

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

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

PLAINTIFFS,

VS.

JENNIFER BRUNNER, ET AL.,

DEFENDANTS.

CASE NO. 1:08-mc-00105-SO

JUDGE SOLOMON OLIVER

U.S. DC SDOH 2:06-CV-745

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR EXPEDITED
HEARING AND MEMORANDUM IN OPPOSITION TO NONPARTY MICHAEL
CONNELL'S MOTION TO QUASH**

REQUEST FOR JUDICIAL HEARING ON THE MOTIONS

I. INTRODUCTION

The public importance of having Michael Connell's ("Connell") testimony, prior to the November 4, 2008 election, has been recognized by the Southern District of Ohio Court, in an agreed order between the plaintiffs and Ohio Secretary of State Jennifer Brunner, and Ohio Attorney General Nancy Rogers. (Exhibit A). Connell's testimony is sought for the purpose of informing the parties and the public of vulnerabilities to cyber-attacks upon the integrity of the 2008 election. Connell is a principal information technology expert for Republican Presidential campaigns and for the Ohio Secretary of State's Office during Kenneth Blackwell's tenure covering the 2004 and 2006 elections.

Plaintiffs seek this court's assistance in their attempt to obtain Connell's testimony, in the face of a reported attempt by Karl Rove to intimidate Connell and block his testimony.

II. BACKGROUND

The underlying case, *King Lincoln Bronzeville Neighborhood Association, et al. v. Ohio Secretary of State Kenneth Blackwell*, Case No. 2:06-cv-00745-ALM-TPK was filed in the Southern District on August 31, 2006. It alleges an ongoing civil rights conspiracy on the part of Secretary of State J. Kenneth Blackwell and 100 John Doe defendants, to suppress African-American and student voters, and to alter their votes. This case built upon evidence of voter suppression and vote tampering in the 2004 Presidential election in Ohio.

After the November 2006 election and inauguration of Secretary of State Jennifer Brunner and Attorney General Mark Dann, plaintiffs' counsel met with representatives of the Ohio Attorney General's office, to consider possible settlement of the case. These counsel agreed to jointly file a motion to stay the proceeding to enable further exploration and consummation of the settlement concept discussed at that meeting. An essential part of that settlement concept was that the office of the Ohio Attorney General would conduct an investigation of alleged fraud in the 2004 Ohio Presidential election.

On July 17, 2008, Plaintiffs filed a motion for relief from the stay in this case to enable them to conduct discovery that would better target the official investigation of election fraud that they were seeking. Concurrently therewith, plaintiffs' counsel also sent a document hold notice to United States Attorney General Mukasey in regard to the e-mails of Karl Rove, whom they identified as the principal perpetrator of a pattern of

corrupt activity under the Ohio Corrupt Practices Act. In their news conference concerning this filing and submission, Plaintiffs' counsel also identified Michael Connell as a key witness to multiple facets of Karl Rove's pattern of corrupt activity.

On July 19, 2008, two days after this news conference that was widely disseminated within the blogosphere, an anonymous tipster, describing himself as being within the McCain Presidential campaign, reported that Rove had threatened Michael Connell for the apparent purpose of intimidating him from giving truthful testimony against Karl Rove. *See* Declaration of Brett Kimberlin, Exhibit B, ¶ 3.

Secretary of State Jennifer Brunner initially opposed lifting the stay in this case until after the impending November election. *See* Exhibit C. However, the stay was lifted on September 19, 2008 by an agreed order (Exhibit A) to enable the plaintiffs to take the deposition of Michael Connell.

A subpoena was issued from the Southern District of Ohio for a deposition to occur in Akron, Ohio. Non-party Michael Connell opposed the taking of this deposition and filed a motion to quash. Informal discussions ensued between counsel for the plaintiffs and counsel for Mr. Connell. In these informal discussions there was no compromise or accommodation, other than the delay of the deposition until after the election that would satisfy Mr. Connell's attorneys. Plaintiffs, on the other hand, argued that the agreed court order authorizing Connell's deposition, in the context of the Secretary of State's opposition to pre-election discovery, constituted a judicial determination that Mr. Connell's deposition should take place before the election.

