

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF OHIO

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4 NORTHEAST OHIO COALITION
5 FOR THE HOMELESS, et al.,
6 Plaintiffs,

7 vs.

CASE NO. C2-06-896

8 JENNIFER BRUNNER, et al.,
9 Defendants.

10 * * *

11 Deposition of MARK OSTER, Witness
12 herein, called by the Plaintiffs for
13 cross-examination pursuant to the Rules of Civil
14 Procedure, taken before me, Leigh Anne Trainer, a
15 Notary Public in and for the State of Ohio, at the
16 offices of Clark County Board of Elections,
17 3130 East Main Street, Springfield, Ohio, on
18 Tuesday, October 21, 2008, at 1:13 o'clock p.m.

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2	BY MS. SESTILE:.....	4
3	BY MR. MCGANN:.....	31
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EXHIBITS

6	(Thereupon, Clark Exhibit Number 1, photocopy	
7	of documents provided by Clark County Board of	
8	Elections, was marked for purposes of	
9	identification.).....	5
10	(Thereupon, Plaintiffs' Exhibit Number 22,	
11	photocopy of Statute 3505.183, was shown to	
12	the witness for purposes of identification)..	10
13	(Thereupon, Clark Exhibit Number 2, photocopy	
14	of a four page document of elections	
15	information, bulletin board Q&A, was marked	
16	for purposes of identification.).....	22

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1 APPEARANCES:

2 On behalf of the Plaintiffs:

3 Porter, Wright, Morris & Arthur

4 By: Lindsay Sestile (telephonic)

Attorney at Law

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6 Dayton, Ohio 45402

7 On behalf of the Defendant Secretary of State:

8 By: Steven McGann (telephonic)

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On behalf of the Intervenor-Defendant State of
11 Ohio:

11

12 By: Robert Eskridge (telephonic)

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On behalf of the Clark County Board of
15 Elections:

15

16 By: Andrew P. Pickering

Assistant Prosecuting Attorney

17 50 East Columbia Street

Springfield, Ohio 45502

18

19 ALSO PRESENT:

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Mary Beth Leep

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1 case?

2 A. Yes. We sent them to you.

3 Q. Right.

4 MS. SESTILE: Madam Court Reporter,
5 do you have in front of you Bates documents?
6 Would you go ahead and mark those please as Clark
7 Exhibit 1?

8 (Thereupon, Clark Exhibit Number 1,
9 photocopy of documents provided by Clark County
10 Board of Elections, was marked for purposes of
11 identification.)

12 BY MS. SESTILE:

13 Q. Mr. Oster, is what is marked as
14 Clark Exhibit 1 what Clark County provided in
15 response to the subpoena issued in this case?

16 A. Okay. I have two documents that
17 we did send and -- three that we did send and
18 two that we did not. We have two here that we
19 did not send and I have three before me that we
20 did send.

21 Q. Could you tell me which ones you
22 did send and which ones you did not send?

23 A. Okay. We sent a one page copy of
24 a directive from Pat Wolfe dated September 5,
25 2008 talking about the guidelines for

1 provisional voters. We sent an eight page
2 document, Directive 2008-81, dated
3 September 5, 2008. That's a directive for the
4 guidelines for provisional voting and we also
5 sent a nineteen page document of the Clark
6 County Board of Elections voting procedures and
7 policies. Those are the three documents we did
8 send.

9 Q. Okay. You mentioned two you did
10 not send.

11 A. Yes. Give me a second here. I'm
12 looking to see exactly what they are.

13 Q. Okay.

14 A. This looks like a four page
15 document. It says it's elections information
16 from the bulletin board, Q&A for provisional
17 ballots.

18 Q. That is something we provided to
19 the court reporter that we're going to ask you
20 about today. We don't want that marked as part
21 of this exhibit. If we can fix that now and
22 then the same goes for probably the other thing
23 that you have. Is that the statute?

24 A. Yes.

25 Q. Yeah.

1 MS. SESTILE: We don't want that
2 marked as part of this exhibit either. Madam
3 Court Reporter, if you can fix that as well.

4 BY MS. SESTILE:

5 Q. Mr. Oster, taking out those two
6 documents that we were just talking about,
7 looking at what's been labeled Clark Bates
8 Numbers CLA-00001 through CLA-00028, is that a
9 true and accurate copy of what you produced --
10 what Clark County produced to us in response to
11 the subpoena in this case?

12 A. Yeah. CLA-00001, 2 and 10.

13 Q. 2 and 10? I'm sorry.

14 A. Yes.

15 Q. But it's CLA-00001 through
16 CLA-00028; is that right?

17 A. That's correct.

18 Q. And that's a true and accurate
19 copy of what you produced in this case?

20 A. That's correct.

21 Q. Thank you. Mr. Oster, what is a
22 provisional ballot?

23 A. A ballot that is cast by a voter
24 that doesn't have several things that they need
25 to have, like a proper ID, maybe a change of

1 address.

2 Q. When you say a proper ID, what do
3 you mean?

4 A. A valid photo ID issued by the
5 State of Ohio, either a driver's license or a
6 voter identification card, possibly they could
7 use a military ID that's current and valid, a
8 copy of a current utility bill that's in their
9 name, and that includes a cell phone bill or
10 utilities, gas, electric, a pay stub -- current
11 pay stub or any other government-issued
12 document.

13 Q. Earlier when you said a change of
14 address, what did you mean by that?

15 A. If somebody is not -- when they
16 come to vote, if they are not in our poll book
17 at the current address that we have listed,
18 they have to be a provisional voter.

19 Q. In Clark County is there a policy
20 regarding the process the Board undertakes to
21 verify the voter's ID and qualifications when
22 they cast a provisional vote?

