

In The Supreme Court Of Ohio

THE STATE OF OHIO ex rel.
RHONDA L. COLVIN, *et al.*

Relators,

vs.

JENNIFER BRUNNER, SECRETARY OF
STATE OF OHIO,

Respondent.

:
: Case No. 2008-1813
:
: Original Action in Mandamus

RESPONDENT SECRETARY OF STATE JENNIFER BRUNNER'S SUBMISSION OF EVIDENCE

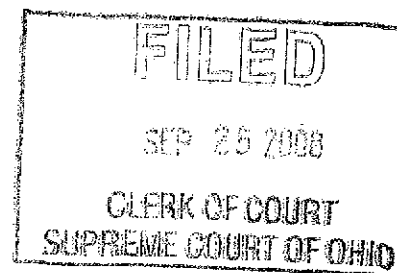
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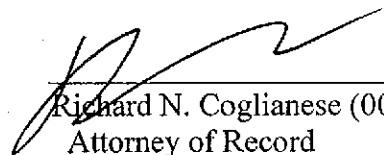


SUBMISSION OF EVIDENCE

Pursuant to S. Ct. Prac. R. X, Section 7, Respondent Secretary of State Jennifer Brunner submits the attached affidavit of Patricia Wolfe.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Respondent Secretary of State Jennifer Brunner's Submission of Evidence* was served upon the following, on this 25th day of September, via electronic mail, facsimile transmission and ordinary, postage prepaid U.S. mail to:

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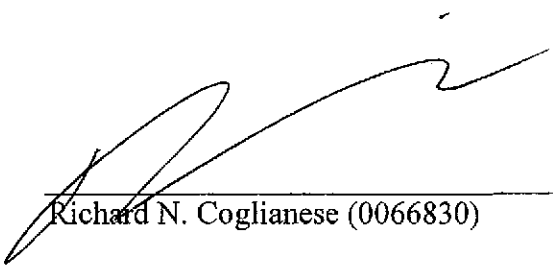
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IN THE SUPREME COURT OF OHIO

The State of Ohio ex rel. Colvin, et al.,

Relators,

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Jennifer Brunner,
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Respondent.

Case No. 08-1813

Original Action in Mandamus

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

AFFIDAVIT OF PATRICIA WOLFE

I, Patricia Wolfe, 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 Elections Administrator in the office of Ohio Secretary of State Jennifer Brunner.
2. I have been employed by the office of the Secretary of State for approximately sixteen years.
3. A requirement of my position is knowledge of how county boards of elections administer absentee voting.
4. The following is a non-exhaustive, general overview of Ohio's absentee voting process and explains in-person and mail-in absentee voting. The following is not meant to be a detailed explanation of Ohio's absentee voting laws, and it does not cover many elements of the absentee voting process, such as absentee voting for military or overseas citizens.

Obtaining an Absentee Ballot Application

5. In order to be given an absentee ballot, whether in-person at a board of elections or by mail, an elector must first complete a written absentee ballot application. R.C. 3509.03.
6. Although there is no mandatory application form, the Secretary of State's office has prescribed an application form that may be used (Form 11-A). An elector may request this form from a board of elections or find it online at http://www.sos.state.oh.us/SOS/absentee_avoidLine.aspx?page=9365.
7. As a result of Amended Substitute House Bill 562 and Secretary of State Directive 2008-55, many boards of elections sent absentee ballot applications to all registered electors in the county, along with the mandatory 60-day election notices required by R.C. 3501.19, for the November 2008 election.

Applying for an Absentee Ballot

8. An absentee ballot application, in any form, is sufficient if it contains ALL of the following:
 - The elector's name;
 - The elector's signature;
 - The address at which the elector is registered to vote;
 - The elector's date of birth;
 - *One* of the following:
 - The elector's driver's license number; or
 - The last four digits of the elector's social security number; or
 - A copy of the elector's current and valid photo identification, a copy of a military identification, 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.
 - A statement identifying the election for which an absentee ballot is requested;
 - A statement that the person requesting the ballot is a qualified elector;
 - If the request is for a primary election ballot, the elector's party affiliation; and
 - If the elector desires a ballot to be mailed to the elector, the address to which that ballot shall be mailed.

R.C. 3509.03.

9. If an absentee ballot application is delivered by mail, it must be received by the board of elections no later than noon of the third day before the election. R.C. 3509.03.

10. If an absentee ballot application is returned in-person to the board of elections office, it must be received no later than the close of regular business hours on the day before the election. R.C. 3509.03.
11. If the applicant desires the board of elections to mail the ballot to the applicant, he or she must include the mailing address if different from the voting residence.

Board of Elections' Determination of the Sufficiency of Application

12. After an absentee ballot application is received by a board of elections, the board must review the application for completeness. R.C. 3509.04
13. If an application is not complete – e.g., the application does not contain the applicant's date of birth – the board must notify the applicant of the additional information required to be provided to complete the application.
14. If the application is complete, the board of elections must deliver to the applicant an absentee ballot; this may be done either in person or by mailing it directly to the applicant by special delivery mail, air mail, or regular mail.
15. All absentee ballots, whether delivered in person or by mail, shall be delivered with an unsealed identification envelope and, if sent by mail, an unsealed return envelope upon the face of which must be printed the address of the board of elections.
16. The form of the identification envelope is established in R.C. 3509.04(B). The identification envelope serves the purpose of identifying the voter without disclosing how the elector voted.

