



Ohio Secretary of State J. Kenneth Blackwell
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Directive 2004-45
October 26, 2004

ALL COUNTY BOARDS OF ELECTIONS

TO: Members, Directors & Deputy Directors

Appointment of challengers and witnesses at polling places vs. precincts

As stated on the conference call held between the Secretary of State's office and the county boards of elections on October 26, 2004, this directive is being sent to clarify the questions raised concerning whether the appointment of challengers and witnesses is based on a polling place or precinct basis. This directive overrules any previous documentation on the subject of challengers and witnesses being appointed on a precinct or polling place basis.

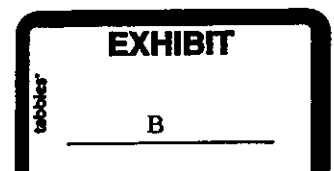
After further review it is the opinion of this office that entities appointing challengers and witness may assign them on either a precinct or polling place basis. Appointing entities may still only have one challenger or witness appointed per precinct and must have filed all challengers and witnesses by the October 22, 2004 deadline. Appointing entities may make amendments to challenger and witness appointments until 4 p.m. on Monday, November 1, 2004, but they may not add additional precincts to those filed by October 22nd.

If you have any questions regarding this directive, please do not hesitate to contact our Elections Division at (614) 466-2585.

Sincerely,

A handwritten signature in cursive script that reads "J. Kenneth Blackwell".

J. Kenneth Blackwell



STATE OF OHIO)
)SS:
CUYAHOGA COUNTY)

IN THE COURT OF COMMON PLEAS

CASE NO. CV 04 546530

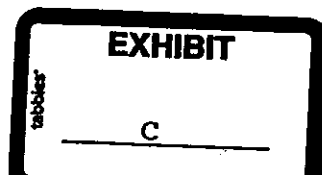
SHIRLEY THOMPSON, et al.)
)
 Plaintiffs)
 vs.)
)
 J. KENNETH BLACKWELL, et al.)
)
 Defendants)

JOURNAL ENTRY
AND ORDER RESTRAINING
DEFENDANT BLACKWELL AND
HIS REPRESENTATIVES, THE 88
OHIO COUNTY BOARDS OF
ELECTIONS

JOHN F. O'DONNELL, JUDGE:

A hearing was held on October 30, 2004, on the plaintiffs' complaint for declaratory judgment and permanent injunctive relief. Upon the evidence, and reasonable inferences from that evidence, the Court finds that defendant J. Kenneth Blackwell, Ohio's Secretary of State, has acted arbitrarily, unreasonably and unconscionably, and has shown a clear disregard for the provisions of sections 3505.20 and 3505.21 of the Ohio Revised Code. Because of that conduct, this Court, in considering the competing interpretations of those sections - specifically a clarified definition of "polling place" as that term is used in those sections - does not afford the defendant the deference normally given to the Secretary of State in interpreting Ohio's election law.

1 The evidence of which having been more fully presented and explained on the oral record in open court and which, due to time limitations, will not be restated here.



This Court finds² that "polling place" as used in Ohio Revised Code sections 3505.20 and 3505.21 (the "challenger statutes") means that public school, public building, other building or other part of any building that a county board of elections has designated as a location where voting may take place, regardless of the number of precincts served at that location. Therefore, so that the decision of this Court may take effect, the Court hereby orders as follows:

Defendant J. Kenneth Blackwell is hereby ordered to notify all 88 county boards of elections, by the most expeditious means possible, but in no event later than by 8:00 p.m. EDT on October 31, 2004, of the following: this order; that his Directive 2004-45 is vacated and of no force and effect as it pertains to the number of challengers per entity per polling place; and that, on Election Day, the boards are to allow only one challenger per challenging entity per polling place³, in accordance with the apparent⁴ previous practice in this state.

Defendant the Cuyahoga County Board of Elections, and all other county boards of elections in Ohio, are hereby enjoined and restrained from allowing to enter, into any of their polling places⁵, any more than one challenger per challenging entity. "One challenger" is to mean a single, named, designated individual per polling place, as opposed to multiple individuals at different times during Election Day. (Of course, that challenger may come and go, within reason and within the bounds of his or her statutory duty of good conduct, but no challenger may be replaced or substituted for once he or she has appeared at a polling place and

² Again, as more fully explained in open court.

³ As the term "polling place" has been defined herein.

⁴ "Apparent previous practice" because the evidence was scant about how many challengers per entity per building were allowed in the past.

⁵ As defined herein.

CERTIFICATE OF SERVICE

A copy of the foregoing Journal Entry, etc. has been personally given to all counsel of record this 30th day of October, 2004.


JOHN F. O'DONNELL, JUDGE