

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

* * *

SERVICE EMPLOYEES
INTERNATIONAL UNION,
LOCAL 1199 and THE
NORTHEAST OHIO COALITION
FOR THE HOMELESS,

Plaintiffs,

vs.

CASE NO. 2:06-CV-896

J. KENNETH BLACKWELL, IN
HIS OFFICIAL CAPACITY AS
SECRETARY OF STATE OF OHIO,

Defendant.

* * *

Deposition of MATTHEW M. DAMSCHRODER,
Witness herein, called by the Plaintiffs for
cross-examination pursuant to the Rules of Civil
Procedure, taken before me, Beverly W. Dillman, a
Notary Public in and for the State of Ohio, at
the offices of Franklin County Board of
Elections, 280 East Broad Street, Room 100,
Columbus, Ohio, on Monday, October 30, 2006, at
1:09 o'clock p.m.

* * *

EXAMINATIONS CONDUCTED

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2 BY MS. GENTRY:.....7

3 BY MR. COGLIANESE:.....52

4 BY MS. HUNT:.....74

EXHIBITS MARKED

5

6 (Thereupon, Damschroder Exhibit Number 1 was

7 marked for purposes of identification.).....25

8 (Thereupon, Damschroder Exhibit Number 2 was

9 marked for purposes of identification.).....39

10 (Thereupon, Damschroder Exhibit Number 3 was

11 marked for purposes of identification.).....48

12 (Thereupon, Damschroder Exhibit Number 4

13 was identified, but not provided to the

14 notary.).....49

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1 APPEARANCES:

2 On behalf of the Plaintiffs:

3 Porter, Wright, Morris & Arthur

4 By: Caroline H. Gentry (via telephone)
5 Attorney at Law
6 1600 One Dayton Centre
7 One South Main Street
8 Dayton, Ohio 45402

9 and

10 Porter, Wright, Morris & Arthur

11 By: Lindsay M. Sestile (via telephone)
12 Attorney at Law
13 41 South High Street
14 Columbus, Ohio 43215

15 On behalf of the Defendant
16 J. Kenneth Blackwell:

17 Jim Petro, Attorney General of Ohio

18 By: Richard N. Coglianese (via telephone)
19 Assistant Attorney General
20 Constitutional Offices Section
21 30 East Broad Street
22 17th Floor
23 Columbus, Ohio 43215

24 and

25 Crabbe, Brown & James, LLP

By: Christina Corl (via telephone)
Attorney at Law
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1 On behalf of the Proposed Intervenor,
2 State of Ohio:

3 Jim Petro, Attorney General of Ohio

4 By: Holly J. Hunt (via telephone)
5 Assistant Attorney General
6 Constitutional Offices Section
7 30 East Broad Street
8 17th Floor
9 Columbus, Ohio 43215

10 On behalf of the Witness:

11 Ron O'Brien, Franklin County
12 Prosecuting Attorney

13 By: Patrick J. Piccininni
14 Assistant Prosecuting Attorney
15 Civil Division
16 373 South High Street
17 Columbus, Ohio 43215

18 ALSO PRESENT:

19 Lindsey Williams (via telephone)

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1 MR. PICCININNI: I have one thing
2 for the record, okay? While this deposition is
3 being done by agreement of the parties, it's
4 still the position of the Franklin County Board
5 of Elections that we object to the proceedings
6 and the time being taken from our Board members
7 for this lawsuit that was filed 15 days before
8 the election. We have provided the documents by
9 agreement of the parties, again, subject to
10 objections, in the interest of moving this matter
11 forward.

12 It is also my understanding that as
13 a result of this objection -- of this deposition,
14 the subpoena issued to Matthew Damschroder for
15 Wednesday's hearing is being withdrawn; am I
16 correct?

17 MS. GENTRY: That is correct. And
18 let me also say that we are taking this
19 deposition in lieu of your witness' appearance at
20 the preliminary injunction hearing on Wednesday,
21 and we intend to use this transcript at the
22 hearing, in lieu of his appearance.

