

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

<p>THE NORTHEAST OHIO COALITION FOR THE HOMELESS, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>JENNIFER BRUNNER, in her official capacity as Secretary of State of Ohio,</p> <p>Defendant.</p> <p>STATE OF OHIO</p> <p>Intervenor-Defendant</p>	<p>Case No. C2-06-896</p> <p>Judge Algenon Marbley</p>
--	--

CONSENT DECREE

Plaintiffs Northeast Ohio Coalition for the Homeless (“NEOCH”), the Columbus Coalition for the Homeless (“CCH”), (the “Coalitions”), Kyle Wangler (“the Individual Plaintiff”) and the Service Employees International Union, Local 1199 (“SEIU”) have brought this action against Defendant Secretary of State and Intervenor-Defendant State of Ohio (collectively “Defendants”). In addition, Plaintiff-Intervenor Ohio Democratic Party has filed a Complaint in this action against the Defendants with respect to provisional ballot issues.

Plaintiffs have alleged that the Individual Plaintiff and some of the Coalitions’ members lack the identification required by the Ohio Voter ID laws to cast a regular ballot on Election Day and, further, that the Ohio Provisional Ballot Laws have been and will be applied differently and unequally by Ohio’s 88 Boards of Elections. Plaintiffs allege that they are therefore deprived of the equal protection of the laws and due process. Plaintiffs have further alleged that the Ohio Voter ID Laws impose an unlawful poll tax because the State of Ohio does not provide free State of Ohio identification cards and because homeless voters are unable to provide other acceptable forms of identification since such identification must contain proof of a current address.

The Court granted in part and denied in part the Defendants’ motion to dismiss the claims in Plaintiffs’ initial Complaint. The remaining claims in that Complaint, as well as the new claims in the Supplemental Complaint, are brought solely under federal law, namely, under the Equal Protection and Due Process Clauses of the Fourteenth Amendment and the Twenty-Fourth Amendment to the United States Constitution.

The parties, desiring that this action be settled by an appropriate Consent Decree (“Decree”) and without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. Subject to this Court’s approval of this Decree, and subject to the continuing validity of this Decree if it or its terms are challenged in any other court, the parties waive a hearing and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding among and between themselves as to the issues raised in the Plaintiffs’ Complaint and Supplemental Complaint, and the matters resolved in this Decree.

This Decree, being entered with the consent of the parties, shall in no way constitute an adjudication or finding on the merits of Case No. 2:06-CV-896, nor be construed as an admission by the Defendants of any wrongdoing or violation of any applicable federal or state law or regulation.

In resolution of this action, the parties hereby AGREE to, and the Court expressly APPROVES, ENTERS and ORDERS, the following:

I. PURPOSES OF THIS DECREE

1. The purposes of this Decree are to ensure that:
 - a. The fundamental right to vote is fully protected for registered and qualified voters who lack the identification required by the Ohio Voter ID Laws, including indigent and homeless voters—such as the Individual Plaintiffs and certain members of the Coalitions—who do not have a current address and cannot readily purchase a State of Ohio ID Card;
 - b. These voters are not required to purchase identification as a condition to exercising their fundamental right to vote and have their vote be counted;
 - c. The legal votes cast by these voters will be counted even if they are cast by provisional ballot on Election Day;
 - d. These voters will not be deprived of their fundamental right to vote because of differing interpretations and applications of the Provisional Ballot Laws by Ohio’s 88 Boards of Elections;
 - e. These voters will not be deprived of their fundamental right to vote because of failures by poll workers to follow Ohio law. For purposes of this Decree poll worker error will not be presumed, but must be demonstrated through evidence; and
 - f. All legal votes that are cast by indigent and homeless voters on Election Day will be counted.

