

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 * * *

5 THE NORTHEAST OHIO
6 COALITION FOR THE
7 HOMELESS, et al.,

8 Plaintiffs,

9 vs.

CASE NO. 2:06-CV-896

10 J. KENNETH BLACKWELL,
11 in his official capacity
12 as Secretary of State of Ohio,
13 Defendant.

14 * * *

15 Deposition of SUSAN R. JOHNSON, Witness
16 herein, called by the Plaintiffs for direct
17 examination pursuant to the Rules of Civil
18 Procedure, taken before me, Caryl L. Blevins, a
19 Notary Public in and for the State of Ohio, at the
20 offices of the Warren County Board of Elections,
21 406 Justice Drive, Lebanon, Ohio, on Monday, the
22 30th day of October, 2006, at 5:11 o'clock p.m.

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8 EXHIBITS MARKED

9	(Thereupon, Plaintiffs' Johnson	8
10	Deposition Exhibit 1 was marked for	
11	purposes of identification.).....	

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1 APPEARANCES:

2 On behalf of the Plaintiffs:

3 Porter, Wright, Morris & Arthur

4 By: Caroline H. Gentry (Telephonically)
5 Attorney at Law
6 1600 One Dayton Centre
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8 Dayton, Ohio 45402

9 On behalf of the Defendant:

10 Ohio Attorney General's Office

11 By: Richard N. Coglianesse (Telephonically)
12 Assistant Attorney General
13 30 E. Broad Street
14 17th Floor
15 Columbus, Ohio 43215

16 and

17 Crabbe, Brown & James

18 By: Christina L. Corl (Telephonically)
19 Attorney at Law
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21 Suite 1200
22 Columbus, Ohio 43215

23 On behalf of the Proposed Intervenor,
24 State of Ohio:

25 Ohio Attorney General's Office

By: Holly Hunt (Telephonically)
Assistant Attorney General
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1 On behalf of the Witness:

2 Warren County Prosecutor's Office

3 By: Keith Anderson
4 Assistant Prosecuting Attorney
5 500 Justice Drive
6 Lebanon, Ohio 45036

7 * * *

8 MS. GENTRY: Before we begin, I would
9 just like to note for the record that the
10 Plaintiffs intend to use this deposition testimony
11 at the preliminary injunction hearing in lieu of
12 the witness' appearance.

13 MR. COGLIANESE: And just for
14 purposes of the record, we don't have a problem
15 with that.

16 It is not currently our intention to
17 call Ms. Johnson as a witness on Wednesday, but we
18 do just want to make sure it's clear on the record
19 we reserve the right to supplement in case
20 something comes up, either today or later as we're
21 going through this case, our right to either go
22 back and ask questions or potentially call her.
23 As I say, there is no present intention for that
24 to happen, but I don't want to waive that right.

25 MR. ANDERSON: Can I jump in here for
just a minute? This is Keith Anderson.

1 MS. GENTRY: Sure.

2 MR. ANDERSON: Only to say keep in
3 mind that with the election coming up, they have a
4 lot of testing of equipment and things scheduled
5 for Wednesday and the days after that, so if at
6 all possible, you know, that --

7 MR. COGLIANESE: Yeah. Mr. Anderson,
8 I'll tell you, I represent Secretary of State
9 Blackwell. I've done it for three years.

10 I perfectly and very well understand
11 all the work your boards have to do, the Boards of
12 Elections have to do this time of year, both
13 leading up to and in the immediate aftermath of an
14 election, and we will do our absolute best not to
15 bother you after today.

16 I just don't want to lose the right
17 in case in a strange way something happens, but
18 trust me, I understand that very well about
19 leaving folks alone so that they can do their job
20 running elections, not participating in
21 litigation.

22 MR. ANDERSON: I know you do, and we
23 appreciate that.

24

25

1 SUSAN R. JOHNSON
2 of lawful age, Witness herein, having been first
3 duly cautioned and sworn, as hereinafter
4 certified, was examined and said as follows:

5 DIRECT EXAMINATION

6 BY MS. GENTRY:

7 Q. Miss Johnson, could you please state
8 your name for the record.

9 A. Susan Johnson.

10 Q. Have you been deposed before,
11 Miss Johnson?

12 A. I've done a hearing for things we've
13 had here in the office.

14 Q. Okay. Well, you may be familiar with
15 the ground rules, but I'll just go over a few. If
16 you don't hear any of my questions, please let me
17 know and I will repeat it.