23 A. Yeah. We have a voting procedures
24 policy that is part of our information we
25 passed on to you.

1 Q. Okay. Have you ever -- and the
2 document CLA-00010 is the beginning Bates
3 number of that; is that right?

4 A. Yes.

5 Q. Did you hear me?

6 A. I answered, yes.

7 Q. Okay. Sorry. If at any point
8 during this deposition you feel like there's a
9 long lapse between questions, it probably means
10 that either you guys or we missed one of your
11 responses, so we'll try to do our best to make
12 sure that doesn't happen and if you could too,
13 that would be appreciated.

14 A. Okay.

15 Q. Aside from this document entitled
16 Clark County Board of Elections voting
17 procedures/policies, are there any other
18 policies or procedures the Clark County Board
19 relies on in deciding whether or not to count
20 provisional ballots?

21 A. The directive that is issued that
22 we gave you a copy of, Directive 2008-81, dated
23 September 5, 2008 from the Secretary of State's
24 office.

25 Q. Aside from these two things, is

1 there anything else that the Board relies on?

2 A. No.

3 MS. SESTILE: Madam Court Reporter,
4 if you could go ahead and hand the witness
5 Plaintiffs' Exhibit 22.

6 (Thereupon, Plaintiffs' Exhibit
7 Number 22, photocopy of Statute 3505.183, was
8 shown to the witness for purposes of
9 identification.)

10 BY MS. SESTILE:

11 Q. Mr. Oster, have you ever seen this
12 document or a document like it before?

13 A. Yes. It's part of the Ohio
14 Revised Code.

15 Q. And does the Clark County Board
16 of Elections rely on this statute,
17 Statute 3505.183, in determining whether or not
18 to count provisional ballots cast?

19 A. We don't -- I mean, we don't
20 directly refer to it. Basically, we get our
21 direction from the Secretary of State on their
22 directives.

23 Q. Does anyone from your Board ever
24 review this statute in deciding whether or not
25 a provisional ballot cast should be counted?

1 MR. MCGANN: Objection.

2 THE WITNESS: Can you repeat the
3 question?

4 MS. SESTILE: Madam Court Reporter,
5 could you read it back?

6 (Record read.)

7 THE WITNESS: No.

8 BY MS. SESTILE:

9 Q. So aside from the Clark County
10 Board of Elections voting procedures/policies
11 and Directive 2008-81, is there any other
12 authority that the Clark County Board looks to
13 in deciding whether or not to count a
14 provisional ballot?

15 A. No.

16 Q. Mr. Oster, do you know if -- do
17 you know who created the Clark County Board of
18 Elections voting procedures/policies document?

19 A. Yes.

20 Q. Who?

21 A. Well, Mary Beth Leep and I did
22 together.

23 Q. When did you create this document?

24 A. I believe it was in August.

25 Q. Of 2008?

1 A. Yes.

2 Q. Before August of 2008, did Clark
3 County have anything it relied on?

4 MR. MCGANN: Objection.

5 THE WITNESS: No, other than anything
6 from the Secretary of State's office, we did not.

7 BY MS. SESTILE:

8 Q. Okay. Why did you decide to
9 create this document?

10 A. Well, the Secretary of State -- we
11 went to a class in Columbus and they stressed
12 that we should have policies in place regarding
13 most of our -- just about all of our voting
14 procedures, so we sat down and went through
15 some of the directives and this is what we came
16 up with.

17 Q. Did you refer to Ohio Revised Code
18 Statute 3505.183 in preparing this document?

19 A. We did not.

20 Q. Mr. Oster, have you ever asked
21 anyone from the Secretary of State's office to
22 review the Clark County Board of Elections
23 voting procedures document?

24 A. I don't believe so, but we did
25 have our legal counsel look at it.

1 Q. And is that Mr. Pickering?

2 A. That would be, yes.

3 Q. Did you have anyone else look at
4 this document?

5 A. The Board reviewed it before they
6 voted to approve it.

7 Q. But, to your knowledge, no one
8 from the Secretary of State's office has
9 reviewed it?

10 MR. MCGANN: Objection.

11 THE WITNESS: Not to my knowledge.

12 BY MS. SESTILE:

13 Q. Mr. Oster, I want to talk to you a
14 little bit about specific issues that might
15 arise in the 2008 election with provisional
16 ballots to know how Clark County will treat
17 those issues.

18 MR. MCGANN: Just for the record, I
19 would like to have a standing objection to the
20 hypotheticals that you are about to ask. Is that
21 okay, Lindsay?

22 MS. SESTILE: That's fine.

23 BY MS. SESTILE:

24 Q. If on a provisional ballot the
25 voter did not provide the date of birth, will

1 the ballot still be counted? Mr. Oster, did
2 you answer that?

3 A. Not yet. Hang on one minute. We
4 would count it without the birth date on there.

5 Q. If a birth date is included on a
6 provisional ballot, do you have a way to check
7 that birth date?

8 A. Through our records, yes.

9 Q. What records are those?

10 A. Our voter records on our database.

11 Q. Which database is that?

12 A. EVIS database.

13 Q. Is that a statewide database, to
14 your understanding?

15 A. It's interconnected with the
16 State.

17 Q. What information does that have
18 about voters?

19 A. Name, address, date of birth. It
20 could have their voter history, their driver's
21 license number, the last four digits of their
22 Social Security number, precinct information,
23 where they vote.

24 Q. Is that all?

25 A. No. I think there's some other

1 things. I'm looking here at our system. Also,
2 absentee information, if they've been sent a
3 ballot. Previous addresses, previous names, if
4 they were election workers, and it has county
5 ID for this county and an SOS ID also -- their
6 Ohio SOS ID through the Secretary of State's
7 system.

8 Q. Okay. Is that all?

9 A. Their status. It also has their
10 status.

11 Q. Okay. Thank you. What about if
12 the voter provides a date of birth on the
13 provisional ballot that doesn't match up with
14 what's in your system, what would you do?

15 A. We would check the registration to
16 make sure it was the right person because
17 sometimes you could have a father and son and
18 it would be possible that the birth dates
19 wouldn't exactly match. We also check the
20 signature. We also have the signatures on
21 record too.

