

2. On September 26, 2006, the Court granted Plaintiffs' motion for summary judgment and entered judgment: declaring that Defendant's oral directive violated the First Amendment of the U.S. Constitution; that Ohio's loitering statute could not be interpreted to prohibit exit polls within a 100-foot designated area around polling places without violating the First Amendment of the Constitution; permanently enjoining Defendant and all those acting in concert with him from enforcing the oral directive; and permanently enjoining Defendant and all those acting in concert with him from enforcing or issuing any rule, directive, advisory, policy or communication that would prohibit exit polls within the 100-foot designated area around polling places. The Court's Order further stated:

The Court orders defendant to issue a written directive by October 15, 2006 to Ohio election officials which shall **prominently** include the following language: "It would be unlawful, and a violation of the First Amendment to the U.S. Constitution, to interpret, apply or enforce Ohio's election Loitering Statutes, Ohio Rev. Code §§ 3501.30, 3501.35, and 3599.24, to prohibit exit polls within 100 feet of polling places." (emphasis added)

3. Defendant has failed to comply with this Court's Order. Plaintiffs now file an emergency motion seeking to enforce the Court's Order.

4. On October 12, 2006, I placed a telephone call to David R. Langdon, Esq., counsel for Defendant, requesting as a courtesy that he provide Plaintiffs and its counsel with a draft of the Directive required by the Court's Order, specified above, in the hopes of avoiding any dispute as to its content.

5. On October 13, 2006, Mr. Langdon, by email, declined to provide a draft of Defendant's proposed Directive. A copy of Mr. Langdon's October 13th email is attached as Exhibit 1.

6. By reply email, on October 13, 2006, I then requested Mr. Langdon to send us a copy of the Directive when it was issued by the Secretary of State's office. A copy of my October 13th email reply is attached as Exhibit 2. There was no response from Mr. Langdon to that email request.

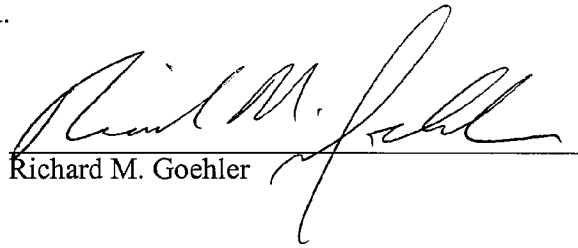
7. On October 16, 2006, still having not received a copy of the required October 15 Directive, I sent another follow-up email to Mr. Langdon requesting a copy as soon as possible. A copy of my October 16th email to Mr. Langdon is attached as Exhibit 3. There was no response from Mr. Langdon to that email request.

8. On October 17, 2006, still having not received a copy of the required October 15 Directive, I left a voicemail message for Mr. Langdon again requesting a copy. In response to my voicemail request, Mr. Langdon sent an email stating that, "I believe the directive was sent on Friday, but I don't have a copy of it yet. It should be on the Secretary's website." A copy of Mr. Langdon's October 17th email is attached as Exhibit 4.

9. To date, neither Plaintiffs nor Plaintiffs' counsel have ever received a copy of Defendant's Directive from Mr. Langdon or the Secretary of State's Office. Plaintiffs' counsel was able to locate a copy of the Directive on the Secretary of State's website after receiving Mr. Langdon's email on October 17. A copy of the Secretary's Directive, 2006-75, dated October 13, 2006, printed from the Secretary of State's website, is attached as Exhibit 5.

10. For the Court's convenience in reviewing this matter, a copy of Defendant's Advisory No. 2004-02, dated February 24, 2004, is attached as Exhibit 6, and a copy of Defendant's Directive No. 2004-51, dated November 2, 2004, is attached as Exhibit 7.

WHEREFORE, I respectfully submit that Plaintiffs' Emergency Motion to Enforce the Court's Judgment and Decree should be granted.


Richard M. Goehler

Sworn to before me and subscribed in my presence this 23rd day of October, 2006.


Notary Public – State of Ohio

DEBRA L. WOELFEL
Notary Public, State of Ohio
My Commission Expires Oct. 12, 2008

CINLibrary 0106684.0528998 1677400v.1

Goehler, Richard M.

