

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

LAURA BOUSTANI, <i>et al.</i>)	CASE NO.: 1:06-2065
)	
Plaintiffs,)	JUDGE: CHRISTOPHER A. BOYKO
vs.)	
)	
J. KENNETH BLACKWELL,)	<u>DEFENDANT'S HEARING BRIEF</u>
)	<u>AND PROPOSED REMEDY</u>
Defendant.)	

In anticipation of the hearing on Plaintiffs' Motion for a Preliminary Injunction, the Secretary of State submits the within Hearing Brief for the Court's review and consideration.

As Ohio's Chief Elections Official, Defendant J. Kenneth Blackwell is committed to protecting the rights of all citizens to vote, be they native citizens or naturalized citizens. The Secretary of State is likewise committed to ensuring that all voters, whether they be native citizens or naturalized citizens, be treated equally and that elections be administered consistently and efficiently across the state.

In furtherance of the foregoing, the Secretary of State, who has publicly voiced his concerns with O.R.C. § 3505.20(A) as amended by H.B. 3, does not oppose Plaintiffs' request for preliminary injunctive relief. If this Honorable Court declares unconstitutional the challenged provisions of O.R.C. § 3505.20(A) and preliminarily enjoins the enforcement of those provisions, the Secretary of State is prepared to advise local elections officials, who are charged with enforcement of O.R.C. § 3505.20(A), of the Court's Order, and to issue a Directive to the Boards of Elections instructing them in how they should instruct judges of elections on election day, in light of that Order. (A copy of such Directive is attached hereto and made a part hereof.)

The essence of the Directive that the Secretary of State is prepared to issue is that if a person offering to vote is challenged under O.R.C. § 3505.20(A), that person should be asked to answer two questions, under oath: (i) are you a citizen of the United States; and (ii) are you a native or naturalized citizen? If the person offering to vote answers “yes” to the first question, and answers either “native” or “naturalized” to the second question, the person shall be entitled to cast a regular ballot.

Further, to avoid any potential confusion, the Secretary is prepared to instruct local election officials, consistent with their duties pursuant to O.R.C. § 3505.181(D) and (E)(3)(e), to publicly post at each polling place on the day of the election a notice indicating that no person shall be required to provide documentary proof of citizenship if the voter’s citizenship is challenged by an elections official.

Unfortunately, there is no time for the legislature to remedy the problems with the Statute before the general election in 2006. Indeed, as of today, the election is underway; voting has started. Accordingly, the Secretary requests the Court to expedite Plaintiffs’ Motion for Preliminary Injunction, so if the Court grants that Motion, the Secretary may promptly issue the attached Directive to the Boards of Elections, and thereby ensure that no citizen, whether native or naturalized, is treated unfairly at the ballot box.

Respectfully submitted,

JIM PETRO
ATTORNEY GENERAL OF OHIO

By: /s/ Richard G. Lillie
Richard G. Lillie (390023744)
Special Counsel for
Secretary of State J. Kenneth Blackwell
Gretchen A. Holderman (390058509)
LILLIE & HOLDERMAN
75 Public Square, Suite 1313
Cleveland, Ohio 44113
(216) 861-1313 (telephone)
(216) 861-1314 (facsimile)
lillie13@sbcglobal.net
gholderman@sbcglobal.net

Counsel for Defendant

CERTIFICATE OF SERVICE

This is to certify that the foregoing was filed electronically on the 3rd day of October 2006 in accordance with the Court's Electronic Filing System. Parties may access this filing through the Court's filing system.

/s/ Richard G. Lillie
Richard G. Lillie