II. PARTIES BOUND BY DECREE.

2. This Order shall be binding upon the Defendants and their employees, agents and representatives. The Secretary of State will issue Directives to the Boards of Elections to follow this Decree, and will use her best efforts to enforce the Decree and all related Directives if put on notice of any alleged violations.
3. The parties recognize that Article VI, Clause 2 of the United States Constitution provides that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

III. GENERAL INJUNCTIVE RELIEF.

4. The Court ADOPTS and annexes hereafter Directive 2008-80 as an Order of this Court.
5. Defendant Secretary of State, her agents, employees and representatives will instruct Ohio’s county Boards of Elections to adhere to the following rules regarding the casting and counting of provisional ballots for persons without identification other than a social security number:
 - a. Boards of Elections must count the provisional ballot cast by a voter using only the last four digits of his or her social security number as identification if all of the following conditions are met:
 - i. The individual who cast the provisional ballot is registered to vote;
 - ii. The individual is eligible to cast a ballot in the precinct and for the election in which the individual cast the provisional ballot;
 - iii. The provisional ballot affirmation includes a statement that the individual is registered to vote in the precinct in which the provisional ballot was cast and a statement that the individual is eligible to vote in the election in which the provisional ballot was cast;
 - iv. The individual’s name and signature appear in the correct place on the provisional ballot affirmation form, unless the voter declined to execute the affirmation and the poll workers complied with their statutory duties under R.C. 3505.182 and R.C. 3505.181(B)(6) when a voter declines to execute the affirmation;
 - v. The signature of the voter substantially conforms to the signature contained in the Board of Election’s records for that voter;

- vi. The provisional ballot affirmation includes the last four digits of that voter's social security number, which is not found to be invalid;
 - vii. The individual's right to vote was not successfully challenged;
 - viii. The individual did not already cast a ballot for the election in which the individual cast the provisional ballot; and
 - ix. Pursuant to R.C. 3505.183(B)(2), the Board of Elections determines that, in addition to the information included on the affirmation, there is no additional information for determining ballot validity provided by the provisional voter or to the Board of Elections during the ten days after the day of the election that casts doubt on the validity of the ballot or the individual's eligibility to vote.
- b. Boards of Elections may not reject a provisional ballot cast by a voter, who uses only the last four digits of his or her social security number as identification, for any of the following reasons:
- i. The voter provided the last four digits of a Social Security Number but did not provide a current driver's license, state issued identification, or other document which serves as identification under Ohio law;
 - ii. The voter did not provide a date of birth;
 - iii. The voter did not provide an address that is tied to a house, apartment or other dwelling provided that the voter indicated that he or she resides at a non-building location, including but not limited to a street corner, alley or highway overpass located in the precinct in which the voter seeks to cast a ballot and that the non-building location qualifies as the individual's voting residence under R.C. 3503.02;
 - iv. The voter indicated that he or she is homeless;
 - v. The voter cast his or her provisional ballot in the wrong precinct, but in the correct polling place, for reasons attributable to poll worker error;
 - vi. The voter did not complete or properly complete and/or sign the provisional ballot application for reasons attributable to poll worker error; or
 - vii. The poll worker did not complete or properly complete and/or sign the provisional ballot application witness line and/or the

provisional ballot affirmation form, except for reasons permitted by the governing statutes.

- c. Boards of Elections must observe the following rules regarding the delegation of processing provisional ballots, and determining their validity, to board staff:
 - i. Ultimately, the members of Boards of Elections must determine the validity of all votes cast in an election and must certify the results of all elections. However, nothing in Ohio law requires that the members of a Board of Elections must personally complete all tasks associated with preparing for that certification.
 - ii. Thus, Boards of Elections may, under a policy adopted by the Board, delegate the processing and some aspects of counting provisional ballots to board staff. Such processing must be done in bipartisan teams.
 - iii. If a Board of Elections delegates the processing of provisional ballots, it must first adopt a policy setting forth procedures for the processing of provisional ballots. Under that policy, board staff responsible for processing provisional ballots must make a recommendation to the Board as to the eligibility of each provisional ballot cast in the county, either on an individual basis, or as to groups or categories of similarly situated provisional ballots.
 - iv. Ultimately, the members of Board of Elections must determine the eligibility or ineligibility of all provisional ballots cast within the county in accordance with Ohio law. Boards may not delegate this task.
 - v. Each Board of Elections must then cause the ballots to be counted by board staff, and must include the tabulation of that count in its official canvass of the election results and, to the extent required, its certification of the election results to the Secretary of State.