From: David R. Langdon [dlangdon@langdonlaw.com]
Sent: Friday, October 13, 2006 1:20 PM
To: Goehler, Richard M.
Subject: Loitering directive

Dick-

In follow up to our discussion yesterday, while we respectfully decline your offer to review a draft of our Directive, please be assured that the Directive will include the language in the court's order.

Sincerely,

David R. Langdon, Esq.
LANGDON & HARTMAN LLC
11175 Reading Road, Ste. 104
Cincinnati, Ohio 45241
Direct: (513) 733-1038
Fax: (513) 577-7383
Mobile: (513) 604-5872
Email: dlangdon@langdonlaw.com

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IRS Circular 230 Disclosure: In accordance with IRS regulations, please be advised that to the extent this communication, including any attachments hereto, contains any federal tax advice, such advice is neither intended nor written to be used (and cannot be used) for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code, nor for promoting, marketing or recommending to another person any transaction, arrangement or matter addressed herein.



10/18/2006

Message

Page 1 of 2

Goehler, Richard M.

From: Goehler, Richard M.
Sent: Friday, October 13, 2006 1:33 PM
To: 'David R. Langdon'
Cc: 'Buckley, Susan'
Subject: RE: Loitering directive

David --

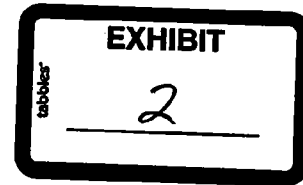
Thank you for the email. We would appreciate it if you would send us a copy of the Directive when it is issued by the Secretary of State's office.

regards

Dick Goehler

-----Original Message-----

From: David R. Langdon [mailto:dlangdon@langdonlaw.com]
Sent: Friday, October 13, 2006 1:20 PM
To: Goehler, Richard M.
Subject: Loitering directive



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10/18/2006

Message

Page 2 of 2

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10/18/2006

Message

Page 1 of 2

Goehler, Richard M.

From: Goehler, Richard M.
Sent: Monday, October 16, 2006 12:47 PM
To: Goehler, Richard M.; 'David R. Langdon'
Subject: RE: Loitering directive

David ---

We would appreciate it if you would forward a copy of the October 15 Directive required by Judge Watson's ruling just as soon as possible.

thanks

Dick Goehler

-----Original Message-----

From: Goehler, Richard M.
Sent: Friday, October 13, 2006 1:33 PM
To: 'David R. Langdon'
Cc: 'Buckley, Susan'
Subject: RE: Loitering directive



David - -

Thank you for the email. We would appreciate it if you would send us a copy of the Directive when it is issued by the Secretary of State's office.

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Sent: Friday, October 13, 2006 1:20 PM
To: Goehler, Richard M.
Subject: Loitering directive

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10/18/2006

Message

Page 2 of 2

David R. Langdon, Esq.
LANGDON & HARTMAN LLC
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Cincinnati, Ohio 45241
Direct: (513) 733-1038
Fax: (513) 577-7383
Mobile: (513) 604-5872
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10/18/2006

Goehler, Richard M.

From: David R. Langdon [dlangdon@langdonlaw.com]
Sent: Tuesday, October 17, 2006 1:20 PM
To: Goehler, Richard M.
Subject: Your vm

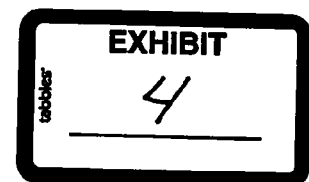
Dick-

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Cincinnati, Ohio 45241
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J. KENNETH BLACKWELL
Ohio Secretary of State

180 E. Broad Street, 16th Floor, Columbus OH 43215
614.466.2655 / Toll Free: 877.767.6446 / Fax: 614.644.0649
e-mail: blackwell@sos.state.oh.us
www.sos.state.oh.us

DIRECTIVE 2006-75

October 13, 2006

ALL COUNTY BOARDS OF ELECTIONS

Section 3501.30 of the Revised Code provides that the county boards shall provide polling supplies for each polling place, including:

(4) Two or more small flags of the United States approximately fifteen inches in length along the top, which shall be placed at a distance of one hundred feet from the polling place on the thoroughfares or walkways leading to the polling place, to mark the distance within which persons other than election officials, observers, police officers, and electors waiting to mark, marking, or casting their ballots shall not loiter, congregate, or engage in any kind of election campaigning. Where small flags cannot reasonably be placed one hundred feet from the polling place, the presiding election judge shall place the flags as near to one hundred feet from the entrance to the polling place as is physically possible. Police officers and all election officials shall see that this prohibition against loitering and congregating is enforced.

