

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

STATE OF OHIO, ex rel. :
DANA SKAGGS, et al., :
 : Case No. 2:08 cv 1077
Relators, :
 : Judge Marbley
vs. :
 : Magistrate Judge King
JENNIFER L. BRUNNER :
SECRETARY OF THE STATE OF :
OHIO, et al., :
 :
Respondents. :

AFFIDAVIT OF DANA WALCH IN SUPPORT
OF MOTION FOR INJUNCTION PENDING APPEAL

STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

I, Dana Walch, being duly cautioned and sworn, state:

1. I served as Director of Elections in the Office of the Secretary of State of Ohio from January 1999 through December 2002. After that, I served until September 2004 as Director of Election Reform for the Secretary of State of Ohio. From September 2004 through June of 2005, I served as Director of Legislative Affairs for the Secretary of State of Ohio.

2. As Director of Elections for the State of Ohio from January 1999 through December 2002, I was responsible for overseeing and assuring that the duties of the Secretary of State relating to the general elections of 2000 (a presidential election year) and 2002 were fulfilled. I am therefore fully familiar with the responsibilities of the Secretary of State of Ohio relating to the processing and reporting of the official election

EXHIBIT
B

returns in a statewide general election and the realities of the time required to complete them.

3. As part of the process of counting and reporting the official results of a statewide general election such as that held on November 4, 2008, the Secretary of State receives abstracts (summaries) of the canvas (counting) of ballots cast in each of the eighty-eight counties from the Board of Elections of each such county. Pursuant to R.C. 3505.35, the Secretary of State has ten (10) days after the abstracts are received to prepare her “canvas [summary] of such [county] abstracts. . . .” At the conclusion of this period, the Secretary declares the official results of the statewide elections, provides her abstract of results of each statewide election, and issues certificates of election to the winners.

4. The process of preparing the canvas of abstracts of the Secretary of State pursuant to R.C. 3505.35 involves the tabulation (or totaling) of the abstracts provided by the eighty-eight individual counties. It is largely a mathematical function with appropriate controls and auditing protections.

5. Based on my personal experience in the 2000 and 2002 general elections, the Secretary of State needs no more than two or three days to complete the functions required of her after receipt of the abstracts of the canvasses of the County Boards of Election. History in other elections establishes that the Secretary of State can do so comfortably and without undue difficulty in a two to three day timeframe.

6. Directive 2008-111 of the Secretary of State sets Monday, December 1, 2008 as the date upon which the abstracts of the canvasses of the County Boards of Election are to be delivered to the Secretary of State. Since R.C. 3505.35 allows the

Secretary of State ten days thereafter to complete her canvas of such abstracts, the Secretary of State can complete her duties as late as Thursday, December 11, 2008 consistent with R.C. 3505.35.


7. I am advised that Matthew Damschroder, Deputy Director of the Franklin County Board of Elections, has submitted an affidavit stating that the Franklin County Board of Elections can complete its processing of provisional ballots within two days following an appellate decision in this matter. Based upon Mr. Damschroder's Affidavit, and based upon my personal experience as Director of Elections for the Secretary of State in the statewide elections of 2000 and 2002, the Secretary of State will have more than sufficient time to complete her statutory duties within the timeframe mandated by R.C. 3505.35 if she receives the Franklin County abstract of canvas on or before Monday, December 8, 2008. This will allow her at least three days to complete her duties and issue her official canvas by the statutory deadline of Thursday, December 11, 2008. If she has already received the abstracts of canvas of the other eighty-seven counties (or substantially all of them) on December 1, 2008 as requested, the Secretary of State can undertake and complete all necessary work relating to the abstracts of the remaining eighty-seven counties and merely add in the vote totals from the Franklin County abstract when received. In such circumstances, a single day should provide the Secretary with sufficient time to complete her work following receipt of the Franklin County abstract without undue difficulty. As such, if the other eighty-seven counties (or substantially all of them) provide their abstracts of their canvasses on December 1, based upon past experience, the Secretary of State will have substantially more time than is necessary to meet the Thursday, December 11, 2008 deadline if she in fact receives the abstract of the

canvas of the Franklin County Board of Elections on or before Monday, December 8, 2008.

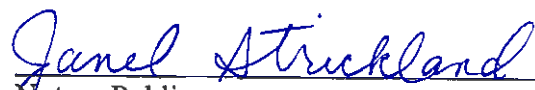
8. Inasmuch as there will not be a presidential recount given the decisive totals in the presidential election in Ohio, any requested recounts in other elections can be completed after the Secretary of State reports her official results. Such recounts must be completed prior to January 2009 but, given the timing for recounts in Ohio, they can be completed timely as long as the Franklin County Board of Elections is not enjoined from opening the provisional ballots past Friday, December 5, 2008.

9. In conclusion, based upon my personal experience as Director of Elections for the Secretary of State of Ohio in two statewide elections, an injunction pending appeal will not unduly delay the processing of the official results of the 2008 general election nor cause any material injury to the public interest as long as that injunction pending appeal does not extend beyond Friday, December 5, 2008.

Further Affiant sayeth naught.


Dana Walch

Sworn to before me and subscribed in my presence this 20th day of November, 2008.


Notary Public

859-001.189270



JANEL STRICKLAND
Notary Public, State of Ohio
My Commission Expires 07-24-13