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## MEMORANDUM

**TO:** All County Boards of Elections

**FROM:** Pat Wolfe, Director of Elections  
Michael Sciortino, President of Ohio Association of Elections Officials (OAE0)

**DATE:** October 20, 2004

**RE:** Challenger and Witnesses

### CHALLENGER & WITNESS GUIDELINES

As election day approaches, many boards will be asked for the forms to appoint and certify challengers and witnesses. R.C. 3505.21 and R.C. 3506.13 authorize the appointment of eligible electors to serve as challengers and/or witnesses of elections. The elector need not live in the precinct where appointed. The statutes set forth:

- The function of challengers and witnesses.
- Who may appoint challengers and witnesses.
- Who may serve as a challenger and/or witness.
- The appointment process and deadlines.

The Ohio Association of Elections Officials (OAE0) has recommended policy and procedures for handling challengers at the polling place which are included in this memorandum.

#### Function

Challengers may be appointed for each polling place (including the board of elections' office), and witnesses for each tabulating location, as provided in R.C. 3505.21 and R.C. 3506.13. The same person may serve as both a challenger and a witness.

#### • Challengers

- **While Polls are Open:** Challengers are allowed to be in the polling place while the polls are open. A challenger may challenge (prior to the issuance of a ballot), for good cause, the right to vote of anyone who appears to vote. A challenge may be based on the person's citizenship, age, registration, residency in the precinct and, if the election is a partisan primary, political party affiliation. (R.C. 3505.21)
- **After the Polls Close:** Challengers are allowed to remain in a polling place *after* the polls close if ballots are not counted in that polling place. Challengers may observe the processing of the ballots including the sealing and signing of the envelopes and/or containers holding the voted ballots. Challengers are not allowed to touch or handle ballots or any other election materials, nor question the actions of the election officials. (R.C. 3506.13)



o **Witnesses**

Witnesses are allowed to observe the counting of ballots. (Thus, if ballots are not counted at a precinct polling place, then witnesses shall not be appointed to that polling place.) Witnesses are not allowed to touch or handle ballots or any other election materials, nor question the actions of the election officials.

**Appointment**

All challengers and witnesses must be appointed in writing on a "Notice of Appointment or Amendment of Appointment of Witnesses and Challengers" (Form No. 214) prescribed by the Secretary of State.

**1. By a Political Party**

Notice of appointment signed by the central committee chairperson and secretary, and filed with the board of elections.

**2. By a Group of Five or More Candidates**

Notice of appointment signed by at least five candidates and filed with the board of elections.

**3. By a Committee Supporting or Opposing a Ballot Issue**

Petitions to be recognized as committee to appoint challengers (Form No. 219) and witnesses (Form No. 220), and Notice of appointment by duly recognized ballot issue committee.

**Eligibility/Restrictions**

No uniformed peace officer as defined by R.C. 2935.01, no uniformed state highway patrol trooper, no uniformed member of any fire department, no uniformed member of the armed services, no uniformed member of the organized militia, no person wearing any other uniform and no person carrying a firearm or other deadly weapon shall serve as a witness or challenger.

A candidate may not serve as a challenger or witness *unless* the candidate (a) also is a member of the party controlling committee and (b) has been appointed by the party.

• **Number of Challengers/Witnesses**

No candidate shall be represented by more than one challenger and one witness at any one polling place except that a candidate who is a member of a party controlling committee, as defined in R.C. 3517.03, may serve as a witness or challenger.

In no case shall more than six challengers and six witnesses be appointed for any one election in any one precinct. If more than three questions are to be voted on, the committees which have appointed challengers and witnesses may agree upon not to exceed six challengers and six witnesses, and the judges of elections shall appoint such challengers and witnesses. If such committees fail to agree, the judges of elections shall appoint six challengers and six witnesses from the appointees so certified, in such manner that each side of the several questions shall be represented.

**Filing Deadline**

By 4 p.m. of the 11th day (October 22) before the election, any political party, group of candidates or issue committee appointing challengers or witnesses shall file with the board of elections a properly completed "Notice of Appointment" (Form No. 214) containing the names and addresses of its appointees and the polling places at which they shall serve.

