



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 2006-90
November 15, 2006

To: ALL COUNTY BOARDS OF ELECTIONS
Members, Directors and Deputy Directors

**CONSENT ORDER REGARDING COUNTING OF PROVISIONAL BALLOTS AND
OBSERVERS**

**THESE INSTRUCTIONS DO NOT CONSTITUTE THE ENTIRE ORDER, PLEASE
READ THE ATTACHED AGREED ENFORCEMENT ORDER**

Boards of elections are instructed to follow the Agreed Enforcement Order of Judge Marbley and provisions of the Consent Order previously issued from the court and adopt the procedures as it relates to the tabulation of provisional ballots and issues related to observers.

Boards of elections are instructed to communicate this information to their county prosecutor.

If you have any question regarding these instructions, please contact the Elections Division at (614) 466-2585.

Sincerely,

A handwritten signature in cursive script that reads "Monty Lobb".

Monty Lobb
Assistant Secretary of State

Attachment

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

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

Plaintiffs,

vs.

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

Defendant.

:
:
: Civil Action No. C2 06 896
:
: JUDGE ALGENON L. MARBLEY
:
: MAGISTRATE JUDGE KEMP
:
:
:
:
:
:

AGREED ENFORCEMENT ORDER

This matter arises under this Court's November 1, 2006 Consent Order ("Consent Order") agreed to by the parties. The Consent Order clarified Ohio's statutory voter identification requirements including what identification voters must show at the polls on Election Day. Pursuant to this Court's Order, the defendant Secretary of State, J. Kenneth Blackwell, properly directed the Boards of Elections for Ohio's 88 counties to comply with the terms and provisions of the Consent Order. The Secretary of State disseminated the Consent Order and directions to comply therewith to each of the 88 County Boards of Elections. Employees of certain Boards of Elections, however, inadvertently or otherwise failed to follow certain Consent Order provisions.

On Election Day, some poll workers incorrectly required voters who presented an Ohio driver's license or Ohio state identification card with a former address to cast a provisional ballot. In addition, some poll workers failed to accept certain forms of proper identification (specifically, government documents) presented by voters, and therefore, incorrectly required

such voters to cast provisional ballots. This Court's Consent Order clarified this identification option by defining "other government document" as any document that has a current address and is issued by an appropriate government entity, and by providing examples of such government entities. Certain forms of identification satisfying this definition were deemed unsatisfactory by some poll workers, and they incorrectly required voters to cast provisional ballots.

Thus, there are a number of ballots that have been mischaracterized as provisional ballots when, in fact, they should have been cast as regular ballots. In order to remedy this situation, and to ensure that every properly cast vote be counted in the November 2006 Election, the parties agree that the following procedures shall be adopted as they relate to the tabulation of provisional ballots cast in Ohio's 88 Counties:

- (1) Provisional ballots cast by voters who were not permitted to cast a regular ballot solely because their proffered identification was a valid Ohio driver's license or Ohio state identification card with a former address shall automatically be counted as regular ballots. Provisional ballots cast by voters who should have been permitted to cast a regular ballot because they provided proper identification in the form of a military identification that shows the voter's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, as set forth in paragraph 3 of the Consent Order, shall automatically be counted as regular ballots.
- (2) Provisional ballots that the board finds to satisfy the eight-factor test as outlined in Paragraph 8 of the Consent Order shall be counted.

- (3) Provisional ballots that the board finds do not satisfy the eight-factor test shall be recorded according to Section 3505.183(C)(1) of the Ohio Revised Code, which states that for each provisional ballot rejected, “the board shall record the name of the provisional voter who cast the ballot, the identification number of the provisional ballot envelope, the names of the election officials who determined the validity of that ballot, the date and time that the determination was made, and the reason that the ballot was not counted.”
- (4) As provided in O.R.C. §§ 3505.21 and 3505.183(D), a duly appointed and sworn observer as that term is defined in O.R.C. § 3505.21, or a designated substitute appointed to the Board of Elections, may be present at all times that the board is determining the eligibility of provisional ballots to be counted and counting those provisional ballots determined to be eligible. The observer also may inspect the counting of all ballots in the polling place or board of elections until the counting is completed and the final returns are certified and signed. Observers shall not interfere or otherwise impede the election officials in the performance of their duties.
- (5) Should a County Board of Elections receive notice from an observer wishing to exercise the observer’s statutory inspection right by reviewing the list of proposed rejected provisional ballots for voter identification errors, said Board of Elections shall provide a list of the total number of rejected ballots, along with the reasons for each proposed rejection, only in those cases where the proposed rejection is as a result of the application of voter identification provisions of Title 35 of the Ohio Revised Code and this Court’s November 1, 2006 Consent Order. The reason for each proposed rejection should include

