

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF OHIO

3 * * *

4 THE NORTHEAST OHIO

5 COALITION FOR THE

6 HOMELESS, et al.,

7 Plaintiffs,

8 vs.

CASE NO. C:2-06-896

9 JENNIFER BRUNNER, IN HER

10 OFFICIAL CAPACITY AS

11 SECRETARY OF STATE OF OHIO,

12 Defendant.

13 * * *

14 Deposition of MARY FRY, Witness herein,

15 called by the Plaintiffs for cross-examination

16 pursuant to the Rules of Civil Procedure, taken

17 before me, Beverly W. Dillman, a Notary Public in

18 and for the State of Ohio, at the offices of the

19 Board of Elections, 724 South Seventh Street,

20 Coshocton, Ohio, on Tuesday, October 21, 2008, at

21 12:11 o'clock p.m.

22 * * *

1 EXAMINATIONS CONDUCTED Page

2 BY MR. HALLINAN:.....4

3 BY MR. MCGANN:.....36

4 BY MR. HALLINAN:.....44

5 BY MR. MCGANN:.....45

6 EXHIBITS MARKED

7 (Thereupon, Coshocton Exhibit Number 1,
8 Identification Document, Provisional Ballot
9 Affirmation, was marked for purposes of
10 identification.).....6

11 (Thereupon, Coshocton Exhibit Number 2,
12 Provisional Ballots, Pages 37 and 38 from
13 poll worker manual, was marked for purposes
14 of identification.).....6

15 (Thereupon, Coshocton Exhibit Number 3,
16 Provisional Ballots, two pages from the poll
17 worker Quick Reference Guide, was marked
18 for purposes of identification.).....9

19 (Thereupon, Coshocton Exhibit Number 4,
20 Pages Bates Number MIA-00043 through 00046,
21 was marked for purposes of identification.)...31

22 (Thereupon, Plaintiffs' Exhibit Number 22
23 was referenced.).....38

24

25

1 APPEARANCES:

2 On behalf of the Plaintiffs:

3 Porter, Wright, Morris & Arthur, LLP

4 By: Paul G. Hallinan (via telephone)
5 Lindsay M. Sestile (via telephone)
6 Caroline H. Gentry (via telephone)
7 Attorneys at Law
8 1600 One Dayton Centre
9 One South Main Street
10 Dayton, Ohio 45402

11 On behalf of the Defendant Jennifer Brunner,
12 in her official capacity as Secretary of
13 State of Ohio:

14 Nancy H. Rogers, Attorney General
15 State of Ohio

16 By: Steven McGann (via telephone)
17 Senior Assistant Attorney General
18 150 East Gay Street
19 18th Floor
20 Columbus, Ohio 43215

21 On behalf of the Intervenor-Defendant
22 State of Ohio:

23 Nancy H. Rogers, Attorney General
24 State of Ohio

25 By: Robert Eskridge (via telephone)
Assistant Attorney General
30 East Broad Street
16th Floor
Columbus, Ohio 43215

ALSO PRESENT:

21 Kathy Hendricks, Deputy Director
22 Don Andrews, Board Member
23 Robert J. Batchelor, Prosecuting Attorney

24 * * *

25

1 MARY FRY
2 of lawful age, Witness herein, having been first
3 duly cautioned and sworn, as hereinafter
4 certified, was examined and said as follows:

5 CROSS-EXAMINATION

6 BY MR. HALLINAN:

7 Q. Ms. Fry, just formalities, would you
8 state your name for the record, please.

9 A. Mary Fry.

10 Q. And your position?

11 A. I am Director of the Coshocton
12 County Board of Elections.

13 Q. And in that position -- I think we
14 have been over this a couple of times, but in
15 that position you manage the elections functions
16 for the Board of Directors -- or Board of
17 Elections; is that right?

18 A. That is correct.

19 Q. Okay. And I think you have there
20 with you Ms. Hendricks, who is your Deputy; is
21 that right?

22 A. Yes.

23 MS. HENDRICKS: Correct.

24 BY MR. HALLINAN:

25 Q. And what generally would be Ms.

1 Hendricks' functions?

2 A. She is a backup individual for me.
3 If I am sick or can't do the job, then Kathy
4 steps in in my place. And if I get backlogged in
5 my workload, Kathy steps in and takes my place
6 also.

7 Q. I am with you. Is there a specific
8 split of functions between the two of you with
9 respect to provisional ballots -- the counting,
10 rejection or assessment of provisionals?

11 A. No, there is not. The majority of
12 the time we do this together.

13 Q. Okay. Well, let's do this first: I
14 understand that you have produced some documents
15 in response to the subpoena; is that correct?

16 A. That is correct.

17 Q. And I have got three documents
18 produced, and am I missing anything or is that
19 what you have?

20 A. No, that's very -- that's exactly
21 what I have also.

22 MR. BATCHELOR: Can you please have
23 him identify the documents -- ask him to
24 identify.

25 MR. HALLINAN: Yeah. I have got one

1 called identification envelope?

2 THE WITNESS: Correct.

3 MR. HALLINAN: We will call that
4 Coshocton 1.

5 (Thereupon, Coshocton Exhibit Number
6 1, Identification Document, Provisional Ballot
7 Affirmation, was marked for purposes of
8 identification.)

9 MR. HALLINAN: Then we have got one
10 that's entitled Provisional Ballots, between two
11 bars, with a lot of space around it, and it's got
12 some handwriting up in the top left-hand corner.

13 MR. BATCHELOR: Okay. This is --
14 these are Pages 37 and 38 from the poll worker
15 manual that we e-mailed Ms. Ransom here recently.

16 MR. HALLINAN: E-mailed who?

17 MR. BATCHELOR: Ms. Ransom.

18 MR. HALLINAN: Okay. I am with you.

19 Thank you. Okay.

20 Well, these two pages will be marked
21 as Coshocton 2.

22 (Thereupon, Coshocton Exhibit Number
23 2, Provisional Ballots, Pages 37 and 38 from
24 poll worker manual, was marked for purposes of
25 identification.)

1 MR. HALLINAN: And then the third
2 document, also captioned Provisional Ballots, is
3 three pages, two of them landscaped, and that
4 will be Coshocton 3.

5 MR. BATCHELOR: I believe those
6 would actually be two pages from the poll worker
7 Quick Reference Guide, and they are marked -- or
8 they are noted as the section -- as Provisional
9 Ballots. I believe the first page would start
10 as: Provisional ballots are paper ballots that
11 are used by voters whose identities cannot be
12 vouched for by required identification; is that
13 correct?

14 MR. HALLINAN: That's what I have as
15 the first page.

16 MR. BATCHELOR: Then the second page
17 would begin with the language: If the voter does
18 not have one of the seven forms.

19 MR. HALLINAN: Right.

20 MR. BATCHELOR: So there is actually
21 just two pages.

22 MR. HALLINAN: I have got a third
23 page called Processing Provisional Ballots Voted.

24 THE WITNESS: That's on the same
25 page.

1 MR. BATCHELOR: Okay. That
2 Processing Provisional Ballots Voted is on the
3 same page of the second page. They just couldn't
4 get it all scanned in together, apparently.

5 MR. HALLINAN: Okay. The second
6 page looks like it's kind of from a flip chart or
7 something; is that right?

8 MR. BATCHELOR: Yeah. The whole
9 thing is.

10 MR. HALLINAN: Okay. The
11 Provisional Ballots caption page is page one, and
12 then the second two pages I have --

13 MR. BATCHELOR: Yeah, apparently the
14 Secretary of State doesn't have a copy in their
15 office, so we scanned those two pages in.

16 THE WITNESS: Do you want me to make
17 copies of those?

18 MR. HALLINAN: Okay. So the second
19 page would actually be the five bullet points
20 followed by two black bars that have a number of
21 numbered paragraphs under them; is that right?

22 MR. BATCHELOR: I believe that's
23 correct, yes.

24 MR. HALLINAN: Okay. And you said
25 this is from the Quick Reference Guide from the

1 Secretary of State?

2 MR. BATCHELOR: Poll worker Quick
3 Reference Guide for November 2008, Ohio Secretary
4 of State.

5 (Thereupon, Coshocton Exhibit Number
6 3, Provisional Ballots, two pages from the poll
7 worker Quick Reference Guide, was marked
8 for purposes of identification.)

9 BY MR. HALLINAN:

10 Q. Okay. And the second one we
11 identified as being from the poll workers' manual
12 for the Secretary of State, and the first one is
13 the ballot -- or the envelope affirmation
14 statement; right?

