

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

THE NORTHEAST OHIO COALITION)
FOR THE HOMELESS, et al.)

Plaintiffs,)

vs.)

) Case No. 2:06-CV-896

J. KENNETH BLACKWELL,)
in his official)
capacity as Secretary of State)
of Ohio,)

Defendant.)

- - - - -

DEPOSITION OF L. MICHAEL VU
Tuesday, October 31, 2006

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Deposition of L. MICHAEL VU, called by the Plaintiffs
for examination under the Ohio Rules of Civil
Procedure, taken before me, the undersigned, Priscilla
A. Hefner, Registered Professional Reporter, a Notary
Public in and for the State of Ohio, at the Cuyahoga
County Board of Elections, 2925 Euclid Avenue,
Cleveland, Ohio, commencing at 10:00 a.m. the day and
date above set forth.

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APPEARANCES:

On Behalf of the Plaintiffs,
appearing by telephone:

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1 MS. GENTRY: Before we begin,
2 just for the record I would note that
3 the plaintiffs intend to use this
4 deposition testimony in lieu of live
5 witness testimony at the preliminary
6 injunction hearing tomorrow.

7 MR. COGLIANESE: This is Rich
8 Coglianesse, Ohio Attorney General's
9 Office, representing Secretary Of
10 State Blackwell.

11 We at this point do not object to
12 the plaintiff's using this deposition
13 testimony tomorrow.

14 We do, however, reserve the right
15 to either supplement this testimony
16 through additional questioning or
17 potentially calling Mr. Vu live
18 tomorrow if need be.

19 We don't believe it's going to be
20 necessary, but we don't want to waive
21 our right to do it in case it becomes
22 necessary as discovery in this case
23 keeps moving on.

24
25

1 L. MICHAEL VU
2 a witness herein, called by the Plaintiffs for
3 examination under the Ohio Rules of Civil Procedure,
4 after having been first duly sworn, as hereinafter
5 certified, was examined and testified as follows:

6 EXAMINATION

7 BY MS. GENTRY:

8 Q Okay. Mr. Vu, could you please state your full
9 name for the record.

10 A It's L. Michael Vu.

11 Q Have you been deposed before, Mr. Vu?

12 A I have, yes.

13 Q Well, you are familiar with the ground rules,
14 then. I will just repeat a few here.

15 If you don't hear any of my questions, please let
16 me know. If you do not understand any of my questions,
17 please let me know. And I will rephrase them.

18 And if at any time you want to go back and clarify
19 or supplement a previous answer, please just let me
20 know or let your counsel know and then go ahead and
21 make the clarification.

22 A Okay.

23 Q Do you understand all of that?

24 A Yes.

25 Q Mr. Vu, could you please describe your title and

1 job responsibilities with the Cuyahoga County Board of
2 Elections?

3 A My title is the director of the board of
4 elections. The responsibilities includes making sure
5 that preparations for the elections, making sure that
6 proper retention of information and reports and
7 information is conducted, but, for the most part,
8 making sure that we are prepared in the way of poll
9 workers, polling locations, absentee ballots, voting
10 day, and overall direction as far as compliance with
11 state law and directives from the secretary of state's
12 office.

13 Q How long have you been the director?

14 A I have been the director since August of 2003.

15 Q Were you with the board of elections before that
16 time?

17 A No.

18 Q Where were you before you joined the board of
19 elections?

20 A I was in Salt Lake County, serving as the
21 elections manager for the county.

22 Q Mr. Vu, a number of issues have come up in this
23 litigation. And I'm going to move through them with
24 you.

25 The first issue relates to the phrase "current

1 utility bill, bank statement, government check,
2 paycheck or other government document," as that phrase
3 is used in the voter identification requirements. Are
4 you familiar with that phrase, sir?

5 A I am, yes.

6 Q How is your board of elections interpreting the
7 word "current" as it is used in that phrase?

8 A Well, we received a directive from the secretary
9 of state's office, stating -- I think this was
10 Directive 2006-78 -- that "current" meant anything that
11 was not more than six months from the date that it was
12 presented in the -- let's see here. I'm pulling it
13 up.

14 It is a document which is dated not more than six
15 months from the date that it is presented to the
16 election official. So that's how we are using it as of
17 this date. Prior to that, as far as "current" goes --
18 and I will talk more specifically about the driver's
19 license -- as long as it was not expired.

20 Q I'm sorry. Are you interpreting the word
21 "current" as it's used in the directive to also apply
22 to whether use of the photo identification is current
23 and valid?

24 A Yes.

25 Q So are you now only accepting drivers' licenses

1 that are dated within the last six months?

2 A No. We are still accepting -- well, as of the
3 court decision, which came, what, Sunday, we weren't
4 accepting any forms of identification, since there was
5 an injunction on that. But prior to the injunction and
6 as a result of Sunday's court action, what we have been
7 doing is accepting any forms of identification and
8 photo ID or address, as long as -- in the case of the
9 driver's license, as long as it's not expired.

10 Q Okay. So you are not using the definition of
11 "current" in the directive to interpret the phrase
12 current and valid photo ID; is that correct?

13 A That's correct, yes.

14 Q Okay. Prior to -- first let me ask you this:
15 When you received Directive 78, was that last Thursday?

16 A Yes.

17 Q Did you put it into effect right away after
18 receiving it?

19 A What we did -- yes.

20 Q And then was it in effect -- how long?

21 A Well, essentially, 24 hours, because then we
22 received Directive 2006-79.

23 Q Have you put Directive 78 back into effect?

24 A As of this date, we have essentially spoken with
25 counsel as to direction.

1 Q Have you taken any action to put Directive 78 in
2 effect? And I don't want to know what your counsel
3 told you.

4 MR. COGLIANESE: Objection.

5 A What we've done is -- and we've only talked with
6 respect to in-office absentee voters, because we are
7 still talking with counsel on the other aspects of
8 mailing out the absentee ballots. But for those
9 individuals that come into the board of elections to
10 vote in-office absentee, we have put in effect the
11 directive, yes.