**Deadline to Amend Appointments**

The deadline for amending challenger and witness appointments is 4 p.m. the day before the election; i.e., Monday, November 1, 2004.

**Certificate of Appointment**

Each challenger and witness shall receive from his or her appointing authority the appropriate Secretary of State-prescribed "Certificate of Appointment" (see Form Nos. 215, 216, 217, 218, 221 and 222.)

That certificate must be filed with the presiding judge of the polling place on election day.

Appointments and certifications must be made in writing by 4 p.m. on **October 22, 2004**, using the appropriate forms prescribed by the Secretary of State:

Form #	Description
214	Notice of appointment or amendment of appointment of witnesses and challengers
215	Certificate of appointment of challenger - executive or central committee of a political party
216	Certificate of appointment of witness - executive or central committee of a political party
217	Certificate of appointment of challenger - five or more candidates
218	Certificate of appointment of witness - five or more candidates
219	Petition to be recognized as committee to appoint challengers - measure submitted
220	Petition to be recognized as committee to appoint witnesses and challengers - measure submitted
221	Certificate of appointment of challenger - duly recognized committee advocating/opposing a measure
222	Certificate of appointment of witness - duly recognized committee advocating/opposing a measure

**Challenges to a Person's Right to Vote at the Polling Place - R.C. 3505.20****Who May Challenge**

R.C. 3505.20 provides that the right of a person to vote on election day may be challenged, for good cause, by any of the following persons:

- o Any challenger (appointed pursuant to R.C. 3505.21)
- o Any elector then lawfully in the polling place
- o Any judge or clerk of elections.

**Procedure**

- o **If the Board of Elections Already Has Ruled on the Person's Eligibility**

If the board of elections has ruled on the question presented by a challenge prior to election day pursuant to R.C. 3501.11(Q), R.C. 3503.24, R.C. 3505.19 or any other section of law, its finding and decision shall be final and the presiding judge shall be notified in writing of that decision.

- o **If No Prior Ruling by the Board of Elections on the Person's Eligibility**

If the board has not ruled, the question shall be determined as set forth in R.C. 3505.20.

**Form**

SoS No. 10-U Affidavit/oath/examination of person challenged at polls on election day (RC 3505.20)

### **Oath**

If any person is so challenged as unqualified to vote, the presiding judge shall administer the following oath to the challenged person: "You do swear or affirm that you will fully and truly answer all of the following questions put to you, touching your place of residence and your qualifications as an elector at this election?"

### **Grounds for Challenge**

#### **1. Not a U.S. Citizen - R.C. 3505.20(A)**

If the person is challenged as unqualified on the ground that the person is not a citizen, the judges shall put the following questions:

- (1) Are you a citizen of the United States?
- (2) Are you a native or naturalized citizen?
- (3) Where were you born?

If the person offering to vote claims to be a naturalized citizen of the United States, the person shall, before the vote is received, either:

- o Produce for inspection of the judges a certificate of naturalization and declare under oath that the person is the identical person named therein, or
- o State under oath when and where the person was naturalized, that the person has had a certificate of the person's naturalization, and that it is lost, destroyed, or beyond the person's power to produce to the judges.

If the person states under oath that, by reason of the naturalization of the person's parents or one of them, the person has become a U.S. citizen, and when or where the person's parents were naturalized, the certificate of naturalization need not be produced.

#### **2. Not a Resident of Ohio for 30 days Immediately Before the Election - R.C. 3505.20(B)**

If the person is challenged as unqualified on the ground that the person has not resided in this state for 30 days immediately preceding the election, the judges shall put the following questions:

- (1) Have you resided in this state for thirty days immediately preceding this election?  
If so, where have you resided? Name two persons who know of your place of residence.
- (2) Have you been absent from this state within the 30 days immediately preceding this election? If yes, then the following questions:
  - (a) Have you continuously resided outside this state for a period of four years or more?
  - (b) Did you, while absent, look upon and regard this state as your home?
  - (c) Did you, while absent, vote in any other state?