15 A. Right.

16 MR. BATCHELOR: That is correct.

17 I also noted -- this is Bob
18 Batchelor. I am the Prosecuting Attorney. I
19 referenced, I believe, four other documents in my
20 e-mail.

21 MR. HALLINAN: Yes.

22 MR. BATCHELOR: Two directives, an
23 advisory opinion -- three directives and an
24 advisory opinion. Are you going to need
25 reference to those during the deposition?

1 MR. HALLINAN: We might. But let me
2 ask this, did the -- Bev, did you get exhibits
3 from us for this?

4 (Thereupon, an off-the-record
5 discussion was held.)

6 BY MR. HALLINAN:

7 Q. The information we have consists of
8 those three documents, and then there are some
9 other materials referenced by your counsel in an
10 e-mail, including three directives from the
11 Secretary of State, advisory from the Secretary
12 of State. And that was all there is; correct, in
13 response to the subpoena?

14 A. As far as I know, yes.

15 MR. HALLINAN: Bob, is that right?

16 MR. BATCHELOR: Yeah, that's
17 correct.

18 MR. HALLINAN: Thank you.

19 BY MR. HALLINAN:

20 Q. Okay. Ms. Fry, can you give me a
21 little bit of an overview of how the office
22 functions on Election Day in terms of
23 specifically the handling of provisional ballots?

24 A. Do you want me to start from the
25 beginning, when a voter walks in the door?

1 Q. That would be great.

2 A. Okay. If a voter does come into our
3 office and states that they have either just
4 moved into our county or have changed their
5 address within our county, we then pull their
6 registration card, if they are a registered
7 voter, and then proceed to have them fill out
8 your Exhibit Number 1. They fill out this
9 envelope, and then we go from there.

10 We precinct them, give them a
11 precinct that they will vote in from now on
12 through; give them a ballot that corresponds with
13 that precinct, and they vote here in the office.

14 And then those are held for ten days
15 until they are verified.

16 Q. Okay. How are -- well, let's try it
17 this way: How many precincts do you have?

18 A. We have 43 precinct.

19 Q. Okay. How are provisional ballots
20 handled out at the precinct?

21 A. Out at the polling locations the
22 poll workers are instructed to do the very same
23 thing. They cannot pull a card. What they have
24 the individual do is fill out a voter
25 registration card, fill out the envelope; and if

1 that is the current precinct that they would vote
2 in, they let them vote there. If not, they send
3 them to our office to vote here.

4 Q. Okay. Now, that's for change of
5 address; is that right?

6 A. That is correct. Or a new one
7 coming into the county.

8 Q. Okay. Coming into the county or
9 moving within the county; is that correct?

10 A. Coming -- like -- correct, yes.

11 Q. Okay. What other circumstances
12 might result in a provisional ballot?

13 A. Just an individual that has moved
14 into Coshocton County from another county and an
15 address change.

16 Q. How about a lack of ID?

17 A. Yes, that's another reason.

18 Q. Okay. What -- how are lack of ID
19 circumstances handled -- well, start with your
20 office.

21 A. In our office, what they -- well, in
22 our office there wouldn't be any problem because
23 they have got their ID right with them when they
24 come in.

25 Q. Okay. Out at the polling locations,

1 how are lack of ID situations handled?

2 A. In the polling location they have
3 ten days to come in and give us an
4 identification. And then once it's verified,
5 then we can go ahead and count that ballot, after
6 those ten days.

7 Q. Apart from the material that you
8 have sent us, does the Board have any process,
9 written process, guidelines or policies that
10 determine how these provisional ballots will be
11 handled at the polling locations for lack of ID?

12 A. At the polling locations, they are
13 put in a separate -- we have individual ballot --
14 a small ballot box that they store these in until
15 Election Day -- or election night, then they
16 bring them into the office. And when they bring
17 in all their supplies, we get this envelope, and
18 we put this envelope with the rest of ours to be
19 approved in that ten-day period.

20 Q. Okay. How do you determine whether
21 or not a person has sufficient ID? Strike that.

22 Who determines whether or not a
23 person has sufficient ID to vote regular, or
24 insufficient ID and, therefore, votes
25 provisional?

1 A. Well, a person that votes
2 provisional ballots is one that has no ID, has
3 moved within the county or has moved into the
4 county. That's it.

5 Q. Okay. No ID; how about inadequate
6 ID?

7 A. That would be -- serve the same
8 purpose.

9 Q. Okay. For example, if a person came
10 in with just a Social Security number, would that
11 vote regular or vote provisional?

12 A. If it was done here in our office,
13 they just had their Social Security -- the card,
14 you mean, or just giving the verbal number?

15 Q. Verbal number.

16 A. If we pull the registration card and
17 that verbal number matches and their signature
18 matches that card, then they are given a regular
19 ballot.

20 Q. Okay. How do you determine whether
21 or not the signature matches?

22 A. We pull the registration card.

23 Q. Right. Do you have a written policy
24 or -- strike that.

25 Do you have any policy or procedure

1 for determination whether or not the signatures
2 match? In other words, how far different do they
3 have to be before you say they don't match?

4 A. They have to match pretty close for
5 us to accept it. If not, then they vote
6 provisional, and we get a new signature from
7 that, and then it's up to the Board to make the
8 decision.

9 Q. So the Board makes the ultimate
10 decision on whether the signatures match?

11 A. Correct.

12 Q. Okay. Are any signature matches or
13 mismatches rejected at the polling location by
14 the poll workers?

15 A. No, because they don't have no way
16 to do that at the polls. They just take the
17 information down, bring it to the office on
18 election night.

19 MR. MCGANN: This is Steve McGann.
20 I had an objection to that question. Thanks.

21 (Thereupon, an off-the-record
22 discussion was held.)

23 BY MR. HALLINAN:

24 Q. Let me see if I have got this
25 straight. At the polling locations there is no

1 ability to match or not match signatures?

2 A. Signature book -- in your signature
3 book, all voters' signatures is listed in the
4 signature book and, yes, there is a way that they
5 could match it. But we instruct our poll workers
6 not to do this at the polls if there is somebody
7 that has no ID, has moved within the county or
8 coming into the county.

9 Q. Right. If a person shows up with no
10 ID, says here is my Social Security number, here
11 is my name, and then signs for a ballot, is there
12 a match made in that circumstance, or is -- I
13 mean, how is that person handled?

14 MR. MCGANN: Objection. Steve
15 McGann.

16 THE WITNESS: You want me to answer
17 that?

18 BY MR. HALLINAN:

19 Q. Yes, you can go ahead.

20 A. Okay. With just a Social Security
21 number at the polling locations, they would have
22 to vote provisional because the Social Security
23 numbers don't go to the polls.

24 Q. There are no Social Security numbers
25 or Social Security part numbers at the polls?

1 A. Correct. It's not listed in our
2 signature books. All that's in the signature
3 book is the birth date, the name, their address
4 and their signature and what precinct they are
5 in. There is no Social Security numbers in any
6 of our polling locations in our signature books.
7 We don't put that in there.

8 Q. Okay. So those kind of
9 circumstances would go to the --

10 A. That would go to our Board members
11 to say whether we do or don't count it, after the
12 individual has come in with an ID in that ten-day
13 period time.

14 Q. After the end of the ten-day period?

15 A. Correct.

16 Q. Okay. And then the Board of
17 Elections votes on these -- these kinds of issues
18 that are presented to them after the ten-day
19 period; right?

20 A. Correct.

21 Q. And do you know how many folks you
22 have on your Board of Elections?

23 A. We have four Board members, Chairman
24 and three members.

25 Q. All right. And what record is made

1 of the Board's disposition of individual ballots?

2 A. It's kept in the Board minutes. The
3 deputy director takes the minutes and records
4 everything. It would be the individual's name,
5 the -- what new identity they have brought in to
6 verify that this is who they are.

7 Q. Now, the identification envelope,
8 Exhibit 1, who fills that information out?

9 A. The individual voter themselves do
10 that.

11 Q. Okay. And that's done at the polls
12 as well as at your office, depending upon where
13 they show up?

14 A. Correct, yes.

15 Q. Okay. At the poll, if the
16 individual voter does not provide an address, how
17 is that handled?

18 A. Without an address, they wouldn't
19 get a ballot unless they are already registered
20 in that precinct. How would a poll worker know
21 where to tell them to go to vote?

