

1 A. Yes, I am aware of individuals in
2 Franklin County who have cast -- or attempted to
3 cast an absentee ballot, and have provided as
4 their form of identification the number that
5 appears on the driver's license card above the
6 photograph.

7 Q. Do you know how many voters made
8 that choice?

9 A. I do not know that number at -- the
10 precise number at this time, but it's
11 ascertainable, based on the ballots we have
12 evaluated, or the identification of ballots that
13 we have looked at so far.

14 Q. Okay. Are you in a position to give
15 an estimate of that number?

16 A. You know, I would rather not at this
17 point, just because I know the number is
18 ascertainable.

19 Q. Okay. That's fine. What standard
20 has the Board applied to those ballots,
21 acceptable or not?

22 A. We have asked the Franklin County
23 Prosecuting Attorney's Office to give us guidance
24 on that issue.

25 (Difficulty in telephonic

1 transmission.)

2 THE WITNESS: I am sorry, can you
3 repeat that question?

4 BY MS. GENTRY:

5 Q. Have you received a response to your
6 request?

7 MR. PICCININNI: Objection. Any
8 communications between the Prosecutor's Office
9 and the Board of Elections is protected by
10 attorney-client privilege.

11 MS. GENTRY: Any communications with
12 counsel.

13 BY MS. GENTRY:

14 Q. My understanding is you asked the
15 Secretary of State's Office for guidance; is that
16 correct -- no, you asked your prosecutor for
17 guidance?

18 A. Yes. We asked the Franklin County
19 Prosecuting Attorney for guidance, based upon the
20 verbal and written statements of the Secretary of
21 State's Office that we should consult with our
22 county prosecuting attorney on these matters.

23 Q. When did you ask for that?

24 MR. PICCININNI: Objection. Calls
25 for privilege.

1 MS. GENTRY: I don't want to know
2 the substance, Patrick, I just want to know when
3 the request was made.

4 MR. PICCININNI: And that's
5 contained in the communication. That's
6 privileged.

7 MS. GENTRY: I don't need the copy
8 of the communication. He testified that there
9 was a communication. I am entitled to know --
10 just as on a privilege log, I am entitled to know
11 who it was to and when. I am not looking for
12 substance.

13 MR. PICCININNI: It was -- go ahead
14 and answer as best you can.

15 THE WITNESS: As I recall, it was
16 mid-August of this year.

17 BY MS. GENTRY:

18 Q. What is the current practice of the
19 Board of Elections with regard to photograph
20 numbers?

21 A. As it pertains to the application or
22 as it pertains to the identification envelope?

23 MR. COGLIANESE: This is Rich. I
24 made a couple of objections here. I just want to
25 make sure all these things are getting on the

1 record.

2 MR. PICCININNI: I am not hearing
3 objections from you, Rich. I heard one objection
4 from you. Rich?

5 MR. COGLIANESE: Yeah, we are just
6 trying to figure out what to do. I think if you
7 guys can't hear that, I think maybe among counsel
8 we will just agree --

9 MS. GENTRY: The problem is if he
10 objects to form. If you make specific objections
11 to form, you should make it at the time so that I
12 can correct it. We can't have standing
13 objections to everything.

14 Guys, here is what we are going to
15 do. After I ask my question, please just pause,
16 and we will see if Rich has an objection.

17 MR. COGLIANESE: That works.

18 MS. GENTRY: Because as soon as you
19 start answering, you can't hear us.

20 MR. PICCININNI: Yeah, and the court
21 reporter can't hear you.

22 MS. GENTRY: Right, most
23 importantly.

24 MR. PICCININNI: Right.

25 MS. GENTRY: Madam court reporter,

1 was there a question pending?

2 MR. COGLIANESE: I think there was,
3 and I think I had an objection to it.

4 MS. GENTRY: Read back the question,
5 and then we will let Rich object.

6 (Record read.)

7 MR. COGLIANESE: Okay. Let's just
8 go ahead and pick it up from there.

9 MS. GENTRY: Okay. Let me withdraw
10 the question and ask again.

11 BY MS. GENTRY:

12 Q. Mr. Damschroder, with regard to
13 both -- either the ballots or the application
14 forms, what is the current practice of the Board
15 of Elections with regard to accepting the
16 photograph number?