#### **3. Not a Resident of the County or the Precinct - R.C. 3505.21(C)**

If the person is challenged as unqualified on the ground that the person is not a resident of the county or precinct where he offers to vote, the judges shall put the following questions:

- (1) Do you now reside in this county?
- (2) Do you now reside in this precinct?
- (3) When you came into this precinct, did you come for a temporary purpose merely or for the purpose of making it your home?

**4. Not 18 years old by Election Day – R.C. 3505.20(D)**

If the person is challenged as unqualified on the ground that the person is not of legal voting age, the judges shall put the following question: "Are you 18 years of age or more to the best of your knowledge and belief?"

**Decision on Challenge**

The presiding judge shall put such other questions to the person challenged under respective heads designated by this section, as are necessary to test the person's qualifications as an elector at the election.

○ **Failure or Refusal to Answer**

If a person challenged refuses to answer fully any question put to the person, is unable to answer the questions as they were answered on the registration form by the person under whose name the person offers to vote, refuses to sign the person's name or make the person's mark, or if for any other reason a majority of the judges believes the person is not entitled to vote, the judges shall refuse the person a ballot.

○ **Failure to Qualify**

If a person is disqualified under R.C. 3505.20(C) because the person does not now reside in the county or precinct, the presiding judge shall inform the person of the person's right to vote in the person's proper county or precinct of residence and instruct the person to contact the appropriate board of elections for information concerning the location of the person's voting precinct.

**Decision is Final**

The decision of said judges shall be final as to the right of the person challenged to vote at such election.

**Policy and Procedures by the Ohio Association of Election Officials (OAEO)**

Because statutes do not specify the procedures and limitations for challenging voters, and because it is widely anticipated that challenger confusion could cause undue delays in voting, it is necessary to develop a policy for dealing with challenges posed at the precinct. The goal of this policy is to provide for the statutory rights of the challengers, while maintaining order in the polling location.

**Challenger Interference**

Challengers may not interfere with the voting process or unnecessarily delay it. For example, if a challenger challenges so many voters that his or her activities slow down the voting process or intimidate voters, then the presiding judge should take immediate action including expelling him or her from the polling place. If necessary, the presiding precinct judge shall follow the steps set forth below:

- The presiding precinct judge shall orally warn the challenger that his/her actions are jeopardizing the voters' constitutional right to cast a ballot.
- If a challenger again persists in delaying voting, the presiding precinct judge shall notify the Board of Elections director and deputy director of his or her decision to remove the challenger from the voting location.

**Initiating the Challenge**

- Challengers shall remain stationed behind the table where poll workers are seated.
- When a challenger wishes to challenge a voter, they shall do so by notifying the presiding judge and shall state the reason for the challenge.

- Whenever possible, the presiding judge shall move the challenged voter to an area no less than 10 feet from the poll worker table that will not obstruct other voters.

**Presiding Judge Duties and Decision**

- The presiding judge shall ask the appropriate questions by administering Form 10-U.
- The presiding judge shall put such other questions to the person challenged under respective heads designated by this section, as are necessary to test the person's qualifications as an elector at the election.
- If a person challenged refuses to answer fully any question put to the person, is unable to answer the questions as they were answered on the registration form by the person under whose name the person offers to vote, refuses to sign the person's name or make the person's mark, or if for any other reason a majority of the judges believes the person is not entitled to vote, the judges shall refuse the person a ballot.
- The decision of said judges shall be final as to the right of the person challenged to vote at such election.

**Affidavit-Oath-Examination of Person Challenged**

Revised Code Section 3505.20

The State of Ohio, \_\_\_\_\_ County, ss:

I, \_\_\_\_\_ the undersigned, swear or affirm that I will fully and truly answer all of the following questions put to me, touching my place of residence and my qualifications as an elector at this election.

(Check all that apply) Being challenged as unqualified on the ground(s) that:

(A) \_\_\_\_\_ The person is not a citizen, the following questions shall be put:

- (1) Are you a citizen of the United States? \_\_\_\_\_
- (2) Are you a native or naturalized citizen? \_\_\_\_\_
- (3) Where were you born? \_\_\_\_\_

If a naturalized citizen, then

<sup>1</sup> I am the identical person named in the certificate of my naturalization herewith produced for the inspection of the Judges of Election.

