

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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

Plaintiffs, )

vs. )

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

Defendants. )

Case No. 2:06-CV-896

Judge Frost

- - -

DEPOSITION OF JILL B. KELLY

DATE: October 31, 2006 at 8:30 a.m.

PLACE: Board of Elections  
One Government Center, Room 300  
Toledo, Ohio

REPORTER: Robert W. Scheid, Jr., RPR  
Notary Public

- - -

1 APPEARANCES:

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On behalf of the Plaintiff:

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On behalf of the Defendant Secretary of State  
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On behalf of Intervening Defendant State of  
Ohio:

OHIO OFFICE OF THE ATTORNEY GENERAL:  
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On behalf of the Board of Elections:

LUCAS COUNTY PROSECUTORS OFFICE:  
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Also Present: Dan Pilrose

- - -

1 MS. SESTILE: My name is Lindsay  
2 Sestile, L-i-n-d-s-a-y S-e-s-t-i-l-e.  
3 I'm an attorney with Porter, Wright,  
4 Morris, & Arthur on behalf of the  
5 plaintiffs.

6 Also here, but not in the room  
7 right this second, on behalf of the  
8 plaintiffs is Caroline Gentry,  
9 G-e-n-t-r-y.

10 MR. COGLIANESE: Hey, John.  
11 Rich Coglianesse. How are you doing?

12 MR. BORELL: Hi, Rich, how are  
13 you doing?

14 (Discussion had off the record.)

15 MS. SESTILE: My name is spelled  
16 C-o-g-l-i-a-n-e-s-e. I'm assistant  
17 attorney general, and I represent  
18 Secretary of State Blackwell.

19 MS. CORL: Christina Corl,  
20 C-h-r-i-s-t-i-n-a. Last name is Corl,  
21 C-o-r-l, at the law firm of Crabbe,  
22 C-r-a-b-b-e, Brown, and James.

23 I'm special counsel for  
24 Defendant Secretary of State Blackwell.

25 MR. BORELL: Why don't you guys

1 identify yourselves, too, for the record.

2 THE WITNESS: I'm Jill Kelly.

3 I'm director of the Lucas County Board of  
4 Elections. For the record, I'm  
5 acquainted with Lindsay Sestile.

6 Lindsay, do you remember me?

7 I'm Joe McNamara's mom.

8 MS. SESTILE: I do. Actually,  
9 when I heard your name yesterday, I said  
10 I think that's my friend's mom.

11 (Discussion had off the record.)

12 MR. PILROSE: My name's Dan  
13 Pilrose. I'm deputy director of the  
14 Board of Elections. That's P-i-l-r-o-s-e.

15 MR. STRIGARI: My name is Frank  
16 Strigari. I represent the intervening  
17 Defendant State of Ohio. My last name is  
18 spelled S-t-r-i-g-a-r-i.

19 I'm assistant attorney general  
20 for the Attorney General's Office.

21 (Discussion had off the record.)

22 THE WITNESS: I'd like to say,  
23 for the record, brevity is king. We have  
24 an election to get prepared for, so,  
25 please, if we can keep this as brief as

1 possible, we would be really  
2 appreciative.

3 MS. SESTILE: We have another  
4 depo at 9:30, so we've got to be done by  
5 then.

6 - - -

7 JILL B. KELLY,  
8 a Witness herein, called by the Defendants as if upon  
9 Examination, was by me first duly sworn, as  
10 hereinafter certified, deposed and said as follows:

11 - - -

12 MS. SESTILE: I first just want  
13 to say on the record that this  
14 deposition, we're planning on using this  
15 at the preliminary injunction hearing in  
16 lieu of the witness's appearance at the  
17 preliminary injunction hearing tomorrow.

18 Are there any objections?

19 MR. COGLIANESE: This is Rich  
20 Coglianesse. We do not object to you  
21 using this testimony for the purposes of  
22 the PI hearing tomorrow.

23 We do reserve the right,  
24 however, to either supplement, if need  
25 be, through the witness in this case or

1 call this witness live tomorrow if need  
2 be, based on information that comes out  
3 either in this deposition or in others.

4 We do not, at this point, intend  
5 to do that. We do not see that at all as  
6 a possibility, but I just don't want to  
7 waive that right.

8 EXAMINATION

9 BY MS. SESTILE:

10 Q. Could you state your name for the record,  
11 please?

12 A. I'm sorry? What did you say? Could you  
13 repeat it?

14 Q. Sure. Could you state your name for the  
15 record, please?

16 A. Yes. Jill Kelly.

17 Q. Have you ever been deposed before, Ms.  
18 Kelly?

19 A. Yes.

20 Q. All right. I'll just briefly go over the  
21 ground rules, then. If I say anything that you don't  
22 understand or don't hear -- we've been having some  
23 trouble with these phones lately -- please, by all  
24 means, ask me, and I'll repeat myself.