22 Q. Do you review signatures?

23 A. Yes.

24 Q. Does anyone else in your office
25 review signatures?

1 A. You know, everybody has access to
2 it here at the office.

3 Q. I guess a better way to ask it is:
4 Whose responsibility is it to review signatures
5 on provisional ballots?

6 A. The person that's doing the
7 absentee check and the provisional people, they
8 check it. You know, when we get the
9 provisional envelopes, we double-check it and
10 make sure that everything matches through our
11 system with what they've recorded on their
12 envelope.

13 Q. Are you and the deputy director
14 two of the people who would do that signature
15 match?

16 A. We don't. The clerks do.

17 Q. Is there ever an instance in which
18 you would?

19 A. It's possible, yes.

20 Q. Have you ever done it before?

21 A. We have.

22 Q. And how do you -- and by you I
23 mean you and the Board of Elections -- how do
24 you determine if a signature matches?

25 A. Well, we just -- we just key on

1 the signature. I mean, a lot of times people's
2 signatures do change over time. We'll check
3 basically the capital letters, how they make
4 say an S, you know, in their signature.
5 There's a lot of things that we can check.
6 We're not handwriting experts, but most of the
7 people do have a signature that matches our
8 record.

9 Q. Okay. You said you would check
10 capital letters and an S; is that right?

11 A. As an example, yes.

12 Q. Are there other things that you
13 typically check?

14 A. Not really. I mean, at the end of
15 their name, like if they make a big loop or
16 something special, I mean, it shows up; but,
17 again, I'm not a handwriting expert and nobody
18 working in this office is.

19 Q. Sure. I understand. What about
20 if the voter or the poll worker doesn't provide
21 the reason for voting provisionally, will the
22 ballot still be counted?

23 A. Yes.

24 Q. Before counting provisional
25 ballots, do you check to see if the voter has

1 already voted?

2 A. Yes.

3 Q. What do you check?

4 A. We check it on our system to make
5 sure that they didn't already -- once they're
6 issued a ballot, whether it's walk-in voting,
7 absentee, or mail-out, it's recorded in our
8 system.

9 Q. Is that the same database we were
10 talking about before?

11 A. Yes.

12 Q. What about citizenship, do you
13 check citizenship before counting a provisional
14 ballot?

15 A. No.

16 Q. Why not?

17 A. The registration that they sign
18 verifies that they are a U.S. citizen and we
19 don't really have access to a hundred thousand
20 people on whether they are registered as
21 citizens or not.

22 Q. In deciding whether or not to
23 count a provisional ballot, do you look at
24 whether the poll worker signed the ballot?

25 MR. MCGANN: Objection.

1 THE WITNESS: Are you saying -- let
2 me clarify. Are you saying that they have to
3 sign -- we make sure that they sign the envelope
4 that they put the ballot in.

5 BY MS. SESTILE:

6 Q. Yes, do you check to make sure
7 that the poll worker signed the envelope of the
8 ballot?

9 A. Yes.

10 Q. And if the poll worker did not
11 sign that, what happens?

12 A. We count it.

13 Q. Do you automatically count it or
14 is there some analysis done?

15 A. Well, I'm not exactly sure what
16 you mean by analysis.

17 Q. This is probably a better way to
18 ask it: If the poll worker did not sign the
19 envelope, does that for the Board raise any red
20 flags where you would need to do more research
21 to decide whether or not to count it as a
22 provisional ballot?

23 A. No.

24 Q. Do you look at any identification
25 provided in addition to a Social Security

1 number?

2 A. Can you repeat that? You cut out
3 there for a second.

4 Q. Sure. Do you look at ID
5 provided -- and by ID I mean in addition to a
6 Social Security number?

7 A. We record it if they show it.

8 Q. Does everyone who votes
9 provisional ballot have to provide ID?

10 A. No.

11 Q. What do they have to provide?

12 A. Starting off with the last four
13 digits of Social Security number. That's what
14 we ask for up front.

15 Q. What if they can't provide the
16 last four digits of their Social Security
17 number?

18 A. Then there are other things, like
19 utility bills, driver's license, state ID, and
20 so forth.

21 Q. Do you look to see that the
22 address listed matches what's on the
23 registration card?

24 A. The address on the envelope you're
25 talking about?

1 Q. Yes. If an address is provided on
2 the envelope, do you look to see if that
3 matches the registration card?

4 A. Yes.

5 Q. What if it does not?

6 A. We double-check to make sure they
7 were in the right precinct. They could have
8 moved within the precinct.

9 Q. So if someone's address is still
10 in the same precinct but it's different than
11 what's on the registration card, what do you
12 do?

13 A. We would count their vote.

14 Q. And if it's different -- if it's
15 in a different precinct, what do you do?

16 A. If they vote in the wrong
17 precinct, it's not counted.

18 Q. Do you let the voter know that
19 they voted in the wrong precinct?

20 A. Not per se. They can call in --
21 we give them a number and they can verify
22 whether the vote was counted or not.

23 Q. Okay.

24 MS. SESTILE: Madam Court Reporter,
25 can you please mark the four page exhibit that's

1 Bates MIA-00043 through 46 as Clark Exhibit 2?

2 (Thereupon, Clark Exhibit Number 2,
3 photocopy of a four page document of elections
4 information, bulletin board Q&A, was marked for
5 purposes of identification.)

6 BY MS. SESTILE:

7 Q. Mr. Oster, have you ever seen
8 what's been marked as Clark Exhibit 2 before?

9 A. Not specifically this one. From
10 time to time we do check the bulletin board. I
11 assume that's what this came off of, the
12 Secretary of State's site, but I cannot testify
13 that I specifically saw this one.

14 Q. Okay. If you wouldn't mind
15 turning to the second page of that exhibit,
16 MIA-00044, the second question on that page
17 begins with: Our BOE office stapled a voter
18 registration form, et cetera, et cetera. Do
19 you see that?

