

**In the
Supreme Court of Ohio**

STATE EX REL. DEWEY STOKES,

Relator,

v.

OHIO SECRETARY OF STATE
JENNIFER BRUNNER,

Respondent.

Case No. 2008-1950

Original Action in Mandamus

Expedited Election Matter
Under S. Ct. Prac. R. X, § 9

**SUBMISSION OF EVIDENCE OF
RESPONDENT SECRETARY OF STATE JENNIFER BRUNNER**

James B. Hadden (0059315)
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Attorney for Relator

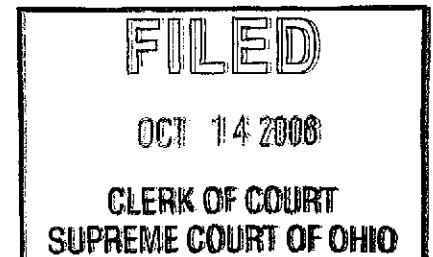
NANCY H. ROGERS
Attorney General of Ohio

Richard N. Coglianese (0066830)*

**Counsel of Record*

Damian W. Sikora (0075224)
Pearl M. Chin (0078810)
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30 East Broad Street, 16th Floor
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Attorneys for Respondent



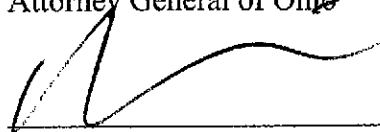
SUBMISSION OF EVIDENCE

Pursuant to S. Ct. Prac. R. X, Section 7, Respondent Secretary of State Jennifer Brunner submits the following evidence in support of her arguments.

- Exhibit A - Affidavit of Patricia A. Wolfe, Elections Administrator,
Ohio Secretary of State's Office
- Exhibit B - Affidavit of Sue Wallace, Director,
Hocking County Board of Elections
- Exhibit C - Affidavit of Lisa Schwartz, Deputy Director,
Hocking County Board of Elections
- Exhibit D - Affidavit of Nancy Robison, Deputy Director,
Morgan County Board of Elections
- Exhibit E - Affidavit of Carolyn Addy, Member,
Harrison County Board of Elections
- Exhibit F - Affidavit of Marjorie Findling, Member,
Harrison County Board of Elections

Respectfully submitted,

NANCY H. ROGERS
Attorney General of Ohio



Richard N. Coglianese (0066830)*

**Counsel of Record*

Damian W. Sikora (0075224)

Pearl M. Chin (0078810)

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Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Submission of Evidence of Respondent Secretary of State Jennifer Brunner* was served on this 14th day of October, 2008, by electronic mail, facsimile transmission and ordinary, postage prepaid U.S. mail upon the following counsel:

James B. Hadden
Porter Wright Morris & Arthur LLP
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Attorney for Relator



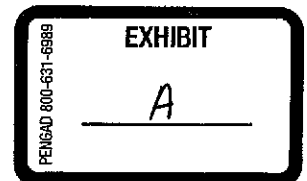
Pearl M. Chin (0078810)

State of Ohio)
) ss:
County of Franklin)

AFFIDAVIT

Now comes PATRICIA A. WOLFE, having been duly cautioned and sworn, attesting as follows:

1. From 1984 to March 1992, I was employed by the Coshocton County (Ohio) Board of Elections, where I served in the positions of Director and Deputy Director, performing the statutory duties of those offices, and such other duties as assigned to me by the board, relative to the administration and conduct of elections in that county.
2. I have been employed in the Elections Division of the Ohio Secretary of State's Office since March 1992, during which time I have served in the positions of Assistant Elections Administrator, Elections Administrator, and Director of Elections. I currently am the Elections Administrator for the Office of Ohio Secretary of State Jennifer Brunner.
3. I am, and since 1997 have been, a Certified Elections Registration Administrator ("CERA"). To retain my CERA certification, I must successfully complete specified continuing education courses offered by the Elections Center and Auburn University (Alabama).
4. Based upon my years of employment at the Coshocton Board of Elections and at the Secretary of State's office, I have first-hand knowledge of the duties and responsibilities of the boards of election in preparation for Election Day.
5. Now through November 3, 2008, the board of elections in each of Ohio's 88 counties must perform numerous statutory duties in connection with the general election to be held on November 4, 2008, including but not limited to, the following:
 - Processing new voter registration forms and name and/or address changes for existing voters received by the October 6, 2008 deadline and entering that information into the board's records and the statewide voter registration database for the November 4, 2008 general election.
 - Processing applications received in person and by mail pursuant to R.C. 3509.03 for absent voter ballots and verifying the information contained on each application.
 - If an application for an absentee ballot cannot be processed as presented, notifying the applicant of the reason that the application cannot be processed, in accordance with R.C. 3509.04(A).

