



**J. KENNETH BLACKWELL**  
Ohio Secretary of State

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Directive No. 2006-72  
October 5, 2006

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

In Am. Sub. House Bill 3, the Ohio General Assembly modified the language of R.C. §3505.20 as it relates to election day challenges of a person offering to vote. Under the new provisions of this statute, only election judges will be permitted to make challenges to a voter's qualifications.

One of the statutorily permitted bases for challenges is whether the voter is a citizen of the United States. See R.C. §3505.20(A). The United States District Court for the Northern District of Ohio has issued an Order prohibiting the enforcement of portions of R.C. §3505.20(A). (See attached.)

In light of the Court's decision (a copy of which is attached to this directive) declaring certain provisions of §3505.20(A) unconstitutional and enjoining enforcement of those provisions, for purposes of the general election on November 7, 2006, and in the absence of legislative action to remedy the Court's decision, you are hereby instructed to instruct all judges of elections as follows:

If a person offering to vote is challenged by a judge of elections on the basis of citizenship pursuant to §3505.20, and after the presiding judge has tendered the required oath to the challenged voter, the judge shall put to that person the following question:

Are you a citizen of the United States?

If the person offering to vote answers the question in the affirmative the person shall be entitled to vote a regular ballot.

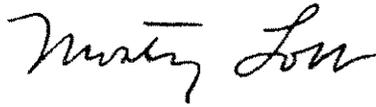
In addition, the attached Notice shall be posted at all polling locations:

**NOTICE**

**The Boards of Election, Election Judges, and pollworkers shall not require any documentary proof of citizenship.**

Please provide your County Prosecuting Attorney with this information and copies of the attachments. If you have any questions regarding this Directive, 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

# **NOTICE**

**THE BOARDS OF ELECTION, ELECTION  
JUDGES AND POLLWORKERS SHALL NOT  
REQUIRE DOCUMENTARY  
PROOF OF CITIZENSHIP.**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

<b>LAURA BOUSTANI, et al.,</b>	)	<b>CASE NO. 1:06CV2065</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE CHRISTOPHER A. BOYKO</b>
	)	
<b>vs.</b>	)	
	)	<b><u>OPINION AND ORDER</u></b>
<b>J. KENNETH BLACKWELL,</b>	)	
	)	
<b>Defendant.</b>	)	

**CHRISTOPHER A. BOYKO, J.:**

This matter comes before the Court upon the Complaint and Motion for Preliminary Injunction filed August 29, 2006 (ECF DKT #1 & ECF DKT #3). A hearing was conducted in open court on October 4, 2006, and the Court orders as follows:

The parties have agreed, and the Court so finds, that a permanent injunction shall issue against Defendant, J. Kenneth Blackwell, as Secretary of State, and all others acting for and on his behalf, enjoining enforcement of the following portions of Ohio Revised Code Section 3505.20(A), as amended by House Bill 3, to-wit: subsections (A)(2), (3), and (4) and the text following immediately thereafter:

“(2) Are you a native or naturalized citizen?

(3) Where were you born?

(4) What official documentation do you possess to prove your citizenship? Please provide that documentation.

If the person offering to vote claims to be a naturalized citizen of the United States, the person shall, before the vote is received, produce for inspection of the judges a certificate of naturalization and declare under oath that the person is the identical person named in the certificate. If the person states under oath that, by reason of the naturalization of the person’s parents or one of them, the person has become a citizen of the United States, and when or where the person’s parents were naturalized, the certificate of naturalization need not be produced. If the person is unable to provide a certificate of naturalization on the day of the election, the judges shall provide to the

person, and the person may vote, a provisional ballot under section 3505.181 of the Revised Code. The provisional ballot shall not be counted unless it is properly completed and the board of elections determines that the voter is properly registered and eligible to vote in the election.”

The parties, by agreement, have expanded the above-referenced language, challenged as unconstitutional, beyond that identified in the original Complaint; and the Court, therefore, amends the pleadings in conformity with that agreement.

In accordance with the agreement of the parties, in light of the approaching General Elections of November 7, 2006, and to effectuate the implementation of this Order, the Secretary of State shall: (1) issue a Directive, which is not inconsistent with this Opinion and Order, to the local boards of election in all counties of the State of Ohio, and (2) shall place, or cause to be placed in each voting location, conspicuous notice in clear, simple language, reciting that naturalized citizens will not be required to provide additional documentation or information before casting their regular ballot.

This Order issues upon this Court’s independent determination that the above-referenced portions of Ohio Revised Code Section 3505.20(A) are unconstitutional. An expanded opinion of the Court’s reasoning in support of this Order shall follow. In light of the above agreement of the parties and the orders of this Court, Plaintiffs’ Motion for Preliminary Injunction is rendered moot.

**IT IS SO ORDERED.**

October 4, 2006  
**Date**

s/Christopher A. Boyko  
**CHRISTOPHER A. BOYKO**  
**United States District Judge**

**§ 3505.20. Challenges.**

Any person offering to vote may be challenged at the polling place by any judge of elections. If the board of elections has ruled on the question presented by a challenge prior to election day, its finding and decision shall be final, and the presiding judge shall be notified in writing. If the board has not ruled, the question shall be determined as set forth in this section. If any person is so challenged as unqualified to vote, the presiding judge shall tender the person the following oath: "You do swear or affirm under penalty of election falsification that you will fully and truly answer all of the following questions put to you concerning your qualifications as an elector at this election."

(A) If the person is challenged as unqualified on the ground that the person is not a citizen, the judges shall put the following questions:

(1) Are you a citizen of the United States?

(2) Are you a native or naturalized citizen?

(3) Where were you born?

(4) What official documentation do you possess to prove your citizenship? Please provide that documentation.

If the person offering to vote claims to be a naturalized citizen of the United States, the person shall, before the vote is received, produce for inspection of the judges a certificate of naturalization and declare under oath that the person is the identical person named in the certificate. If the person states under oath that, by reason of the naturalization of the person's parents or one of them, the person has become a citizen of the United States, and when or where the person's parents were naturalized, the certificate of naturalization need not be produced. If the person is unable to provide a certificate of naturalization on the day of the election, the judges shall provide to the person, and the person may vote, a provisional ballot under section 3505.181 of the Revised Code. The provisional ballot shall not be counted unless it is properly completed and the board of elections determines that the voter is properly registered and eligible to vote in the election.

(B) If the person is challenged as unqualified on the ground that the person has not resided in this state for thirty days immediately preceding the election, the judges shall put the following questions:

(1) Have you resided in this state for thirty days immediately preceding this election? If so, where have you resided?

(2) Did you properly register to vote?

(3) Can you provide some form of identification containing your current mailing address in this precinct? Please provide that identification.

(4) Have you voted or attempted to vote at any other location in this or in any other state at this election?

(5) Have you applied for an absent voter's ballot in any state for this election?