

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF OHIO

3 THE NORTHEAST OHIO)
4 COALITION FOR THE)
HOMELESS, ET AL.,)

5)
6 Plaintiff(s),)

7 vs.)

8) Case No. C2-06-896

9 JENNIFER BRUNNER, in her)
10 official capacity as)
11 Secretary of State of)
12 Ohio,)

13 Defendant(s).)

14 - - - - -
15 DEPOSITION OF MIKE DEFRANCO
16 Tuesday, October 21, 2008
17 - - - - -

18 Deposition of MIKE DEFRANCO, called by the
19 Plaintiffs for Examination under the Federal
20 Rules of Civil Procedure, taken before me, the
21 undersigned, Rebecca L. Brown, Registered
22 provisional Reporter, a Notary Public in and for
23 the State of Ohio, at the offices of the Cuyahoga
24 County Board of Elections, 2925 Euclid Avenue,
25 Cleveland, Ohio, commencing at 1:52 p.m. the day
and date above set forth.

1 APPEARANCES:

2 On Behalf of the Plaintiffs:

3 Paul Hallinan, Esq.
4 Porter, Wright, Morris & Arthur LLP
5 1 South Main Street, Suite 1600
6 Dayton, Ohio 45402
7 937-449-6740

8 On Behalf of Defendant Secretary of
9 State of Ohio:

10 Aaron Epstein, Esq.
11 Assistant Attorney General.
12 30 East Broad Street, 16th Floor
13 Columbus, Ohio 43215
14 614-728-4735

15 On Behalf of Defendant State of Ohio:

16 Sharon Jennings, Esq.
17 Assistant Attorney General
18 30 East Broad Street, 16th Floor
19 Columbus, Ohio 43215
20 614-728-4735

21 On Behalf of the Cuyahoga County Board
22 of Elections:

23 Frederick W. Whatley, Esq.
24 Assistant Prosecuting Attorney
25 Cuyahoga County Prosecutor's Office
The Justice Center, Courts Tower
1200 Ontario Street
Cleveland, OH 44113
216-443-7800

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1 MIKE DEFRANCO
2 called by the Plaintiffs for Examination
3 under the Federal Rules of Civil Procedure, after
4 having been first duly sworn, as hereinafter
5 certified, was examined and testified as follows:

6 EXAMINATION

7 BY MR. HALLINAN:

8 Q Would you state your name for the record,
9 sir.

10 A Mike DeFranco.

11 Q Mike, what's your position with the BOE?

12 A Training and compliance administrator.

13 Q In that position what are your duties,
14 functions, and responsibilities?

15 A Training of management and making sure the
16 agency is compliant with all the laws relevant to
17 the Ohio Revised Code.

18 Q How long have you been in that position?

19 A Since March of '08.

20 Q Is that a new position or did you replace
21 somebody?

22 A It is a new position.

23 Q What were you doing before that?

24 A Manager of the registration department.

25 Q What did you do in that position?

1 A Overseeing the data entry of voter
2 registrations, signature verification on
3 petitions, and provisional ballot verification.

4 Q In your current position, how much of that is
5 devoted to provisional ballot verification?

6 A I would just handle the training aspects of
7 it with the manager of that department.

8 Q And in your former position, I think you did
9 actual provisional ballot verification hands on.

10 A Correct. I was the manager in charge of
11 that.

12 Q Okay. We can go through this the long way,
13 but let's try it the short way try to get it
14 advanced quicker. Who decides -- at the Cuyahoga
15 County BOE, who decides whether a provisional
16 ballot is going to be counted or rejected?

17 A That is done by -- there is a staff member of
18 one party that verifies the envelope, the
19 information on the provisional ballot
20 affirmation. If that information is rejected for
21 whatever reason, voter not being registered,
22 incomplete, it is then checked by a member of the
23 opposite party in the department.

24 If both operators agree that the ballot is to
25 be rejected, it is then put in front of the board

1 for a decision on whether or not the ballot is
2 rejected or not.

3 Q So all envelopes go at least before one
4 person who either accepts or sends it on to the
5 second person; is that fair?