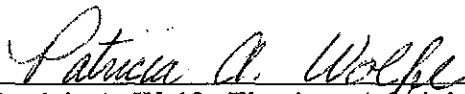


- Preparing individual absentee ballots and accompanying materials for each applicant who submits a valid and sufficient application and delivering the ballots either in person or by mail, as requested by the applicant, in accordance with R.C. 3509.04(B).
- With respect to any disabled voter who declares on the voter's absentee ballot application that the voter is confined or unable to mark the ballot by reason of physical infirmity, a board of elections must designate two board employees belonging to the two major political parties to deliver the ballot to the disabled voter and to return the voter's marked absentee ballot to the board of elections office.
- With respect to any voter who is confined to a private or public institution in the county, a board of elections must make arrangements for two board employees belonging to the two major political parties to deliver the ballot to the confined voter and to return the voter's marked absentee ballot to the board of elections office.
- Processing changes of name and changes of address received from currently registered Ohio electors who appear at the board office or other site designated by the board after the October 6, 2008 deadline, and providing provisional ballots for in-person voting in accordance with R.C. 3503.16.
- Reviewing challenges and requests for correction of the precinct registration lists and promptly conducting hearings as may be required.
- No later than October 20, 2008, preparing and posting a report of the allocation of voting machines/equipment per precinct in the county, pursuant to Secretary of State Directive No. 2008-64.
- No later than October 21, 2008, preparing and posting the official voter registration list for each precinct in the county.
- Continuing to recruit and train precinct judges of elections and to designate replacement precinct election judges as may be necessary.
- Conducting tests of all the voting systems and tabulation equipment intended for use at the November 4 election in anticipation of the mandatory public pre-tests of that equipment.
- Processing notices of appointments of Election Day observers received no later than October 24, 2008, and subsequent amendments to such appointments that may be received through November 3, 2008, pursuant to R.C. 3505.21.
- Providing for the advertisement of local questions and issues in local newspapers.
- Preparing and publishing the notice of election required by R.C. 3501.03 at least 10 days before the day of the election.

- Mailing to each precinct election official notice of the date, hours, and place of holding each election in the official's respective precinct at which the board desires the official to serve.
- Inspecting precinct polling locations and completing final arrangements for their use on November 4, 2008.
- Preparing the necessary supplies for each precinct polling location, including ballot boxes, official ballots, cards of instructions, registration forms, pollbooks or poll lists, tally sheets, forms on which to make summary statements, writing implements, paper, and all other supplies necessary for casting and counting the ballots and recording the results of the voting at the polling place. A board of elections also must provide all of the following supplies to each precinct:
 - A large map of each appropriate precinct to be displayed prominently to assist persons who desire to register or vote on Election Day, showing all streets within the precinct and contain identifying symbols of the precinct in bold print.
 - Any materials, postings, or instructions required to comply with state or federal laws.
 - A United States flag which shall be displayed outside the entrance to the polling place during the time it is open for voting.
 - Two or more smaller United States flags to be placed 100 feet from the polling place to mark the distance within which persons other than election officials, observers, police officers, and electors waiting to mark, marking, or casting their ballots shall not loiter, congregate, or engage in any kind of election campaigning.
 - Three copies of the official precinct voter registration list to be posted and updated throughout Election Day in accordance with R.C. 3503.23(B).
- Preparing a precinct voting location guide that lists the correct jurisdiction and polling place for either each specific residential street address in the county or the range of residential street addresses located in each neighborhood block in the county, which allows a precinct election official or any elector who is at a polling place in that county to determine the correct jurisdiction and polling place of any qualified elector who resides in the county, and providing a copy of the guide to each precinct polling location.
- Preparing the sample ballots to be posted at each precinct polling location; with respect to any ballot language for a local issue that is a condensed text, providing copies of the full text of the resolution, ordinance or petition proposing that local issue.
- Obtaining the official notices and posters that state of federal law requires to be posted at each precinct polling location.
- Distributing to the presiding judges of the precinct polling locations the precinct kits and supplies.