23 MR. PICCININNI: Okay.

24 MR. COGLIANESE: Patrick, although
25 we have absolutely no present intent on calling

1 Matt at the hearing, we reserve the right,
2 depending on how this and the rest of the stuff
3 goes, if there is some supplemental stuff that we
4 need to get from him, working something out or
5 potentially calling him live. But the chances of
6 that happening are probably very, very low, but I
7 still don't want to waive that.

8 MR. PICCININNI: And I understand
9 you don't want to waive it, Rich, and I just have
10 to put on the record that if my client -- if
11 anybody from the Board of Elections is being
12 subpoenaed for Wednesday, it will be met with an
13 objection from our office because we are now
14 eight days out from the election, and we --
15 there is still a multitude or a myriad of details
16 that need to be attended to. And this is a
17 complete -- it's taking away -- these proceedings
18 are taking away from our statutory duties in
19 conducting the election.

20 So I will give you the same
21 objection, that -- if they are called by the
22 plaintiffs as well. And I understand where
23 you're coming from. But I just need that to be
24 known at this point.

25 MR. COGLIANESE: Absolutely,

1 Patrick, and I understand that. And we will do
2 our best not to interfere with you or with Matt
3 or with what the Franklin County Board needs to
4 do.

5 MR. PICCININNI: Thank you.

6 MATTHEW M. DAMSCHRODER
7 of lawful age, Witness herein, having been first
8 duly cautioned and sworn, as hereinafter
9 certified, was examined and said as follows:

10 CROSS-EXAMINATION

11 BY MS. GENTRY:

12 Q. Okay. Thank you.
13 (Difficulty in telephonic
14 transmission.)

15 MR. PICCININNI: Caroline?

16 MS. GENTRY: Did you hear my
17 question?

18 MR. PICCININNI: No.

19 MS. GENTRY: Can you hear me now?

20 MR. PICCININNI: We can hear you
21 now.

22 BY MS. GENTRY:

23 Q. Could you please state your name for
24 the record.

25 A. Yeah. Matthew M. Damschroder.

1 Q. Mr. Damschroder, have you been
2 deposed before?

3 A. I have.

4 Q. Well, then, you're familiar with the
5 ground rules, but I will just quickly go over
6 some of them. If you don't hear my question,
7 obviously, please ask me to repeat it; all right?

8 A. Yes.

9 Q. If you don't understand my question,
10 please let me know and I will rephrase it; okay?

11 A. Yes.

12 Q. And then, finally, if you want to go
13 back and clarify any of your prior answers,
14 please just tell me or tell your attorney and you
15 can do that.

16 A. Yes.

17 Q. Thanks. Could you please tell us
18 your title and job responsibilities with the
19 Franklin County Board of Elections.

20 A. I am the Director of the Franklin
21 County Board of Elections. And in that capacity,
22 I am responsible for all of the statutory,
23 day-to-day operations of the Board, including,
24 but not limited to, voter registration, absentee
25 voting, poll worker recruitment and training,

1 voter education, campaign finance, petitions, and
2 all of those similar matters.

3 Q. How long have you been Director?

4 A. Since June the 1st, 2003.

5 Q. Sir, I want to walk through some of
6 the issues that have been raised in this lawsuit.
7 The first one I want to run through is the
8 definition of current, in the phrase current
9 utility bills, bank statement, government check,
10 paycheck or other government document. Are you
11 familiar with that phrase?

12 A. Yes, I am.

13 Q. How is your Board of Elections
14 interpreting the word current, as it is used in
15 that phrase?

16 A. We have not provided a specific
17 interpretation of the word current.

18 (Difficulty in telephonic
19 transmission.)

20 THE WITNESS: Can you repeat the
21 question?

22 BY MS. GENTRY:

23 Q. Have there been any discussions
24 about what it means?

25 A. Yes, there have been discussions.

1 Q. Tell me about those discussions.

2 A. Discussions have been internal among
3 staff of the Board of Elections, and in some
4 instances at training classes conducted by myself
5 or other Board of Elections or other Board staff,
6 and we have said that at this time, neither Ohio
7 law nor the Secretary of State have provided
8 guidance on what is the definition of the
9 phrase -- of the word current, as used in the
10 identification provisions of Ohio law.