Likewise, section 3501.35 of the Revised Code provides:

(A) During an election and the counting of the ballots, no person shall do any of the following:

- (1) Loiter, congregate, or engage in any kind of election campaigning within the area between the polling place and the small flags of the United States placed on the thoroughfares and walkways leading to the polling place, and if the line of electors waiting to vote extends beyond those small flags, within ten feet of any elector in that line;
- (2) In any manner hinder or delay an elector in reaching or leaving the place fixed for casting the elector's ballot;
- (3) Give, tender, or exhibit any ballot or ticket to any person other than the elector's own ballot to the judge of election within the area between the polling place and the small flags of the United States placed on the thoroughfares and walkways leading to the polling place, and if the line of electors waiting to vote extends beyond those small flags, within ten feet of any elector in that line;



(4) Exhibit any ticket or ballot which the elector intends to cast;

(5) Solicit or in any manner attempt to influence any elector in casting the elector's vote.

(B) Except as otherwise provided in division (C) of section 3503.23 of the Revised Code, no person who is not an election official, employee, observer, or police officer shall be allowed to enter the polling place during the election, except for the purpose of voting or assisting another person to vote as provided in section 3505.24 of the Revised Code.

(C) No more electors shall be allowed to approach the voting shelves at any time than there are voting shelves provided.

(D) The judges of election and the police officer shall strictly enforce the observance of this section.

Pursuant to section 3599.40 of the Revised Code, whoever violates either of the foregoing statutes is guilty of a misdemeanor of the first degree.

Finally, section 3599.24(A)(5) of the Revised Code provides that “[n]o person shall ... [l]oiter in or about a registration or polling place during registration or the casting and counting of ballots so as to hinder, delay, or interfere with the conduct of the registration or election.” Whoever violates this provision is guilty of a misdemeanor of the first degree.

Thus, according to the above Statutes:

- no person who is within the area designated between the polling place and the small flags and, if the line of electors waiting to vote extends beyond those small flags, within ten feet of any elector in that line, is permitted to “loiter,” “congregate,” “engage in any kind of election campaigning” or otherwise “in any manner hinder or delay an elector in reaching or leaving the place fixed for casting the elector’s ballot”
- no person not an election official, employee, observer, or police officer, shall be allowed to enter the polling place during the election except for the purpose of voting or assisting another person to vote as provided in section 3505 of the Revised Code.

If a person conducting exit polls is “loitering” or “congregating” within the designated area, or otherwise “hindering” or “delaying” an elector from leaving the polling place, that person could be in violation of one or more of the Statutes. Under no circumstances is any person permitted to conduct “exit polls” within any polling place.

Of course, to the extent possible, the Statutes should be construed to protect both the fundamental right to vote and the freedom of speech, rights which are guaranteed by the Ohio constitution and the United States Constitution. And, in accordance with an order issued on September 26, 2006, from Judge Michael H. Watson of the United States District Court for the Southern District of Ohio, we have been instructed to state:

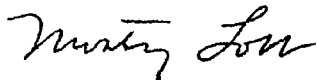
It would be unlawful, and a violation of the First Amendment to the U.S. Constitution, to interpret, apply, or enforce Ohio's election Loitering Statutes, Ohio Rev. Code §§ 3501.30, 3501.35 and 3599.24, to prohibit exit polls within 100 feet of polling places.

On election day, it is the responsibility of county election officials and, more specifically, precinct judges and clerks—working in cooperation with local police officers (see R.C. 3599.31)—to enforce the Statutes at each polling place. Any person charged with a violation of one or more of the Statutes may be subject to prosecution by the county prosecutor or local municipal authorities, as applicable.

This Directive supersedes all previous directives, advisories or other instructions from this office concerning the foregoing Statutes or polling place access.