25 If you feel the need to supplement any

1 answers that you give, please let me or your attorney  
2 know. I'd rather do that on the record than off the  
3 record later.

4 Finally, as I told you before, I don't  
5 think this is going to go very long, but if for any  
6 reason you do need to take a break, please let me  
7 know. The only thing that I ask is if there's a  
8 question pending, you go ahead and answer that before  
9 the break.

10 A. Understood.

11 Q. You're currently employed at the Board of  
12 Elections; is that correct?

13 A. That's correct.

14 Q. How long have you been there?

15 A. About 2-1/2 years.

16 Q. And what's your official title?

17 A. Director of the Lucas County Board of  
18 Elections.

19 Q. As a director, what are your  
20 responsibilities?

21 A. To administer elections from inception to  
22 the official canvas, to administer the local option  
23 functions of the Board of Elections, the campaign  
24 functions, campaign finance functions of the Board of  
25 Elections, and otherwise any other statutory duties

1 that are assigned to director and deputy director of  
2 the Board of Elections pursuant to the statute.

3 Q. And I know you said you've been there  
4 about 2-1/2 years. So am I correct in stating that  
5 you were there for the 2004 general election?

6 A. Yes, that's correct.

7 Q. Thanks.

8 A. But not --

9 Q. One of the issues in this lawsuit, Ms.  
10 Kelly, is the interpretation of the word "current" in  
11 current utility bills, bank statements, government  
12 checks, paychecks, or other governmental documents.

13 Are you familiar with that issue?

14 A. Well, now I am. We have not seen it as  
15 an issue prior to this deposition. It has not been an  
16 issue in our county.

17 Q. All right. How have you guys been  
18 interpreting the word "current"?

19 A. We have not had to interpret it up to  
20 this date, because voters that have come to vote here  
21 at the Board of Elections or who have mailed things in  
22 have given us things that were absolutely recent. For  
23 example, this month's utility bill. So we haven't  
24 received anything that wasn't right out of the chute  
25 and new.



1 Q. Okay.

2 A. So it has not been an issue for this  
3 county.

4 We, also, once we received Directive  
5 2006-78 from the Secretary of State's office, passed  
6 that out to our employees. It does define "current"  
7 and indicates -- for the record, I'll note that it  
8 indicates "current" should be defined as a document  
9 which is dated not more than six months from the date  
10 that it is presented to the election official.

11 But, as I said, to date, we haven't had a  
12 problem, because most folks have either brought in a  
13 driver's license that was current or, if they had some  
14 kind of utility bill, it was this month's.

15 Q. So before you received Directive 2006-78,  
16 you didn't have any reason to come up with your own  
17 Board definition of the word "current"?

18 A. That's not exactly correct. We told our  
19 staff that we wanted them, when examining the  
20 documentation provided by potential voters, that it be  
21 something recent, in that it be, oh, maybe a month  
22 old.

23 Q. Okay. So you were actually defining a  
24 definition of "current" that is more strict than the  
25 definition in Directive 78?

1 MR. COGLIANESE: This is  
2 Coglianese. Objection.

3 Go ahead and answer.

4 THE WITNESS: No, I don't think  
5 I'd want to characterize it as more  
6 stringent. What I'm trying to say is  
7 that this didn't happen very often. As I  
8 said, it really didn't even come up.

9 We wanted to have some kind of  
10 ground rules for our employees, so we  
11 figured if you look in a dictionary, you  
12 can't go wrong if you say it's a bill  
13 from this month.

14 So that's about a month old.  
15 That's what we were using. But it has  
16 not come up, but we wanted to give our  
17 employees something to go by.

18 BY MS. SESTILE:

19 Q. Basically, you told your staff you wanted  
20 any bills to be about a month old.

21 Were there any written materials issued  
22 about that?

23 A. No.

24 Q. What standard is your Board planning on  
25 following on election day?

1 A. We'll follow the statute to the letter.

2 Q. Does that mean you're planning on  
3 applying the six-month rule in Directive 78?

4 A. If that's what the statute says and  
5 that's what the directive says, then that's what we're  
6 going to do unless different is issued prior to the  
7 election.

8 Q. All right. On the second issue, Ms.  
9 Kelly, another one of the issues in this lawsuit is  
10 the interpretation of the phrase "other government  
11 document."