22 Q. Right. Out at the poll, they are in
23 a precinct, and they come in and they want to
24 vote without an address --

25 A. Well, then the poll worker is

1 instructed to call our office. And from there we
2 get an address from the individual. If they
3 don't have an address, then the individual is
4 requested to come to our office, and then we take
5 it from there.

6 Q. Okay. There is a provision on the
7 ballot affirmation form for a birth date. What
8 if that's left blank? Do you see where I am at
9 on the Coshocton 1?

10 A. Yes. That has to be filled out
11 before the ballot can be counted. And that's
12 where they have got the time frame to come into
13 our office and finish -- give us further ID.

14 Q. Okay. If they don't give you a
15 birth date, the ballot is not counted?

16 A. Correct.

17 Q. The provisional ballot is rejected,
18 I guess is the way I should phrase that; is that
19 right?

20 A. You are correct. That is if they
21 don't give us further information within that
22 ten-day period of time. Our Board has instructed
23 us to call the voter, if at all possible.

24 Q. I am with you. You do -- you make a
25 diligent effort to get the information. But my

1 question is, if they don't provide you with a --
2 or they do not provide you with a birth date
3 during that ten-day period, the ballot is
4 rejected?

5 A. Correct.

6 Q. Do you make any effort to verify the
7 address listed on the form --

8 A. Yes.

9 Q. -- or the address given on the form?

10 A. We do, yes.

11 Q. What effort do you make?

12 A. Okay. We have the Secretary of
13 State's website that we can go on the website
14 with all 88 counties and verify that that
15 individual was a registered voter, if not in
16 Coshocton County, in another county. And then if
17 we have got an address or a phone number that we
18 can call the individual, then we call the
19 individual, tell them to come to our office in
20 that ten-day frame time and to bring further
21 information with them.

22 Q. Further information in terms of
23 verifying the address?

24 A. Correct.

25 Q. What happens if the address doesn't

1 match up with a known address that you have or
2 are able to verify?

3 A. Then the ballot is not counted.

4 Q. The ballot is rejected?

5 A. Correct.

6 Q. If a homeless person were to come in
7 and give you an address that consisted of an
8 intersection, would that be considered a
9 verifiable address or not?

10 MR. MCGANN: Objection. Steve
11 McGann.

12 THE WITNESS: What did he say?

13 BY MR. HALLINAN:

14 Q. He objected. The question was: If
15 a homeless person came in -- sorry, Steve.

16 A. Kind of dumb.

17 Q. I apologize --

18 A. That's okay.

19 Q. -- I am extremely rude today.

20 If a homeless person were to come in
21 and give you an address that consisted of an
22 intersection, and said he had just moved there --
23 he was on the registration system, but had just
24 moved to that intersection, could you -- would
25 that be an address you could verify, an

1 intersection, and would that count if it was
2 verified?

3 A. If it was in our precinct finder, I
4 would think it would be. But it would have to be
5 listed in our precinct finder. If not, then we
6 would have to contact the Auditor's Office to
7 find out where this location was supposedly at.

8 Q. Okay. But an intersection address,
9 the corner of Main and Elm, would be an
10 acceptable address if you could determine that it
11 was within a precinct within your county?

12 MR. MCGANN: Objection.

13 MR. BATCHELOR: Is it up to the
14 Board of Elections?

15 BY MR. HALLINAN:

16 Q. You can go ahead and answer.

17 A. With a case like this, we would take
18 all the information from the individual voter and
19 leave that up to our Board to make the decision.

20 Q. Okay. When the Board takes this
21 information, do you provide a recommendation one
22 way or another?

23 A. No. We leave that up to our Board
24 members.

25 Q. In a circumstance like that -- first

1 of all, do you ever have a circumstance like
2 that?

3 A. No. Haven't.

4 Q. Okay. In a circumstance like that,
5 if that were to happen this fall, the Board would
6 vote; is that correct?

7 A. It would -- we would take it to the
8 Board members, and the Board members would have
9 to make the decision on it.

10 Q. And they would do it by a vote;
11 correct?

12 A. Correct.

13 Q. And if the vote were split, say
14 three to one, how would that be recorded in the
15 minutes?

16 A. As three to one.

17 Q. If it were a rejection, would it be
18 recorded as a three-to-one rejection for lack of
19 verifiable address?

20 A. Yes.

21 Q. And that would -- that would be
22 recorded in the minutes that way; is that
23 correct?

24 A. Correct.

25 MR. MCGANN: I am going to object to

1 that line of questioning, based on the
2 hypothetical. This is Steve McGann again.

3 MR. HALLINAN: All right.

4 BY MR. HALLINAN:

5 Q. Returning to the identification
6 envelope --

7 A. Okay.

8 Q. -- there is a set of categories for
9 reasons for voting provisional ballot; do you see
10 that?

11 A. Right.

12 Q. If none of those is checked, what
13 happens to the ballot?

14 A. It goes before the Board. But one
15 of those reasons has to be checked.

16 Q. Let's say the poll worker forgot to
17 check something.

18 A. Then it would go to the Board
19 members, and they would have to take the new
20 registration card that was filled out at the same
21 time and make the decision as to whether they
22 wanted to accept that ballot or reject that
23 ballot.

24 Q. Okay. So the absence of a check on
25 this box would not result in rejection of the

1 ballot or acceptance of the ballot, it would be
2 subject to further assessment by the Board; do I
3 have that right?

4 A. Correct. That's correct.

5 Q. Would there be any contact with the
6 poll worker who --

7 A. See, the poll worker has to sign
8 down at the bottom. And we would pick that up
9 from there and go contact her also.

10 Q. That was my next question. So you
11 would contact the poll worker and find out why
12 there was no check mark?

13 A. Correct.

14 Q. And if the poll worker didn't sign,
15 there was no check mark and no signature --

16 A. Our poll workers are instructed to
17 sign those. We could always tell from the
18 precinct that was up at the top -- they are also
19 instructed to put a precinct that this transpired
20 in at the top of these yellow envelopes. We
21 could pick up from that precinct and know who our
22 presiding judge is.

23 Q. Okay. Page 2 of this document,
24 election official verification statement?

25 A. Okay.

1 Q. Where does this appear and how does
2 this work into the process?

3 A. This is on the backside of that same
4 envelope.

5 Q. Okay.

6 A. What it states is the voter has to
7 print his name and the date that he appeared,
8 which would be probably Election Day or any day
9 before the election that they came into our
10 office. And then they are going to go down and
11 check, they are a provisional voter, and whether
12 they are giving the Board additional information;
13 and then go on down, and then the election
14 official has to verify what ID that they did
15 come -- bring with them. And then the name of
16 the precinct goes down next, and then either
17 Kathy or myself would sign it or one of our
18 part-time workers would sign it.

19 Q. Okay. And I guess that's the
20 question I have. This is a very meticulous
21 process that the election officials are required
22 to follow -- at least it appears to me that way.
23 If there is an error or a failure to complete
24 this form properly by the election official, what
25 happens to the ballot?

1 A. It's up to the discretion of our
2 Board members.

3 Q. They may or may not reject it,
4 depending upon what other information they can
5 collect?

6 A. Correct.

7 Q. And the process for collecting that
8 information, is there a written policy or
9 procedure or a methodology for collecting such
10 additional information?

11 A. It's up to myself or the Deputy
12 Director to contact the voter and the poll worker
13 to get -- follow up on the information.

14 Q. One moment, please.

15 Is it fair to say that you do not
16 have a county-created process or methodology for
17 managing or handling provisional ballots?

18 MR. MCGANN: Objection. Steve
19 McGann.

20 MR. BATCHELOR: Answer.

21 THE WITNESS: We -- yes, we do. We
22 have a method for doing everything in this
23 office.

24 BY MR. HALLINAN:

25 Q. Right. I didn't mean to suggest

1 that you do everything arbitrarily or randomly.
2 What I mean is do you have a written procedure or
3 a process that's distributed to poll workers or
4 distributed to others who might be involved in
5 the --

6 A. We have our poll workers' manual.
7 We have instruction sheets. When we have our
8 poll workers' schooling, which is always held the
9 Saturday before the election, we go through each
10 one of these items step by step with our poll
11 workers and give them a guideline sheet to go
12 along with it.