If you have any questions regarding the interpretation of any of the foregoing Statutes, or their application (or potential application) to a specific context, I encourage you to contact your county prosecutor. If you have any questions regarding this Directive, please contact the Elections Division of this office at 466-2585.

Sincerely,

A handwritten signature in cursive script that reads "Monty Lobb".

Monty Lobb



Ohio Secretary of State J. Kenneth Blackwell
Elections Division - 180 E. Broad St., 15th Floor, Columbus, OH 43215
Tel. (614) 466-2585 Fax (614) 752-4360 e-mail: election@sos.state.oh.us

ADVISORY NO. 2004-02
February 24, 2004

TO: ALL BOARDS OF ELECTIONS
Members, Directors & Deputy Directors

Edison Media Research Exit Polling

Edison Media Research will be collecting and compiling election returns for television networks and national news services. The company will have representatives in Ohio to obtain primary election night results in selected precincts in the 37 counties indicated on the accompanying list provided by Edison Media Research. None of the representatives is allowed inside a polling place while voting is occurring.

The organization may have a reporter at each polling place or board of elections where votes are tabulated to obtain results. Please inform all election officials that representatives will be present and should receive precinct returns when they are available.

Exit Polling, Generally

Exit polling will be conducted by news organizations for the March 2 Primary Election. The boards are reminded that R.C. 3501.30, 3501.35 and 3599.24 collectively prohibit *anyone*, on election day, from:

- Engaging in election campaigning within 100 feet of the entrance to a polling place.
- Entering a polling place for any reason other than to vote, unless the person is an election official, a challenger or witness appointed pursuant to R.C. 3505.21, or a police officer.
- Loitering, congregating, hindering or delaying a person from reaching or leaving the polling place.

These statutes do not regulate or specifically address exit polling. Boards are advised that, in keeping with Ohio's past practices, exit pollsters should not be disturbed solely because they are conducting exit polling within the 100-foot boundary. However, if election officials and/or law enforcement officers determine that an exit pollster has unduly hindered or delayed a voter from entering or exiting the polling place, or has been disruptive in violation of the law, appropriate action should be taken.

Exit polling is *not* permitted, under any circumstance, inside any building where voting is conducted.

It is anticipated that exit pollsters from news organizations will conduct themselves in a professional and cooperative manner. Please advise your precinct officials of the possibility of exit pollsters at their precincts.

If you have any questions, please do not hesitate to contact my Elections or legal staff at (614) 466-2585.

Sincerely,

J. Kenneth Blackwell



Case 1:04-cv-00750-MHW Document 39 Filed 05/13/2005 Page 21 of 23
ATTORNEY GENERAL Fax: 614 728 7592 Nov 2 2004 10:47 P. 02



DIRECTIVE NO. 2004-51
November 2, 2004

VIA FACSIMILE - 7:45 a.m. URGENT - READ IMMEDIATELY

To: **ALL COUNTY BOARDS OF ELECTIONS**
Members, Directors & Deputy Directors

Court Orders re:

- **Challengers in the Polling Place,**
 - **Media Access and**
 - **Exit Polling**

1. The United States Sixth Circuit Court of Appeals has ordered that challengers appointed pursuant to R.C. 3505.21 may be in the polling places.
2. The Ohio Supreme Court, in Case No. 04-1834 (*State ex rel. Wolfe v. Blackwell*), orders the Secretary of State "to reissue and enforce his October 26, 2004, Directive 2004-45, to all eighty-eight counties insofar as it permits, in accordance with R.C. 3505.21 and 3506.13, one duly designated challenger per precinct and, after the polls close, one duly designated witness per precinct, no matter how many precincts vote at a single location."

Further, the Court issued a writ of mandamus "to compel the Franklin County Board of Elections and the remaining eighty-seven county boards of election to comply with this directive."

3. The United States District Courts have ordered that news media personnel:
 - a. May not be in the polling places (*ABJ v Blackwell*, USDC N.D. Eastern Div.), *but*
 - b. May be within 100 feet of the entrance of polling places (*ABC, Inc. et al v. Blackwell*, USDC S.D., Western Div.) to conduct exit polling.

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

Sincerely,



J. Kenneth Blackwell