17 MR. COGLIANESE: Objection.

18 Go ahead, Matt.

19 THE WITNESS: The practice of the
20 Board of Elections for applications that show the
21 picture ID number, as opposed to the driver's
22 license number, is that the Board of Elections
23 returns the application to the applicant, along
24 with a note from the Board telling them that they
25 need to provide the correct form of driver's

1 license number.

2 As it pertains to absentee ballot
3 identification envelopes, we have asked the
4 Franklin County Prosecuting Attorney how best to
5 handle those.

6 MR. PICCININNI: And I will object
7 to that because it called for a privileged
8 response, but he has already answered it, so --

9 MS. GENTRY: I won't ask him about
10 the substance of that.

11 MR. PICCININNI: Thank you.

12 BY MS. GENTRY:

13 Q. The local NBC affiliate about this
14 issue of the photograph numbers?

15 A. I am sorry, can you repeat the
16 question?

17 Q. Did you give an interview to the
18 local NBC affiliate about this issue of
19 photograph numbers?

20 A. You know, I do so many interviews
21 with the media, I don't remember who specifically
22 I -- you know, I don't have a specific
23 recollection of that conversation with that
24 particular media entity.

25 Q. Okay. I understand. Putting aside

1 the issue of specifically who it was, have you
2 had conversations in the last week with the
3 media, with anyone in the media, about the issue
4 of photograph numbers?

5 A. It would -- it would not surprise me
6 if I had.

7 Q. And just focusing on the last week,
8 what do you recall about your statements in those
9 conversations?

10 A. I -- if -- my recollection -- well,
11 I don't recall any specific interview that
12 focused or that had any content on that specific
13 issue, but --

14 MR. PICCININNI: I am going to
15 object at this point that any answer calls for
16 speculation.

17 Go ahead and answer to the best of
18 your ability.

19 THE WITNESS: Had I been interviewed
20 by media, I would talk about the fact that there
21 are two different numbers on the driver's
22 license, and that voters need to be aware of that
23 and put the correct number, that begins with two
24 alpha characters, as opposed to the number that
25 appears over the photograph with zeros and

1 dashes.

2 BY MS. GENTRY:

3 Q. Did -- at any point in time in the
4 last week have you made a statement to the effect
5 of you would attempt not to disqualify the vote
6 if the voter could be verified -- if the voter's
7 identity could be verified through other means?

8 A. I don't have specific recollection
9 of that statement.

10 Q. Have you made any statements similar
11 to that?

12 A. I think this morning I was quoted in
13 The Dispatch as saying that we would bend over
14 backwards to see that every properly cast vote
15 would be counted. I would consider those two
16 statements to be similar.

17 Q. What do you mean when you say you
18 would bend over backwards?

19 A. We would do everything in our power
20 and use all the tools available at our disposal
21 to ascertain a voter's identity in order to count
22 their ballot.

23 Q. Would that be true even if they
24 wrote down the photograph number on their ballot?

25 A. We would use every means available

1 to us, including conversations with the
2 Prosecuting Attorney, to count ballots.

3 Q. But is it your understanding, Mr.
4 Damschroder, that if the photograph number is on
5 the ballot, it will be automatically rejected?

6 MR. PICCININNI: Objection. Asked
7 and answered.

8 Go ahead and answer it again.

9 And I know it's a different
10 question, but it's on the same subject, and I
11 think he has answered it twice.

12 THE WITNESS: At this time that
13 precise question is -- is subject to a request
14 pending before the Prosecuting Attorney's Office
15 for guidance on that issue.

16 BY MS. GENTRY:

17 Q. So is it fair to say, as we sit here
18 today, you can't tell me what standards you
19 intend to apply with regard to the photograph
20 number?

21 MR. COGLIANESE: Objection.

22 Go ahead.

23 THE WITNESS: Yes.

24 BY MS. GENTRY:

25 Q. Okay. Mr. Damschroder, moving on,

1 is your Board of Elections accepting driver's
2 licenses that have former addresses?

3 A. Yes.

4 Q. Moving on to another issue, is your
5 Board of Elections requiring in-person voters,
6 who come to the Board of Elections to cast their
7 absentee votes -- does your Board of Elections
8 requiring those voters to show identification,
9 rather than providing a Social Security number or
10 driver's license number?