6 A Yes.

7 Q So one person can accept?

8 A Yes.

9 Q And then if that person doesn't accept, then
10 it's sent to the second person, the other party
11 person, that person can accept, or is it
12 automatic?

13 A At that point if the second person checking
14 the envelope says that it's accepted, it then
15 goes to a supervisor or a manager to check it.
16 If it's rejected by the second person, then we
17 take their word for it that both operators
18 checked it sufficiently and it's rejected and
19 sent in front of the board.

20 Q Does your board have a policy or written
21 policy regarding the process that you just spoke
22 of?

23 A We do have procedures in place for the
24 operators to follow.

25 Q By "procedures," I mean is this county level

1 or is this something you've adopted from the
2 Secretary of State?

3 A It's a county written procedure, but then it
4 is -- what contains -- it contains information
5 from directives supplied from the Secretary of
6 State and also from the Ohio Revised Code.

7 Q Without putting words in your mouth, it
8 sounds like a compilation of various sources of
9 information put together into a procedure that's
10 been adopted by your board?

11 A Yes.

12 Q And is that procedure, as adopted by the
13 board, is it published? Is it distributed to
14 poll workers? Where does it go to?

15 A The procedure for verifying provisional
16 ballots is just for the registration staff
17 members that are doing the actual verification
18 process of the provisional envelopes.

19 Q You're saying one party looks at it and then
20 another party looks at it. How many people are
21 actually involved in this process? How many of
22 these party reps do you have involved?

23 A It varies from election to election and how
24 many provisional ballots we receive for any given
25 election.

1 Q Do you have any idea how many people are
2 involved or will be involved in the election in
3 this coming November for that purpose?

4 A No, I do not.

5 Q Traditionally what's it been like? What are
6 we talking about?

7 A I would say, an estimate, anywhere from 30 to
8 40 people for an election this size.

9 Q 30 to 40. So we are talking 15 to 20 per
10 party?

11 A Yes.

12 Q The verification process is an examination of
13 the envelope form or the forms on the envelope;
14 is that right?

15 A It's a verification process of the
16 affirmation statement, Form 12B, provided by the
17 Secretary of State.

18 Q And that's printed on the envelope; is that
19 right?

20 A Our envelope, which I designed, has the
21 affirmation statement on the front, it has the
22 poll worker verification statement on the back,
23 and it also has Form 10T, voter unable to provide
24 identification on the back also.

25 Q That's an envelope that's chock full of

1 information.

2 A Yeah.

3 Q Are there policies or standards that are
4 generated by the county, by your BOE, for the
5 criteria by which the information, validity,
6 sufficiency of the information on the envelope is
7 judged?

8 Does that make sense or should I try that
9 again?

10 A I believe I think I know what you're saying.
11 This is in regards to the affirmation statement?

12 Q Among other things. We'll go with the
13 affirmation statement now and then we'll go to
14 the verification.

15 A The affirmation statement, as long as there's
16 a signature from the voter and the voter's
17 written name, the voter has met the --

18 THE WITNESS: What's the
19 word I'm looking for, Fred?

20 A -- met the requirements from the Secretary of
21 State to have completed the affirmation
22 statement.

23 Q Okay. Now, when you say it's the
24 requirements from the Secretary of State to have
25 completed the affirmation statement, is that

1 ballot then counted, or is that ballot then
2 subject to further assessment for counting or
3 rejection?

4 A We need to be able to determine who that
5 voter is, first of all. It's kind of hard to
6 determine with just a signature and a name. A
7 good example I like to use is Patricia Phillips,
8 I believe it is. We have 125 of them in our
9 voter registration database. If Patricia
10 Phillips is one of these provisionals that signs
11 and writes her name, it's kind of difficult to
12 verify who she is.

13 Q I'm with you. Is there a process of
14 collecting additional information or just
15 assessing whether or not that information was
16 adequate to identify the voter?

17 A Hopefully there's more information on the
18 back of the envelope somewhere that would help us
19 determine who that voter is.

20 Q You're talking about the verification of the
21 10T?

22 A Correct.

23 If not, and we are unable to determine it,
24 that, again, is it put in front of the board for
25 a ruling on what to do with it.

