



J. KENNETH BLACKWELL
Ohio Secretary of State

180 E. Broad Street, 16th Floor, Columbus OH 43215
614.466.2655 / Toll Free: 877.767.6446 / Fax: 614.644.0649
e-mail: blackwell@sos.state.oh.us
www.sos.state.oh.us

DIRECTIVE 2006-85

November 4, 2006

To: All County Boards of Elections
Members, Directors and Deputy Directors

Procedures for Absent Voter's Ballots

R.C. 3505.27 imposes minimum requirements for the counting of votes, and permits the Secretary or the Boards of Elections to prescribe additional procedures "that assure an accurate count of all votes cast." In order to ensure the integrity of the absentee balloting process, the Secretary of State is issuing this Directive.

For purposes of this Directive and implementation thereof, "processing" shall include the handling, examination and opening of absentee ballot identification envelopes, as well as the preparation of absent voter's ballots for scanning.

For those boards utilizing "automatic tabulating equipment" (as defined in R.C. 3506.01(C)) to scan absent voter's ballots, "scanning" shall mean the examination and counting of such ballots under R.C. 3505.27.

I. Court Order Regarding Absent Voter's Ballots

On November 3, 2006, the Cuyahoga County Court of Common Pleas issued a writ of mandamus directing the Secretary to authorize the Cuyahoga County Board of Elections and all other boards of elections in the State of Ohio to begin optical scanning of absent voter's ballots at 7:00 a.m. on November 6, 2006, without disclosing the count or any portion of the count at any time before the polling places close on November 7, 2006. A copy of the Court's Order is attached.

Due to security concerns regarding the integrity and counting of absent voter's ballots, the Office of the Secretary of State would advise the boards not to begin the scanning of absent voter's ballots prior to November 7, 2006.

II. Procedures for Counties Scanning Absent Voter's Ballots Prior to November 7 With Automatic Tabulating Equipment

Before commencing the processing or scanning of absent voter's ballots, those boards electing to scan absent voter's ballots prior to November 7 with automatic tabulating equipment must have formally adopted and have implemented a security plan relating to absent voter's ballots that ensures at a minimum: (i) controlled access to the location where ballots are counted; (ii) secured, password-

controlled access to the automatic tabulating equipment; (iii) bipartisan (2-person) control over all absent voter's ballots at all times; and (iv) that, at no time, any person has access to the count or any portion of the count before the polling places close on November 7, 2006.

III. Procedures for All Counties In Handling Absent Voter's Ballots

Regardless of when each board elects to commence the processing or scanning of absent voter's ballots, the following procedures must be followed before the board may commence the processing or scanning of absent voter's ballots to ensure sufficient security and control over the entire process regarding absent voter's ballots, as well as protecting ballot secrecy.

A. Appointment of Special Election Judges by the Board

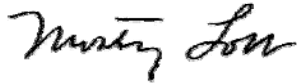
For those counties that count absent voter's ballots at the office of the board of elections or at another location designated by the board, special election judges shall be appointed by the board for the processing and scanning of absent voter's ballots. R.C. 3509.06(C). No person, other than a duly appointed special election judge, may be involved, in any manner, with the examination and opening of any absentee ballot identification envelope.

B. Scanning Must Be In Full View of Board

All scanning of any absent voter's ballot by any automatic tabulating equipment shall be done in the full view of members of the board and observers. R.C. 3505.27(A).

If you have any questions, please contact the Elections Division at 614-466-2585.

Sincerely,

A handwritten signature in black ink, appearing to read "Monty Lobb". The signature is fluid and cursive, with the first name "Monty" and last name "Lobb" clearly distinguishable.

