

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

DEFENDANTS.

CASE NO. 2:06-CV-745

JUDGE MARBLEY

MAGISTRATE JUDGE KEMP

DECLARATION OF CLIFFORD O. ARNEBECK, JR.

My Professional Background Relevant to Election Litigation

1. I graduated from Harvard Law School in 1970 and was admitted to the practice of law in Ohio in 1970. I have continuously been engaged in the practice of law as an attorney for Ohio Bell, General Counsel for Ohio Power Company, Partner with Jones Day, of counsel with Chester Wilcox and Saxbe, partner Arnebeck & Christensen and as a sole practitioner and in association with other lawyers on an *ad hoc* basis. A principal part of my practice is election law, and since 2004 I have shared offices with Ohio Attorney Robert Fitrakis for whom this case is a principal focus of his limited practice.
2. During the 1980's, while a partner at Jones Day, and later as of counsel at Chester Willcox and Saxbe, I had managed election litigation as outside general counsel to the Ohio Senate Campaign Committee. This included intense election litigation, working with John Zeiger and Jack Chester, in federal and state courts, at multiple levels in which control of the Ohio Senate was at stake. In 1988, I was general counsel to the Dole Presidential campaign in Ohio.
3. In 1990 I ran an election reform campaign in the Republican primary for the Ohio 15th US Congressional District. We had a series of eight bipartisan town hall meetings that were covered as news events. The popularity of this campaign concept prompted President George H.W. Bush to counter it with a saturation media blitz in support of the reelection of the incumbent, throughout the weekend preceding the primary election.
4. In 1992, as legal committee chair and then co-chair of the Coalition to End the Permanent Congress, I led successful Congressional election reform litigation against the US

Congress in regard to the unconstitutional use of the postal franking privilege for incumbent reelection purposes. I also was an organizer of an election reform Presidential candidacy for which Ross Perot was recruited as a candidate.

5. In 1996 I ran another election reform candidacy, as the Democratic Party nominee to the 15th US Congressional District. I addressed the general session of the National Congress of American Indians on behalf of the reelection of President Bill Clinton, following John McCain's address in support of the candidacy of challenger Robert Dole.
6. Beginning in October 2000 and continuing through 2005, I was engaged in election litigation as trial attorney for the Alliance for Democracy under the personal supervision of that organization's founder, journalist and author Ronnie Dugger. Our complaint challenged the Ohio Chamber of Commerce's use of corporate treasury funds to launch a saturation defamatory attack upon the Ohio Supreme Court Justice Alice Robie Resnick during her 2000 reelection campaign. I filed and argued new complaints against the Ohio Chamber for continuing corporate election advocacy in violation of Ohio's election laws in the 2002 and 2004 Ohio Supreme Court election cycles.
7. In early 2005 I was elected to the Board of Directors of Common Cause/Ohio and was appointed as Chair of its legal affairs committee. I was also the primary board representative in regard to the companion election litigation of Common Cause/Ohio against the US Chamber, in which election attorney Don McTigue was trial counsel.
8. The election litigation with the US and Ohio Chambers of Commerce involved appeals at all levels of the state and federal courts and was generally successful for both the Alliance for Democracy and Common Cause/Ohio.

The Professional Litigation Team in *Moss v Bush*

9. I was counsel of record in the *Moss v. Bush* contest of the 2004 election before the Ohio Supreme Court. Bill Todd, then of Squire Sanders, had been counsel to the Ohio Chamber during all of my election litigation with them, and was general counsel to the Bush Cheney 2004 Ohio campaign.
10. Bob Fittrakis, was principal co-counsel. He is a Professor of Political Science and graduate of the Ohio State Moritz Law School. Fittrakis had the most comprehensive knowledge of the facts in regard to voter suppression and vote rigging in Ohio of anyone, other than those who were principal figures in the actual criminal conspiracy. He was the principal communicator of these facts through the Free Press, and through public hearings he organized around the state. Fittrakis identified the expert witnesses we relied upon in the development and presentation of the case. Fittrakis also obtained a grant to facilitate the creation of a digital archive of the 2004 ballots. Because of the destruction of many ballots, this archive is the only remaining record of some of those ballots.