IV. IMPLEMENTATION.

6. Defendant Secretary of State shall issue a Directive to all Boards of Elections that sets forth the text of the injunctive relief described above.
7. Before every primary and general election, Defendant Secretary of State shall remind Boards of Elections that they must comply with the injunctive relief described above and shall distribute the text of the injunctive relief to all Board Members, Directors and Deputy Directors.

8. In every location where provisional ballots are processed after an election, Boards of Elections shall post a notice in a conspicuous place that contains the text of the injunctive relief described above in large, capitalized and bolded type.

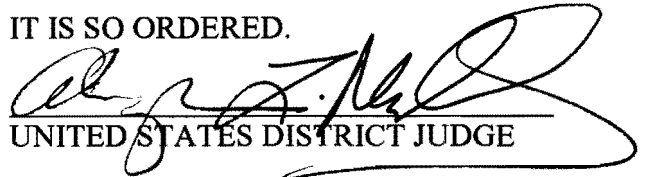
V. CONTINUING VALIDITY.

9. This Decree shall remain in effect until June 30, 2013.
10. If the State of Ohio repeals or amends any portion of the Ohio Voter ID Laws or Provisional Ballot Laws that are identified in the Complaint, Defendant Secretary of State shall file a notice with the Court within 30 days of passage of the law regarding such changes. Those changes in Ohio law will supersede this consent decree and this decree will be automatically amended by operation of law to include those statutory changes.
11. Any of the parties may file a motion with the Court to modify, extend or terminate this Decree for good cause shown.

VI. MISCELLANEOUS PROVISIONS.

12. Within sixty (60) days after entry of this Decree, Defendant Secretary of State shall pay to counsel for Plaintiffs the attorneys' fees that were previously awarded by this Court, as follows: \$321,942.15.51 to Porter Wright Morris & Arthur LLP, \$99,722.58 to Carlile Patchen & Murphy LLP, and \$82,749.38 to The Chandra Law Firm, LLC.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

180 EAST BROAD STREET, 16TH FLOOR
COLUMBUS, OHIO 43215 USA
TEL: 1-877-767-6446 FAX: 1-614-644-0649
WWW.SOS.STATE.OH.US

DIRECTIVE 2008-80

September 5, 2008

TO: ALL COUNTY BOARDS OF ELECTIONS
MEMBERS, DIRECTORS, DEPUTY DIRECTORS

RE: Voter Identification Requirements

This directive is intended to clarify Ohio's voter identification requirements as applied by Ohio's boards of elections, Ohio election officials and poll workers in Ohio. This directive supersedes Section I of Directive 2007-06.

All boards of elections shall implement the instructions provided in this directive.

The Secretary of State's office has incorporated the instructions contained in this directive in its Poll Worker Manual of Instructions and its Poll Worker Quick Reference Guide, which is provided to boards of elections and referenced in Directive 2008-77. Presiding judges must be provided with a copy of this directive, and the Secretary of State's office offers further assistance to boards of elections in interpreting or applying this directive through the elections attorneys at the Secretary of State's office assigned to county boards of elections.