11 A. Individuals casting an absent voters
12 ballot in person at the office of the Board of
13 Elections complete the application for absent
14 voters ballot in the same manner that a person --
15 an absent voter would who was requesting to vote
16 by mail.

17 (Difficulty in telephone
18 transmission.)

19 MR. PICCININNI: Caroline, what was
20 the first part of your question?

21 MS. GENTRY: Strike that question.
22 Here is a new one.

23 BY MS. GENTRY:

24 Q. In terms of the standards applied to
25 early person voters who cast their ballot, is

1 that the same as mail-in voters who cast their
2 ballot?

3 THE WITNESS: Yes.

4 MS. GENTRY: Could we go off the
5 record for a second? I want to mark an exhibit.

6 (Thereupon, Damschroder Exhibit
7 Number 1 was marked for purposes of
8 identification.)

9 THE NOTARY: The witness has Exhibit
10 1.

11 BY MS. GENTRY:

12 Q. Turning to the second page of
13 Exhibit 1 --

14 A. Yes.

15 (Difficulty in telephone
16 transmission.)

17 BY MS. GENTRY:

18 Q. Can you hear me now?

19 A. Yes, we can hear you.

20 Q. Turning to the second page, looking
21 at the last two paragraphs, Mr. Damschroder, have
22 you had a chance to read these before?

23 A. I have -- I have read this Directive
24 on Wednesday, October the 26th, 2006, when it was
25 issued by the Office of the Secretary of State.

1 Q. Okay. Why don't you take a moment
2 and read the section to yourself now and let me
3 know when you're done.

4 A. Okay. I have read -- I have reread
5 the paragraphs in question.

6 Q. Okay. Mr. Damschroder, is it your
7 understanding that these paragraphs provide that
8 early in-person voters must show identification,
9 whereas absentee voters who vote by mail can
10 provide a Social Security number or driver's
11 license number in lieu of that?

12 MR. COGLIANESE: Objection.

13 Go ahead, Matt.

14 THE WITNESS: I guess I am unclear
15 on the question.

16 BY MS. GENTRY:

17 Q. What is your understanding of these
18 two paragraphs?

19 A. These two paragraphs set out the
20 form of identification to be provided by
21 individuals casting an absent voters ballot,
22 either by mail or in person at the office of the
23 Board of Elections.

24 Q. Is there a difference between
25 absentee voters who vote by mail and absentee

1 voters who vote in person?

2 A. The difference, to the extent that I
3 would understand it, would be that a person
4 casting a ballot in person, the Directive reads:
5 The vote -- quote: The voter must present to the
6 Director of the Board a current, valid photo
7 identification, or copy of the same.

8 And then the Directive continues to
9 list the other forms of acceptable
10 identification.

11 Q. How is that different from voters
12 who vote by mail?

13 A. It might be a -- I am looking for
14 the phrase I want to use. But the difference
15 would appear to be that the person voting by mail
16 isn't actually presenting the form of ID to the
17 Director or the Director's representative, as the
18 case is here in Franklin County; whereas the
19 person casting the ballot in person would seem to
20 be, according to this Directive, presenting in
21 person the ID to the Director.

22 Q. Let me ask you this, based on your
23 reading of it, is it your understanding that
24 absentee voters who vote by mail can provide
25 their Social Security number or driver's license

1 number in lieu of the identification?

2 A. State that question again.

3 Q. Is it your understanding that under
4 Directive 78, absentee voters who vote by mail
5 can provide their Social Security number or
6 driver's license number in lieu of the required
7 identification?

8 A. Yes.

9 Q. Okay. Now, in looking at the last
10 paragraph, is it your understanding that absentee
11 voters, who vote in person, can also provide a
12 Social Security number or driver's license in
13 lieu of the required identification?

14 A. Let me review the Directive again.
15 It would appear that the Directive, as written,
16 does not contemplate the -- the providing of the
17 last four digits of the Social Security number in
18 lieu of presenting a form of current valid ID,
19 photo ID, or a copy of one of the other
20 qualifying forms of identification.

21 Q. Does it then appear to you that
22 there is a difference in what is being required
23 in terms of identification between mail-in voters
24 and walk-in voters?

25 A. Yes.