11. Ohio licensed attorney, Susan Truitt, a 1984 graduate of Capital University Law School, had quickly established herself as excellent organizer and speaker for the cause of election integrity. She was a valuable part of our litigation team. Truitt had founded Citizens Alliance for Secure Elections, which had played a significant role in blocking the introduction of paperless Direct Recording Electronic voting machines in Ohio for use in the 2004 election.
12. Mike O’Grady as general counsel to the Ohio Democratic Party has asked for reports of any irregularities in the 2004 Presidential election. One of the irregularities reported to him was the under performance in Southwestern Ohio counties of John Kerry in relation to Ellen Connally, the Democratic candidate for Ohio Chief Justice. This became known as the “Connally Anomaly.”
13. I engaged Peter Peckarsky, a Washington, D.C. patent attorney. His undergraduate degree was from MIT and his law degree was from Case Western Reserve University. He was responsible for the content of the pleadings. His statistical expertise was invaluable in addressing both the Connally Anomaly and the exit poll discrepancy. Both of these factors indicated fraud in the election on a scale as large or larger than the officially reported margin of victory for Bush.
14. On the recommendation of Ohio Attorney Chris Glaros, who had played a leadership role among the Ohio volunteer attorneys in the Kerry Campaign, I engaged Susan Gellman, a graduate of OSU Moritz Law School, who had been Benson Wolman’s partner, to assist in the drafting of pleadings in the case. Wolman and Gellman were among the most highly respected civil litigators in Columbus.
15. Other lawyers from Washington, D.C., Stanford Law School, and Yale Law School were consulted and/or participated at the strategic and/or drafting levels.

The Voluntary Dismissal of *Moss v. Bush*

16. Chief Justice Moyer did not follow the precedent he set in a previous election contest between Fisher and Pfeiffer for the office of Ohio Attorney General, where he deferred the fact-finding responsibility of the Chief Justice to the full court. Nor did he recuse himself from deciding the case of *Moss v. Bush*, on a motion stating that he should recuse based upon the similarity of the alleged irregularities in the Chief Justice and Presidential 2004 races.
17. On January 6, 2005, I consulted two of the leading litigators in the United States, namely Allen Snyder and David Kendall, and later with our entire litigation team, consulted Mark Coco, an independent Ohio litigator with substantial expertise in Ohio election law, as part of my due diligence in advising our clients of our recommendation that *Moss v. Bush*

be dismissed after the rejection by Congress of the historic challenge to the Ohio Electoral vote.

18. Prior to dismissing *Moss v. Bush* we spoke personally with Reverend Jesse Jackson who had assembled the major portion of the individual plaintiffs in *Moss v Bush*. When he accompanied us to file *Moss v Bush* in the Ohio Supreme Court, Reverend Jackson described our action as a continuation of the walk from Selma to Montgomery, led by the Reverend Martin Luther King, Jr. We received Reverend Jackson's approval of this recommended action. We also received the signed consent from all of the named individual plaintiffs in the suit.
19. On January 11, 2005, we voluntarily dismissed *Moss v. Bush* without prejudice to further action.
20. On January 14, 2005, I filed a motion in the United States District Court on behalf of the Alliance for Democracy for leave to intervene in *Ohio Democratic Party v. Blackwell*, U.S. District Court SD OH Case No. C2-04-1955, for the purpose of proving the theft of the 2004 Presidential election.
21. The June 2006 article of Robert Kennedy, Jr. in the Rolling Stone Magazine eloquently and graphically presented the evidence that had been presented in *Moss v Bush*. Because of his family relationship with retired pollster Lou Harris, Kennedy was able to add the weight of this renowned election authority to the conclusion of his article that the 2004 Presidential election was stolen.
22. Neither our case, nor Robert Kennedy, Jr.'s article have been effectively rebutted on the merits, by anyone. Since that time, the fact that Ken Blackwell brought partisan Republican organizations into the Ohio Secretary of State's office, and utilized the servers of the partisan Smartech of Chattanooga, TN, has come to light. In addition, a leading cyber security expert, Stephen Spoonamore, who is also a traditional Republican, has come forward and independently confirmed evidence that the 2004 Presidential election was stolen through the use of classic electronic fraud techniques.
23. The Secretary of State/Ohio Attorney General motion for sanctions against the contestors' attorneys was opposed by Ohio Attorney Benson Wolman on behalf of 18 members of Congress, including Judiciary Committee ranking member John Conyers and Senator Russell Feingold. It was also opposed by the editorial board of the New York Times.

Miscellaneous Matters

24. I have not dismissed a case, or settled a case without the express approval of my client(s). Our motion for leave to intervene in *Ohio Democratic Party v. Blackwell* was opposed by the Ohio Democratic Party, and was denied by the court coincident with its dismissal of

the case on motion of the Ohio Democratic Party.