20 A. Yes.

21 Q. I would like you to please focus
22 your attention on the second paragraph under
23 that question, the last portion of that
24 paragraph, which I'll read into the record,
25 says: If, based on the information provided by

1 the voter, the BOE can verify the voter's
2 identity and qualifications, the BOE may count
3 the provisional vote. The process the BOE uses
4 to verify the voter's ID and qualifications is
5 up to the Board and there should be a policy in
6 place regarding this. Do you see that?

7 A. I see it, yes.

8 Q. You testified that you don't
9 believe you've ever seen this document before,
10 but have you ever seen a similar statement from
11 the Secretary of State?

12 MR. MCGANN: Objection.

13 THE WITNESS: I'm sure -- yeah. I
14 would say that I'm sure that it's in our training
15 from time to time through the Secretary of State's
16 office.

17 BY MS. SESTILE:

18 Q. I know earlier you talked about
19 training you had this summer, training that
20 prompted you to create the Clark County
21 policies; is that right?

22 A. Yes.

23 Q. So was this same sort of statement
24 given to you in that training?

25 MR. MCGANN: Objection.

1 THE WITNESS: I really can't say for
2 sure. I've got to be honest. I don't know for
3 sure.

4 BY MS. SESTILE:

5 Q. Do you remember what they told you
6 in the training?

7 A. We were over there for three days.

8 Q. Do you remember what they told you
9 about provisional ballots or creating a policy
10 with respect to verifying voter identity and
11 qualifications?

12 MR. MCGANN: Objection.

13 THE WITNESS: I believe they told us
14 that they were going to be sending out several
15 directives on how to handle provisionals.

16 BY MS. SESTILE:

17 Q. Did they tell you anything else?

18 MR. MCGANN: Objection.

19 THE WITNESS: Not that I can recall.

20 BY MS. SESTILE:

21 Q. Did you receive several directives
22 based on -- did you receive several directives
23 on provisional ballots?

24 A. I'm aware that we received the one
25 that you have a copy of, the eight page one.

1 Q. Mr. Oster, if you wouldn't mind
2 turning please to page CLA-00025 in what was
3 previously marked as Clark Exhibit 1, it's the
4 Clark County voting procedures and policies.

5 A. Okay.

6 Q. The top portion of that page deals
7 with provisional voting; is that right?

8 A. That's correct.

9 Q. And under general information, did
10 you draft this paragraph?

11 A. I believe we took that language
12 out of the director's handbook.

13 Q. The director's handbook, what's
14 that?

15 A. Hang on one second. I have it
16 here. It's the Election Officials Manual for
17 Ohio County Boards of Election. It comes from
18 the Secretary of State's office.

19 Q. Is there a date on that?

20 A. I wrote 2008 on it because that's
21 when we got it, so I'm not sure if -- I don't
22 really see a date date, no.

23 Q. Mr. Oster, could we ask for a copy
24 of that document? We don't need it right at
25 this second or anything. I don't know how

1 voluminous it is, but we would like to see a
2 copy of that when you can.

3 A. Okay. You want the whole thing?

4 Q. Actually, just the portion that
5 relates to provisional voting.

6 A. Okay.

7 Q. I'm sorry. Is it your belief that
8 you took the language out of that and that is
9 what became Section 1, general information,
10 under the provisional voting title in the Clark
11 County voting procedures and policies?

12 MR. MCGANN: Objection.

13 THE WITNESS: Yeah, that's where we
14 got it.

15 BY MS. SESTILE:

16 Q. Okay. In that first paragraph
17 entitled general information in the Clark
18 County Board of Elections voting procedures
19 provisional voting section, is that what you
20 rely on when determining whether or not to
21 count provisional ballots?

22 MR. MCGANN: Objection.

23 THE WITNESS: Yes.

24 BY MS. SESTILE:

25 Q. If you'll look at the next page of

1 this document, which is Bates labeled

2 CLA-00026 --

3 A. Okay.

4 Q. -- the top paragraph there ends
5 with a sentence that's in all caps. It says:
6 Provisional voter envelopes that are missing ID
7 information or an affirmation statement will
8 not be counted. Do you see that?

9 A. Yes.

10 Q. And what does that mean to you?

11 MR. MCGANN: Objection.

12 THE WITNESS: Basically, that they
13 provided no ID.

14 BY MS. SESTILE:

15 Q. When you say ID, do you include
16 Social Security numbers?

17 A. Yes.

18 Q. And also documents with current
19 address -- certain documents with current
20 address?

21 A. Yes.

22 Q. Anything else?

23 A. Well, a driver's license or a
24 utility bill. It has to be current.

25 Q. Sure.

1 A. That's probably it.

2 Q. All right. I have a couple more
3 questions and I'll be done with you, Mr. Oster,
4 at least for now. With specific respect to
5 homeless voters in your county, could a
6 homeless person use, for example, a park bench
7 as their address when voting?

8 A. I guess, yes.

9 Q. How would Clark County treat that?

10 MR. MCGANN: Objection.

11 THE WITNESS: Well, they would have
12 to provide some sort of address. They would have
13 to be registered in our system.

14 MR. MCGANN: My objection is based on
15 form, foundation, and hypothetical. Thank you.

16 BY MS. SESTILE:

17 Q. Mr. Oster, if a homeless person
18 were registered and then voted a provisional
19 ballot providing as an address a park bench,
20 for example, would you count that provisional
21 ballot?

22 MR. MCGANN: Same objection.

23 THE WITNESS: If it was a matching
24 address -- I mean, it couldn't just say park bench
25 on it. It would have to match our records.

1 BY MS. SESTILE:

2 Q. How do you verify if someone does
3 something like that?

4 MR. MCGANN: Same objection.

5 THE WITNESS: Well, they verify that
6 they're giving us the correct information when
7 they sign that registration card under the penalty
8 of law.