18 A. Okay.

19 Q. If you don't understand any of my
20 questions, please let me know and I will rephrase
21 it.

22 A. Okay.

23 Q. If at any time you want to go back
24 and clarify or supplement a prior answer, please
25 just let me know or let your attorney know and go

1 ahead and make that clarification.

2 A. Okay.

3 Q. Okay. Thank you, Miss Johnson.

4 A. Uh-hum.

5 Q. Could you please state your title and
6 your responsibilities.

7 A. I'm the director for the Warren
8 County Board of Elections. I'm kind of
9 responsible for the day-to-day activity throughout
10 the office and putting on the elections.

11 Q. Are you referring to the upcoming
12 election in November?

13 A. That one also, all of them.

14 Q. Okay. How long have you been
15 director?

16 A. Since February of 2003.

17 Q. Were you with the Board of Elections
18 before that time?

19 A. Yes. I was the deputy director from
20 August of '92 until I became director.

21 Q. Miss Johnson, there are several
22 issues in this case, and I want to move through
23 them fairly quickly.

24 The first issue relates to the phrase
25 current utility bill, bank statement, government

1 check, paycheck, or other government document as
2 that phrase is used in the voter identification
3 rules. Are you familiar with that phrase?

4 A. Yes. Yes.

5 Q. How is your Board interpreting the
6 word current in that phrase?

7 A. Well, I guess because we received in
8 a directive from the Secretary of State's office,
9 that's something that is dated not more than six
10 months.

11 Q. You're referring to Directive 78?

12 A. Yes.

13 MS. GENTRY: Let's go ahead and mark
14 that for the record. Madam Court Reporter, it
15 should be toward the end of the small stack of
16 documents that you have.

17 (Thereupon, Plaintiffs' Johnson
18 Deposition Exhibit 1 was marked for purposes of
19 identification.)

20 BY MS. GENTRY:

21 Q. Miss Johnson, do you have a copy of
22 Directive 78 in front of you?

23 A. Yes, I do.

24 Q. Could you please turn to page three,
25 the last page of the document.

1 A. Yes, I've got that.

2 Q. And do you see at the top where it
3 references the word current?

4 A. Yes. Yes, I do.

5 Q. Is that the six-month standard that
6 you were referring to?

7 A. Yes. Yes.

8 Q. When did you receive Directive 78?

9 A. October the 26th.

10 Q. Did you put it into practice or into
11 effect after you received it on October 26th?

12 A. I suppose.

13 Q. Is it also correct that you received
14 on or around the 26th a court order staying the
15 effect of Directive 78?

16 A. Was that Thursday?

17 Q. Yeah, either Thursday or the next
18 day.

19 A. Or Friday? We received that, I
20 think -- it was Friday when I actually got that, I
21 think.

22 Q. And is it your understanding that
23 today or last night, the Sixth Circuit has stayed
24 that court order?

25 A. Yes.

1 Q. Is Directive 78 currently in effect
2 in Warren County?

3 A. Yes.

4 Q. When did you put it into effect?

5 A. Well, a lot of it was put into effect
6 when House Bill 3 went into effect.

7 Q. Okay. Let's focus right now on the
8 definition of current. Before you received
9 Directive 78 last week, had you applied a
10 six-month standard to the definition of current?

11 A. Probably had not actually applied
12 that to anything definite, no.

13 Q. Had you formulated an interpretation
14 of what current means as it's used in that phrase?

15 A. Not up till that time, no.

16 Q. Had any voters, to your knowledge,
17 attempted to present a current utility bill, bank
18 statement, paycheck, government check, or other
19 government document as part of their absentee
20 ballot application?

21 A. Possibly less than six.

22 Q. Do you have reason to believe that
23 some did but it would be fewer than six?

24 A. Yes.

25 Q. Do you know how current their

1 identification was for those five or fewer voters?