Or,

I was naturalized on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_  
I have had a certificate of my naturalization which is lost, destroyed or beyond my power to produce to the Judges.

Or,

By reason of the naturalization of my parent(s) \_\_\_\_\_ I have become a Citizen of the United States and my parent(s) \_\_\_\_\_ was naturalized on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_.

(B) \_\_\_\_\_ The person is not a resident of the state for thirty days immediately preceding election, the following questions shall be put:

- (1) Have you resided in this state for thirty days immediately preceding this election?

\_\_\_\_\_

If yes:

- (a) Where have you resided?

\_\_\_\_\_

- (b) Names of two persons who know your place of residence.

(1) \_\_\_\_\_

(2) \_\_\_\_\_

<sup>1</sup> Cross out words or lines not applicable so that statements and answers made shall be factual.

Form 10-U Prescribed by Secretary of State (12-97)

(2) Have you been absent from this state within the thirty days immediately preceding this election?

If yes:

(a) Have you continuously resided outside this state for a period of four years or more?

(b) Did you, while absent, look upon and regard this state as your home?

(c) Did you, while absent, vote in any other state?

(C) \_\_\_\_\_ The person is not a resident of the county or precinct where he/she offers to vote, the following questions shall be put:

(1) Do you now reside in this county? \_\_\_\_\_

(2) Do you now reside in this precinct? \_\_\_\_\_

(3) When you came into this precinct, did you come for a temporary purpose merely or for the purpose of making it your home? \_\_\_\_\_

(D) \_\_\_\_\_ The person is not of legal voting age, the following question shall be put:

(1) Are you eighteen years of age or more to the best of your knowledge and belief ?

\_\_\_\_\_

Other Questions and Answers:

\_\_\_\_\_  
\_\_\_\_\_

(Refusing or failing to answer any question fully or refusing to sign this form will result in the loss of your right to vote.)

Challenged Voter's Signature \_\_\_\_\_

Sworn to before me and signed in my presence, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
(Month) (Year)

\_\_\_\_\_  
Presiding Judge of Election,

Precinct \_\_\_\_\_

\_\_\_\_\_  
Township or Ward and City or Village

The Presiding Judge shall put such other questions to the persons challenged as may be necessary to test his qualifications as an elector at the election. R.C. 3505.20.

**WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY  
OF A FELONY OF THE FIFTH DEGREE**

**WITNESSES AND CHALLENGERS POLICY**  
Adopted by Hamilton County Board of Elections  
October 22, 2004

The following is the policy of the Hamilton County Board of Elections regarding witnesses and challengers in the November 2, 2004 Election. This serves to supplement the memorandum from the Secretary of State's Office dated October 20, 2004, which is attached hereto.

- 1) Witnesses and challengers must be Ohio electors, but may be from outside of Hamilton County.
- 2) Challengers are election officials and therefore may cast absentee ballots.
- 3) The signatures of Party officials on the certifications of witnesses or challengers need not be original but may be photocopied, stamped or faxed, but only with the authority and approval of the involved Party officer.
- 4) Witnesses are not appointed at precincts but only for activities at the Board. A challenger may remain in the polling place after the close of voting to observe the process.
- 5) A challenger may serve in that capacity for more than one precinct where there is more than one precinct located in the same polling place.
- 6) The initial names of all witnesses and challengers must be submitted to the Hamilton County Board of Elections office by no later than Friday, October 22<sup>nd</sup> at 4:00 p.m. Changes in that list can be made up until 4:00 p.m. on Monday, November 1<sup>st</sup>, but changes can only be made in those precincts in which someone was named by October 22<sup>nd</sup>.