12 Are you familiar with that issue?

13 A. I'm familiar with the term "other  
14 government document" as it's found in the statute and  
15 directives, yes.

16 Q. How has your Board been applying the term  
17 "other government document"?

18 A. We were going to examine it on a  
19 case-by-case basis. And to date, again, we haven't  
20 had anybody bring anything in other than a utility  
21 bill or their driver's license or a State ID. It has  
22 not come up.

23 But we have instructed staff to let us  
24 know if something other than a government paycheck or  
25 a tax bill or something like that came in, so we can

1 examine it and see if it appears to be appropriate.

2 Our intention was, if we had any  
3 questions, to immediately call Mr. Borell. We have  
4 his cell phone number and, God bless him, he answers  
5 questions 24/7.

6 Q. That's good. So you haven't had occasion  
7 to call Mr. Borell yet?

8 A. Not on other government documents. We  
9 haven't had any other government documents.

10 Q. All right. I think we can move on to the  
11 third issue, Ms. Kelly. You're making it too easy for  
12 us. The third issue I wanted to talk about today is  
13 how your Board has been applying the rules if people  
14 put down the photograph number on their driver's  
15 license.

16 First let me ask you, when I say  
17 "photograph number" with respect to a driver's  
18 license, do you understand what I mean?

19 A. Yes. But I would think that the average  
20 person may not.

21 Q. What do you mean by that?

22 A. Well, I look at my driver's license and  
23 it says on the face of it "license number."

24 And as I read the statute and I read the  
25 directives that we receive from the Secretary of

1 State, it's very clear to me that "license number"  
2 means just that, license number. But I think until  
3 this identification stuff came up, I don't think most  
4 people even knew there were two numbers on a driver's  
5 license.

6 Q. So for purposes of this deposition, if I  
7 say, "photograph number," do you understand that  
8 number to be the number that's actually above someone?

9 A. Yes, ma'am, I do.

10 Q. All right. In Lucas County, have you had  
11 any instances of anyone using their photograph number  
12 rather than their driver's license number either on an  
13 application for an absentee ballot or an absentee  
14 ballot itself?

15 A. We had a few people who came to the Board  
16 of Elections to vote absentee ballots who attempted to  
17 use the wrong number. Our staff's been directed.  
18 We've shown them an actual driver's license and shown  
19 them the difference between the two numbers.

20 We've given them the directives. We've  
21 given them the statute. And our staff understands  
22 that it has to be the license number. So anybody that  
23 did that, our staff politely said, oops, wrong number,  
24 we need the license number itself.

25 On applications that have come in --

1 there haven't been many. But on applications that  
2 have come in that have used that photo number instead  
3 of the actual license number, we sent them back a  
4 letter saying wrong number, please give us the license  
5 number.

6 Q. How many applications would you estimate  
7 that that has happened with?

8 A. Very few.

9 Q. Less than ten?

10 A. Yes.

11 Q. Have you -- has Lucas County opened any  
12 absentee ballots themselves yet?

13 A. Please define "opened."

14 Q. My understanding is that there's two  
15 levels of envelope when somebody sends in an absentee  
16 ballot; is that correct?

17 A. Yes. There's an exterior envelope, which  
18 is the mailing envelope, and then there's the  
19 statutorily-required identification envelope.

20 Q. Have you opened either one of those  
21 envelopes yet?

22 A. We have opened the exterior delivery  
23 envelope. We have not opened the identification  
24 envelope. That would be against the law.

25 Q. When do you plan on opening the

1 identification envelopes?

2 A. At this point, our Board has made the  
3 determination that we will begin on election morning,  
4 possibly at around 4:00 in the morning on the actual  
5 morning of election.

6 Q. Sounds like an early morning. So is  
7 there any way of knowing if anyone has actually used  
8 the photograph number on their absentee ballot itself  
9 for identification purposes?

10 A. Do you mean on the identification  
11 envelope?

12 Q. Yes, ma'am. I'm sorry.

13 A. You know what? Give me a minute, let me  
14 get one, because just now, I'm blanking on this. One  
15 second, please.

16 (Brief recess was had.)

17 THE WITNESS: Okay. I'm looking  
18 at our identification envelope, which is  
19 -- looks like Form 12-A, prescribed by  
20 the Secretary of State.

21 And it does, in fact, include a  
22 space and a box where you can put your  
23 Ohio driver's license number.

24 So in answer to your question,  
25 if somebody used the photo number,

1                   theoretically, yes, we would see that on  
2                   there.

3 BY MS. SESTILE:

4           Q.     And to your knowledge, has anyone used  
5 this photo -- the photograph number rather than their  
6 driver's license number on their identification  
7 envelope?