13 Q. Okay. The guideline sheet is
14 created by who?

15 A. Secretary of State's office.

16 Q. Okay. And the poll workers' manual
17 you referred to, that's also the Secretary of
18 State?

19 A. Yes.

20 Q. And my question was, is there
21 anything at the -- at the county level or Board
22 of -- your Board of Election level that is in
23 writing that is distributed, other than the
24 information that comes from the Secretary of
25 State?

1 A. Well, it would be our -- how to do
2 the signature book, what to put in the poll book.

3 MR. BATCHELOR: Is this question
4 regarding provisional ballots or --

5 MR. HALLINAN: I am sorry, it is.

6 MR. BATCHELOR: Just with regard to
7 provisional ballots.

8 THE WITNESS: Oh, provisionals. In
9 our poll book and in our signature book there is
10 a spot where they have the individual that is
11 voting a provisional ballot, they do sign in, and
12 then the name is listed in the provisional poll
13 book.

14 BY MR. HALLINAN:

15 Q. Right. Is there a process that's
16 written down for that, how that's handled, or is
17 it just you tell people that's how it's handled?

18 A. That's the way it's always been
19 done.

20 Q. Okay. I am with you on that, the
21 way it's always been done.

22 A. A provisional would -- has been here
23 for years. I have been with the Board for 19
24 years. We have had provisionals from Day One
25 almost. A provisional voter is a voter that has

1 moved into our county from another county, or has
2 changed their address and did not meet the
3 deadline qualifications.

4 MR. BATCHELOR: Okay.

5 BY MR. HALLINAN:

6 Q. I am with you.

7 (Thereupon, an off-the-record
8 discussion was held.)

9 THE WITNESS: No, we do not have any
10 county policies. The Secretary of State, from
11 Day One, has given us all of these guidelines,
12 and this is what we have gone by.

13 BY MR. HALLINAN:

14 Q. Okay. So you follow the Secretary
15 of State's guidelines and do not supplement, add
16 or amend --

17 A. Correct.

18 Q. -- at the county level?

19 A. Correct.

20 Q. The guidelines you're referring to
21 are the ones that your counsel e-mailed us about
22 those directives and advisories; is that right?

23 A. That is correct.

24 Q. Okay. And, of course, the
25 information that was also provided to us as

1 exhibits; right?

2 A. Correct.

3 Q. Now, that's in the handling and
4 management of the provisionals when they come in.
5 Is there any policy for dealing with the
6 acceptance or rejection -- rejection of
7 provisionals that's county -- specific to your
8 county?

9 A. Please define further.

10 (Thereupon, an off-the-record
11 discussion was held.)

12 THE WITNESS: No, we have not.

13 BY MR. HALLINAN:

14 Q. One of the documents that the court
15 reporter has, the MIA 043 --

16 (Thereupon, an off-the-record
17 discussion was held.)

18 (Thereupon, Coshocton Exhibit Number
19 4, Pages Bates Number MIA-00043 through 00046,
20 was marked for purposes of identification.)

21 THE NOTARY: I have marked 4 and
22 handed it to the witness.

23 BY MR. HALLINAN:

24 Q. All right. Ms. Fry, do you
25 recognize that document?

1 A. This is the first I have seen it.

2 Q. Are you familiar with a Q & A
3 Bulletin Board that the Secretary of State
4 maintains for Boards of Elections?

5 A. Yes, I am.

6 Q. Okay. This doesn't strike you as
7 being that Q & A site?

8 A. Well, I will tell you it's a
9 possibility it could have been there, but I
10 haven't had time to look.

11 Q. I gotcha. Maybe we could see if I
12 could refresh you on one part of it. You can
13 read whatever you want on this thing, I don't
14 mean to surprise you with it. But if you will
15 turn to MIA-00044, the second page of the
16 document --

17 A. Okay.

18 Q. -- do you see the question that
19 begins: Our BOE office stapled; do you see that
20 question?

21 A. Right.

22 Q. Down below that, in the second
23 paragraph following it, it talks about what's to
24 be done after a voter gives information required
25 to cast a provisional ballot. It says: However,

1 before counting the ballot; do you see where I am
2 at?

3 A. Right.

4 Q. It says: Additional information may
5 be needed for the BOE to verify the voter's
6 identity and qualifications?

7 A. Correct.

8 Q. And, again, you can read the whole
9 thing. The last sentence says: The process a
10 BOE uses to verify the voter's ID and
11 qualifications is up to the Board -- and there
12 should be a policy in place regarding this. Do
13 you see that?

14 A. Yes.

15 Q. Okay. Does your BOE have a policy
16 in place regarding the process used to verify the
17 voter's ID and qualifications?

18 A. Our Board gave us instructions to
19 call the voter. It's in our minutes.

20 Q. Okay. So you have a policy to call
21 the voter?

22 A. Yes. Our Board has instructed us to
23 do that.

24 Q. And what do you do when you call the
25 voter?

1 A. We ask the voter over the telephone
2 to give us more information that is needed, and
3 the sufficient information, and bring it to the
4 Board office.

5 Q. Let's just take -- and we could spit
6 out any number of different parameters. So let's
7 just take a situation where you have got a voter
8 who has given you the last four digits of a
9 Social Security number, and an address that can't
10 be verified -- that is different than what's in
11 the registration book. What kind of additional
12 information would you try to seek out before you
13 could determine whether to accept or reject that
14 voter?

15 MR. MCGANN: Objection. McGann.

16 BY MR. HALLINAN:

17 Q. You can go ahead and answer.

18 A. If he has given us an address, we
19 would go through our Auditor's Office to try and
20 verify where this address is at.

21 Q. That's the former address that's in
22 the registration. He has given you a new address
23 that can't be verified.

24 A. That isn't on an electric bill,
25 telephone bill or a driver's license, is this

1 what you're referring to?

2 Q. Right.

3 A. In this case it would be up to the
4 discretion of the Board. We would give it to the
5 Board members and say: This is the information
6 we have, it's up to you, do we or do we not count
7 this ballot?

8 Q. Okay. And the Board may say yes or
9 no in that situation?

10 A. Correct.

11 MR. MCGANN: Objection. McGann.

12 BY MR. HALLINAN:

13 Q. You guys sound like you're having
14 fun at that end.

15 A. Well, we are in our kitchen area,
16 and we have people up at the front who are
17 voting, and they are talking up there, and then
18 we have people in the back room that are doing
19 L&A. But that doesn't pertain to this, I don't
20 think. They are going through this room.

21 Q. Okay. All right. Hang on a second.
22 I may actually be pretty close to being done with
23 you folks. Hold on just a second. And after I
24 am done, Mr. McGann is probably going to have
25 some questions for you.

1 A. No problem.

2 MR. MCGANN: I am sure I will have
3 an objection or two before that.

4 THE WITNESS: Thank you.

5 MR. HALLINAN: Thanks for the
6 warning.

7 That's all I have.

8 THE WITNESS: Good.

9 MR. HALLINAN: No more objections,
10 Steve.

11 MR. MCGANN: Darn.

12 CROSS-EXAMINATION

13 BY MR. MCGANN:

14 Q. Ms. Fry?

15 A. Yes.

16 Q. Hi. My name is Steven McGann. I am
17 with the Attorney General's Office, and I am
18 representing the Secretary of State today.

19 A. Okay.

20 Q. How are you?

21 A. I am fine.

22 Q. I just have some questions for you
23 as well. I want to go back to the last line of
24 questioning about a policy in place. I think you
25 referred to Exhibit 4?

1 A. Got it.

2 Q. Remember that?

3 A. I have it.

4 Q. Okay. And you said that you have a
5 policy in place, set in the Board minutes, about
6 calling the voter; is that right?

7 A. Right.

8 Q. You also testified earlier that you
9 used the Secretary of State's directives as part
10 of your training for your poll workers and that
11 sort of thing?

12 A. Correct.

13 Q. And also the Secretary of State's
14 manual for poll workers; is that right?

15 A. That's correct.

16 Q. Do you use any of those Secretary of
17 State documents as your county policy that's
18 referred to in Exhibit 4?

19 A. You mean the policy, what the Board
20 members set up as a policy?

21 Q. What I am asking is have you adopted
22 formally or informally any of the Secretary of
23 State's documents into the county policy?

24 A. Oh, yes, we have.

25 Q. Okay. Do you refer to the Revised

1 Code at all?

2 A. Many times.

3 Q. Okay. So you're familiar with the
4 Revised Code and -- when it comes to election
5 law?

6 A. Well, if you want to -- a specific
7 one, I would have to go look at the code.

8 Q. Well, specifically, Revised Code
9 3505.183.

10 A. Right off the bat, I do not know
11 what that is. I would have to go look it up.

12 MR. MCGANN: I think there is a
13 Plaintiffs' Exhibit there marked. Could you hand
14 that to the witness?

15 (Notary complying.)

