

Declaration of Robert Fittrakis

1. After the November 2006 election Secretary of State Kenneth Blackwell filed a motion to dismiss this complaint on grounds of mootness and the argument that the plaintiffs would not want to proceed against the Secretary of State's office under the new leadership of Jennifer Brunner.
2. At the public invitation of the new Secretary of State and Attorney General of the state of Ohio to settle cases of merit that had been filed against Secretary of State Kenneth Blackwell, counsel for plaintiffs met with senior officials of the Ohio Attorney General's office for the purpose of exploring settlement of this case.
3. A settlement concept of a consent order that would embody a substantial number of election reforms that plaintiffs were advocating, along with consideration of a criminal investigation by the Attorney General's office of the evidence of fraud in the 2004 election, formed the essential basis for a standstill agreement between the parties. This standstill agreement was to be implemented by a motion to stay the proceeding pending the completion of settlement negotiations.
4. A consent order was drafted and submitted to the Attorney General's office and has been the basis for ongoing negotiations and actions by the Secretary of State's office. The directive issued on Friday, September 5, 2008, concerning voter purges was consistent with one of the provisions of the consent order we proposed, as have been many other actions taken by the Secretary of State over the past year.
5. Trial counsel Arnebeck was handling implementation of this agreement with the Attorney General's office and the Court, including with respect to the planned filing of a joint motion for a stay of the litigation.
6. Ms. Lupo expressed concern to me that the deadline for responding to Secretary of State Blackwell's motion to dismiss the case as moot was nearing, and that the Ohio Attorney General's office might delay the filing of the proposed joint motion to stay the case, until after the deadline for response had passed. She asked if she might prepare a response for use, in the event that it was needed. I gave my permission to her to prepare a draft for use if it was needed, but made clear that nothing should be submitted that had not been approved by trial counsel Arnebeck.
7. Without my approval and without my authorization Ms. Lupo obtained my identification number for purposes of making filings in federal court and told me, after the fact, she had done so. She then, again without my knowledge or permission, contacted my wife to obtain my Email password, so as to be able to access the ID and password for my electronic filings in federal court. She then electronically filed, without my authorization, a proposed memorandum contra to Secretary of State Blackwell's motion to dismiss on

grounds of mootness. After the fact, she admitted to me doing this.

8. Some time afterwards, I received a copy of Ms. Lupo's memorandum to Mr. Arnebeck indicating her disagreement with the strategy that the trial attorneys had agreed upon, to standstill and to move to stay the case for purposes of trying accomplish a complete settlement of the case with Secretary of State Brunner, and not proceeding against the additional defendants named in the amended complaint. This strategy had been openly discussed among counsel in Ms. Lupo's presence after the meeting with the AG's office. Ms. Lupo had expressed her views at that time, but we as counsel in the case wanted to proceed with a settlement of the case on the concept we had discussed, and have the Attorney General's office take lead responsibility for investigating the evidence of fraud in the election.
9. This later memorandum by Ms. Lupo was not the basis for any professional concerns about Ms. Lupo's conduct. Rather, those concerns arose out of: 1) her unilateral unauthorized filing of a legal memorandum with the court in our case, and 2) her subsequent aggressive attempt, shortly after the termination of her work with us as a paralegal, to take control of the case by contacting at least one prospective client on which Mr. Arnebeck serves on the Board of Directors. As to this latter matter, I counseled her that she might get herself into trouble by contacting a group of which Arnebeck was a member and providing them with inaccurate information.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 8, 2008.

/s/ Robert Fittrakis

Robert Fittrakis