1 Q But if you do have the information you just
2 described and something else, it's conceivable
3 that the ballot will be accepted either as a
4 result of the first party person looking at it or
5 both party people looking at it?

6 A If it's verified as a registered voter and
7 they meet all the other qualifications for a
8 provisional ballot, yes.

9 Q Let me ask you a couple of quick ones.

10 The affirmation form has a place for the
11 birth date on there. Do you see that?

12 A Yes.

13 Q If that place is blank, can the ballot be
14 counted?

15 A Yes. We count them here.

16 Q You count even though there is no date of
17 birth?

18 A Yes.

19 Q If the reason -- on the right-hand side of
20 the form -- do you have one of those forms in
21 front of you?

22 A No, I do not.

23 Q But you're familiar enough with it because
24 you designed the ballot or envelope, right?

25 A Yes.

1 Q On the right-hand side there's a place called
2 reason for voting provisional ballot, and there's
3 a series of check boxes. Do you see that?

4 A Yes. I know what you're talking about.

5 Q If that is left blank, will the ballot still
6 be counted -- or is it possible for the ballot
7 still to be counted?

8 A Yes.

9 Q If the voter doesn't sign the form, is it
10 possible for the ballot still to be counted?

11 A No.

12 Q There has to be a signature by the voter?

13 A Yes.

14 Q And if the poll worker either fails to
15 co-sign the affirmation or fails to sign the
16 election verification statement, is it possible
17 for the ballot to be counted?

18 A Yes. Our board ruled that we were not going
19 to not count a ballot because one of our poll
20 workers failed to do something correctly.

21 Q Is there any effort made -- for example, if
22 you have a question about an address on either a
23 card or former address on the ballot affirmation
24 form, is there any effort taken prior to
25 acceptance or rejection by party workers to

1 verify an address or further explore the address?

2 A Yeah. We go into great detail exploring
3 addresses. If an address doesn't match our
4 database, we have a GIS department that will go
5 as far as to go out and physically check that
6 address to make sure it's a valid address in
7 Cuyahoga County, and then we also contact the
8 building departments of each city to verify that
9 it could possibly be a new street that we don't
10 have in our system yet.

11 Q When you talk about verifying addresses, are
12 any physical -- is any physical location
13 verifiable? And let me give you an example. If
14 there's an address given as the corner of
15 Prospect and Ontario -- I don't even think they
16 cross -- but if you get something like that,
17 corner of two streets, is that a verifiable
18 address or is that a rejected address?

19 A No. That would be rejected as what we call
20 it as a street exception.

21 Q Okay. What's the definition of a street
22 exception?

23 A An invalid address in Cuyahoga County.

24 Q I gave you a bad example. If the
25 intersection actually exists, but there's no

1 structure, no house number, no building number
2 there, is that a street exception?

3 A Yes. I believe the code is pretty specific
4 on stating it has to be the voter's residence
5 address on the application.

6 Q If a homeless would give you an address that
7 was a street corner, you would reject that?

8 A Yes. Our board has identified three
9 addresses in Cuyahoga County that the homeless
10 can use for an address. I don't have those
11 addresses with me. I know one is 2100 Lakeside.
12 I'm not sure what the other two are.

13 Q Are those shelters?

14 A I believe so, yes.

15 Q Do the homeless know to use those on the
16 forms?

17 A I believe so. I believe they're told that --
18 if they're voting a provisional at the polling
19 locations?

20 Q Um-hmm.

21 A That I cannot answer.

22 Q Do you have any idea how they might be told
23 if they are told? I mean, is it something that
24 the poll workers all know to tell the homeless?

25 A I want to say that it's in our manual, but

1 I'm not 100 percent sure, and I don't want to
2 give you a wrong answer.

3 Q I'm with you. Good.

4 Let's move on to some other areas real quick
5 because I don't want to keep you much longer than
6 I have to. How about in terms of matching
7 signatures, how do you go about matching
8 signatures from the affirmation form and what's
9 in the poll book, for example, or on the
10 registration form?