9 BY MS. SESTILE:

10 Q. Okay. Does Clark County do
11 anything independent of that to verify
12 addresses?

13 A. We send them an acknowledgment
14 card to the address that they provided us.

15 Q. What's an acknowledgment card?

16 A. It's basically a postcard that
17 says that they have registered with us at this
18 address, this name, and it's delivered to the
19 address that they gave us.

20 Q. Do you do anything else?

21 A. If it comes back, then they are
22 flagged in our system.

23 Q. What happens if they are flagged
24 in the system?

25 A. We send a confirmation card to

1 that address -- that person's name and to that
2 address again.

3 Q. Then what happens if it comes back
4 again, for example?

5 A. If it comes back, then they are
6 made a provisional voter on our system.

7 Q. Automatically?

8 A. Yes.

9 Q. So what would someone have to do
10 to vote a regular ballot if they were in that
11 situation?

12 MR. MCGANN: Same objection as
13 earlier, form, foundation, and hypothetical.

14 THE WITNESS: Repeat the question.

15 BY MS. SESTILE:

16 Q. Sure. If someone were in that
17 position, that they were flagged in the system
18 as having to vote a provisional ballot, how
19 would they or could they vote a regular ballot
20 after that?

21 A. They couldn't.

22 Q. What would they have to do to ever
23 be able to vote a regular ballot again?

24 MR. MCGANN: Objection.

25 THE WITNESS: Once they went through

1 the voting system on election day, if they filled
2 out a provisional and everything checked out, then
3 they would be put back to their previous status.

4 MS. SESTILE: Thank you, Mr. Oster.
5 I think that's all I have for right now. I'm sure
6 Mr. McGann has some questions for you too.

7 CROSS-EXAMINATION

8 BY MR. MCGANN:

9 Q. Mr. Oster, good afternoon. I'm
10 Steve McGann. I'm with the Ohio Attorney
11 General's office. I'm here today representing
12 the Secretary of State's office, okay?

13 A. Okay.

14 Q. I have a couple of questions for
15 you as well. You were shown Exhibit 22, which
16 is Ohio Revised Code 3505.183. Do you recall
17 that?

18 A. Okay.

19 Q. I believe your testimony -- and
20 correct me if I'm wrong -- I'm not trying to
21 put words in your mouth -- was something along
22 the lines that you don't look at the statute
23 when you're dealing with provisional ballots?

24 A. As a general rule, no. We go by
25 the Secretary of State's guidelines.

1 Q. Is it fair to say that if you have
2 a legal question, that you would present it to
3 your attorney or something?

4 A. Absolutely.

5 Q. It might be reviewed by them, but
6 you don't know, but it might be reviewed by
7 someone with a legal mind --

8 A. Yes.

9 Q. -- that can come up with a legal
10 conclusion?

11 A. Yes.

12 Q. Okay. Thank you. And you
13 mentioned that you have Directive 2008-81 from
14 the Secretary of State's office?

15 A. Yes.

16 Q. You reviewed that as well; right?

17 A. Yes.

18 Q. Do you feel you understand it?

19 A. Yes.

20 Q. And what if you didn't understand
21 it, would you -- what would you do in that
22 scenario?

23 A. I would probably call the
24 Secretary of State's office.

25 Q. Okay. You are in Clark County; is

1 that right?

2 A. Yes.

3 Q. How many precincts do you have in
4 Clark County?

5 A. One hundred.

6 Q. How many poll workers do you have
7 for the 2008 election?

8 A. For this election we're going to
9 have six hundred.

10 Q. Is that divvied up evenly between
11 the precincts?

12 A. Yes.

13 Q. What about multi-precinct polling
14 locations, do you have any of those?

15 A. Yes.

16 Q. Do you know offhand how many you
17 have or approximately?

18 A. I think there's twenty-five,
19 twenty-six that are combined.

20 Q. Okay. Now, with regard to your
21 poll workers, do you provide -- have you
22 provided or will you provide training to your
23 poll workers for the 2008 election?

24 A. Yes, we do.

25 Q. You do, okay. Have you provided

1 that as you sit here today?

2 A. Actually, we just had one this
3 morning. We're still in the process.

4 Q. Okay. Can you describe to me your
5 process?

6 A. Okay. Actually, we're training
7 everybody who's working at the polls this time,
8 okay? We have scheduled classes for between
9 fifty people and fifty-five people for each
10 class. They are held at various times for
11 people's schedules, so they can come in.

12 We start with the basic setup of
13 the equipment. We go over all aspects of the
14 training. We also do a short presentation on
15 absentee voting, on provisionals, you know, all
16 aspects of the training. We also do mock
17 elections where we have people from the
18 audience come up and act like they are working
19 at the polls and we go through several
20 scenarios.

21 Q. Does that include provisional
22 ballots?

23 A. It does. That's basically it. We
24 cover all aspects. It's about a three hour
25 class.

1 Q. And do you provide documents,
2 manuals to the poll workers?

3 A. Yes, we do.

4 Q. You said you were going to train
5 everyone. Are there other people you are
6 training besides poll workers?

7 A. No.

8 Q. Okay. Have you been -- has Clark
9 County received any provisional ballots for the
10 '08 election as you sit here today?

11 A. Yes.

12 Q. Do you know how many?

13 A. Not right offhand. We've been
14 voting since September 30th here in the office
15 and we have gotten a number of provisionals.

16 Q. Okay. I'm just reviewing my notes
17 here. Give me a second, please. You were
18 talking earlier about -- I think there was a
19 scenario about how you would verify an address
20 provided -- I think it was for a provisional
21 ballot -- and you said you would send an
22 acknowledgment card to the address provided;
23 correct?

24 A. No.

25 Q. Okay. I'm sorry. Could you

1 clarify that for me? When do you send the
2 acknowledgment card to the address provided?