16 (Thereupon, Plaintiffs' Exhibit
17 Number 22 was referenced.)

18 THE WITNESS: Okay.

19 BY MR. MCGANN:

20 Q. Are you familiar with this section
21 of the Revised Code?

22 A. It pertains to provisional ballots.

23 Q. Have you seen it before?

24 A. You know, I have seen so many, I
25 probably have, and it's probably on my desk right

1 at the moment.

2 Q. Okay. All right. Ms. Fry, I am
3 going to move on. You say you have 43 precincts
4 in your county?

5 A. We do.

6 Q. Okay. And I am going to ask you
7 about polling locations. Do you have
8 multiprecinct polling locations?

9 A. We do.

10 Q. How many do you have of those?

11 A. Multiple ones. We have 20, I think
12 there is.

13 MS. HENDRICKS: Ten multiple
14 precincts.

15 THE WITNESS: With multiple
16 precincts, we think it's about ten, without
17 sitting down and counting them.

18 BY MR. MCGANN:

19 Q. Okay. So that's approximate?

20 A. Yes, I would say, yes.

21 Q. Okay. Thank you. I forget, did you
22 tell you us how many poll workers you have? If
23 not, could you tell us how many poll workers you
24 would have in the county for the 2008 election?

25 A. For this fall we would have --

1 MR. BATCHELOR: If you know.

2 MS. HENDRICKS: Forty-three times
3 four.

4 THE WITNESS: Forty-three times
5 four.

6 BY MR. MCGANN:

7 Q. That's about 172?

8 A. Yes.

9 Q. Okay. And you said that you're
10 doing some training of the poll workers?

11 A. Correct.

12 Q. That's for the 2008 election?

13 A. Yes.

14 Q. Is that ongoing?

15 A. We do it every election.

16 Q. Oh, okay. And that's the Saturday
17 before Election Day; is that right?

18 A. That is correct.

19 Q. Okay. Do you gather all 172
20 together and do one big training session?

21 A. No. We do it in two different
22 sessions.

23 Q. Okay. How long are those sessions?

24 A. Sometimes it can be three to four
25 hours long.

1 Q. Okay. And I think you said that you
2 provide written procedures: The poll worker
3 manual, provided by the Secretary of State, and a
4 guideline sheet which is also provided by the
5 Secretary of State?

6 A. Correct.

7 Q. And is that part of the training?

8 A. It is.

9 Q. Is there anything -- any other
10 documents that you provide them during the
11 training?

12 MR. BATCHELOR: Is that related to
13 all other issues or just to provisional ballots?

14 BY MR. MCGANN:

15 Q. Let's go with provisional ballots on
16 this question.

17 A. No then. That's what -- the
18 Secretary of State's guidelines is what we go by
19 for provisional ballots.

20 Q. And let me ask you about homeless
21 voters, okay, and I will give you a hypothetical.
22 Are you ready?

23 A. I'm ready.

24 Q. Say you have a homeless voter, comes
25 in to vote at the polling station, and they are

1 not required to present any type of
2 identification, okay, as set forth in the Revised
3 Code. Any other way to identify that homeless
4 voter?

5 A. Did you say in the Ohio Revised Code
6 it states they don't have to provide an ID?

7 Q. No. No. No. No. I did not say
8 that.

9 A. Okay. What was that again? I
10 didn't catch it.

11 Q. I said the Ohio Revised Code
12 provides a way to check, in 3505.183 that's in
13 front of you.

14 MR. BATCHELOR: Just listen to the
15 question.

16 BY MR. MCGANN:

17 Q. Okay?

18 A. Okay.

19 Q. What if -- the hypothetical is there
20 is a Court order that says a homeless voter is
21 not required to present any type of
22 identification; for example, identification as
23 set forth in Ohio Revised Code 3505.183; are you
24 following me?

25 A. Right.

1 Q. Okay. Would you have any other way
2 to identify that homeless voter under that
3 scenario?

4 A. That's really hypothetical.

5 MR. BATCHELOR: If you know.

6 BY MR. MCGANN:

7 Q. If you can answer, Ms. Fry.

8 A. My thinking here is I wouldn't know
9 what ballot to give the individual if he doesn't
10 have any information to give to me.

11 Q. Okay.

12 A. I mean, if I was a poll worker and
13 this individual came to my polling location, I
14 would send him to the Board of Elections. I
15 would -- and then if he came in to see me in the
16 Board of Elections, I would say, okay, can you
17 give me a valid address? And then I would
18 probably give him a ballot to let him vote, and
19 then leave it up to the Board to make the
20 decision whether to accept that ballot or reject
21 it.

22 MR. HALLINAN: That would be a
23 provisional ballot; right?

24 THE WITNESS: Correct.

25 MR. MCGANN: That's fine. Thank you

1 for the clarification. That was a provisional
2 ballot, okay.

3 Ms. Fry, thank you very much.
4 Nothing further.

5 FURTHER CROSS-EXAMINATION

6 BY MR. HALLINAN:

7 Q. Let me ask you one quick question.
8 If the homeless person came to a polling location
9 and there was a Court order says you can't ask
10 them for ID, you would check that person's
11 signature against the signature on the poll book,
12 true, or the poll worker would?

13 A. If we didn't -- if we had a
14 signature, yes. But according to you, he is
15 homeless and he is not registered, so there would
16 be no way to check.

17 Q. That's the problem with the
18 question. If the person -- you wouldn't give a
19 regular ballot to a person who is not registered
20 on Election Day; true?

21 A. Correct.

22 Q. Okay. It would have to be either no
23 ballot or, at worst, a provisional ballot;
24 correct?

25 A. Correct.

1 Q. But if they were registered, you
2 would be able to determine at least one form of
3 ID, and that would be the signature; correct?

4 A. Correct.

5 MR. MCGANN: Okay. Good. That's
6 all I have got.

7 MR. MCGANN: This is Steven.

8 FURTHER CROSS-EXAMINATION

9 BY MR. MCGANN:

10 Q. But you would review the signature?

11 A. Correct. Yes.

12 Q. Okay. Thank you.

13 MR. HALLINAN: Nothing further.

14 MR. ESKRIDGE: Nothing, thank you.

15 (Thereupon, an off-the-record
16 discussion was held.)

17 MR. BATCHELOR: We will waive.

18 (Signature waived.)

19 (Thereupon, the deposition was
20 concluded at 12:59 o'clock p.m.)

21

22

23

24

25

1 STATE OF OHIO)

2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Beverly W. Dillman, a Notary Public
4 within and for the State of Ohio, duly
5 commissioned and qualified,

6 DO HEREBY CERTIFY that the above-named
7 MARY FRY, was by me first duly sworn to testify
8 the truth, the whole truth and nothing but the
9 truth.

10 Said testimony was reduced to writing by
11 me stenographically in the presence of the
12 witness and thereafter reduced to typewriting.

13 I FURTHER CERTIFY that I am not a
14 relative or Attorney of either party, in any
15 manner interested in the event of this action,
16 nor am I, or the court reporting firm with which
17 I am affiliated, under a contract as defined in
18 Civil Rule 28(D).

19
20
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25

1 IN WITNESS WHEREOF, I have hereunto set
2 my hand and seal of office at Dayton, Ohio, on
3 this _____ day of _____, 2008.

4

5 _____
6 BEVERLY W. DILLMAN, RPR, CRR
7 NOTARY PUBLIC, STATE OF OHIO
8 My commission expires 3-7-2012

7

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Form No. 12-B Prescribed Secretary of State (06-06)

**IDENTIFICATION DOCUMENT
PROVISIONAL BALLOT AFFIRMATION**
R.C. 3503.16, 3505.181, 3501.182

00614

I, _____, solemnly swear or affirm that I am a
Printed name of voter

registered voter in the precinct in which I am voting this provisional ballot and that I am eligible to vote in the election in which I am voting this provisional ballot.