11 A In our voter registration database, we have
12 actual copies, digitalized copies, of the voter
13 registration on our system. The operators are
14 trained to -- that is one of the first things
15 they do, match up the signature with the
16 signature on the voter affirmation statement. If
17 they have any questions at all -- we are not
18 signature experts here by any sense. But if they
19 have any questions on the signature, they are to
20 get a supervisor at that point. And a supervisor
21 only would reject a signature for not matching.

22 Q Do the supervisors have additional training
23 on signature matches?

24 A No. But they are the more experienced in the
25 department, and even if they have questions on

1 it, it's going to go in front of the board for a
2 final decision.

3 Q Does the board ever use any kind of expertise
4 or invite any expertise for anyone to contribute
5 in terms of signature matches?

6 A Not that I'm aware of, no.

7 Q Is there any check back with the voter during
8 the process of signature matching? In other
9 words, are they asked to submit another specimen
10 or explain why it's printed in one case and
11 signed in another? Anything like that?

12 A No.

13 Q Is there any circumstances -- and this is
14 more general than just signature. Is there any
15 circumstance in which the voter is contacted
16 again after the affirmation form is signed off?

17 A The only time they would be contacted is if
18 the ballot was rejected for any reason. We send
19 a notice to the voter telling them why their
20 ballot was rejected.

21 Q That may be after the 10-day period?

22 A It is well after the 10-day period. It's
23 after all the provisionals are verified, after
24 the board has ruled on all of them, so it's after
25 certification.

1 Q So it's not a contact for can you give us
2 more information; it's just for your information,
3 your ballot wasn't counted?

4 A Correct.

5 Q Okay. You indicated that you are familiar
6 with 3505.183, the statute that you're familiar
7 with on provisionals.

8 A Yes, I am.

9 Q You're familiar with the part of the statute
10 that talks about the five criteria for counting a
11 ballot?

12 A Yes. I don't have it memorized, but I am
13 familiar with it.

14 Q Do you have that in front of you? I thought
15 you might have said that was one of the things in
16 front of you.

17 A Yes, I do.

18 Q There's a provision -- hold on a second.
19 Here we go -- in 3 that sets forth five criteria
20 for counting ballots.

21 A Um-hmm.

22 Q And then there's a provision at 4(a) that has
23 seven criteria for rejecting or not counting
24 ballots.

25 A Yes.

1 Q Which of those or both of those -- or how do
2 you reconcile those if you have a ballot that
3 meets the first five, but fails on something in
4 4(a)? Do you count or not count that?

5 A I'm not sure I understand that.

6 Q If a provisional were to meet all five of the
7 requirements in 3 -- do you see where I'm at?

8 A Yeah.

9 Q -- that would suggest it's to be counted,
10 right?

11 A Yes.

12 Q So you've met part 3, all five requirements,
13 do you then go on and see whether it should be
14 rejected under any part of 4(a), or are you done
15 after you hit 3(a) -- or after you hit 3?

16 A So what you're, I think, trying to say to me
17 is if the first -- if 3(a), (b), (c), (d), and
18 (e) are met -- which means the ballot would be
19 counted, correct?

20 Q Correct.

21 A -- and then if one of 4(a) through whatever
22 falls into there, it would not be counted?

23 Q That would be the suggestion under 4(a), and
24 I'm asking is that how you guys would operate it
25 or interpret it?

1 A That's the way I would interpret it, yes.

2 Q So in 3(a) -- a ballot that complies with
3 3(a) through (e) could be rejected if it failed
4 under 4(a)(i) through (vii)?

5 A Yeah. But I think -- yeah. But I think
6 Section 3 just is the reverse of Section 4.
7 Section 3(a), the individual named on the
8 affirmation is properly registered to vote, which
9 means we would count it. And then 4(i), the
10 individual named on the affirmation is not a
11 qualified elector or properly registered to vote.

12 Q I'm with you. The words change a little bit
13 and that's, I guess, what I'm getting at. What
14 you're telling me is you view 4 as being the
15 inverse of 3; is that right?

16 A That's the way I'm seeing it, yes.

17 Q So, in fact, if you hit everything under 3(a)
18 through (e), you're done, because 4 would do
19 nothing but negate something you already had a
20 positive on?