8           A.     I don't have any personal knowledge of  
9 that right this very moment, but I will tell you that  
10 we are verifying signatures on these envelopes.

11                   I think if one of the staff caught that  
12 and saw that, boom, that it stuck out, at that point,  
13 this particular envelope would be put in a different  
14 pile.

15           Q.     Okay. And would you notify the voter at  
16 all that they've used the wrong number on their  
17 driver's license?

18           A.     Could you hold for a moment please?

19                   MR. COGLIANESE: Just for the  
20 record, objection.

21                   THE WITNESS: We're just going  
22 to put you on hold for a moment.

23                   MS. SESTILE: Sure.

24                   (Discussion had off the record.)

25                   THE WITNESS: Okay, we're back.



1 Our phone system is not the greatest  
2 either.

3 It's our understanding from Mr.  
4 Borell that we don't have any type of  
5 statutory obligation to notify, and we  
6 have not done so at this time.

7 BY MS. SESTILE:

8 Q. Okay. So if someone does send in an  
9 envelope -- or a ballot, rather, that they put down  
10 the wrong number from their driver's license, what  
11 will you do with that ballot?

12 MR. COGLIANESE: Objection.  
13 Go ahead.

14 THE WITNESS: We separate that  
15 out because it hasn't met the statutory  
16 requirements. So we put it in a separate  
17 bucket.

18 BY MS. SESTILE:

19 Q. And will you count that ballot?

20 MR. COGLIANESE: Objection.  
21 Go ahead.

22 THE WITNESS: That depends on  
23 the type of direction we receive from the  
24 Secretary of State's office. I'm sure  
25 we'll make inquiry about that, what do we

1 do if someone uses the photo number  
2 instead.

3 We'll get a response from both  
4 the Secretary of State and the  
5 prosecutor's office. That's how this  
6 Board conducts business.

7 First we check with our  
8 prosecutor's office -- actually, we  
9 usually do it simultaneously. So we get  
10 a legal opinion from the prosecutor's  
11 office and we also always attempt to get  
12 an opinion in writing from the Secretary  
13 of State's office to clarify.

14 BY MS. SESTILE:

15 Q. For this election, to date, have you  
16 sought any guidance from either the Secretary of State  
17 or from your prosecutor with regard to any election  
18 issue? Not just the photograph ID number.

19 A. That's a pretty broad question. Can you  
20 narrow that down somehow?

21 Q. Sure. With respect to handling the voter  
22 ID issues that we've talked about today, the  
23 photograph number, the meaning of "other government  
24 document," the meaning of "current," have you sought  
25 any guidance from either the Secretary of State or

1 your prosecutor?

2 A. The answer is yes. And additionally, we  
3 have received directives from the Secretary of State  
4 to give guidance for just those very issues.  
5 Particularly, we received Directive 2006-78.

6 Q. Thank you. It's my understanding  
7 Directive 2006-78 went out to all these various county  
8 Boards of Elections.

9 Have you guys received any individual  
10 correspondence from the Secretary of State with  
11 respect to any questions or concerns you had about the  
12 photo ID issues we've been talking about?

13 A. Not that I can recall.

14 Q. I think we can move on to the next issue,  
15 Ms. Kelly, which is the issue of military ID cards for  
16 voter identification.

17 Are you currently accepting military ID  
18 cards that do not show a current address?

19 A. Yes. Pursuant to the statute, we are.

20 Q. What do you mean by that?

21 A. I know where you're going with this  
22 question, so I can't help thinking like a lawyer, and  
23 I shouldn't be. I should just be being deposed.

24 The statute says that you may accept the  
25 military ID. And clearly, military -- we all know

1 military IDs don't have addresses on them. None of  
2 them. We know that. But it's up to the legislature  
3 to correct and clarify that portion of the statute.

4 So because it says accept them, we're  
5 accepting them. Now, I can't tell you how many we've  
6 had.

7 Q. So are you accepting military ID cards  
8 without a current address and are you also, then, not  
9 requiring another form of identification?

10 A. Could we please have a moment to confer?

11 MS. SESTILE: Sure.

12 (Discussion had off the record.)

13 THE WITNESS: Can you hear us  
14 okay?

15 BY MS. SESTILE:

16 Q. Sure can.

17 A. Yes. When that incident occurs, we're  
18 just accepting it with the military ID as received. I  
19 will say -- you asked me before did we have any  
20 correspondence or talk with the Secretary of State  
21 about these issues. We did ask for clarification on  
22 the military ID.

23 Q. Did you receive any clarification from  
24 the Secretary of State?

25 A. We talked. It was just telephonic. And