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

* * *
<table>
<thead>
<tr>
<th>EXAMINATIONS CONDUCTED</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>BY MS. GENTRY</td>
<td>4</td>
</tr>
<tr>
<td>BY MR. COGLIANESE</td>
<td>40</td>
</tr>
<tr>
<td>BY MS. GENTRY</td>
<td>57</td>
</tr>
<tr>
<td>BY MR. COGLIANESE</td>
<td>65</td>
</tr>
<tr>
<td>BY MS. GENTRY</td>
<td>66</td>
</tr>
</tbody>
</table>

EXHIBITS MARKED

(Thereupon, McGary Exhibit 1 was marked for purposes of identification.)
APPEARANCES:

On behalf of the Plaintiffs:
Porter Wright Morris & Arthur

By: Caroline H. Gentry
Attorney at Law
1600 One Dayton Centre
One South Main Street
Dayton, Ohio 45202-2028

On behalf of the Defendant:

By: Richard N. Coglianese
Sharon Jennings
Assistant Attorneys General
Constitutional Offices Section
30 East Broad Street
17th Floor
Columbus, Ohio 43215

Special Counsel for Secretary of State
Blackwell:

Crabbe, Brown & James, LLP

By: Christina L. Corl
Attorney at Law
500 South Front Street
Suite 1200
Columbus, Ohio 43215

On behalf of Butler County Board of Elections:

By: Roger S. Gates
Assistant Prosecuting Attorney
P.O. Box 515
Hamilton, Ohio 45012

* * *
of lawful age, Witness herein, having been first
duly cautioned and sworn, as hereinafter
certified, was examined and said as follows:

MR. GATES: Caroline, one other item.

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

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

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

CROSS-EXAMINATION

BY MS. GENTRY:
Q. Miss McGary, could you please state your name for the record?
A. Betty L. McGary.
Q. Have you been deposed before, Miss McGary?
A. Yes.
Q. Well, then you will remember the ground rules for a deposition. If you -- just to go over them briefly, if you don't understand any of my questions, please tell me and I'll rephrase the question. If you don't hear me, please let me know and I'll repeat the question. If at any time you want to go back and correct or supplement an answer to a prior question, please let me or your attorney know and you can do that. Do you have any questions about that?
A. No, I don't.
Q. Miss McGary, could you please describe your responsibilities and your job title at the Board of Elections?
A. I am the deputy director and basically administrate election laws throughout the department with the various departmental managers and staff and work directly with my
four board members.

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

A. No, I do not.

Q. How long have you been deputy director?

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

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

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

Q. Congratulations.

A. Thank you.

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

A. Yes, that's correct.
Q. How is your Board of Elections interpreting the word current in that phrase?

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

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

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

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

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

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

Q. What do you mean by residential move?

A. If -- in other words, if they had moved their residence, we felt that the year would suffice on that.
Q. Who made the decision to have it be one year?

A. The director and deputy director.

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

A. I believe it was just before.

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

A. E-mail.

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

A. No, ma'am.

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

A. That's correct, and I should clarify my response on the question before this, of course, the director and deputy director had met with the managers. You asked me if we had discussed it with anyone else
prior to making that year decision and that was
 discussed with the managers of the absentee
department and several other personnel in the
office.

Q. Why was it discussed with the
managers of the absentee department?
A. To receive their views on the
issue.

Q. What do you recall about their
views on the issue?
A. Again, that the year would be most
fairly applied to the voter.

Q. Why do you say it would be most
fairly applied?
A. In the event that the voter had
moved in the last year.

Q. Did you -- strike that. What did
you do with regard to the word current after
you received Directive 78, did you change your
policy?
A. Yes, we did.

Q. Can you tell me about that?
A. We changed it to six months.

Q. And that was beginning last
Thursday?
A. Let me look at some notes here. Just a moment.

(Pause in proceedings.)

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

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

A. No, it is not.

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

A. Yes.

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

A. Yes.

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

A. Those that came in prior to October the 26th will be the year, those that came in after October 26th will be the six months, and that is subject to change depending on having a discussion with our four board
members at a board meeting that is scheduled for tomorrow at 11:00 a.m.

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

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

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

MR. COGLIANESE: Objection. Go ahead and answer.

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

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

MR. COGLIANESE: Objection. Go ahead and answer.

THE WITNESS: The Secretary of State.

Q. Okay. Thank you, Miss McGary. I
would like to move on to the second issue which
is the phrase other government documents. Are
you familiar with that phrase?

A. Yes.

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

MR. COGLIANESE: Objection. Go ahead
and answer.

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

Q. What do you consider to be local
government?

MR. COGLIANESE: Objection. Go ahead
and answer.

THE WITNESS: Municipality or county.

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

A. Just what we have received from
the Secretary of State primarily in Directive
2006-78.
Q. Prior to receiving 2006-78 did you have any written standard that you were applying?

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

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

MR. COGLIANESE: Objection?

A. Yes, we are.

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

A. Yes, I am.

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

A. I'd like to clarify that my understanding go is the same as yours on the number. We're talking about the number on the driver's license that is directly above the
birth date and it has three letters such as
RMX -- two letters and six numbers.
Q. What is your understanding as to
what number that is?
A. That that is the required number.
Q. That's the driver's license number?
A. Yes.
Q. And then are you -- have you also
seen a number above the photograph?
A. I'm at a disadvantage here. We
have that copy of a driver's license that we
have been using. It's a sample.
Q. I believe it's in the documents
that I sent --
A. So the only other number on a
driver's license would be the number on the
right-hand side of the driver's license that is
sort of part of a photo ID to the far
right-hand side of the license which is above
the individual's physical description.
Q. Okay.
A. We have not been accepting that
number.
Q. Just for purposes of this