21 A Yes. Now I got it, yes.

22 Q That's the way you treat that; is that right?

23 A Yes, it is.

24 Q Do you see any difference between being a
25 qualified voter and being an eligible voter?

1 A Yes. Eligible means you're eligible to vote
2 in that precinct. Qualified just means you're a
3 registered voter. You're registered to vote.
4 You're qualified to vote.

5 Q And registered to vote meaning everything
6 that goes into that or just says you're of the
7 properly age, that sort of thing?

8 A Yes.

9 Q Everything that goes into registration?

10 A Yes.

11 Q And qualified means you're registered and
12 also in the precinct; is that right?

13 A Correct.

14 Q Hold on a second. I may be done with you,
15 but I may have some other questions. Hold on.

16 Other than the written procedures --

17 MR. HALLINAN: This is
18 still Paul Hallinan.

19 Q Other than the written procedures you
20 mentioned to me, do you have any other policy or
21 process that the board would use in determining
22 whether to accept or reject a provisional ballot?

23 Let me withdraw that and try a different
24 way.

25 - - - - -

1 (Exhibit 1 was marked
2 for identification.)

3 - - - - -

4 BY MR. HALLINAN:

5 Q Do you recognize this?

6 A I have seen it before, yes.

7 Q It's off of some bulletin board Q and A's that
8 the Secretary of State has?

9 A Right.

10 Q If you look on page 2 -- you can read
11 whatever you want in this thing, I don't care,
12 but what I want to focus your attention on is the
13 third paragraph under the second question. The
14 question that begins "Our BOE office," and
15 then -- I'm sorry. The second paragraph begins
16 "However, before counting the ballot."

17 Do you see where I'm at?

18 A Um-hmm.

19 Q In the last sentence it talks about what you
20 do to determine a voter's identity and
21 qualifications to vote at the BOE level. At the
22 last sentence, "The process a BOE uses to verify
23 the voter's ID and qualifications is up to the
24 Board, and there should be a policy in place
25 regarding that."

1 Do you see where I'm at there?

2 A Yes.

3 Q Is there some specific Cuyahoga County BOE
4 policy in place regarding the process the BOE
5 uses to verify the voter's ID and
6 qualifications?

7 A Can I have one second?

8 Q Sure.

9 A I believe what you're asking me for is do we
10 have a procedure in place.

11 Q The best way would be is if you had one that
12 said based on this Q and A we promulgate the
13 following policy and procedure, and the BOE signs
14 off on it. I don't think you're going to have
15 something like that.

16 Do you have something that fits into that
17 kind of category, though?

18 A Without having the procedure in front of me,
19 I believe it is in our regular procedure that we
20 use to verify provisional ballots that the
21 operator must check for proper voter ID.

22 Q And the process of doing that is by the BOE
23 too; is that right?

24 A Yeah. We require that. On the front of the
25 provisional envelope there's a box on the

1 affirmation statement that has a place for
2 identification. We also have on the back of the
3 envelope the poll worker verification statement,
4 and there's a little box that says voter provided
5 ID. And in the affirmation statement on the
6 bottom, 10T, if any box is checked off in any of
7 those, we accept it as the voter provided ID.

8 Q And my question is if those are checked off,
9 where's the policy that would state that those
10 things count? In other words, is there a policy
11 beyond just the existence of the form?

12 A I believe it's in our policy for the clerks,
13 but I'm not 100 percent sure on that.

14 Q Okay. If there are no boxes checked off on
15 the verification form, what happens to that
16 ballot?

17 A If all the other information that is required
18 is met, the ballot is still counted.

19 Q This is if a poll worker forgot to sign or
20 something like that?

21 A Correct.

22 MR. HALLINAN: Okay.
23 Cool. That's all I have. The
24 Secretary of State may have
25 something for you.

1 THE WITNESS: All right.

2 Tell me what I did wrong.

3 MR. HALLINAN: She's not

4 actually here, but a

5 representative.