Monty Lobb
Assistant Secretary of State

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

JIMMY DIMORA, ET AL.,	)	CASE NO. 606178
	)	
Plaintiffs,	)	
	)	JUDGE DANIEL GAUL
vs.	)	
	)	<u>ORDER</u>
J. KENNETH BLACKWELL,	)	
SECRETARY OF STATE,	)	
	)	
Defendant.	)	

This matter having come before the Court on the ____ day of November 2006, on Plaintiffs' Amended Verified Complaint and Motion for Temporary Restraining Order and Preliminary and Permanent Injunction, and Writ of Mandamus and supporting memorandum. The Court, having been fully advised of the premises, finds that Plaintiffs motion is well taken. The Court determines that in light of circumstances of this case, including the unprecedented number of absentee ballots that will be cast in the November 7, 2006 General Election and the new and untried technology and equipment that will be utilized to process and count such absentee ballots, the failure to begin scanning absentee ballots in advance of election day would create an unreasonable risk that the results of the November 7, 2006 General Election will not be reported in a timely manner in accordance with Ohio law. Accordingly, the Court hereby orders, adjudges and decrees as follows:

This order is made in recognition of the unique and unprecedented circumstances presented by this election.

The Cuyahoga County Board of Elections may begin the processing and optical scanning of absent voter's ballots at 7:00 a.m. on November 6, 2006, provided that the

Board of Elections shall take all reasonable security precautions against any disclosure of the count or any portion of the count at any time before the closing of the polling places on November 7, 2006 as required by Section 3509.06 of the Ohio Revised Code.

In addition, it is also ordered that the Cuyahoga County Board of Elections shall appoint two (2) teams of observers, each team consisting of two (2) Republicans and two (2) Democrats, to observe the processing and optical scanning of all absentee ballots from inception to end, pursuant to Section 3505.21 of the Ohio Revised Code.

A writ of mandamus is hereby issued to compel Defendant J. Kenneth Blackwell, Secretary of State, to authorize the Cuyahoga County Board of Elections and all other boards of election in the State of Ohio to begin the processing and optical scanning of absent voter's ballots at 7:00 a.m. on November 6, 2006 without disclosing the count or any portion of the count at any time before the polling places close on November 7, 2006.

No bond required.

Further, this matter is hereby set for a hearing on Plaintiffs' requested Preliminary and Permanent Injunction relief for November 25, 2006, at 10:00am.

It is so ordered.

Date

Judge

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

JIMMY DIMORA, ET AL.,	)	CASE NO. 606178
	)	
Plaintiffs,	)	
	)	JUDGE DANIEL GAUL
vs.	)	
	)	<u>ORDER</u>
J. KENNETH BLACKWELL,	)	
SECRETARY OF STATE,	)	
	)	
Defendant.	)	

This matter having come before the Court on the ____ day of November 2006, on Plaintiffs' Amended Verified Complaint and Motion for Temporary Restraining Order and Preliminary and Permanent Injunction, and Writ of Mandamus and supporting memorandum. The Court, having been fully advised of the premises, finds that Plaintiffs motion is well taken. The Court determines that in light of circumstances of this case, including the unprecedented number of absentee ballots that will be cast in the November 7, 2006 General Election and the new and untried technology and equipment that will be utilized to process and count such absentee ballots, the failure to begin scanning absentee ballots in advance of election day would create an unreasonable risk that the results of the November 7, 2006 General Election will not be reported in a timely manner in accordance with Ohio law. Accordingly, the Court hereby orders, adjudges and decrees as follows:

This order is made in recognition of the unique and unprecedented circumstances presented by this election.

The Cuyahoga County Board of Elections may begin the processing and optical scanning of absent voter's ballots at 7:00 a.m. on November 6, 2006, provided that the

Board of Elections shall take all reasonable security precautions against any disclosure of the count or any portion of the count at any time before the closing of the polling places on November 7, 2006 as required by Section 3509.06 of the Ohio Revised Code.

In addition, it is also ordered that the Cuyahoga County Board of Elections shall appoint two (2) teams of observers, each team consisting of two (2) Republicans and two (2) Democrats, to observe the processing and optical scanning of all absentee ballots from inception to end, pursuant to Section 3505.21 of the Ohio Revised Code.

A writ of mandamus is hereby issued to compel Defendant J. Kenneth Blackwell, Secretary of State, to authorize the Cuyahoga County Board of Elections and all other boards of election in the State of Ohio to begin the processing and optical scanning of absent voter's ballots at 7:00 a.m. on November 6, 2006 without disclosing the count or any portion of the count at any time before the polling places close on November 7, 2006.

No bond required.

Further, this matter is hereby set for a hearing on Plaintiffs' requested Preliminary and Permanent Injunction relief for November 25, 2006, at 10:00am.

It is so ordered.

Date

Judge