

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

THE STATE OF OHIO ex rel.	:
DANA SKAGGS, et al.,	:
	: Case No. 2:08-CV-1077
Plaintiff - Relator,	:
	:
v.	: Judge Frost
	:
JENNIFER L. BRUNNER	:
SECRETARY OF THE STATE	:
OF OHIO, et al.,	:
	:
Defendant - Respondent.	:
	:

**DEFENDANT OHIO SECRETARY OF STATE JENNIFER BRUNNER’S
SUPPLEMENTAL MEMORANDUM IN SUPPORT OF REMOVAL**

The United States Code statutorily prescribes what is commonly known as the “All Writs Act,” which states “[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. 28 U.S.C. § 1651(a). “The purpose and function of the All Writs Act [is] to supply the courts with the instruments needed to perform their duty, as prescribed by the Congress and the Constitution . . .” *Harris v. Nelson*, 394 U.S. 286, 300 (1969) (citing *Price v. Johnston*, 334 U.S. 266, (1948)). It is true that “the All Writs Act does not, by its specific terms, provide federal courts with an independent grant of jurisdiction.” *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 33 (2002) (internal citations omitted). Nevertheless, ““ancillary jurisdiction may extend to claims having a factual and logical dependence on the primary lawsuit.”” *Id.* (quoting *Peacock v. Thomas*, 516 U.S. 349, 355, (1996)). Moreover. “[i]f a district court is acting with respect to a case that remains within its jurisdiction, there is no doubt that its jurisdiction over the case includes authority to act under section 1651 when necessary to

‘protect,’ or ‘aid,’ its jurisdiction.” *Covanta Onondaga v. Onondaga County Res. Recovery Agency*, 318 F.3d 392, 396 (2d. Cir. 2003) (internal citations omitted).

In *Northeast Ohio Coalition for the Homeless v. Brunner*, Case No. 2:06-CV-00896, (“*NEOCH*”) the Federal District Court for the Southern District of Ohio issued an order on October 24, 2008, adopting and annexing Secretary of State Directive 2008-101. Then, the *NEOCH* Court incorporated verbatim Secretary of State Directive 2008-103 in an order issued on October 27, 2008. The claims asserted in the Supreme Court of Ohio case *State ex rel. Skaggs v. Brunner*, Case No. 2008-2206, have a “factual and logical dependence” on the *NEOCH* case currently before the Southern District Court. Despite the fact that Plaintiffs have attempted to characterize their Complaint purely on the basis of state law, in actuality, it is nothing more than an ancillary attack on the Southern District Court’s jurisdiction. This is not only a situation where the Southern District is exercising some continuing authority to effectuate its prior judgments; the Southern District also retains jurisdiction over these matters because the *NEOCH* case is still pending before the Court. In order to appropriately aid its jurisdiction, the Southern District of Ohio may exercise its power stemming from 28 U.S.C. § 1651 to uphold the integrity of those orders. For these reasons, removal of the underlying state action is proper in order to protect the integrity of the previous Court orders.

Respectfully submitted,
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*Attorneys for Defendant Jennifer L. Brunner
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CERTIFICATE OF SERVICE

This is to certify a copy of the foregoing was served upon all counsel of record by means of the Court's electronic filing system on this 14th day of November, 2008.

/s Richard N. Coglianesse