, that they

allowed the double counting of absentee ballots, that they suppressed or spoiled votes in areas that tended to vote for Senator Kerry, they inflated vote tabulations from areas that voted for President Bush, they failed to properly follow Ohio's recount laws, and they violated other provisions of state and federal law.

The Court originally issued a stay of this case, including all discovery. That stay was lifted "for the sole purpose of permitting the plaintiffs to take the deposition of Michael Connell and any other witnesses whose testimony, in the judgment of these parties, may be warranted based upon the deposition of Michael Connell." (R. 65 Agreed Order). On November 3, 2008, the Plaintiffs took the deposition of Mr. Connell. That deposition focused on work that Mr. Connell did for the Secretary of State's office as an outside vendor working on the Secretary's computer system and website. The Plaintiffs were attempting to obtain information about whether there were security problems with the Secretary's website that would allow vote tallies to be switched between candidates.

Nothing further transpired in this case until the Plaintiffs purported to serve a subpoena on Karl Rove on October 22, 2010. After receiving a copy of the subpoena, counsel for the State Defendants sent an email to counsel for the Plaintiffs asking why they believed that this deposition was necessary. Mr. Arnebeck responded by saying that "[t]he gist of the *King Lincoln* amended complaint was that Blackwell and his cohorts were involved in an ongoing conspiracy to suppress the votes of African-Americans and young voters and to manipulate vote counts in a variety of ways that would be prejudicial to their interests. Creating an avalanche of billionaire/global corporate funding in favor of candidates in favor freedom (sic) of special interests from taxation and regulation is just another form of fraudulent manipulation of the election process." (Exh. A, Arnebeck

email dated October 25, 2010). Arnebeck also informed counsel for the Defendants that he wanted to serve additional subpoenas under the King Lincoln case on the Chamber of Commerce because the “public will be irreparably harmed if it is not informed before Tuesday’s election as to whom is funding these ads that are in a sufficient volume to determine the election. Indeed they have determined the election according to the Dispatch’s ever reliable written poll. Inasmuch as this seeks to address fraud in the present election, I have left a telephone message to this effect with Jennifer.” (Exh. B, Arnebeck email dated October 31, 2010).

The deposition of Mr. Connell had did not touch upon any campaign finance issues. Rather, it concerned the computer system and webpage that Mr. Connell set up for then-Secretary Blackwell. Similarly, the *King Lincoln* case itself does not involve campaign finance issues. Although this rationale may be outside the bounds of the Court’s order on whether discovery can be had in this case, the Secretary of State has no objection to whether the deposition of Mr. Rove should be allowed to go forward.

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 9th day of November, 2010.

/s Richard N. Coglianese