- Transporting and setting up voting equipment at the precinct polling locations.
 - Posting on the board's web site all information required by law to be posted.
6. In addition to performing the many duties relating to the November 4 election, the boards of elections continue to review petition papers filed in connection with statewide issues to be submitted to the voters at the November 4 election and reporting to the Secretary of State the number of valid and invalid petition papers and signatures.
 7. Of Ohio's 88 county boards of elections, approximately one-half have only two fulltime employees, to wit: a director and a deputy director, who together must perform, within the applicable statutory timeframe, the mandatory duties listed in this affidavit.
 8. Only five boards of elections – those for the counties of Franklin, Knox, Lucas, Hardin and Summit – are offering in-person absentee voting at a location other than the board of elections office. The other 83 boards of elections are conducting in-person absentee voting at the board office at the same time they are performing the duties listed in this affidavit.
 9. All of the above statements are true to the best of my knowledge, information and belief.

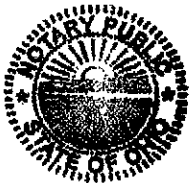
Further Affiant sayeth naught.


Patricia A. Wolfe, Elections Administrator

Sworn to before me, a notary public in and for said county and state, and subscribed in my presence, by the above-named Patricia A. Wolfe, who acknowledged that she did sign the foregoing instrument and that the same is hers and its free act and deed, this 14th day of October 2008, in the City of Columbus, County of Franklin, State of Ohio, in testimony whereof, I set my hand and official seal.



Brandi R. Laser Seskes, Elections Counsel
Notary Public, State of Ohio
My commission has no expiration date. R.C. 147.03.



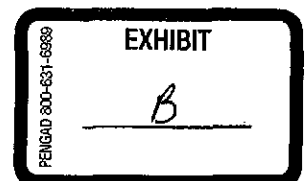
BRANDI R. LASER SESKES, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

STATE OF OHIO)
) SS.
COUNTY OF HOCKING)

AFFIDAVIT OF SUE WALLACE

I, Sue Wallace, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify to the facts set forth below based upon my personal knowledge.

1. I currently serve as Director of the Hocking County Board of Elections.
2. I have been employed by the Hocking County Board of Elections for four and a half years.
3. The Hocking County Board of Elections only has two full-time staff members who run the day to day operations of the office.
4. The board has hired two part-time staff members to assist during the absentee voting period.
5. I am aware that Ohio law and Directives and Advisories of the Secretary of State provide that the board of elections must accommodate observers at the board office on Election Day. However, the board has made no plans to accommodate observers at the board office prior to Election Day during the period of absentee voting.
6. Accommodating observers during the absentee voting period will place a substantial burden on the board of elections due to limited space in the board office, limited staff, and security issues.
7. The board's office is a small room that used to be a restroom in the county courthouse, with only employee desks separating the public from the work



- area of the board staff. The public area of the office between the door and the staffs' desks is a very small area (approximately 5 feet by 3 feet).
8. The board utilizes a small part (approximately 10 feet by 16 feet) of the Hocking County Courthouse lobby during the absentee voting period because there is no room in the board office to accommodate electors requesting and voting absentee ballots in person. However, the courthouse lobby is also shared by the public waiting on hearings in Municipal Court and by members of the public visiting other county agencies.
 9. Two part-time staff members are stationed in the courthouse lobby during absentee voting. However, board staff must make frequent trips between the board office and the small absentee voting area in the lobby during absentee voting.
 10. To maintain security in the board office, no members of the public are permitted in the staff work area. Similarly, observers cannot be permitted in the staff work area in the board office. In order for observers to be able to observe all the procedures related to absentee voting, the observers would have to follow board staff back and forth from the board office to the absentee voting area in the courthouse lobby.
 11. Maintenance of security is necessary due to the presence of unvoted and voted absentee ballots in the staff work area and sensitive personal information from Ohio electors that could be viewed in the staff work area. Additionally, any observers in the staff work area would literally be in the way of board staff and would interfere with the performance of the board staff's duties.


12. Board staff must be able to monitor observers to ensure that they are not interfering with electors during the requesting and casting of absentee ballots in person.
13. Because the two part-time staff members must devote their time to assisting electors with requesting and voting absentee ballots and the remaining staff members are preparing for the election, they cannot effectively monitor observers, assist electors, and prepare for the election at the same time.
14. In my time with the board of election, we have only had one observer during any election, and the observer was allowed to observe from a small designated area in the office so that she would not interfere with the board's performance of its duties on Election Day.
15. While accommodating observers on Election Day will be challenging given the small size of the board office, the hardship on the board will be less than it would be during the absentee voting period because no electors will be in the board office requesting and casting absentee ballots at the same time that observers are present on Election Day.

FURTHER AFFIANT SAYETH NAUGHT.

Sue Wallace
Sue Wallace

Sworn and subscribed before me this 14th day of October, 2008.

