

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
13 Ohio,

14 Defendant.

15 * * *

16 Deposition of BETTY L. MCGARY, Witness
17 herein called by the Plaintiffs for
18 cross-examination pursuant to the Rules of Civil
19 Procedure, taken before me, Mary Jo Stevens, a
20 Notary Public in and for the State of Ohio, at the
21 offices of the Butler County Board of Elections,
22 315 High Street, Suite 1050, Hamilton, Ohio, on
23 Monday, the 30th day of October, 2006, at 9:15
24 a.m.

25 * * *

EXAMINATIONS CONDUCTED PAGE

| | | |
|---|-------------------------|----|
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EXHIBITS MARKED

| | | |
|----|----------------------------------|----|
| 7 | | |
| 8 | | |
| 9 | (Thereupon, McGary Exhibit 1 was | 22 |
| 10 | marked for purposes of | |
| 11 | identification.)..... | |

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1 APPEARANCES:

2 On behalf of the Plaintiffs:

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25 On behalf of Butler County Board of Elections:

By: Roger S. Gates
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* * *

1 BETTY L. MCGARY

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 MR. GATES: Caroline, one other item.

6 There are two other Board employees here in the
7 room just so you're aware. We have Trina
8 Spradling and Tippi Slaughter. They are here just
9 because if Betty had a question -- a need for a
10 documents, they are going to help her, but she
11 will -- we would identify if she's asking any of
12 them for any information.

13 MS. GENTRY: Thank you. Before we
14 begin, I would just like to state for the record
15 that plaintiffs intend to use this deposition in
16 lieu of testimony at the preliminary injunction
17 hearing on Wednesday and it is my understanding
18 that the state does not object to that use; is
19 that correct.

20 MR. COGLIANESE: That's correct. We
21 do reserve the right to supplement, if need be,
22 but we don't object to you using this in lieu of
23 live testimony.

24 CROSS-EXAMINATION

25 BY MS. GENTRY:

1 Q. Miss McGary, could you please
2 state your name for the record?

3 A. Betty L. McGary.

4 Q. Have you been deposed before, Miss
5 McGary?

6 A. Yes.

7 Q. Well, then you will remember the
8 ground rules for a deposition. If you -- just
9 to go over them briefly, if you don't
10 understand any of my questions, please tell me
11 and I'll rephrase the question. If you don't
12 hear me, please let me know and I'll repeat the
13 question. If at any time you want to go back
14 and correct or supplement an answer to a prior
15 question, please let me or your attorney know
16 and you can do that. Do you have any questions
17 about that?

18 A. No, I don't.

19 Q. Miss McGary, could you please
20 describe your responsibilities and your job
21 title at the Board of Elections?

22 A. I am the deputy director and
23 basically administrate election laws throughout
24 the department with the various departmental
25 managers and staff and work directly with my

1 four board members.

2 Q. Do you report to anybody other
3 than the board members?

4 A. No, I do not.

5 Q. How long have you been deputy
6 director?

7 A. I need to go back and on the do I
8 report to anyone else, of course, we all report
9 to the Secretary of State.

10 Q. Okay. Thank you for that
11 clarification. How long have you been with
12 deputy director?

13 A. I have either been the director or
14 the deputy director since 1978.

15 Q. Congratulations.

16 A. Thank you.

17 Q. Since our time is limited today,
18 I'm going to go ahead and move to the first
19 topic, substantive topic, which is the word
20 current. I assume you're aware that as a voter
21 identification requirement voters can provide a
22 current utility bill, bank statement,
23 government check, paycheck or other government
24 documents; is that correct?

25 A. Yes, that's correct.

1 Q. How is your Board of Elections
2 interpreting the word current in that phrase?

3 MR. COGLIANESE: This is Rich,
4 objection. Go ahead and answer.

5 Q. Let me rephrase. To your
6 knowledge how is your Board of Elections
7 interpreting the word current?

8 A. We said originally a year until we
9 received a directive from the Secretary of
10 State which commented it would be six months, I
11 believe.

12 Q. Okay. Can you tell me about how a
13 decision was reached to interpret the current
14 term to mean one year?

15 MR. COGLIANESE: Just for the record,
16 objection. Go ahead.

17 THE WITNESS: We felt that the year
18 would suffice insofar as any moves -- any
19 residential move that the voter may have made and
20 we felt the year would take that in.

21 Q. What do you mean by residential
22 move?

23 A. If -- in other words, if they had
24 moved their residence, we felt that the year
25 would suffice on that.

1 Q. Who made the decision to have it
2 be one year?

3 A. The director and deputy director.

4 Q. Do you recall when that decision
5 was made approximately, was it before early
6 voting began?

7 A. I believe it was just before.

8 Q. How did you communicate that
9 understanding to your election officials and
10 employees, if at all?

11 A. E-mail.

12 Q. Have you had any discussions with
13 anyone, either internally or externally, about
14 the meaning of the word current other than whom
15 you have already identified?

16 A. No, ma'am.

17 Q. So is it correct that up until
18 Directive 78 was issued last week, your Board
19 of Elections was applying a one year time frame
20 to the word current?