6 - - - - -

7 EXAMINATION

8 BY MR. EPSTEIN:

9 Q Mr. DeFranco, my name is Aaron Epstein. I'm
10 assistant attorney general. I'm here on the
11 behalf of the Secretary of State, and I'm not
12 here to tell you you did anything wrong. I would
13 like to get some more generalized information
14 from you, if I could.

15 A Sure.

16 Q First of all, voting has begun in Cuyahoga
17 County; is that correct?

18 A I'm sorry. Voting has begun in Cuyahoga
19 County?

20 Q Yes. For the November 2008 election, voting
21 has begun, correct?

22 A Yes.

23 Q And would it also be correct to say that some
24 of the people who have cast ballots already have
25 cast provisional ballots?

1 A Yes.

2 Q How many precincts will there be in the
3 November 2008 election in Cuyahoga County?

4 A I want to say 1436. That's not an accurate
5 number, but I think it's close.

6 Q Does Cuyahoga County have multi-precinct
7 polling locations?

8 A Yes.

9 Q Can you tell me about those, how many there
10 are and how many precincts you might have in a
11 single location?

12 A That is not my area of specialty, but I know
13 we have a few. I wouldn't feel comfortable
14 answering those questions.

15 Q Fair enough. Do you know approximately how
16 many poll workers Cuyahoga County will be using
17 this year?

18 A No, I do not.

19 Q Who would be the appropriate person to ask
20 that question of? Do you know?

21 A That would be Shantiel Soeder. She is our
22 poll worker manager. And the other question as
23 far as the voting locations and multi-precinct
24 would be Brian Kaluscak. He is our election
25 support manager.

1 Q Do you have specific information regarding
2 the training that's given to the poll workers or
3 is that a matter that should be discussed with
4 someone else?

5 A That's a Shantiel question too, but I was
6 involved with some of her training. I helped her
7 with some of her training.

8 Q Were you involved in the aspects of her
9 training that involved provisional balloting?

10 A Yes.

11 Q Can you tell me about the training that was
12 done regarding provisional balloting?

13 A The training that was done in regards to
14 provisional we tried -- I kind of intervened with
15 her process and the problems we were experiencing
16 in past elections of voters voting in the wrong
17 precinct and their ballots being rejected because
18 of this, so I helped her. We worked together to
19 develop a plan to help better train the poll
20 workers to ask the voter for their address rather
21 than their name when they're voting
22 provisionally. And that's about the extent I had
23 with it in training.

24 Again, she would be the one to talk to for
25 the more intense training part of the way she did

1 her provisionals.

2 Q Do you know how much time was spent on these
3 poll worker training sessions?

4 A It varied, depending on who was being
5 trained, so I don't want to give you an answer on
6 that.

7 MR. EPSTEIN: That's all
8 the questions I have.

9 MS. JENNINGS: This is Miss
10 Jennings. I have just one or two
11 questions for you.

12 - - - - -

13 EXAMINATION

14 BY MS. JENNINGS:

15 Q Going back to provisional ballots and the
16 counting of provisional ballots, if a voter
17 provides the last four digits of their Social
18 Security number and signs the affirmation, is
19 that vote counted?

20 A Yes. As long as they are registered. They
21 have to meet the other qualifications, but if
22 it's a registered voter -- otherwise valid
23 registered voter, and all they're supplying us is
24 the last four digits of their Social, yes, it
25 would be counted.

1 Q So even if they don't have a driver's license
2 or a state ID card, or other form of
3 identification, if they use the last four digits
4 of their Social Security number and sign the
5 affirmation, the vote will be counted?

6 A Yes.

7 MS. JENNINGS: Thank you.

8 - - - - -

9 FURTHER EXAMINATION

10 BY MR. HALLINAN:

11 Q Will that vote be provisional or will it be
12 counted immediately?

13 A All provisionals are counted in the official
14 count. None are counted in the unofficial count.

15 Q Right. I guess I stated that badly.

16 You will have a ballot at the affirmation
17 envelope -- or affirmation form on the envelope.
18 There's nothing on it saying a Social Security
19 number and --

20 MR. HALLINAN: What was
21 the other thing?

22 MS. JENNINGS: Last four
23 digits of the Social Security
24 number and affirmation.

25 Q And there's a registration, that ballot will

1 be counted by the first party worker that sees
2 the envelope, right?