Kenneth R. Wilson
Notary Public



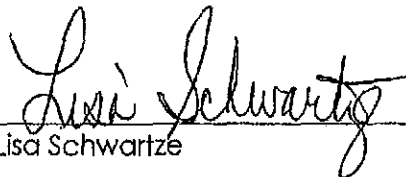
KENNETH R. WILSON
Notary Public, State of Ohio
My Commission Expires
November 13, 2008

area of the board staff. The public area of the office between the door and the staffs' desks is a very small area (approximately 5 feet by 3 feet).

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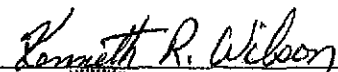
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FURTHER AFFIANT SAYETH NAUGHT.



Lisa Schwartz

Sworn and subscribed before me this 14th day of October, 2008.



Notary Public

KENNETH R. WILSON
Notary Public, State of Ohio
My Commission Expires
November 13, 2008

STATE OF OHIO

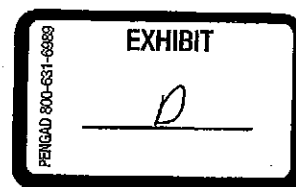
)
)
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SS.
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COUNTY OF MORGAN

AFFIDAVIT OF NANCY ROBISON

I, Nancy Robison, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify to the facts set forth below based upon my personal knowledge.

1. I serve as Deputy Director of the Morgan County Board of Elections.
2. I have been employed by the Morgan County Board of Elections for eleven years.
3. The Morgan County Board of Elections only has two part-time staff members who run the day to day operations of the office.
4. I am aware that Ohio law and Directives and Advisories of the Secretary of State provide that the board of elections must accommodate observers on Election Day. However, the board has made no plans to accommodate observers prior to Election Day during the period of absentee voting.
5. Accommodating observers during the absentee voting period will place a substantial burden on the board of elections due to limited space in the board office, limited staff, and security issues.
6. The board office is a small room with a counter that separates the public from the work area of the board staff. The public area of the board office between the door and the counter is a very small area (approximately fourteen by seven feet).

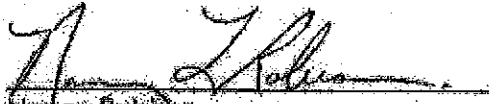


7. To maintain security during the absentee voting period, electors coming to the board office to request and vote absentee ballots in person are not permitted behind the counter. Similarly, observers cannot be permitted behind the counter in the board office.
8. Maintenance of security is necessary due to the presence of unvoted and voted absentee ballots in the staff work area and sensitive personal information from Ohio electors that could be viewed in the staff work area. Additionally, any observers in the staff work area would literally be in the way of board staff and would interfere with the performance of the board staff's duties.
9. Because of the presence of members of the public requesting and voting absentee ballots at the board office, there literally is no room to accommodate observers in the public area of the board office at the same time as absentee voting is occurring.
10. Moreover, board staff must be able to monitor observers to ensure that they are not interfering with electors during the requesting and casting of absentee ballots in person.
11. Because the board only has two staff members who must devote their time to assisting electors and preparing for the election, they cannot effectively monitor observers while assisting electors with absentee voting and performing their statutory duties preparing for the election all at the same time.
12. During my time with the board of elections, we have only ever had one observer at the board office on Election Day, and he was allowed to observe

from the public side of the counter in the board office in a space that is being used now for in person absentee voting.

13. While accommodating observers on Election Day will be challenging given the small size of the board office, the hardship on the board is less than it would be during the absentee voting period because no electors will be in the board office requesting and casting absentee ballots at the same time that observers are present on Election Day.

FURTHER AFFIANT SAYETH NAUGHT.

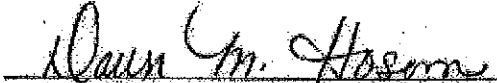

Nancy Robinson

Sworn and subscribed before me this 14th day of October, 2008.



DAWN M. CARROLL
Notary Public, State of Ohio
My Commission Expires

7/27/2010


Notary Public

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FURTHER AFFIANT SAYETH NAUGHT.

Carolyn S. Addy
Carolyn S. Addy

Sworn and subscribed before me this 14th day of October, 2008.

Cynthia S. Bear
Notary Public
CYNTHIA S. BEAR
Notary Public, State of Ohio
My Commission Expires 9/19/2009

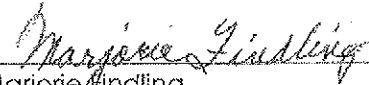


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FURTHER AFFIANT SAYETH NAUGHT.



Marjorie Findling

Sworn and subscribed before me this 14 day of October, 2008.



Notary Public



CYNTHIA S. BEAR
Notary Public, State of Ohio
My Commission Expires 4/19/2009