Current Address

Former Address (if applicable)

Street Address

City/Zip

County

Street Address

City/Zip

County

Mailing Address if other than above

If name change, please complete line below:

Birthdate: _____

Former Name _____

Reason for voting provisional ballot:

Form of identification provided:

- My name should appear on the official precinct list, but does not
- Change of address
- Change of name
- Requested, but did not receive absent voter's ballot
- Other _____

- Ohio drivers license (provide #): _____
- Other valid photo identification (specify): _____
- I cannot or will not provide valid photo identification; the last four digits of my social security number are : _____
- Other
- None

I understand that, if the above-provided information is not fully completed and correct, if the board of elections determines that I am not registered to vote, a resident of this precinct, or eligible to vote in this election, or if the board of elections determines that I have already voted in this election, my provisional ballot will not be counted. I further understand that knowingly providing false information is a violation of law and subjects me to possible criminal prosecution. I hereby declare, under penalty of election falsification, that the above statements are true and correct to the best of my knowledge and belief. I further declare, if the election is a primary election, by requesting a ballot for the _____ Party, I hereby state that I desire to be affiliated with and support that party.

X _____
Signature of Voter

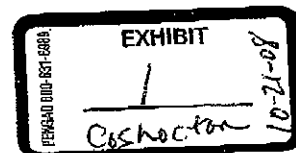
Date

X _____
Signature of Witnessing Election Official

Date

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

**THE ELECTION OFFICIAL VERIFICATION STATEMENT
MUST BE COMPLETED ON BACK.**



ELECTION OFFICIAL VERIFICATION STATEMENT

The Provisional Ballot Affirmation of _____ was subscribed and
Print Voter's Name

affirmed before me this _____ day of _____
Month Year

If applicable, the election official must check the following true statement concerning additional information needed to determine the eligibility of the provisional voter:

- The provisional voter is required to provide additional information to the board of elections
- An application or challenge hearing regarding this voter has been postponed until after the election

The election official must check the following true statement concerning identification provided by the provisional voter, if any.

- Current and valid photo identification
- Current valid photo identification other than a driver's license or state ID card, with the voter's former address instead of current address and has provided the election official both the current and former addresses.
- Military identification, copy of current utility bill, bank statement, government check, or other government document with the voter's name and current address.
- Last four digits of social security number
- Unable to provide any of the above acceptable ID but does have one of these items. Voter must provide one of the acceptable ID to the board of elections within ten days after the election.
- Unable to provide any of the above acceptable ID but does have one of these items and cannot provide the last four digits of the voter's social security number. Voter must provide one of the acceptable ID to the board of elections within ten days after the election.
- Does not have any acceptable ID, but has completed Form 10-T *Affirmation of Voter Unable to Provide* Identification.
- Does not have any acceptable ID and has declined to execute an affirmation (Form 10-T).
- Voter declined to provide any acceptable ID, but does have one of those forms of ID. Voter must provide one of the acceptable ID to the board of elections within ten days after the election.

Name of Precinct _____

X _____
Signature of Election Official

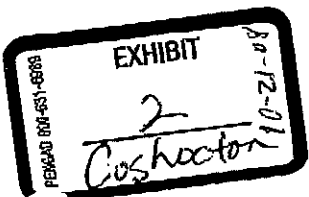
*Current
From Pollworker Manual*

PROVISIONAL BALLOTS

Provisional ballots are paper ballots that are used by voters whose identities cannot be vouched for by required identification (see Voter ID Requirements section) or in situations where there may be a question about a voter's eligibility to vote on Election Day in your precinct. The law provides specific situations where a provisional ballot should be issued. If you determine a voter is in the wrong precinct but the voter insists on voting in your precinct, you may still allow the voter to cast a provisional ballot, which will not be verified for eligibility until after Election Day.

Reasons under Ohio Law for Issuing a Provisional Ballot

- If the voter's **name does not appear** in the Signature Poll Book or the Supplemental Voter List, and the voter is in the right precinct, he or she **MUST** vote a provisional ballot.
- If the voter's name does not appear in the Signature Poll Book or the Supplemental Voter List, and the voter is in the wrong precinct and demands to vote, he or she **MUST** vote a provisional ballot.
- If the voter has **changed his or her name** and did not update his or her registration by the deadline for that Election Day, the voter **MUST** vote a provisional ballot.
- If the voter has **moved into your precinct** and did not update his or her registration with the board of elections, he or she **MUST** vote a provisional ballot. You must verify this by locating the voter's new address in your Voting Location Guide. The voter's current address will not be in the Signature Poll Book or the Supplemental Voter List. The voter should fill out a change of address form at the polling location which you will submit to the board of elections with all materials after the close of the polls.
- If a **message stating** the voter requested an absentee ballot or voted an earlier provisional ballot **appears** in the Signature Poll Book, he or she





PROVISIONAL BALLOTS

Provisional ballots are paper ballots that are used by voters whose identities cannot be verified through required identification (see Voter ID Requirements section) or in situations where there may be a question about a voter's eligibility to vote on Election Day in your precinct. The law provides specific situations where a provisional ballot should be issued. If you determine a voter is in the wrong precinct but the voter insists on voting in your precinct, you may still allow the voter to cast a provisional ballot, which will not be verified for eligibility until after Election Day.

Reasons under Ohio Law for Issuing a Provisional Ballot

- If the voter's **name does not appear** in the Signature Poll Book or the Supplemental Voter List, and the voter is in the right precinct, he or she **MUST** vote a **provisional ballot**.
- If the voter's name does not appear in the Signature Poll Book or the Supplemental Voter List, and the voter is in the wrong precinct and demands to vote, he or she **MUST** vote a provisional ballot.
- If the voter has **changed his or her name** and did not update his or her registration by the deadline for that Election Day, the voter **MUST** vote a provisional ballot.
- If the voter has **moved into your precinct** and did not update his or her registration with the board of elections, he or she **MUST** vote a provisional ballot. You must verify this by locating the voter's new address in your Voting Location Guide. The voter's current address will not be in the Signature Poll Book or the Supplemental Voter List. The voter should fill out a change of address form at the polling location which you will submit to the board of elections with all materials after the close of the polls.
- If a **message stating** the voter requested an absentee ballot or voted an earlier provisional ballot **appears** in the Signature Poll Book, he or she **MUST** vote a provisional ballot, unless you are otherwise directed by the board of elections.
- If the Signature Poll Book shows that the Notice of Election card that was sent to the voter by the board of elections 60 days before the election was **returned as undeliverable**, a message will appear in the voter's signature box in the Signature Poll Book. If the voter **does not show** a valid proof of identity, the voter **MUST** vote a provisional ballot.
- If the voter is **NOT ABLE to provide a valid ID** at the check-in table, the voter **MUST** vote a provisional ballot.
- If the voter **REFUSES to provide a valid ID** at the check-in table, the voter **MUST** vote a provisional ballot.
- If the voter's **signature**, in the opinion of the poll worker, **does not match** the signature in the Signature Poll Book, the voter **MUST** vote a provisional ballot.

If the voter's **eligibility** to cast a ballot has been **challenged** (see **challenging voter section**) by the poll workers and the voter refuses to make the required statement (Form 10-U), the voter **MUST** vote a **provisional ballot**. **Before providing a voter with a provisional ballot**, make sure that the voter's address is in your precinct. **If not**, please direct the voter to the correct precinct, providing information on location and a telephone number the voter can call for help. There should be available cards, from the Secretary of State, with a number for the voter to call for help if needed on Election Day. If no cards are available, please have them call the following phone number: (877) 868-3874.

Provisional Ballot Requirements Relating to Last Four Digits of a Voter's Social Security Number When No Acceptable ID is Provided

If a voter does not have one of the seven forms of acceptable voter ID, you must ask them to fill out the last four digits of their or her Social Security number. The voter does not have to sign the poll worker's form for the actual Social Security card.

ASKING FOR LAST FOUR DIGITS OF SSN: Election officials must ask a provisional voter for the last four digits of his or her Social Security number.

VOTER HAS NO VA. N/A VOTER WHO DOES NOT HAVE A SOCIAL SECURITY NUMBER: Must ask for a provisional ballot if not completing a form and asking that he or she does not have a Social Security number or any type of identification. The poll worker must give the voter a written notice that the ballot will not be counted unless the voter appears at the county board of elections within ten days of the election and provides the required identification.

VOTER HAS SSN BUT CANNOT OR WILL NOT PROVIDE: If the voter cannot or will not provide the last four digits of his or her Social Security number, the election officials must ask the voter if they have a Social Security number. The poll worker must give the voter a written notice that the ballot will not be counted unless the voter appears at the county board of elections within ten days of the election and provides the required identification.