whether the voter presented any form of identification, including the last four digits of the voter's social security number, the voter's address, the voter's date of birth, the voter's Ohio driver's license number, a military identification that shows the voter's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document.

- (6) At any meeting of the Board of Elections at which the Board intends to vote upon whether the rejected provisional ballots shall be counted, the reviewing observer shall be allowed to object to the director's proposed rejection of any provisional ballot. The Board may consider the objection of the observer before making its final decision regarding the validity of any provisional ballot.
- (7) The Board of Elections shall then follow its normal and customary procedures pursuant to Title 35 of the Ohio Revised Code regarding the validity of any provisional ballot. The Board's decision regarding whether a provisional ballot shall be counted shall be final except as otherwise provided by Ohio law.

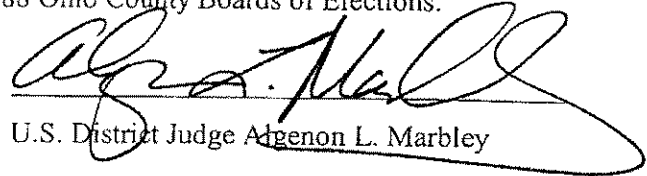
Nothing in this Agreed Enforcement Order shall be construed to extend or to limit any of the time periods outlined in Title 35 of Ohio Revised Code for tabulation of votes or official or unofficial certification of election results. Nothing in this Agreed Enforcement Order shall be construed to extend or to limit the time by which a voter may return to the Board of Elections for the purposes of providing additional identification pursuant to O.R.C. §3505.181.

This Agreed Enforcement Order applies only to the provisional ballot counting process for the election held November 7, 2006, and shall not be deemed to have any precedential effect in any future election.

This Court further Orders that Defendant Secretary of State, J. Kenneth Blackwell, shall forthwith issue a directive to the County Boards of Elections attaching this Agreed Enforcement Order and directing it to be followed by the 88 Ohio County Boards of Elections.

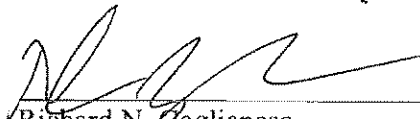
November 14, 2006

Date


U.S. District Judge Argenon L. Marbley

APPROVED BY:

Jim Petro
Attorney General



Richard N. Coglianesse
Assistant Attorney General

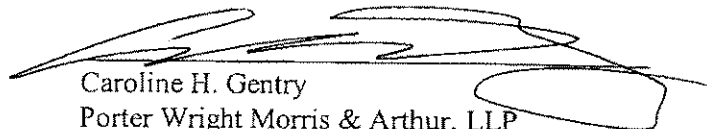
Larry H. James

Christina L. Corl

Crabbe, Brown & James

Attorneys for Defendant

Secretary of State J. Kenneth Blackwell



Caroline H. Gentry

Porter Wright Morris & Arthur, LLP

Subodh Chandra

The Chandra Law Firm LLC

Dennis J. Concilla

Carlile Patchen & Murphy

Attorneys for Plaintiffs

The Northeast Ohio Coalition for the Homeless, et al.

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

THE NORTHEAST OHIO COALITION	:	
FOR THE HOMELESS, <i>et al.</i>	:	
	:	
Plaintiffs,	:	Case No. C2-06-896
	:	
v.	:	JUDGE ALGENON L. MARBLEY
	:	
J. KENNETH BLACKWELL, in his official	:	
capacity as Secretary of State of Ohio	:	<u>CONSENT ORDER</u>
	:	
Defendant.	:	

This matter came before the Court on the Plaintiffs' Motion for a Temporary Restraining Order and Plaintiffs' Complaint and Motion for a Preliminary Injunction.