3 A. Once they register. When we have
4 a new registration and it's put in our system,
5 we automatically generate an acknowledgment
6 card to that person under that name and at the
7 address that they've given us.

8 Q. Okay. And you said it's flagged
9 when it comes back. You mean if it comes back
10 nondelivered?

11 A. Yes, if it does. Most of them get
12 to the right place; but if there's a problem
13 for whatever reason and it comes back, then we
14 send them a confirmation card to that address.

15 Q. Then you attempt it again and if
16 it comes back again as nondeliverable, that's
17 when you make them provisional?

18 A. Yes.

19 Q. Okay. Now, everyone who votes in
20 Clark County has to be registered; is that
21 right?

22 A. That's correct.

23 Q. You check that; correct?

24 A. Yes.

25 Q. You check that for provisional

1 ballots as well; correct?

2 A. Yes.

3 Q. Okay. And with provisional
4 ballots, if you have someone registered and
5 they provide nothing -- they're at the polls
6 and they provide no form of identification,
7 does that provisional ballot go back to the
8 Board office and they wait ten days for
9 additional verification from that voter?

10 A. That's correct.

11 Q. Some sort of identification?

12 A. Yes.

13 Q. Okay. Let's say that they signed
14 their provisional ballot. Do you still wait
15 for additional identification?

16 A. Yes.

17 Q. If they don't send anything and
18 you have the signature -- just the signature
19 without any other form of identification, do
20 you count that vote?

21 A. No.

22 Q. Can you tell me why?

23 A. Well, identification is required.

24 Q. Required by what?

25 A. Per the directive.

1 Q. Okay. Is that the Secretary of
2 State's directive?

3 A. That's correct.

4 Q. Let me ask you this: If you had a
5 homeless individual who voted on provisional
6 ballot in the scenario I just gave you, okay --
7 they provide no identification, okay --

8 A. Yes.

9 Q. -- and you have a Court order that
10 says homeless voters are not required to
11 present any type of identification, okay, would
12 you have any other way to verify and identify
13 that voter?

14 A. No. We would have to follow the
15 Court order, I'm sure.

16 MR. MCGANN: Thank you very much. I
17 have nothing further.

18 MS. SESTILE: Rob, do you have
19 anything?

20 MR. ESKRIDGE: No, I have nothing.

21 MS. SESTILE: I have a couple
22 follow-up questions for you, Mr. Oster, if that's
23 all right --

24 THE WITNESS: Okay.

25 MS. SESTILE: -- actually, even if

1 it's not.

2 FURTHER CROSS-EXAMINATION

3 BY MS. SESTILE:

4 Q. Earlier you mentioned that if you
5 had a question about a provisional ballot, you
6 might ask your attorney, Mr. Pickering, about
7 it; is that right?

8 A. No. Actually, we'd probably ask
9 the Secretary of State's office for
10 clarification.

11 Q. Okay. Let me back up actually.
12 Who ultimately decides in Clark County whether
13 or not to count a provisional ballot?

14 A. The deputy director and myself.

15 Q. Do you refer to the Board at all?

16 A. We follow the procedures that the
17 Board voted on and approved.

18 Q. Okay. But you don't -- for
19 example, you don't involve the Board in each
20 provisional ballot that you're deciding to
21 count or --

22 A. No, we don't.

23 Q. So you're saying that if you had a
24 question, you would call the Secretary of
25 State?

1 A. Yes.

2 Q. Have you ever done that?

3 A. Not with provisionals, no.

4 Q. Have you ever asked your attorney
5 for advice about whether or not to count a
6 provisional ballot?

7 A. No.

8 Q. Are poll workers at all involved
9 in the decision to count or reject provisional
10 ballots?

11 A. No. They just collect the
12 information.

13 Q. And, finally, if a homeless person
14 were able to provide a poll worker with, for
15 example, a letter of indigency from the State,
16 would that in your mind provide a form of
17 identification that would suffice under the
18 provisional ballot rules?

19 MR. MCGANN: Objection. Form,
20 hypothetical.

21 THE WITNESS: To be quite honest, I'm
22 not familiar that that's ever happened. I guess
23 that would be a government document.

24 BY MS. SESTILE:

25 Q. If it were a document emanating

1 from the government, would that in your mind be
2 a sufficient identification?

3 MR. MCGANN: Same objection.

4 THE WITNESS: We would have to --
5 quite honestly, I'm not sure.

6 BY MS. SESTILE:

7 Q. Okay. That's good enough for me.

8 MS. SESTILE: I don't have any
9 further questions for you, Mr. Oster.

10 (Thereupon, the deposition was
11 concluded at 2:03 o'clock p.m.)

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1 STATE OF OHIO)

2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Leigh Anne Trainer, a Notary
4 Public within and for the State of Ohio, duly
5 commissioned and qualified,

6 DO HEREBY CERTIFY that the
7 above-named MARK OSTER, was by me first duly sworn
8 to testify the truth, the whole truth and
9 nothing but the truth.

10 Said testimony was reduced to
11 writing by me stenographically in the presence
12 of the witness and thereafter reduced to
13 typewriting.

14 I FURTHER CERTIFY that I am not a
15 relative or Attorney of either party, in any
16 manner interested in the event of this action,
17 nor am I, or the court reporting firm with which
18 I am affiliated, under a contract as defined in
19 Civil Rule 28(D).

20

21

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25

1 IN WITNESS WHEREOF, I have hereunto set
 2 my hand and seal of office at Dayton, Ohio, on
 3 this _ _ _ _ day of _ _ _ _ _ _ _ _ , 2008.

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 LEIGH ANNE TRAINER
 NOTARY PUBLIC, STATE OF OHIO
 My commission expires 5-7-2012

Clark County Bd of Elections

From: Wolfe, Pat [pwolfe@sos.state.oh.us]
Sent: Friday, September 05, 2008 2:21 PM
To: All Counties; BOE Contacts
Cc: Elections; Elections Attorneys; Field Staff
Subject: Directives 2008-80 , Directive 2008-81 , and Directive 2008-82



Dir 2008-80 Voter
ID Requireme...



