

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

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

**PLAINTIFFS,**

**VS.**

**JENNIFER BRUNNER, ET AL.,**

**DEFENDANTS.**

**CASE NO. 2:06-CV-745**

**JUDGE MARBLEY**

**MAGISTRATE JUDGE KEMP**

**PLAINTIFFS' MOTION FOR RELIEF FROM STAY**

Plaintiffs move that the stay entered in this matter by the court on joint motion of the parties be lifted.

Respectfully submitted,

*/s/ Clifford O. Arnebeck, Jr.*

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Counsel for Plaintiffs

## MEMORANDUM IN SUPPORT OF MOTION

Plaintiffs notified Ohio Secretary of State Kenneth Blackwell and all of the 88 Ohio county boards of elections of their intention to file suit on August 23, 2006. The immediate purpose of the suit was to preserve the ballots and related materials for the 2004 Ohio presidential election with respect to which the 22-month retention schedule was about to expire. Suit was filed on August 31, 2006. On September 7, 2006, on motion of the plaintiffs and with agreement of defendant Secretary of State Kenneth Blackwell, this court issued an order to all of the Ohio county boards of elections to preserve the 2004 ballots and related materials until further order of the court.

The broader purpose of plaintiffs' complaint was protection against an ongoing conspiracy to interfere with the voting rights of African American and college student voters that was evident in the 2004 Ohio presidential election, and with respect to which this court ordered relief on election day 2004 in an action brought by the Ohio Democratic Party. The original complaint sought intervention of the court through appointment of a special master to oversee the integrity of the 2006 Ohio election and protect against interference with voting rights in that important election.

On October 9, 2006, plaintiffs amended their complaint to add Rainbow PUSH and the Columbus Coalition for the Homeless as plaintiffs, various additional defendants and a request to declare unconstitutional the voter ID requirements, passed on a partisan basis into Ohio law in 2005, in House Bill 3.

On plaintiffs' motion, Case C2-06-896 filed by the Northeastern Ohio Coalition for the Homeless ("NEOCH") challenging the constitutionality of House Bill 3 voter ID provisions, was deemed related to this case and, on October 25, 2006, was transferred to this court. This court proceeded to declare the voter ID requirements of House Bill 3 to be unconstitutional. After the Sixth Circuit reversed, plaintiffs cooperated with plaintiffs in the NEOCH case to assist the court and parties in clarifying and ameliorating some of the provisions of House Bill 3 voter ID requirements.

On the day preceding the 2006 election the court heard plaintiffs' request for judicial supervision of the 2006 election, including a request for availability to address issues as they arose on election day in regard to voter ID requirements, and to require post election audits as an antidote to anticipated partisan election rigging activity. While the court declined to formally grant the temporary injunctive relief requested by plaintiffs, such as the appointment of a special master, the court made itself available on election day to personally respond and intervene on an informal basis to correct a widespread abuse in the application of the law, that was having a disparate and discriminatory adverse effect upon African American and college student voters on election day 2006. Specifically, the court secured the commitment of Secretary of State Blackwell to order all boards of elections to immediately cease and desist from placing voters in a provisional status where their drivers' licenses did not have the same address as their registered voting address.

The voters of the State of Ohio, among other offices, elected a Democratic Governor, Secretary of State and Attorney General in the 2006 election. This terminated the ability of the alleged

conspirators against the civil rights of the plaintiffs to enact further legislation on a partisan basis and to administer regulations and litigation in the furtherance of the conspiracy alleged by plaintiffs against their civil rights.

Upon the public invitation by the new Secretary of State Jennifer Brunner and Ohio Attorney General Mark Dann to settle cases of merit that had been filed against former Secretary of State Kenneth Blackwell, plaintiffs initiated settlement discussions with respect to this case with the office of the Attorney General. The parties agreed to a standstill agreement with respect to this litigation which was implemented by joint motion to stay the case filed with, and approved by this court on February 15, 2007.

On April 3, 2007, the parties jointly moved that the stay be lifted for the sole purpose of obtaining an order from the court to the boards of elections requiring that the ballots from the 2004 presidential election, which had been previously preserved by court order, be transferred to the custody of the Ohio Secretary of State Jennifer Brunner in a central state repository.