Election Day Regular Voting ID Requirements

R.C. 3505.18 requires every voter, upon appearing at the polling place to vote on Election Day, to announce his or her full name and current address and *provide proof of the voter's identity*. The forms of identification that may be used by a voter who appears at a polling place to vote on an Election Day include:

- 1. His or her current and valid Ohio driver's license; or**
- 2. His or her current and valid photo identification card issued by the State of Ohio or the United States government; or**
- 3. His or her military identification ("military ID"); or**
- 4. An original or copy of a current utility bill; or**
- 5. An original or copy of a current bank statement; or**
- 6. An original or copy of a current paycheck; or**
- 7. An original or copy of a current government check; or**
- 8. An original or copy of a current other government document.**

(NOTE: An Ohio driver's license or Ohio issued photo identification card may be used that does not contain the voter's address appearing in the records of the board of elections. In such case, a poll worker must record the last 4 digits of the voter's driver's license or Ohio ID card number in polling place records as instructed by the board of elections. Also, beginning with the November 2008 general election, pursuant to Am. Sub. H.B. 562, military ID's will no longer have to contain the name or address of the voter offering the military ID as identification; poll workers must, however, be able to ascertain that the person offering the military ID as identification is the person he or she purports to be and has the qualifications to vote in the election in question.)

Please see the definitions section of this Directive for clarification on such terms as "current" and for more information about the above forms of identification.

If an elector appearing on an Election Day to vote in person does not have, or fails or refuses to provide, any of the acceptable forms of proof of identity outlined above, that elector may cast a provisional ballot pursuant to R.C. 3505.181. A discussion of instructions for provisional voting appears in Directive 2008-81.

Please see addendum No. 1 to this directive. That addendum is a flow chart that poll workers may use to assist them in determining whether a particular voter has provided sufficient identification to vote a regular ballot or must vote a provisional ballot. Four copies of this addendum must be included in the precinct/polling location kit for Election Day.

Absentee ("Early") Voting ID Requirements

Any qualified Ohio elector whose current voting residence address is the address appearing in the records of the board of elections for that voter may request an absent voter's ballot without stating a reason. A detailed discussion of absentee voting appears in Directive 2008-82.

The Ohio General Assembly has implemented somewhat different and perhaps more simplified voter ID requirements for absentee voting (whether by mail or in person) than for Election Day voting. Absentee voters are required to provide ID at two distinct points in the voting process. First, all absentee voters must provide ID at the time they apply for their absentee ballots. Second, all absentee voters must also provide ID at the time they vote and return their absentee ballots.

A voter is **not** required to provide identical forms of required ID at both points in time discussed above as long as both forms of ID provided are acceptable forms of ID as enumerated below. The forms of ID that may be used by an **absentee voter** include:

- 1. His or her Ohio driver's license number; or**
- 2. The last four digits of his or her Social Security number; or**
- 3. A copy of his or her current and valid Ohio driver's license; or**
- 4. A copy of his or her photo identification card issued by the State of Ohio or the United States government; or**
- 5. A copy of his or her a military identification; or**
- 6. An original or copy of a utility bill; or**

7. **An original or copy of a bank statement; or**
8. **An original or copy of a paycheck; or**
9. **An original or copy of a government check; or**
10. **An original or copy of another government document.**

(NOTE: Beginning with the November 2008 general election, pursuant to Am. Sub. H.B. 562, military ID's will no longer have to contain the name or address of the voter offering the military ID as identification; poll workers must, however, be able to ascertain that the person offering the military ID as identification is the person he or she purports to be and has the qualifications to vote in the election in question.)

If an elector or voter who desires to vote absentee provides the identification information contained in numbers 1 or 2 above, he or she is **not** required also to provide any of the identification documentation described in numbers 3 through 10 above.

Please see the definitions section of this Directive for clarification on such terms as "current" and for more information about the above forms of identification.

Definitions Relating to Voter ID

Am. Sub. H.B. 3 did not define many of the terms used in the voter ID requirements contained in that law. To ensure uniform application of those requirements throughout Ohio, and under my authority under R.C. 3501.05, the following terms are defined, as used in relation to voter ID:

Current

"Current" means the document was issued on a date within one year immediately preceding the date of the election at which the voter seeks to vote, or has on it an expiration date which has not passed as of the date of the election in which the voter seeks to vote.