Dir 2008-81
Guidelines For Pro...



Dir 2008-82
Guidelines for Abs...

Dear Directors, Deputy Directors and Members:

In a continued effort to provide clarity and uniformity in the election process, these three directives are being issued which supersede sections of previously issued Directive 2007-06:

Directive 2008-80 (Voter Identification Requirements) - provides instructions on voting ID requirements and supersedes Section I of Directive 2007-06.

Directive 2008-81 (Guidelines for Provisional Voting) - provides the requirements for provisional voting in Ohio and supersedes Section III of Directive 2007-06.

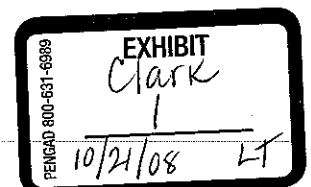
Directive 2008-82 (Guidelines for Absentee Voting) - which is intended to clarify Ohio's absentee voting law and supersedes Section II of Directive 2007-06.

If you have any questions regarding any of the above directives, please contact your county's assigned elections counsel at 614-466-2585 or via email.

Since <<Dir 2008-80 Voter ID Requirements.pdf>> re <<Dir 2008-81 Guidelines For Provisional Voting.pdf>> ly, <<Dir 2008-82 Guidelines for Absentee Voting.pdf>>

Patricia A. Wolfe
 Elections Administrator
 P. O. Box 2828
 Columbus, OH 43216
 Phone 614-466-2585
 Fax 614-752-4360

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JENNIFER BRUNNER
OHIO SECRETARY OF STATE

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 COLUMBUS, OHIO 43215 USA
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 WWW.SOS.STATE.OH.US

DIRECTIVE 2008-81

September 5, 2008

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

RE: Guidelines for Provisional Voting

This directive supersedes Section III appearing on page 9 of Directive 2007-06. This directive is intended to clarify Ohio's provisional voting requirements as applied by Ohio's boards of elections, Ohio election officials and poll workers in Ohio.

During the 2006 general election, 21% of all provisional ballots cast throughout Ohio were rejected (23,062 out of 106,212). While the percentage of Ohio voters having to cast provisional ballots has decreased, as has the percentage of voters whose provisional ballots have been rejected, reducing the number of provisional voters will aid enfranchisement for all electors. Prior to Directive 2007-06, many instructions or the lack thereof erred in favor of having a voter cast a provisional ballot, when not at all times was this necessary. Ohio's requirements for processing provisional ballots require the expenditures of both voter and poll worker time on Election Day and can add to the length of time it takes to vote, slowing down the process for other voters as well. Unnecessary provisional ballots increase the administrative time and effort for boards of elections after Election Day and increase the anxiety for voters who are uncertain whether their vote counted.

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.

CONTINUING PROHIBITION AGAINST PROVISIONAL VOTING ON DRE'S

No person, other than a person eligible to vote on a DRE because of a disability, may vote a provisional ballot on a DRE machine. Voting provisional ballots on DRE machines has been prohibited since May 9, 2007, and that prohibition remains in place. All provisional ballots must be cast on paper optical scan ballots regardless of the type of voting machine or method used for regular voting.



This prohibition is based on the difficulty of conducting recounts using VVPATs containing provisional ballots (as evidenced by the procedures set forth in prior Directive 2006-05) and based on the risks to the secrecy of the ballot created by those procedures and VVPAT technology (resulting in failure to randomize first voted ballots).

GENERAL RULES FOR PROVISIONAL VOTING

Ensure Voters are in the Correct Precinct or Location

Generally speaking, on any given Election Day Ohioans must cast their ballots, whether regular or provisional, at their assigned precinct polling locations. More specifically, federal law, Ohio law and federal case law provide that boards of elections cannot count provisional ballots cast in a precinct to which the voter has not been assigned, in a precinct that is not assigned to the voter's current residence address or at a board of elections office on Election Day, unless the law allows for the voter to cast a provisional ballot there.

The single most common reason provisional ballots cast in Ohio are rejected by boards of elections is that the voter cast the provisional ballot at an incorrect location. During the 2006 general election, 46% (10,610) of the provisional ballots rejected statewide were rejected for being cast in an incorrect precinct.

For this reason, before any poll worker or election official offers a voter a provisional ballot, that poll worker or election official must first seek to ensure that the voter is in his or her correct precinct or voting location based on the voter's situation calling for voting a provisional ballot and the voter's current residence address. Poll workers or election officials assisting voters with provisional ballots must verify what are the voters' correct precincts or voting locations by referring to a "precinct voting location guide." Every board of elections must ensure that its office and every precinct in every polling location in the county are equipped with a precinct voting location guide, pursuant to R.C. 3505.181(C) and (E).

If the voter is not in the correct precinct, the poll worker is required to determine the correct precinct for the voter based on the current residence address provided, AND must advise the voter of both of the following:

- that the voter is in an incorrect precinct; and
- the location of that voter's correct polling location and precinct, as determined by referring to the precinct voting location guide and/or in consultation with the county board of elections, if appropriate.

If the voter clearly indicates to the election official that the voter still desires to vote in that precinct, the election official must notify the voter of both of the following:

- The voter has the right to cast a *provisional* ballot at that precinct; AND
- That, according to law, all provisional ballots cast at an incorrect precinct *shall not* be counted.

TIME FRAME AND LOCATIONS FOR PROVISIONAL VOTING**Before Election Day**

For any election other than a presidential primary election, provisional voting begins twenty-eight (28) days before the election. R.C. 3503.16(B), (C). For presidential primary elections, provisional voting begins twenty-five (25) days before the election.