21 A. That's correct, and I should
22 clarify my response on the question before
23 this, of course, the director and deputy
24 director had met with the managers. You asked
25 me if we had discussed it with anyone else

1 prior to making that year decision and that was
2 discussed with the managers of the absentee
3 department and several other personnel in the
4 office.

5 Q. Why was it discussed with the
6 managers of the absentee department?

7 A. To receive their views on the
8 issue.

9 Q. What do you recall about their
10 views on the issue?

11 A. Again, that the year would be most
12 fairly applied to the voter.

13 Q. Why do you say it would be most
14 fairly applied?

15 A. In the event that the voter had
16 moved in the last year.

17 Q. Did you -- strike that. What did
18 you do with regard to the word current after
19 you received Directive 78, did you change your
20 policy?

21 A. Yes, we did.

22 Q. Can you tell me about that?

23 A. We changed it to six months.

24 Q. And that was beginning last
25 Thursday?

1 A. Let me look at some notes here.

2 Just a moment.

3 (Pause in proceedings.)

4 THE WITNESS: We changed it on
5 Thursday, October 26th.

6 Q. Can you explain to me what it
7 means when you say you changed it, is that
8 change retroactive to all the absentee voters
9 who voted before October 26th?

10 A. No, it is not.

11 Q. So is it correct that people who
12 voted up until October 26th can satisfy the
13 definition of current in it's within one year?

14 A. Yes.

15 Q. And voters who vote after October
16 26th must present identification within six
17 months?

18 A. Yes.

19 Q. What standard will the Board of
20 Elections apply on election day?

21 A. Those that came in prior to
22 October the 26th will be the year, those that
23 came in after October 26th will be the six
24 months, and that is subject to change depending
25 on having a discussion with our four board

1 members at a board meeting that is scheduled
2 for tomorrow at 11:00 a.m.

3 Q. Can you tell me why it's subject
4 to change?

5 A. I need to review the subject with
6 our four board members since we did receive
7 additional direction from the Secretary of
8 State's office on it stating that it was six
9 months and we will ask the -- will make the
10 four board members aware of the situation and
11 review their feelings.

12 Q. Is it possible that you will come
13 out with a different interpretation than six
14 months after your meeting?

15 MR. COGLIANESE: Objection. Go ahead
16 and answer.

17 THE WITNESS: I don't know what the
18 four board members' position may be on that issue.

19 Q. If the four board members'
20 position conflicts with that of the Secretary
21 of State, which will you follow?

22 MR. COGLIANESE: Objection. Go ahead
23 and answer.

24 THE WITNESS: The Secretary of State.

25 Q. Okay. Thank you, Miss McGary. I

1 would like to move on to the second issue which
2 is the phrase other government documents. Are
3 you familiar with that phrase?

4 A. Yes.

5 Q. What does your Board of Elections
6 consider to be any other government document?

7 MR. COGLIANESE: Objection. Go ahead
8 and answer.

9 THE WITNESS: Any other government
10 document would mean any document that the voter
11 has received from the federal government, the
12 state government or a local government entity that
13 shows the voter's name and their current address.

14 Q. What do you consider to be local
15 government?

16 MR. COGLIANESE: Objection. Go ahead
17 and answer.

18 THE WITNESS: Municipality or county.

19 Q. Do you have any written materials
20 that discuss what standard to apply when
21 interpreting the term other government
22 documents?

23 A. Just what we have received from
24 the Secretary of State primarily in Directive
25 2006-78.

1 Q. Prior to receiving 2006-78 did you
2 have any written standard that you were
3 applying?

4 A. I believe only through e-mail with
5 the staff in that department and even then
6 prior to this directive being issued we were on
7 the same page with the Secretary of State
8 meaning government document, log all, federal
9 or state.

10 Q. Miss McGary, moving on to the
11 third issue, disregard the different drive he's
12 license, one above the photograph on the one
13 that says driver's license number. Are you
14 familiar with that issue?

15 MR. COGLIANESE: Objection?

16 A. Yes, we are.

17 Q. Do you understand what I mean by
18 the term photograph number?

19 A. Yes, I am.

20 Q. Is your Board of Elections
21 accepting photograph numbers currently?

22 A. I'd like to clarify that my
23 understanding go is the same as yours on the
24 number. We're talking about the number on the
25 driver's license that is directly above the

1 birth date and it has three letters such as
2 RMX -- two letters and six numbers.

3 Q. What is your understanding as to
4 what number that is?

5 A. That that is the required number.

6 Q. That's the driver's license
7 number?

8 A. Yes.

9 Q. And then are you -- have you also
10 seen a number above the photograph?

11 A. I'm at a disadvantage here. We
12 have that copy of a driver's license that we
13 have been using. It's a sample.

14 Q. I believe it's in the documents
15 that I sent --

16 A. So the only other number on a
17 driver's license would be the number on the
18 right-hand side of the driver's license that is
19 sort of part of a photo ID to the far
20 right-hand side of the license which is above
21 the individual's physical description.

22 Q. Okay.

23 A. We have not been accepting that
24 number.

25 Q. Just for purposes of this