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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.

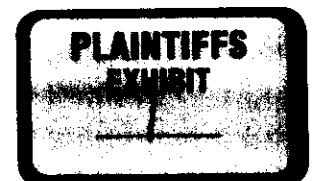
The Ohio Association of Elections Officials (OAE0) has recommended policy and procedures for handling challengers at the polling place which are included in this memorandum.

#### 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.

o **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. 3503.11(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?