11 Q. Have you attempted to provide any
12 such guidance?

13 A. The only guidance provided was last
14 Wednesday, in the form of a Directive from the
15 Secretary of State.

16 Q. Okay. Let me ask again, have you,
17 as Director, attempted to provide any guidance on
18 that issue?

19 A. No, I have not. I am not an
20 attorney and not engaged in the practice of law.

21 Q. Do you know how your election
22 officials have been interpreting that word as
23 absentee voters have come in to vote?

24 A. The -- I am not aware of, at this
25 time, any individuals who have appeared in person

1 at the Board of Elections, to vote, who have
2 attempted to provide a form of identification
3 other than Social Security number or driver's
4 license number.

5 Q. Okay. If that had happened, would
6 you be aware of it?

7 A. I would probably be aware of it
8 after the fact.

9 Q. Why?

10 A. Because we talk about those kind of
11 things.

12 Q. Do you have any standards in place
13 for evaluating the absentee ballots that were
14 mailed in?

15 A. Evaluate how?

16 Q. In terms of whether the
17 identification provided is sufficiently current
18 to be acceptable.

19 A. At this point we have not opened any
20 of the absentee ballot identification envelopes
21 to evaluate the form of copied identification
22 provided inside of the envelope. So so far the
23 only evaluation, so to speak, of absentee ballot
24 identification envelopes has been to segregate
25 them by category of identification provided.

1 Specifically, you know, if those -- those
2 identification envelopes on which the voter has
3 indicated that they have enclosed a qualifying
4 form of identification are segregated, and we
5 will not open those identification envelopes to
6 determine the form of identification until
7 Saturday before the election.

8 Q. At that time what standard do you
9 intend to apply regarding the word current?

10 A. At this time we intend to use the
11 definition as prescribed by the Secretary of
12 State in his Directive of last Wednesday.

13 Q. Directive 78?

14 A. I believe that is the number, yes.

15 Q. Do you recall what that definition
16 of current is in the Directive?

17 A. My recollection is that it is --

18 MR. PICCININNI: Objection. The
19 document speaks for itself.

20 But go ahead, Matt.

21 THE WITNESS: As I recall, the
22 document defines current as within the last six
23 months, going back to, I believe, April the 7th,
24 2006.

25 BY MS. GENTRY:

1 Q. Issue of other government documents,
2 that's one of the other forms of identification
3 that can be provided; is that correct?

4 A. Can you repeat the question, please?

5 Q. I am turning now to the issue of
6 other government documents. Is it your
7 understanding that's one of the other types of
8 identification that can be provided by a voter?

9 A. Yes, that is correct.

10 Q. What is your Board of Elections'
11 interpretation of the phrase other government
12 documents?

13 MR. COGLIANESE: Objection.

14 Go ahead and answer.

15 THE WITNESS: We do not have a
16 specific -- we do not have a specific
17 interpretation of the phrase other government
18 document, and I do not recall whether or not the
19 Secretary of State Directive of last Wednesday
20 defined that phrase.

21 BY MS. GENTRY:

22 Q. You don't have a definition at all;
23 is that correct?

24 A. You broke up. Can you repeat that
25 question?

1 Q. Putting aside whatever Directive 78
2 says, before you received that Directive, you did
3 not have a definition of what an other government
4 document was?

5 A. That is correct.

6 Q. Does that mean you did not -- you
7 had not decided whether it would include local
8 governments or not?

9 A. That is correct. We had not -- we
10 had not formulated a full and clear definition of
11 what that undefined phrase meant.

12 Q. Moving on to the next issue, are you
13 aware, Mr. Damschroder, of the issue regarding
14 the photograph number on the driver's license,
15 and by that I mean the number that appears above
16 the picture, as distinct from the driver's
17 license number, which is on the left side of the
18 license?

19 A. Yes, I am aware of the presence of
20 two different numbers on the same driver's
21 license card.

22 Q. To your knowledge, have any voters
23 in Franklin County, to date, in absentee voting,
24 provided the wrong number -- or let me strike
25 that -- provided the photograph number?