Under the requirements of House Bill 234, all voters who obtained an absentee ballot on October 3, 2006 or after, had to return a properly completed application to their local Boards of Elections. That statute required the voter to supply a driver's license number, the last four digits of the voter's social security number, or other statutorily recognized forms of identification.

After this Court issued a temporary restraining order on October 26, 2006 all voters who obtained absentee ballots did not have to provide specific identifying information as required by House Bill 234.

Once the U.S. Court of Appeals for the Sixth Circuit stayed this Court's temporary restraining order on October 29, then under House Bill 234, any voter who obtained an absentee ballot had to return a properly completed application to their local Board of Elections. That

statute required the voter to supply a driver's license number, the last four digits of the voter's social security number, or other statutorily recognized forms of identification.

The Parties to this action desire to avoid confusion, ensure that all voters are treated fairly, and ensure that all votes properly cast in the November 2006 General Election be counted. Therefore the parties enter into the following Consent Order, which shall apply only to the November 2006 General Election.

1. County Boards of Elections shall permit absentee voters who apply or applied for an absentee ballot in the November 2006 General Election to provide proof of their identities in the form of a Driver's License number, the last four digits of the voter's social security number, or a copy of a current and valid photo identification, a copy of a military identification that shows the elector's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, that shows the name and address of the elector.

2. County Boards of Elections shall accept and count any absentee or provisional ballot that an absentee voter cast and returned, whether by mail or in-person, to the local Board of Elections, if that ballot has the voter's name, address, date of birth, and signature as required by R.C. § 3509.04(B) and otherwise complies with Ohio law. County Boards of Elections shall count these ballots even if they do not contain the driver's license number, the last four digits of the voter's social security number, or other statutorily recognized forms of identification.

3. To cast a regular ballot on Election Day, electors shall provide proof of their identities in the form of a current and valid photo identification, a military identification that shows the voter's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, that shows the name and current address of the elector.

4. A "photo identification" as used in this Order means a document that meets each of the following requirements:

- (a) It shows the name of the individual to whom it was issued, which shall conform to the name in the poll list or signature pollbook.
- (b) It shows the current address of the individual to whom it was issued, which shall conform to the address in the poll list or signature pollbook, except for a driver's license or a state identification card issued under section 4507.50 of the Revised Code, which may show *either the current or former address* of the individual to whom it was issued, regardless of whether that address conforms to the address in the poll list or signature pollbook.
- (c) It shows a photograph of the individual to whom it was issued.
- (d) It includes an expiration date that has not passed.
- (e) It was issued by the government of the United States or this State.

5. A voter on Election Day, November 7, 2006, who does not have, or who has but is unable to provide, one of the forms of identification listed in paragraph 3 above, but who has a social

security number, may provide the last four digits of the voter's social security number. Upon providing the last four digits of a social security number, the voter may cast a provisional ballot under section 3505.181 of the Revised Code, the envelope of which shall include that social security number information. Such provisional ballots shall be counted if they meet the test provided in paragraph 8 below.

6. A voter on Election Day, November 7, 2006, who does not have any of the forms of identification listed in paragraph 3 above, and who also does not have a social security number, may execute an affirmation under penalty of election falsification that the elector cannot provide the identification required under that division or the last four digits of a social security number for those reasons. Upon signing the affirmation, the elector may cast a provisional ballot under section 3505.181 of the Revised Code. Such provisional ballots shall be counted if they meet the test provided in paragraph 8 below.

7. A voter on Election Day, November 7, 2006, who has a military identification that does not show the voter's current address, but that does show the voter's social security number, may provide the last four digits of the voter's social security number. Upon providing the social security number information, the voter may cast a provisional ballot under section 3505.181 of the Revised Code, the envelope of which shall include that social security number information. Such provisional ballots shall be counted if they meet the test provided in paragraph 8 below.

