



of State of Ohio, that day to discuss a report he had heard that county election officials in Ohio had been instructed by the Secretary of State that exit polling would not be permitted within 100 feet of polling places during the November 2, 2004 general election, contrary to prior advisories from the Secretary and past practices.

3. Because Mr. Mitofsky had been promised a return call that never came, he asked me to try to contact Ms. Wolfe directly to seek clarification. Beginning first thing Friday morning, October 29, 2004, I attempted to call Ms. Wolfe on dozens of occasions, but the telephones at the Secretary of State's offices were continuously busy. I also sent Ms. Wolfe an e-mail mid-day to let her know that I was having difficulty getting through by telephone and asking her to return my call as soon as possible.

4. After the close of business on Friday, October 29, 2004, Keith Scott of Ms. Wolfe's office returned my call. In that call, Mr. Scott confirmed that the Secretary of State had instructed county officials that exit polling would not be permitted within 100 feet of Ohio polling places on election day.

5. Mr. Scott confirmed that he was familiar with the substance of the Secretary of State's Advisory 2004-02, dated February 24, 2004, which explicitly permits exit polling and states unambiguously that exit polling is not conduct restricted by Ohio R.C. 3501.30, 3501.35, and/or 3599.4, but reiterated that exit polling would nevertheless not be allowed in the 100-foot zone. I advised Mr. Scott that it is the plaintiffs' position that a directive excluding

polling reporters from the 100-foot zone would be a violation of plaintiffs' First Amendment rights.

  
S. Penny Windle

Sworn to before me this  
31st day of October, 2004.

  
Notary Public

DOROTHY M. WIGMORE  
Notary Public, State of New York  
No. 31-4828098  
Qualified in New York County  
Commission Expires 3-4-05