Conform

For the purposes of verifying the identity of the voter by **name**, "conform" means that the document shall contain the same last name and the same first name or derivative of the first name as the first and last names appearing in the poll list or signature poll book. When a middle name or initial can be matched, the election official or poll worker should also verify the middle name or initial. Minor misspellings shall not preclude the use of a proffered ID for purposes of voting.

For the purposes of verifying the identity of the voter by **address**, "conform" does not mean an exact match, but rather, the form and content of the address can reasonably be determined to match the form and content of the address appearing in the poll list or signature poll book.

Photo identification

R.C. 3501.01(AA) defines "photo identification" and requires ALL of the following:

- The photo identification has been issued by either the government of the **United States or the State of Ohio**. Drivers' licenses and photo ID cards from other states or countries are not acceptable forms of identification.
- The photo identification shows a **photograph** of the individual to whom it was issued, and the photograph appears to be the person who has presented the photo ID.
- The photo identification includes an **expiration date that has not passed**.
- The photo identification shows the **name of the individual** to whom it was issued, which shall conform to the name in the poll list or signature poll book for the person presenting the photo ID.
- The photo identification shows the **current address** of the individual to whom it was issued, which shall conform to the address in the poll list or signature poll book. **There are two exceptions, however. No voter shall be denied a regular ballot solely because his or her military ID or his or her Ohio driver's license or ID card does not provide his or her current address, or the address on his or her Ohio driver's license or ID card does not match that in the poll list or signature poll book.** Note, in this case, the poll worker must accept one of these forms of photo ID to allow the individual to vote, but must record the last four digits of a driver's license or state ID number if the address on the ID does not match the address for the voter appearing in the poll list or signature poll book.

Please note that there are two numbers on an Ohio driver's license. The **required** number is the number located on the **left hand side** of the ID under the phrase "LICENSE NO." The correct number actually begins with letters. In contrast, the number located above the picture on an Ohio driver's license number is not the driver's license number and cannot be used to verify the identity of a voter.

If an **absentee voter provides the number above his or her picture and not the driver's license number**, the board must notify the voter of such error by telephone or in writing, within two business days of receiving the application or voted ballot. The voter so notified must be permitted to appear in person at the office of the board to provide the correct information. In the case of a returned absent voter's ballot, the voter shall have until the tenth day after the election to provide this information to enable his or her ballot to be counted.

Military ID

The General Assembly has not defined "Military identification." Generally speaking, an acceptable Military ID is an identification card issued by the United States Department of Defense to:

- An active duty member of any branch of the United States Armed Forces (Air Force, Army, Coast Guard, National Guard, Reserves, Joint Services, Marines, or Navy);
- A member of a reserve military unit;
- A retired military personnel;
- A dependent of a military personnel;
- An ROTC student; or
- Some civilian government employees and contractors.

The ID presented must allow the election official to whom it is presented to verify that the person presenting the ID is the person whom they purport to be, and thus, to verify that the

person presenting the ID has the qualifications to vote in the election at which the ID is presented.

Specifically, as of August 2008, all Military IDs should indicate that they are a version of:

- The Common Access Card (“CAC”), including Geneva Convention Identification Cards, Geneva Convention Accompanying Forces Cards, Identification and Privilege Cards, and Identification Cards;
- DD Form 2 (such as DD Form 2A); or
- DD Form 1173.

All CACs look very similar; the slight variations in the form of the ID depend on the ID holder’s status in the military and are not at issue for the purpose of voting.