During the period that this case has been stayed Secretary of State Jennifer Brunner has instituted broad and important initiatives to enhance both the integrity and appearance of integrity in Ohio elections. These include the establishment of a Voting Rights Institute by which to secure the input of interested citizens, the ongoing development of election policies and directives and the Everest Project which, using industry and academic experts, tested the vulnerability of the electronic voting machines to fraudulent manipulation of the very kind that is

alleged by the plaintiffs to have occurred in the 2004 Ohio presidential election and was predicted by the plaintiffs for the 2006 election.

A central part of the settlement explorations in this case was the possibility that the Attorney General's office, under powers granted by House Bill 3 to investigate election fraud, would open such a criminal investigation. Counsel for plaintiffs – based upon their relationship and work in the aftermath of the 2004 election with U.S. Representative John Conyers -- committed to seek the assistance of the US House Judiciary Committee with respect to such investigation.

After being advised that the criminal division of the office of the Ohio Attorney General had been organized, counsel for plaintiffs made a formal and public referral of the evidence of criminal activity in the suppression of voters and tampering with votes that had occurred in the 2004 presidential election. This submission included, among other things, the book entitled Witness to a Crime, written by Richard Hayes Phillips, a witness for plaintiffs in this case, to which a compendium of digital photographs of ballots and other election materials in the 2004 election was appended and the book What Happened in Ohio? A Documentary Record of Theft and Fraud in the 2004 Election, of which co-counsel Robert Fittrakis and individual plaintiff, Harvey Wasserman are authors.

One of the chapters of Witness to a Crime, "Shreds of Evidence," specifically addresses the destruction of evidence, including the destruction of unused ballots of which the plaintiffs complained in their original document hold notice to Secretary of State Kenneth Blackwell and the 88 county boards of elections and in their motion to the court for a protective order. It also

addresses the responses of the boards of elections made to Secretary of State Jennifer Brunner in response to her directive that an explanation be provided for any ballots from the 2004 election which were not delivered to the Secretary of State.

Requests for criminal investigation and prosecution in regard to these matters did not begin with this lawsuit. Rather, counsel for plaintiffs and then ranking member of the House Judiciary Committee John Conyers made multiple referrals to the FBI for investigation of reported criminal activity in connection with the 2004 presidential election. In addition, both the case *Moss vs. Bush* before the Ohio Supreme Court, in which plaintiff's counsel Arnebeck and Fitrakis were counsel, and plaintiff Rainbow PUSH was an organizer, and a report Preserving Democracy: What Went Wrong in Ohio, prepared by US Representative John Conyers' staff for submission to the Congress in its consideration of the historic challenge to the Ohio electors on January 6, 2005, alleged fraudulent manipulation of votes and voter suppression tactics that targeted African American voters and college students. Counsel Arnebeck and Fitrakis, president of plaintiff Rainbow PUSH the Reverend Jesse Jackson, and plaintiff Matt Segal, a student who voted at Kenyon College in November 2004, testified before the committee of the Congress organized by US Representative John Conyers, in one or both meetings that were conducted in Washington and Columbus, on December 6 and December 13, 2004, respectively.

The suspected lead perpetrator of this conspiracy against the civil rights of the plaintiffs and against the rule of law in the United States is Karl Rove who at the time of the 2004 presidential

election was serving as deputy chief of staff to the president of the United States.<sup>1</sup> Rove's politicization of the Justice Department is currently being investigated by the US House Judiciary Committee.

Upon being advised in regard to the limited resources of the criminal division of the Ohio Attorney General's office, and its preference that their involvement begin at the point where specific targets for indictment had been identified, plaintiffs' counsel advised the criminal division that plaintiffs would proceed with the civil case for the purpose of further developing the evidence in the case.

Plaintiffs have also obtained new witnesses and resources to enable them to prosecute their civil case in a carefully targeted fashion, without disrupting the important work of the Secretary of State Jennifer Brunner and the county boards of elections in preparing for the 2008 general election.

Wherefore, Plaintiffs request that their motion for relief from the stay be granted.

Respectfully submitted,

/s/Clifford O. Arnebeck, Jr.  
Clifford O. Arnebeck Jr. (0033391)  
Trial Attorney

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<sup>1</sup> As documented in the movie *American Blackout*, when Reverend Jesse Jackson asked to speak with the president concerning the suppression of some one million African American voters in the 2000 election, President Bush told Jackson to speak with Karl Rove.

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### **CERTIFICATE OF SERVICE**

This is to certify a copy of the foregoing was served upon counsel of record by means of the Court's electronic filing system on this 17th day of July 2008.

/s/ Clifford O. Arnebeck, Jr.