3 A As long as all other information is met, yes.

4 Q What's the other information that has to be
5 met?

6 A The voter's registered, a registered voter in
7 the State of Ohio.

8 Q Okay.

9 A The affirmation statement is filled out
10 correctly. The required information on the
11 affirmation statement.

12 Q Okay.

13 A In other words, what's in 3505.183.

14 MR. HALLINAN: That's
15 good. Thank you. I don't think
16 we have any more questions.

17 Mike, I really appreciate
18 your time.

19 Fred, thank you very much.
20 Do you want to talk to him about
21 signature?

22 MR. WHATLEY: Do you want
23 to -- I would recommend that you
24 waive it, unless you want to read
25 your the transcript and have the

1 opportunity to correct any
2 typographical errors or anything
3 like that, or you can waive
4 signature. It's up to you.
5 Whatever you would like to do.

6 THE WITNESS: Whatever
7 you recommend. I've never done
8 one of these.

9 MR. WHATLEY: Normally I
10 would recommend that we just waive
11 signature.

12 Can I ask you guys, do we
13 have to come down there Thursday
14 morning or not, or you haven't
15 decided yet?

16 MR. HALLINAN: As
17 plaintiffs we don't need you. I
18 think the Secretary of State isn't
19 certain at this point. Is that
20 fair?

21 MR. EPSTEIN: That's a
22 fair statement. I do not know the
23 answer to that, but if it is
24 necessary, we will give you as
25 early notice as possible.

1 MR. WHATLEY: Could you --
2 just so you don't get in an
3 unfortunate loop, could you call
4 me at my office and let me know?

5 MR. EPSTEIN: Absolutely.
6 What number should we call?

7 MR. WHATLEY: 216-443-7849.

8 MR. EPSTEIN: We will call
9 you, Mr. Whatley, either way,
10 whether we do or we don't so you
11 won't be left hanging.

12 MR. WHATLEY: Thank you
13 very much.

14 - - - - -
15 (Deposition concluded at 2:23 p.m.)

16 - - - - -
17 (Signature waived.)

18 - - - - -

19
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1 The State of Ohio,)
) SS: CERTIFICATE
 2 County of Cuyahoga.)

3 I, Rebecca L. Brown, Notary Public
 4 within and for the State of Ohio, duly
 5 commissioned and qualified, do hereby certify
 6 that the within-named MIKE DEFRANCO was by me
 7 first duly sworn to testify the truth, the whole
 8 truth, and nothing but the truth in the cause
 9 aforesaid; that the testimony then given by
 10 him/her was by me reduced to stenotypy in the
 11 presence of said witness, afterwards transcribed
 12 on a computer, and that the foregoing is a true
 13 and correct transcript of the testimony so given
 14 by him/her as aforesaid.

15 I do further certify that this
 16 deposition was taken at the time and place in the
 17 foregoing caption specified and was completed
 18 without adjournment.

19 I do further certify that I am not a
 20 relative, employee of, or attorney for any of the
 21 parties in the above-captioned action; I am not a
 22 relative or employee of an attorney for any of
 23 the parties in the above-captioned action; I am
 24 not financially interested in the action; I am
 25 not, nor is the court reporting firm with which I
 am affiliated, under a contract as defined in
 Civil Rule 28(D); nor am I otherwise interested
 in the event of this action.

IN WITNESS WHEREOF I have hereunto set
 my hand and affixed my seal of office at
 Cleveland, Ohio on this 21st day of October,
 2008.

 Rebecca L. Brown, Notary Public
 in and for the State of Ohio.

My commission expires 6/5/10.

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)

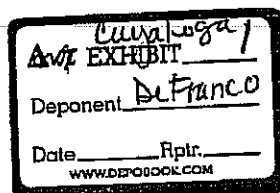
▼ Is a Board of Elections required to label Provisional Ballots in some way or print them on special paper stock to ensure they are designated as "provisional"?

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)

▼ 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)

▼ 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)

▼ 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)

▼ 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:

(ii) 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)