8. If, in examining a provisional ballot affirmation and additional information under divisions (B)(1) and (B)(2) of Ohio Revised Code Section 3505.183, the Board of Elections determines that all of the following conditions are met, the provisional ballot envelope shall be

opened, and the ballot shall be placed in a ballot box and counted. If any of the following conditions are not met, then the provisional ballot shall not be counted:

- (a) The individual named on the affirmation is qualified (i.e. registered and eligible to vote under Ohio law).
- (b) The individual named on the affirmation is properly registered to vote.
- (c) The individual named on the affirmation is eligible to cast a ballot in the precinct.
- (d) The individual named in the affirmation is eligible to cast a ballot for the election in which the individual cast the provisional ballot.
- (e) The individual provided all of the information required under division (B)(1) of Section 3505.183 in the affirmation that the individual executed at the time the individual cast the provisional ballot.
- (f) The individual has not already cast a ballot for the election in which the individual cast the provisional ballot.
- (g) If applicable, the individual provided any additional information required under division (B)(8) of section 3505.181 of the Revised Code within ten days after the day of the election.
- (h) If applicable, the hearing conducted under division (B) of section 3503.24 of the Revised Code after the day of the election resulted in the individual's inclusion in the official registration list.

- (i) The individual provided a current and valid photo identification, a military identification that shows the voter's name and current address, a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3503.19 of the Revised Code, with the voter's name and current address, or the last four digits of the individual's social security number or executed an affirmation under division (A) of section 3505.18 or division (B) of section 3505.181 of the Revised Code.

9. "Current" as used in the phrase "current utility bill, bank statement, government check, paycheck, or other government document" in this Order shall be defined as one year from the date on which it is presented to the Board of Elections. "Utility" includes, but is not limited to, water, sewer, electric, natural gas, cable, internet, telephone, and cellular-telephone service.

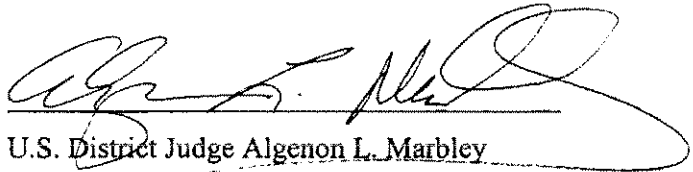
10. "Other government document" as used in this Order shall be defined as any document that has a current address and is issued by an appropriate governmental entity. "Other government document" includes, but is not limited to, those documents issued by all branches of local governments (including city, municipal, county, township, and village governments), all branches and political subdivisions of the State of Ohio (including public colleges or universities, public community colleges), and all branches of the United States government.

11. The remaining portion of this Court's Temporary Restraining Order of October 26, 2006 that was not previously stayed by the Sixth Circuit is dissolved, and Boards of Elections no longer have to preserve the absentee ballots as the October 26, 2006 Order required.

12. The Secretary of State and the Boards of Elections shall communicate this information to all of their employees and shall post it on the home page and voting-rule-related pages on their websites.

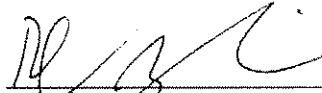
IT IS SO ORDERED that Defendant J. Kenneth Blackwell and County Boards of Elections are to act in accordance with the above, and that this Court shall retain jurisdiction to enforce this Consent Order. This Consent Order shall remain in effect until further order of this Court or until dismissal of this action.

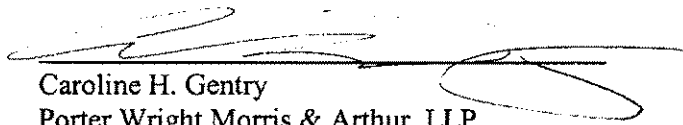
November 1, 2006
Date


U.S. District Judge Algenon L. Marbley

APPROVED BY:

Jim Petro
Attorney General


Richard N. Coglianese
Assistant Attorney General
Larry H. James
Christina L. Corl
Crabbe, Brown & James
Attorneys for Defendant
Secretary of State J. Kenneth Blackwell


Caroline H. Gentry
Porter Wright Morris & Arthur, LLP
Subodh Chandra
The Chandra Law Firm LLC
H. Ritchey Hollenbaugh
Carlile Patchen & Murphy
Attorneys for Plaintiffs
The Northeast Ohio Coalition for the Homeless, et al.