7) **Conduct at the Polls:**

- a) **Challengers may not campaign or wear any candidate, issue or Party identification inside the polling place;**
- b) **Challengers may not touch any of the election equipment or supplies;**
- c) **Challengers may not talk to voters in the polling place;**
- d) **A challenger who desires to bring a challenge or to call attention to any issues he or she believes should be dealt with in the polling place shall do so by addressing the presiding judge or, if the presiding judge is not available any of the other judges, in a polite professional manner;**
- e) **A challenger must have a good faith basis for challenging a voter and may not blanket challenge or randomly challenge voters;**
- f) **The challenger may challenge a voter only for the following reasons:**
  - i) **lack of citizenship;**
  - ii) **non-residency in the state;**
  - iii) **non-residency in the county;**
  - iv) **non-residency in the precinct (this challenge may depend on developments in the pending litigation);**
  - v) **not of legal voting age; or**
  - vi) **impersonating an elector.**

**The challenger shall state which of these reasons apply to the challenge:**

- g) **If challenged for any of the reasons stated in i) through iv) the prospective voter shall be provided with a form 10-U and the presiding judge or an assigned judge shall ask the questions of that prospective voter provided on the form that apply to the challenge being made. If the voter is in the signature book and voter responds to those questions with answers indicating that they are qualified to vote and signs the form under oath, they shall be given a regular ballot, be permitted to vote that ballot and the ballot shall be deposited in the ballot box. If the prospective voter's name is**

not in the signature book, but the voter is otherwise qualified to cast a provisional ballot, if that voter is challenged, he or she shall complete the Form 10-U and if their answers indicate they are qualified to vote and they sign the form under oath, they shall be instructed to cast a provisional ballot. Such provisional voters shall also complete the provisional ballot envelope and their ballot shall be placed in the envelope after it has been voted and shall then be deposited in the ballot box.

- h) If the basis for challenging a voter is that they are impersonating an elector, the prospective voter shall be asked to sign their name on a card or piece of paper provided to them by the presiding judge or judge. The presiding judge and judges shall then compare that signature to the signature in the signature book. The presiding judge and judges shall determine based upon the signature offered by the prospective voter and any other documentation the prospective voter chooses to provide, whether or not the prospective voter is permitted to vote. If the presiding judge and judges determine that the voter is not allowed to vote, the voter shall be advised that they may appeal that determination to the Hamilton County Board of Elections.
  - i) The presiding judge or judges may move a challenged voter away from the sign-in table to any area no less than 10 feet from the poll worker table while the judge and voter are completing the Form 10-U so that the processing of voters in line may continue.
  - j) Challengers shall not use cell phones in the polling place.
  - k) Challengers must follow the direction of the presiding judge. A Presiding Judge must recognize the right of Challengers to perform the duties conferred on Challengers under Ohio law. A presiding judge may remove a challenger from the polling place who the presiding judge deems to be disruptive following the process outlined in the attached Secretary of State's Memorandum of October 20, 2004..
- 8) By 4:00 p.m. on Friday, October 22<sup>nd</sup>, parties desiring to appoint witnesses for operations at the Board of Elections shall name those witnesses on the lists filed with the Board of Elections. Names of witnesses to procedures at the Board of Elections can be changed by filing the corrected name with

the Board of Elections by 4:00 p.m. on the day prior to the operation they are intended to witness. The operations which may be witnessed include:

- a) The preparation of the AV ballots which will begin on Monday, October 25<sup>th</sup> and continue on a daily basis until the election. Absentee ballots that are challenged shall be kept in the secrecy envelope until the Board has determined the challenge;
  - b) The Election Night receipt of ballots on the first floor of the building and their preparation for counting;
  - c) The Election Night count in the counting room on the third floor;
  - d) The preparation and handling of provisional ballots in the ten days following the election;
  - e) The official count:
    - i) at the tables where the ballots are reviewed;
    - ii) in the counting room.
  - f) Witnesses to Post Election Night activities shall be accepted pursuant to the Ohio Revised Code.
- 9) The Director and Deputy Director, in consultation with the Board of Elections, shall determine the number of witnesses who may be present for each operation and shall do so giving consideration to the space available and the ability to efficiently and accurately complete the process involved. Witnesses shall not handle any ballots nor the absentee ballot secrecy envelopes or the provisional ballot secrecy envelopes.