VOTER HAS SSN AND PROVIDES LAST FOUR DIGITS: A voter who has a Social Security number and provides the last four digits, he or she may vote a provisional ballot. The voter may appear at the board of elections within ten days after the election to provide a valid form of identification but is not required to for the ballot to count.

VOTER REFUSES TO COMPLETE ANY FORMS: If a voter refuses to complete the appropriate Affirmation Statement and Form ID-10 (as noted above), he or she may vote a provisional ballot. However, the poll worker must record the voter's name and email address that information with the ballot when transmitting it to the county board of elections. The poll worker must give the voter a written notice that the ballot will not be counted unless the voter appears at the county board of elections within ten days of the election and provides the required identification.

Processing Provisional Ballots Voted

1. The poll worker must indicate on the Provisional Ballot Envelope (Form 12-B) why the voter is casting a provisional ballot and include all of the following that apply:
 - The type of ID provided, if any.
 - **The last four digits of that voter's Social Security number, if provided.**
 - The fact that the Affirmation Statement (Form ID-10) was executed, if applicable.
 - That the voter refused to execute the Affirmation Statement (Form ID-10).
2. The envelope and Provisional Voter Hotline Notice must be given to the voter.
3. The voter should be asked to complete the statement on the envelope.
4. The poll worker must check to make sure the voter's envelope is completed.
5. The poll worker must completely fill out the back of the envelope and sign the front of the envelope.
6. The completed envelope should be double-checked by a second poll worker, and
7. Poll workers must provide to every provisional voter a copy of the Provisional Voter Hotline Notice at the time the voter casts his or her provisional ballot.

Recording Provisional Ballots Voted (Provisional Voting Summary)

1. The Provisional Voters Only section in the back of Poll Book must be completed and signed.
2. The poll worker must record the stub number(s) when the ballot is given to the voter.
3. The voter must complete the ballot and seal the ballot in the envelope, and
4. The voted provisional ballot in the sealed envelope must be placed by the voter presiding judge in the provisional voting bag or box.

PROVISIONAL BALLOTS

Poll Worker Manual

MUST vote a provisional ballot, unless you are otherwise directed by the board of elections.

- If the Signature Poll Book shows that the Notice of Election card that was sent to the voter by the board of elections 60 days before the election was **returned as undeliverable**, a message will appear in the voter's signature box in the Signature Poll Book. If the voter **does not show** a valid proof of identity, the voter **MUST** vote a provisional ballot.
- If the voter is **NOT ABLE to provide a valid ID** at the check-in table, the voter **MUST** vote a provisional ballot.
- If the voter **REFUSES to provide a valid ID** at the check-in table, the voter **MUST** vote a provisional ballot.
- If the voter's **signature**, in the opinion of the poll worker, **does not match** the signature in the Signature Poll Book, the voter **MUST** vote a provisional ballot.
- If the voter's **eligibility** to cast a ballot has been **challenged (see challenging voter section)** by the poll workers and the voter refuses to make the required statement (Form 10-U), the voter **MUST vote a provisional ballot**.
- **Before providing a voter with a provisional ballot, make sure that the voter's address is in your precinct. If not, please direct the voter to the correct precinct, providing information on location and a telephone number the voter can call for help. There should be available cards, from the Secretary of State, with a number for the voter to call for help if needed on Election Day. If no cards are available, please have them call the following phone number: (877) 868-3874.**

Provisional Ballot Requirements Relating to Last 4 Digits of a Voter's Social Security Number When No Acceptable ID is Provided

If a voter does not have one of the seven forms of acceptable voter ID, you must ask him or her for the last four digits of his or her Social Security number. The voter does not have to show the poll worker her or her actual Social Security card.

- **ASKING FOR LAST FOUR DIGITS OF SSN:** Election officials must ask a provisional voter for the last four digits of his or her Social Security number.

The following questions are of a general nature. The answer provided here may not be the appropriate answer if your county's circumstances are not identical. For more detailed information, please refer to directives, advisories, the appropriate statutes or municipal charters (if applicable), or call the Elections Division at (614) 468-2585.

Click on a question to see the answer. Click on the question again to hide the answer.

Provisional Ballots

▼ May a Board of Elections update a voter's record after the a 25th day before a Presidential Primary?

R.C. 3503.16 is very specific with regard to how an elector who has moved prior to election day must vote if the elector's change of address is received by the board of elections after the deadline.

The deadline for a change of address form to be received by the board of elections before the presidential primary election is the 25th day (February 8, 2008). If a change of address form is received after that date, then the change will not be effective for the presidential primary election. So, you must take the statutory deadline into account with regard to the updating of your poll books prior to the election. If the 25-day deadline has not passed, then you may update your poll books with regard to that elector.

If the elector moves within the same precinct in the county and fails to file a change of address on or before the 25th day before the presidential primary election, then that voter may still vote a regular ballot in that precinct polling place under the procedures in R.C. 3503.16(B)(1)(a).

If the elector moves to a different precinct within the county and fails to file a change of address with the board of elections on or before the 25th day before the presidential primary election, then that voter must vote a provisional ballot at the board of elections between the 24th day and the day before the election OR at that elector's new precinct polling place or at the board of elections on the day of the presidential primary election under the procedures in R.C. 3503.16(B)(2).

If the elector moves to a different county within the state and fails to register to vote in the new county within the state on or before the 25th day before the presidential primary election, then that voter must vote a provisional ballot either at the board of elections in the county where the elector now resides starting on 24th day before the presidential primary election through the day of the presidential primary election under the procedures in R.C. 3503.16(C) OR at the elector's new precinct polling place on the day of the presidential primary election under R.C. 3505.181(A)(9), (B), and (C).

The only exception is for electors who, due to illness, physical disability, or infirmity, cannot appear at the board of elections and vote an absentee ballot under R.C. 3503.16(G) (a provisional absentee ballot).

Please note that after the 25-day deadline has passed, electors who move to a different precinct in the county or to a different county within the state must vote a provisional ballot regardless if your poll books have been printed or not.

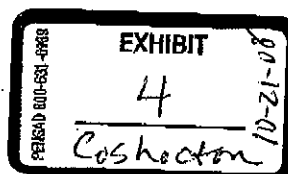
(as of March 3, 2008)

▼ Is a Board of Elections required to label Provisional Ballots in some way or print them on special paper stock to ensure they are designated as "provisional?"

No. The Secretary of State's office is not aware of any provision in law that requires some type of label or special designation for provisional ballots. (Absentee ballots, yes; but provisional ballots, no.) (as of November 21, 2007)

▼ Is the SOS prescribed Affirmation Statement that has been printed on a provisional ballot envelope sufficient to register a non-registered voter for future elections?

No. The form cannot be used to register a previously unregistered person. However, the SOS prescribed Provisional Ballot Affirmation Statement (SOS form 12-B) printed on a provisional ballot envelope, if completed properly, may serve several purposes. For example, it is an affirmation for providing a provisional voter's identity and qualifications to vote, and it may be used for voters who are currently registered by need to update their registration due to an address or name change. (as of 3/7/08)



10/17/2008

MIA - 00043

▼ Is a voter who is casting a provisional ballot at a precinct polling place required to complete a voter registration card for a change of address?

No. Election officials may request, but shall not require, that a provisional voter complete a new voter registration card. It should be noted that the provisional ballot affirmation statement prescribed by the Secretary of State in 2006 serves two functions: it serves as a provisional voter affirmation statement as well as a change of name/address form (voter registration card).

Therefore, Boards of Elections need not attach a voter registration form to a provisional ballot envelope because the affirmation statement printed on the envelope, as designed by the SOS office, serves as a multi-function document; if properly completed it will serve to provide proof of identity and voter qualification, AND as a change of address form. Using the SOS prescribed affirmation statement as a multi-purpose form in this way will likely reduce confusion and BOEs are STRONGLY encouraged to do. (as of 3/7/08)

▼ Our BOE office stapled a voter registration form to all our provisional ballot envelopes that went to the polling locations. We have some provisional voters that didn't put their ID information on the provisional ballot envelope but did put the ID information on the attached voter registration form. Can we use their ID information from the registration form as a valid reason to count the provisional ballot?

Maybe. As stated in Directive 2007-06, on Pages 14-15, Section III.E., all that is required of a voter who casts a provisional ballot is that the voter affirm certain things by signing an affirmation statement. This affirmation statement should be preprinted on the provisional ballot envelope, so all a voter should have to do is sign it.