Voting and Returning an Absentee Ballot

By Mail:

17. When an elector receives an absentee ballot by mail, the elector shall mark the ballot with his or her choices; fold the ballot in the manner instructed by the board of elections ensuring that the stub remains on the ballot; place the ballot in the identification envelope; and seal the identification envelope. The elector shall then cause the statement of the voter on the outside of the identification envelope to be completed and signed under penalty of election falsification. If the elector does not provide the elector's driver's license number or the last four digits of the elector's social security number on the envelope, the elector also shall include in the return envelope with the identification

envelope a copy of acceptable identification. Secretary of State Directive 2008-82 lists the forms of acceptable identification.

18. The elector must then either mail the identification envelope to the board of elections in the return envelope, postage prepaid, or personally deliver it to the board of elections. The elector may also have a family member deliver the ballot to the board of elections.
19. If the elector decides to mail his or her completed absentee ballot to the board office, the ballot must be postmarked by the day before Election Day and received by the board of elections before the eleventh day after Election Day. If the elector decides to deliver the ballot to the board of elections office in person, the ballot must be returned by not later than the close of polls on Election Day.
20. If a voter receives his or her absentee ballot from the board of elections in person at the board office, or an alternative site designated by the board for absentee voting, the voter may take the ballot with him or her and return the ballot at a later date. If the absentee voter indicates a desire to return the absentee ballot at a later date, the board of elections shall provide the voter with a return mailing envelope in addition to the identification envelope.

In Person:

21. If a voter receives his or her absentee ballot from the board of elections in person at the board office or at an alternative site designated by the board of elections for absentee voting, the voter may also complete the ballot at the board office or the alternative site.
22. Depending on the particular voting system in place in a county board of elections, a person may vote either on a direct recording electronic voting machine (DRE) or by optical scan ballot. After submitting a properly completed and signed application, the elector may go to a voting compartment to mark the ballot, take the optical scan ballot with him or her to mark and return by the appropriate deadline, or cast his or her ballot on a DRE. If voting by optical scan ballot, the elector shall fold the ballot, place it in the identification envelope provided, seal the identification envelope, fill in and sign the statement thereon under penalty of election falsification, and deliver the envelope to the board of elections. The Secretary of State's office has previously directed boards of elections that allow voters to cast absentee ballots on a DRE to assign a five-digit number to each absentee ballot cast on a DRE. This number serves as the stub number for electronically cast ballots and is used to identify electronically cast ballots that are later challenged.
23. In Secretary of State Directive 2008-91, the Secretary of State has directed all boards of elections using DREs as their primary voting system to provide optical scan ballots with

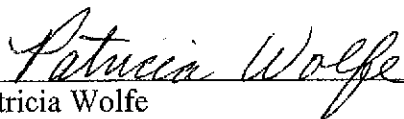
identification envelopes to voters who both register and vote on the same day in person at the board of elections office during the five days in which absentee voting overlaps with voter registration.

Processing and Counting of Absentee Ballots

24. Under Secretary of State Directive 2008-67, boards of elections may begin processing absentee ballots no sooner than ten days prior to Election Day. "Processing" means the handling and examining of absentee ballots and identification envelopes but excludes tabulation or counting of absentee ballots," and the Secretary of State has expressly provided that "[u]nder no circumstances may tabulation of any votes occur before 7:30 p.m. on Election Day." Secretary of State Directive 2008-67.
25. Regardless of whether a board of elections begins "processing" absentee ballots prior to Election Day or on Election Day, all boards must first examine the validity and sufficiency of the absentee ballot identification envelope and ballot prior to counting the ballot.
26. As prescribed by R.C. 3509.06, boards of election first compare the signature of the elector on the identification envelope with the signature on the elector's registration form. The board of elections then verifies that the absentee ballot is eligible to be counted under R.C. 3509.07.
27. R.C. 3509.07 provides the reasons to reject an absentee ballot as insufficient. Those reasons are:
 - The identification envelope is insufficient. (For example, the voter has failed to sign the identification envelope.)
 - The elector has not included with the elector's ballot any of the identification required under Ohio law.
 - The signature of the voter does not correspond with the person's signature on his or her registration.
 - The absentee ballot was not sealed in the identification envelope.
 - The applicant is not a qualified elector of the precinct.
 - The identification envelope contains more than one ballot of any kind, or any voted ballot that the elector is not entitled to vote.
 - Stub A, which contains a unique identifier to identify that ballot, is detached from the absentee ballot.

28. If any absentee ballot is not counted, the board of elections shall endorse on the envelope or ballot "Not Counted" with the reasons the ballot was not counted.
29. If the board of elections determines that the ballot and identification envelope are sufficient, the board will prepare the ballot for scanning, and the ballot should be counted on election night and included in the vote totals for the unofficial canvass. Typically, two board of elections employees from opposite political parties scan absentee ballots. Per Secretary of State Directive 2008-67, scanning may only occur prior to Election Day if the voting system used by the county board of elections allows an absentee ballot to be fed through the ballot scanning device without tabulating or counting the votes scanned on the ballot.
30. Under no circumstances may absentee ballots be counted or tabulated prior to Election Day. No one may disclose the count or any portion of the count of absentee ballots prior to the time of the closing of the polls on Election Day. R.C. 3509.06.
31. If the board does not receive the absentee ballot until after Election Day, it shall examine the sufficiency of the identification envelope and ballot and, if valid, count the ballot in the official canvass.
32. If the election officials examining the absentee ballot identification envelopes and ballots set aside a disputed absentee ballot, due to a challenge or any other reason, the board shall investigate whether the ballot may be counted during the time before the official canvass. If the board determines the ballot shall be counted, the votes shall be included in the totals with the official canvass.

FURTHER AFFIANT SAYETH NAUGHT.

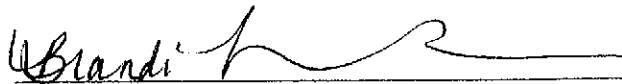


Patricia Wolfe

Sworn and subscribed before me this 25th day of September, 2008.



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



Notary Public