25. All of the funds contributed and expended in connection with *Moss v. Bush* and the motion of the Alliance for Democracy to intervene in *Ohio Democratic Party v. Blackwell*, most of which were generated by a national solicitation by two hosts on Air America Radio, were reported and disclosed in accordance with the laws and regulations applicable to charitable organizations, by the Alliance for Democracy, of which I was national co-chair and chair of its Ohio Honest Elections Campaign at the time.
26. I notified by E-mail on 3/6/09 the plaintiffs in this case of the court's decision denying the moving intervenor plaintiffs' motion to intervene, and attached the entire decision in pdf format.
27. The interview of Ms. Cornick of Willis Brown, which I facilitated at her request, took place when we were seeking further discovery in this case.
28. I have not threatened to sue a client of mine for defamation, nor have I sued or been sued by a client.
29. I have not threatened to sue Ms. Lupo, or anyone else in connection with this case, for defamation. Nor have I told anyone who asked about this case, that their inquisitiveness could lead to his or her death. I have described various comments by Ms. Lupo and Ms. Shaffer as defamatory, in particular their suggestion that plaintiffs' counsel in this case have been trying to suppress evidence of criminal activity. I have asked that their statements, which I have characterized as scandalous be stricken in accordance with the Civil Rules.
30. Aside from asking Bob Fittrakis about Ms. Lupo's unilateral filing of a pleading in this case, while she was functioning as a paralegal for us, I have not investigated Ms. Lupo. When I called Ms. Lupo for consent to my request for a week's extension for responding to her motion for reconsideration, I called the two numbers I had on my cell phone. I had these numbers from the time she was working in a paralegal capacity on this case. The person answering the first number said Ms. Lupo was not at that number. The interchange was brief and courteous. I then called the second number, where I connected with Ms. Lupo, who expressed doubt that she would be able to connect with all the members of her group. I then called Ms. Shaffer who said she would contact all the members of her group and get back to me.
31. On April 15, 2009, I went to the Columbus Metropolitan Area Public Library to pick up some tax forms. After picking up these forms, a former employee of the Secretary of State's office approached me. He stated he was in the middle of medical treatment at the Grant Hospital, adjacent to the library, but wanted me to know of his observations of improper activity in the Secretary of State's office in a prior administration. Ms. Shaffer

was not the subject of this or any other conversation I had that day. I was not aware of Ms. Shaffer's presence in the library.

32. The majority of clients in this case are African American, and the majority of all my clients are African American. I defended the NAACP National Voter Fund in an Ohio Corrupt Practices Act case, Wood County, Ohio Common Pleas Court, *Mark Rubick, et al. v. Americans Coming Together, et al.*, Case No. 04 CV 650. I represented the Rainbow-PUSH Coalition in regard to the *Moss v Bush* litigation and represent them in this litigation. Reverend Jackson has publicly referred to me as his lawyer and, described me to my wife as his "brother." I consider my close relationship with African American leaders, clients, friends and neighbors to be a privilege and an honor.

The Threats Against, and Death of Michael Connell

33. I regard Michael Connell's death as a tragedy. The major news coverage of the crash of his airplane on December 19, 2008, was by a joint CBS and Associated Press story that included film of his burning plane. The story of the crash and Connell's relation to this litigation appeared in the business section of the New York Times. It was also featured on the front page of the Cleveland Plain Dealer as part of a story that the writer said sounded like a John Grisham novel.
34. Bob Fittrakis and I met personally with US Rep. Dennis Kucinich at the US Capital to urge him to interview Michael Connell and call him as a witness before his oversight subcommittee.
35. I met personally with US Rep. John Conyers at the Rainbow-PUSH headquarters building in Chicago to urge that he interview and call Stephen Spoonamore and Michael Connell as a witness before his House Judiciary Committee.
36. Two individuals who have funded Velvet Revolution joined us in our meeting with Rep Kucinich. Sometime afterwards they committed to make substantial donations in support of our litigation to hold Karl Rove accountable for his ongoing activity to rig Presidential elections. Their contributions were sent to Velvet Revolution as the charitable 501(c)(3) for forwarding to us for use in this litigation. We have not engaged in fund-raising in concert with Velvet Revolution.
37. Michael Connell had agreed to come forward to meet with House Judiciary Committee staff. However, according to the declaration of Brett Kimberlin of Velvet Revolution, this did work its way through the committee bureaucracy. Kimberlin Declaration paragraph 6.
38. Our efforts to secure Connell's testimony in our case, after a threat by Rove against Connell had been reported to us, were supported by the Ohio Secretary of State and Attorney General offices and two federal judges. This resulted in lifting the stay in our

case to enable us to seek the deposition of Connell, and the court order for Connell's appearance in court and at deposition, in Cleveland.

39. Had Connell chosen to seek protection in the course of these proceedings, we believe he would have received it. Without his pursuit of witness protection from law enforcement authorities, we could not obtain it for him.

Further Progress in this Case

40. Since the tragic death of Michael Connell, a new witness has come forward with evidence linking the election rigging activities of this decade to organized crime operations based in Enterprise, AL. This witness has inside knowledge of this organized crime operation. This witness has also opened communication for us with another witness who has inside knowledge of Karl Rove's activities.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 22, 2009.

/s/ Clifford O. Arnebeck, Jr.

Clifford O. Arnebeck, Jr.