

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

King Lincoln Bronzerville
Neighborhood Association, *et al.*

Plaintiffs,

v.

Ohio Secretary of State Jennifer Brunner, et al.

Defendants.

Case No. 2:06-CV-00745

Judge Marbley
Magistrate Judge Kemp

PLAINTIFFS' MOTION FOR LEAVE TO FILE OUT OF PERIOD
THEIR SUPPLEMENTAL MEMORANDUM *CONTRA*
OHIO CHAMBER OF COMMERCE AND PARTNERSHIP FOR OHIO'S FUTURE
MOTION TO QUASH SUBPOENAS

Plaintiffs move for leave to file, three days out of period, a supplemental memorandum *contra* the Ohio Chamber of Commerce and Partnership for Ohio's Future motion to quash plaintiffs' subpoenas for the production of documents, duly served by plaintiffs' counsel upon these entities on November 2, 2010.

Respectfully submitted,

/s/ Clifford O. Arnebeck, Jr.

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MEMORANDUM IN SUPPORT

In the telephone conference on November 2, 2010 in this matter, Magistrate Judge Kemp invited counsel for the plaintiffs and defendants to file additional memoranda by November 9, 2010. In the intervening time plaintiffs' counsel has attended to the following matters of an emergency nature:

1) Plaintiffs' counsel discovered or received, and investigated, credible reports of additional fraud in the 2010 Ohio election that appears to have affected the reported outcome in the 2010 Ohio races for Governor, Auditor and Attorney General. He has brought reliable polling and exit polling data to the attention of Attorney General Richard Cordray, Kent Markus in his capacity as legal counsel to Governor Strickland and to Ohio Secretary of State Jennifer Brunner.

2) Plaintiffs' counsel was made aware by confidential credible sources of a conspiracy involving illegal payoffs to public officials and businesses in connection with a major government contract in Alabama which he felt duty bound to investigate and report to interested parties and law enforcement authorities.

3) Plaintiffs' counsel learned that Washington, D.C. law firm with whom he had made an arrangement for representation before the death of Mike Connell to assist in securing plaintiffs' deposition of Karl Rove were no longer available. Therefore, he had to find new counsel to assist in the litigation in the U.S. District Court in Washington, D.C. over the Rove deposition and the subpoena to the US Chamber of Commerce. Counsel for Karl Rove and the US Chamber have advised plaintiffs' counsel that they are opposing the plaintiffs' discovery

requests issued out of the U.S. District Court in Washington, D.C.

These unforeseen activities and other demands interfered with plaintiffs' counsel's ability to complete his supplemental memorandum by November 9, 2010.

The attached supplemental memorandum contra the Ohio Chamber's motion to quash plaintiffs subpoenas, *instanter*, consists in part of documents that were attached to Arnebeck's complaint to the Ohio Elections Commission filed on October 28, 2010 which was attached to the Ohio Chamber's motion to quash subpoenas as Exhibit 1, and exhibits that were offered at the hearing of the Ohio Elections Commission complaint on the morning of November 1, 2010. Thus, most of these materials and the oral argument related to them are already familiar to Brad Smith as counsel to Partnership for Ohio's Future and the Ohio Chamber of Commerce.

In addition, plaintiffs' argument that coordinated expenditures are outside the range of free speech approved by the United States Supreme Court majority in the case of *Citizens United v. Federal Elections Commission* was communicated to Brad Smith in a letter in April 2010 reaffirming the document hold notice that had been issued to the Ohio Chamber by plaintiffs' counsel in 2007 in connection with a prospective racketeering claim against the Ohio Chamber under the Ohio Corrupt Practices Act.

Therefore, granting of leave to file three days late in the schedule ordered by the magistrate judge on November 2, 2010, should not be prejudicial to the ability of the Ohio Chamber of Commerce and Partnership for Ohio's Future to respond within a reasonable time following this filing. Defendants' counsel and counsel for the Ohio Chamber of Commerce gave their consent to a late filing by plaintiffs' counsel, and plaintiffs' counsel has given his consent to a correspondingly later filing by the Chamber of Commerce in response.

While many of these facts and arguments are already familiar to counsel for the Ohio Chamber of Commerce, they are not familiar to the court and, in the interest of justice, should be considered by the court in its consideration of the matter of the plaintiff's subpoena for information concerning the contributions to the Ohio Chamber of Commerce and Partnership for Ohio's Future for use in influencing the Ohio 2010 elections.

Respectfully submitted,

/s/ Clifford O. Arnebeck, Jr.

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CERTIFICATE OF SERVICE

A copy of the foregoing was served upon counsel for the parties and respondents through the court's electronic filing system, this 13th day of November 2010.

/s/ Clifford O. Arnebeck, Jr.

Clifford O. Arnebeck Jr. (0033391)