However, before counting the ballot, additional information may be needed for the BOE to verify the voter's identity and qualifications to vote - which is why we encourage election officials to ask the voter to complete the rest of the info requested in our office's prescribed affirmation statement for provisional ballot envelopes. If - based on the information provided by the voter - the BOE can verify the voter's identity and qualifications, the BOE may count the provisional vote. The process a BOE uses to verify the voter's ID and qualifications is up to the Board - and there should be a policy in place regarding this.

It should be noted that Boards of Elections need not attach a voter registration form to a provisional ballot envelope because the affirmation statement printed on the envelope, as designed by the SOS office, serves as a multi-function document; if properly completed, it will serve to provide proof of identity and voter qualification, AND as a registration form. Using the SOS prescribed affirmation statement as a multi-purpose form in this way will likely reduce confusion and BOEs are STRONGLY encouraged to do. (as of 9/10/07)

▼ Our Board of Elections printed its SOS prescribed Affirmation Statements for provisional voters on a piece of paper separate from the provisional ballot envelopes (we were trying to use up our old supply of plain envelopes). The precinct Election Official sealed the Affirmation Statement in the provisional ballot envelope. How should this be handled?

This should not have happened because the SOS prescribed provisional voter affirmation statement was redesigned based on changes in law and the current version should now be printed on the outside of the provisional ballot envelopes used by boards; old provisional ballot envelopes without affirmation statements printed on them, or with outdated affirmation statements printed on them, should not be used. Please refrain from using old envelopes and affirmation statements in the future, and please address this situation with your poll workers in case the poll workers don't understand the purpose of the affirmation statement or the need for an affirmation to be accessible without also accessing the ballot.

Because state law seems to indicate that the determination as to the sufficiency of the affirmation statement must be made before the envelope is opened, there is an argument that there is no way to count these ballots without violating state law. As such, you should certainly make your legal counsel, the county prosecutor, aware of the circumstances.

As for dealing with these particular ballots, there are two options:

1. First, the voter should not be disenfranchised because of mistakes made by election officials and, after discussing the situation with others here in the office, I think the situation can be resolved without jeopardizing the secrecy of the ballot by following the process outlined below:
 - o First, a Democrat and a Republican, together, should carefully unseal the envelope, without looking at the contents of the envelope, so that the envelope may be resealed with tape later in the process. During this step, the team of election officials MUST NOT remove anything from the envelope.

- o Second, the team should carefully look in the envelope to determine whether or not the affirmation statement was in fact sealed in the envelope. If it was, remove ONLY the affirmation statement, reseal the envelope with the ballot still inside, and mark the envelope with an explanation why the envelope was opened prematurely. If no affirmation statement is found inside, the ballot cannot be counted and the envelope should be resealed and marked as rejected with an explanation as to why the envelope was opened at all. At no time should either member of the team look at the actual provisional ballot.
 - o Third, assuming an affirmation statement was found and the envelope was resealed, review the affirmation statement to verify the voter's identity and qualifications to vote. If the affirmation statement is sufficient, follow office procedures for processing the envelope and ballot as you would for any other valid provisional ballot.
2. Alternatively, the Board could simply determine, in consultation with its legal counsel, not to count these ballots on the grounds that the Board may violate state law by doing so. Of course, if the Board chooses this option, it will need to deal with whatever public response may arise because of the mistake and subsequent decision not to count the provisional ballots in question. (as of 9/10/07)

Y A precinct Election Official failed to sign the SOS prescribed Affirmation Statement printed on the outside of the provisional ballot envelope. Should the provisional ballot be counted?

The BOE should ask the election official who failed to comply with his or her statutory duty why they failed to do so. If the election official failed to do so because of a perceived problem with the affirmation statement, then the affirmation statement should be reviewed for sufficiency with the election official's concern in mind. If there is no good reason for the official's failure to sign the statement, then, assuming the BOE can verify the voter's identity and qualifications to vote based on the information provided by the voter, the ballot should be counted. The voter should not be penalized for the mistake of an election official, but the BOE should deal with the election official as necessary and appropriate. (as of 9/10/07)

Y A provisional voter provided no ID and completed the SOS prescribed Affirmation Statement printed on the provisional ballot envelope. The Election Official signed the Affirmation Statement but did not record any information on the Election Official Verification Statement form. May the ballot be counted?

Maybe. As noted at p. 14, Section III.E., of Directive 2007-06, all that is *required* of a voter to vote a provisional ballot is that the voter complete the provisional ballot affirmation statement. Thus, a provisional voter may cast a provisional ballot without providing ID. If the BOE can verify the voter's identity and qualifications to vote based on the information provided by the voter, then the BOE shall count the ballot.

However, if the BOE cannot verify the voter's identity and qualifications to vote based on the information provided by the voter, and the voter does not provide additional identification information within 10 days after the election, then the vote shall not count. (as of 9/10/07)

Y If the name and address of the voter are missing on a provisional ballot envelope's Affirmation Statement prescribed by the SOS, but it contains the voter's signature, should the ballot be counted?

No. According to the provisional ballot affirmation statement requirements in R.C. 3505.181, and described in R.C. 3505.182, the voter's name must appear in the statement, but the voter's address need not. So based on the fact that the name is missing, the ballot should not be counted.

Although the voter's address is not required, it should still be noted that on Page 14 of Directive 2007-06 ("Section E - Provisional Ballot Affirmation Statement"), election officials should encourage provisional voters to provide additional information on the Affirmation Statement (such as the voter's date of birth, current address, etc.), which may be needed to verify the voter's identity before the ballot can be counted. If the board cannot verify the voter's identity and eligibility using the information provided, then the ballot cannot be counted. (as of 9/10/07)

Y May a board count a provisional ballot if it was cast in a precinct in which the voter does not currently reside?

In general, the answer is "no." R.C. 3505.183(B)(4)(a) provides: "If, in examining a provisional ballot affirmation and additional information under divisions (B)(1) and (2) of this section, the board determines that any of the following applies, the provisional ballot envelope shall not be opened, and the ballot shall not be counted:

(i) The individual named on the affirmation is not eligible to cast a ballot in the precinct or for the election in which the individual cast the provisional ballot."

The exception is if the voter is registered in Ohio and has moved into a new precinct and has not updated his or her registration. In that case, if the voter has cast his or her provisional ballot in a new precinct in which he or she now resides, the ballot is counted. (as of 9/10/07)

▼ If a voter provides the wrong number from his/her Ohio driver's license on the SOS prescribed Affirmation Statement that is printed on a provisional ballot envelope, I've heard the Board of Elections has two days to contact voter. Where is this in the Revised Code?

It is not in the Revised Code; it is part of Directive 2007-06 issued by Secretary Brunner, acting in her capacity as the state's chief elections officer. (as of 9/10/07)

▼ Can the last 4 digits of the Driver's License be used, instead of the last four digits of the SSN, as verification of identity for a provisional voter when the BOE is reviewing the SOS prescribed Affirmation Statement printed on the provisional ballot envelope to determine whether or not the provisional ballot should be counted?

A: If the BOE can verify the identity of the voter and his or her qualifications to vote, based on the information provided on the SOS prescribed Affirmation Statement while following the identity verification process implemented by Board, then the ballot may be counted. While electors are required to provide ID, the ORC only requires that a provisional voter complete the SOS prescribed Affirmation Statement. If, based on information in the statement, the BOE can verify the identity of the voter, then the ballot should be counted. (as of 9/10/07)

▼ Are Observers allowed to view the verification process of provisional ballots and if so how do we hide Social Security Numbers from them?

Yes, official "observers" as described in R.C. 3505.21 are allowed to view the verification process of provisional ballots, as provided by R.C. 3505.181(D);

"Provisional ballots that the board determines are eligible to be counted under division (B)(3) of this section shall be counted in the same manner as provided for other ballots under section 3505.27 of the Revised Code. No provisional ballots shall be counted in a particular county until the board determines the eligibility to be counted of all provisional ballots cast in that county under division (B) of this section for that election. Observers, as provided in section 3505.21 of the Revised Code, may be present at all times that the board is determining the eligibility of provisional ballots to be counted and counting those provisional ballots determined to be eligible. No person shall recklessly disclose the count or any portion of the count of provisional ballots in such a manner as to jeopardize the secrecy of any individual ballot." (Emphasis added.)

Election officials should cover Social Security numbers using non-permanent tape that is of an appropriate size and which can be removed without damaging, or leaving residue on, the provisional ballot envelope's affirmation statement. as of (9/10/07)