12 Q Okay. When did you start requiring early absentee
13 voters who voted to show ID under the directive?

14 MR. COGLIANESE: You are talking
15 about since the Sixth Circuit opinion
16 or decision?

17 MS. GENTRY: Correct.

18 Q Tell me when that started happening on your end.

19 A This morning.

20 Q So you put Directive 78 or at least parts of it in
21 place after this morning?

22 A That's correct.

23 Q Turning back to the definition of "current,"
24 Mr. Vu, prior to receiving Directive 78, did your board
25 of elections have an interpretation of "current" as it

1 is used in the phrase "current utility bill, bank
2 statement" or so forth?

3 A No.

4 Q Were your election officials given any guidance as
5 to how current or recent such a form of identification
6 must be to be acceptable?

7 A From my understanding and from conversations that
8 I've had, the only item that really was at issue was
9 the driver's license and the expiration date.

10 Q So, to your knowledge, have any voters by absentee
11 vote, either in person or by mail, submitted a utility
12 bill, bank statement or other government document?

13 MR. COGLIANESE: Objection. Go
14 ahead.

15 A I'm sorry. Can you repeat the question?

16 Q Sure. It was badly phrased. Let me try it
17 again.

18 To your knowledge, has any absentee voter to date,
19 whether that person has voted by mail or in person,
20 attempted to use as identification a utility bill, bank
21 statement, government check, paycheck or other
22 government document?

23 A From my understanding, yes.

24 Q Okay. Do you know how many voters have attempted
25 to use such identification?

1 MR. COGLIANESE: If I can just
2 interject an objection, I assume you
3 are asking him only about Cuyahoga
4 County.

5 MS. GENTRY: Oh, of course.

6 Q Just Cuyahoga County.

7 A Getting back to your question, the answer is I do
8 not have the quantity or number of absentee ballots
9 where the voter has produced an identification other
10 than the driver's license or the Social Security
11 number.

12 Q But you do believe that that has happened at least
13 once?

14 A Yes.

15 Q What's the basis for your belief?

16 A Conversations with staff.

17 Q Can you tell me about those conversations?

18 A Some of the conversations with staff included that
19 they brought, submitted a utility bill. In some cases
20 they've even provided -- in one case that I'm aware of
21 is where I've seen physically the individual mailed in
22 their entire wallet to the board of elections, as well
23 as their -- in some cases they've submitted their
24 entire driver's license, their actual literally their
25 driver's license to the board and also a utility bill

1 or in some cases an actual check.

2 Q Okay. And I saw your statements in the paper this
3 morning. I want to get back to the issue of the wallet
4 and drivers' licenses. But specifically with regard to
5 the utility bill, or similar documents, have there been
6 any discussions with your staff as to how current those
7 forms of identification must be?

8 A No.

9 Q While we are on the topic, can you tell me when
10 did this start happening? When did people start
11 mailing in their wallet or drivers' licenses?

12 MR. COGLIANESE: Objection. Go
13 ahead.

14 A I don't know exactly the date. I can only give
15 you an approximate date. I don't know the exact date,
16 though.

17 Q That's fine. What's the approximate date?

18 A It was approximately a month ago.

19 Q So it was before this lawsuit was filed?

20 A Yes.

21 Q Do you have any indication as to why people began
22 sending in their drivers' licenses?

23 MR. COGLIANESE: Objection. Go
24 ahead.

25 A Well, my only assumption is that they would send

1 in their wallet because of the requirement to produce
2 voter identification or some form of ID.

3 Q Okay. They didn't send in a note or anything
4 saying, "I can't figure this out, so I'm sending you my
5 wallet," or something like that?

6 MR. COGLIANESE: Objection.

7 A No. There was no information or note from the
8 actual voter.

9 Q I take it that you are sending back the drivers'
10 licenses.

11 A Yes.

12 Q Do you have an approximate number of how many
13 people have sent in their actual drivers' licenses, as
14 opposed to a copy?

15 A I don't, no.

16 Q Mr. Vu, turning to the next issue, one of the
17 permissible forms of identification is an "other
18 government document;" is that correct?

19 A Yes.

20 Q Prior to the issuance of Directive 78, how was
21 your board of elections interpreting the phrase "other
22 government document"?

23 A There was no policy or procedure set as far as
24 what "government document" was, as far as defined
25 government document. However, as far as instructions

1 to the staff goes, is we believe that it was any
2 government document other than what was produced from
3 the board of elections. I think there is a stipulation
4 within House Bill 3 that talks about that forms of ID
5 does not include the voter information card or a
6 correspondence that the board of elections mails out.
7 So we believe that it was any other forms of government
8 documents other than bills produced by the board of
9 elections.

10 Q Would that include documents produced by a state
11 university?

12 A We would have gone to counsel if there was any
13 question as to the type of document, if there was a
14 question in regard to the government document that a
15 person provided.

16 Q Did you seek clarification from the secretary of
17 state's office with regard to what "other government
18 document" means?

19 A No.

20 Q Did you seek clarification from the secretary of
21 state's office as to what "current" means?

22 A No.

23 Q Now, after you received Directive 78, what is your
24 understanding of what an "other government document"
25 is?