



**Project Vote**

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October 25, 2006

The Honorable J. Kenneth Blackwell  
Secretary of State  
Borden Building  
180 East Broad Street  
Columbus, OH 43215

Dear Secretary Blackwell and Mr. Lobb:

This letter is to express our concern over Directive 2006-75, issued October 13, 2006. In reviewing the directive, we have found that it instructs elections officials to enforce the broad "anti-loitering" statutes R.C. 3501.35 and R.C. 3599.24, but does not clarify or provide guidance to elections officials on the meaning and application of the statutes in order to assist the officials in such enforcement. As organizations engaged in the civic activities of poll-monitoring and exit polling, we respectfully point out that by merely restating the language of the statutes without providing guidelines for their enforcement, the directive may have a chilling effect on lawful activities outside of polling places and possibly lead to the improper arrest of or other action against poll monitors or exit poll workers for merely approaching electors as they come and go from the polls. We ask that you rescind the directive and replace it with a directive that enables and encourages election officials to objectively and fairly enforce Ohio election law.

Directive 2006-75 as it stands does not serve a clear function except to direct the attention of elections officials to the anti-loitering statutes and the officials' duty to enforce them while making no attempt to aid the officials in distinguishing between lawful civic involvement and unlawful activities. The directive does not address the meaning of the key terms within the statutes. What types of actions would constitute "loitering" so as to interfere in the conduct of an election? What types of actions constitute "hindering" or "delaying" an elector on the way to or from the polls? Does one hinder or delay a voter if one offers information on ID requirements or the right to receive a provisional ballot? Is asking an elector to take part in an exit poll as the elector leave the polling place a hindrance or delay punishable by arrest and criminal charges? Consistent with the First Amendment, a principle recognized by the directive itself, neither of these two activities should be considered improper, but the directive fails to offer clear guidance in this area.

Of particular concern is an apparent contradiction in Directive 2006-75 on the issue of exit polling. On the one hand, the directive states that on September 26, 2006 Judge Michael H. Watson, of the United States District Court for the Southern District of Ohio, instructed the Office of the Secretary of State to state the following:

*It would be unlawful, and a violation of the First Amendment to the U.S. Constitution, to interpret, apply, or enforce Ohio's election Loitering Statutes, Rev. Code 3501.30, 3501.35. and 3599.24, to prohibit exit polls within 100 feet of polling places.*

On the other hand the directive instructs officials:

*If a person conducting exit polls is "loitering" or "congregating" within the designated area, or otherwise "hindering" or "delaying" an elector from leaving the polling place, that person could be in violation of one or more of the Statutes.*

This instruction, we respectfully maintain, advises officials that they may indeed do exactly what the District Court prohibits as a violation of the First Amendment: interpret, apply and enforce Ohio election Loitering Statutes to prohibit exit polling within the 100 foot limit.

Directive 2006-75 counsels election officials that "it is their responsibility –in cooperation with local police officers—to enforce these laws." On behalf of citizens who perform an important public service, monitoring the conduct of elections and providing voters with information regarding their rights as voters, we request that you rescind this directive and issue a directive that clarifies and gives guidance to elections officials on the application of the laws, in a manner fully consistent with the First Amendment and the right to vote.

Sincerely,

Teresa James, J.D.  
Project Vote

Sam Gresham  
Acting Executive Director, Common Cause of Ohio

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