DD Form 2 and DD Form 1173 identification cards are very different in appearance from the CACs, and there are several versions of each card that may look very different from one another. **Examples of the various forms of CACs, DD Form 2s, and DD Form 1173s are included in Addendum No. 2 to this directive.**

Additional Points of Clarification Regarding Military IDs

- It does not matter what color a military ID is. The color of the Military ID simply indicates the status of the individual with the military (Inactive Reserve, ROTC, Reserve, Retired, Dependent, or Active).
- It also does not matter what branch of the military the voter is affiliated with, although the branch may be indicated on the ID.
- Expiration dates:
 - If the ID presented by a voter **does** have an expiration date on it (and most military IDs do), the election official reviewing the ID should apply the definition of current contained in this directive, meaning that the ID is valid if the expiration date has not passed as of the date of the election in which the voter seeks to vote when he or she presents his or her ID.
 - If the expiration date has passed, the ID may not be used.
 - Military IDs for retired military personnel and reserve members of the military **do not** have an expiration date on them. Rather, those ID’s indicate that they are valid for an indefinite period of time. For example, some military IDs may say “INDEF” where an expiration date should otherwise appear. Military ID’s of this nature are valid for purposes of voting whenever presented by a voter.

Utility Bill

A “utility bill” includes, but is not limited to, water, sewer, electric, natural gas, heating oil, cable or satellite television, internet, telephone or digital telephone, and cellular telephone service. A “bill” is a statement of fees owed for such services. A bill is sufficient even if it shows a zero (0) balance due. The utility bill presented for the purposes of identification must show that it was issued to the voter who has presented it. The utility bill must show the voter’s name and current address, which must conform to the voter’s name and address in the record of the board of elections, including the poll list or signature poll book and must be a current statement as defined in this directive. The bill may be an original or a copy of an original. Computer generated print-outs of electronically transmitted bills are also valid.

Bank Statement

A "bank statement" includes, but is not limited to, a statement from any financial or brokerage institution that bears the name and current address of the voter presenting it for identification. The name and address of the voter that appears on the bank statement must conform to the voter's name and address in the record of the board of elections, including the poll list or signature poll book and must be a current statement as defined in this directive. The statement may be an original or a copy of an original. Computer generated print-outs of electronically transmitted statements are also valid.

Paycheck

A "paycheck" includes, but is not limited to, a paycheck, check stub or receipt provided for direct deposit of wages or earnings from any public or private employer and which bears the name and current address of the voter presenting it for identification. The name and address of the voter that appears on the paycheck must conform to the voter's name and address in the record of the board of elections, including the poll list or signature poll book and must be current as defined in this directive. The paycheck may be an original or a copy of an original. Computer generated print-outs of electronically transmitted check stubs or receipts are also valid.

Government Check

A "government check" includes, but is not limited to, a paycheck, check stub or receipt provided for direct deposit of funds issued by any political subdivision of this state, including the State of Ohio, or any political subdivision of or by another state or by the United States government that bears the name and current address of the voter presenting it for identification. The name and address of the voter that appears on the government check must conform to the voter's name and address in the record of the board of elections, including the poll list or signature poll book and must be current as defined in this directive. The check may be an original or a copy of an original. Computer generated print-outs of electronically transmitted check stubs or receipts are also valid.

Other Government Document

"Other government document" includes, but is not limited, to a document that is issued by a government office and that bears the name and current address of the voter presenting it for identification. The name and address of the voter that appears on the government document must conform to the voter's name and address in the record of the board of elections, including the poll list or signature poll book and must be current as defined in this directive. "Government office" includes any local (including county, city, township, and village governments), state, or federal (United States) government office, branch, agency, department, division, or other similar component, including a board, commission, public college or university or public community college, whether or not in Ohio. By way of example, this may include, but is not limited to, letters; bills for taxes and other similar obligations; hunting, fishing and marine equipment operator's licenses; license renewal notices and other notices; filing receipts; court papers; grade reports; or transcripts.

Please note that R.C. 3505.18(A) does explicitly provide that an elector *cannot* use as proof of identity a notice that a board of elections mailed to that voter under R.C. 3501.19 or 3503.19.

If you have questions about this directive, please contact your assigned elections counsel at 614-466-2585.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Brunner". The signature is written in a cursive, flowing style.

Jennifer Brunner