2 A. I would have to actually look at
3 them.

4 Q. Were any standards given or
5 instructions given to your employees as to how
6 current one of those identifications needed to be
7 to be accepted?

8 A. No.

9 Q. Moving on to the next issue,
10 Mrs. Johnson, it relates to the phrase other
11 government document in the same identification
12 provision. Are you familiar with that phrase?

13 A. Yes.

14 Q. Does the Board of Elections have an
15 interpretation of what the phrase other government
16 document means?

17 A. Other than what it's saying, local,
18 state, or federal documents that show the voter's
19 name and current address?

20 Q. Correct. Prior to receiving this
21 directive, did you have any standard approach to
22 that phrase?

23 A. I think it pretty much went by that.

24 Q. But previously, you were accepting
25 local, state, and federal documents?

1 A. Yes.

2 Q. Were you accepting any documents from
3 state universities?

4 A. We haven't come across any of those.

5 Q. Did you have a written standard that
6 identified that local, state, and federal
7 government documents would be accepted?

8 A. It was in a special voting
9 instruction. It just says -- it just says like
10 government checks, paychecks, other government
11 documents other than voter registration
12 notification.

13 Q. Right. And I just want to focus on
14 the phrase other government document. Did you
15 have any written standard as to what that phrase
16 meant prior to receiving Directive 78?

17 A. No. Just what was written there.

18 Q. So that's a no?

19 A. Correct.

20 Q. Moving on to another issue, have you
21 had any absentee voters write down the wrong
22 driver's license number on either their
23 application or their ballot?

24 A. Yes, we have.

25 Q. And which number do you consider to

1 be the wrong number, just for the record?

2 A. The number that is listed above their
3 pictures.

4 Q. Do you know how many voters so far in
5 this election have provided the wrong number?

6 A. I don't have a number. I mean, I
7 haven't counted them up. Most of them have been
8 their correct driver's license number.

9 Q. But you are aware of some that are
10 not?

11 A. Yes. Yes, I am.

12 Q. What is the procedure, first with the
13 application, if someone submits the photograph
14 number? What procedure does the Board of
15 Elections follow?

16 A. We send them a letter requesting
17 their driver's license number.

18 Q. And with regard to ballots, if a
19 person writes down the photograph number on their
20 ballot, what will be the procedure with regard to
21 that ballot?

22 A. That will be a Board decision.

23 Q. Is there any instruction or procedure
24 that's now laid out as to what will happen to that
25 ballot?

1 MR. COGLIANESE: Objection. Go
2 ahead.

3 THE WITNESS: That will be something
4 the Board will determine. They have not at this
5 time.

6 BY MS. GENTRY:

7 Q. So is it possible that that ballot
8 could either be accepted or rejected?

9 MR. COGLIANESE: Objection, go ahead.

10 THE WITNESS: I can't speak for the
11 Board.

12 BY MS. GENTRY:

13 Q. Is it fair to say you don't know
14 whether that ballot will be accepted or rejected?

15 A. That is correct.

16 Q. Do you see on the same page as
17 Directive 78, toward the end of the page, there
18 are two paragraphs that discuss driver's license
19 numbers?

20 A. Yes, I see that.

21 Q. Could you please read those two
22 paragraphs and let me know when you're done.

23 (Pause in proceedings.)

24 THE WITNESS: Okay, I'm finished.

25 BY MS. GENTRY:

1 Q. If Directive 78 applies, do you have
2 an understanding as to whether or not ballots that
3 contain photograph numbers will be accepted or
4 rejected?

5 A. Well, it's saying here that they're
6 not accepted as proof of identity.

7 Q. So is it your understanding that
8 under Directive 78, those ballots will be
9 rejected?

10 MR. COGLIANESE: Objection. Go
11 ahead.

12 THE WITNESS: That is the way I'm
13 understanding it.

14 BY MS. GENTRY:

15 Q. Okay. Miss Johnson, moving on to
16 another issue, is your Board of Elections
17 accepting military ID cards?

18 A. If we had any. We've not received
19 any of those.

20 Q. Do you know whether military ID cards
21 contain a current address or not?

22 A. I do not know.

23 Q. That issue hasn't come up yet for
24 your Board?

25 A. No, it has not.