At the suggestion of the office of Attorney General the subpoena from the Southern District was withdrawn and a new one issued from the Northern District pursuant to Rule 45(a)(2)(B) and for the convenience of the deponent.

Service was attempted and Connell's office and home on October 7, 2008, and left in his office on October 8, 2008, and personally served in the State of Maryland on October 8, for a deposition to occur in Akron on October 15, 2008.¹ *See* Exhibits D and E. Connell accepted personal service at his office on October 13, 2008. *See* Exhibit F.

III. LAW AND ARGUMENT

A. Connell's opposition to being deposed before the election

Connell's opposition to being deposed before the election was communicated by letter notice and a motion to quash which is now before this court. That opposition is not based upon insufficient time or notice, because there is no minimum notice set forth in the Rules. Nor is there a basis for legitimate concern about exposing trade secrets. Plaintiffs' seek information about election fraud and the law does not accord trade secret protection to criminal activity. Connell's position that his deposition be postponed until after the election would prevent the public from having essential information regarding the integrity of this election before the election.

All the grounds set forth by attorneys for Mr. Connell are without merit, are interposed solely for the purpose of delay beyond what the court in the Southern District already determined to be warranted.

Plaintiffs' expert Stephen Spoonamore and Connell do not compete. *See* October 26, 2008, Declaration of Stephen Spoonamore, Exhibit G, ¶ 15.

¹ This out-of-state service, providing actual notice, would have required court approval, and Connell accepted service at his office on October 13, 2008, making that unnecessary.

B. The critical need for Connell's pre-election testimony

Attached hereto is a copy of the original affidavit submitted by Stephen Spoonamore, the plaintiffs' cyber-security expert, in support of plaintiffs' motion to lift the stay. *See* September 17, 2008, Declaration of Stephen Spoonamore, Exhibit H. Subsequently, the Ohio Attorney General provided plaintiffs with the architecture maps that were requested in the Connell subpoena. Copies of the 2004 and 2006 architecture maps are attached as Exhibits I and J respectively hereto.)

Spoonamore's further analysis, after he was able to review the architecture maps reflecting the computer and data processing design in the Ohio Secretary of State's office for the 2004 and 2006 elections is attached, as Exhibit G.

The "man-in-the-middle" setup in the 2004 and 2006 elections in Ohio may shed light upon similar man-in-the-middle schemes which appear to be in place in Colorado, New Mexico and other states for the 2008 election.

The situation in Ohio in which Michael Connell has unique insight and experience can also help expose those who played a significant role in the theft of the 2004 presidential election, who continues to enjoy positions of trust in the administration of the 2008 presidential election. This includes Triad Corporation which was responsible for programming the central tabulators many Ohio counties used in the 2004 election. In the impending 2008 election Triad has been entrusted with responsibility for processing voter registration databases by 55 counties, and in 25 of these counties Triad is actually hosting these databases on its computers.

Obtaining Michael Connell's testimony before the election is critically important. Connell has indicated in prior conversations with plaintiff's expert that, if he is compelled

to testify, he will not lie. Connell's potential testimony is such a great threat to Karl Rove that Karl Rove threatened to see that Cornell's wife would be criminally prosecuted if Connell implicated Rove in the theft of the 2004 Ohio election. *See* Declaration of Brett Kimberlin, Exhibit B, ¶ 3.

Bringing Connell before the court can help establish whether Rove, as reported, has threatened and intimidated Connell and expose whether Rove is employing a reported "limited hangout" for Connell. It could help break up Rove's plan to electronically steal the 2008 presidential election. Rove's reported blocking of Connell's testimony is an obstruction of justice, and this court can and should put an immediate stop to it.

IV. CONCLUSION

Wherefore, the plaintiffs request that the court order that Michael Connell's deposition occur prior to the election at the earliest possible time and deny Michael Connell's motion to quash plaintiffs' subpoena for his testimony.

Respectfully submitted,

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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 29th day of October 2008 and mailed via U.S. Mail to the following:

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