Any voter needing to vote a provisional ballot may do so by appearing "at anytime during regular business hours on or after the twenty-eighth day prior to the election in which that registered elector wishes to vote . . . through noon of the Saturday prior to the election at the office of the board of elections," or "at any time during regular business hours on the Monday prior to the election at the office of the board of elections . . ."

On Election Day**Certain Persons Permitted to Vote at Board of Elections Offices on Election Day**

Generally speaking, on Election Day Ohioans may not vote at a board of elections office.

More specifically, under Ohio law no one may cast a regular ballot at a board of elections office on Election Day, and only certain people may cast provisional ballots at a board of elections office on Election Day. Those persons are:

ELECTORS WHO MOVE FROM ONE PRECINCT TO ANOTHER WITHIN A COUNTY: Registered electors who move from one precinct to another within a county and who, on or before the day of a general, primary, or special election, have not filed a notice of change of residence address with the board of elections at least 30 days before the election. Such voters must also complete a voter registration change of address form. Such voters may vote either at the polling location for their current residence address or at the board of elections office;

ELECTORS WHO MOVE FROM ONE PRECINCT TO ANOTHER WITHIN A COUNTY AND CHANGE THEIR NAME: Registered electors who move from one precinct to another within a county and who, on or before the day of a general, primary, or special election, have not filed a notice of change of residence address with the board of elections at least 30 days before the election and who have changed their name and have not filed a notice of change of name with the board of elections at least 30 days before the election. Such voters must also complete a voter registration change of address form and a voter registration change of name form. Such voters may vote on either at the polling location for their current residence address or at the board of elections office;

ELECTORS WHO MOVE FROM ONE COUNTY TO ANOTHER COUNTY WITHIN OHIO: Registered electors who move from one county to another county within the state on or before the day of a general, primary, or special election and have not registered to vote at least 30 days before the election in the county to which that registered elector moved. Such voters must also complete a voter registration change of address form. Such voters may vote on either at the polling location for their current residence address or at the board of elections office.

Those persons listed immediately above must vote a provisional ballot. They may vote their provisional ballot at a board of elections office or at the correct precinct polling location.

Persons Required to Vote at Precinct Polling Location on Election Day

ELECTORS WHO CHANGE THEIR NAME BUT HAVE NOT MOVED: Registered electors who present themselves to vote on Election Day who changed their name on or before the day of a general, primary, or special election, and who have not filed a notice of change of name with the board of elections at least 90 days before the election, and did not move, must appear at their assigned precinct polling location. They must, in addition to voting a provisional ballot, complete a voter registration change of name form.

ELECTORS WHO HAVE MOVED WITHIN A PRECINCT (NO NAME CHANGE): Registered electors who present themselves to vote on Election Day who moved within a precinct on or before the day of a general, primary, or special election, and who have not filed a notice of change of residence address with the board of elections at least 90 days before the election, must appear at their assigned precinct polling location. They may vote a regular ballot and must complete a voter registration change of address form.

REGULAR VOTERS: Voters who are voting a regular ballot on Election Day must vote in their assigned precinct, unless a court order provides otherwise (e.g. in the event a court order were issued because flooding or other natural disaster would prevent the voter from reaching his or her assigned precinct polling location.)

OTHER REASONS REQUIRING THE CASTING OF A PROVISIONAL BALLOT**1. Voter's name does not appear in poll list**

A voter whose name does not appear in the poll list or signature poll book must vote a provisional ballot. The general rules for provisional voting must be followed.

2. Voter lacks required identification to vote a regular ballot

All voters who present themselves to vote at a polling place on the day of an election must provide one of the acceptable forms of identification as is described in Directive 2008-80, prescribing requirements for voter identification for voting. A voter who is unable or unwilling to provide any of these forms of ID may still, under the law, vote a *provisional* ballot. In some cases provisional voters must provide required ID to the board of elections no later than 10 days after the election for their ballots to count.

3. Returned Notices from Board of Elections**Returned Acknowledgement Notice**

If a board of elections has sent a newly registered voter an acknowledgement by nonforwardable mail as is required by law, and if that notification has been returned to the board of elections as undeliverable, the board of elections is obligated to investigate and send a confirmation notice to the voter's correct address.

If that confirmation notice is also returned to the board of elections as undeliverable, then at the first election thereafter, at which the voter named in the acknowledgement notice and confirmation notice seeks to vote, that voter must provide election officials with one form of the required identification and must vote a *provisional* ballot.

Returned Notice of Election

This section of this directive applies only to the November 2008 general election because the relevant provisions of R.C. 3501.19 do not apply to any subsequent election, unless subsequently extended by the Ohio legislature.

On the sixtieth (60th) day before General Election, every board of elections is required by law to send every registered voter in the county a Notice of Election by nonforwardable mail. The requirements of that notice are set forth in R.C. 3501.19(A).

If a voter's Notice of Election is returned to the board of elections as undeliverable, that voter's name shall be so marked in the poll list or signature poll book.

At the first election thereafter, at which the voter named in the returned Notice of Election seeks to vote, that voter must provide election officials with one proper form of identification (see Directive 2008-80). However, in this limited circumstance, any form of identification (even an Ohio driver's license or state ID card) must contain the current address that matches the address shown for the voter in the poll list or signature poll book for the voter to be permitted to cast a *regular* ballot. Otherwise, the voter must vote a *provisional* ballot. See R.C. 3501.19(C).

4. Voter Requested an Absent Voter's Ballot but Appears on Election Day or Before to Vote In Person

If a voter has requested an absent voter's ballot, his or her name must be marked to that effect in the poll list or signature poll book to prevent a voter from both voting an absentee ballot before Election Day and voting a regular ballot when appearing in person to vote on Election Day. Any voter whose name is so marked and who appears and attempts to vote at a polling location, including at the board of elections, whether on or before the date of an election, must vote a *provisional* ballot.

5. Challenged Voters

If election officials cannot determine a voter's eligibility to vote, or if a voter does not appear to be eligible to vote and that voter insists on voting, that voter must cast a *provisional* ballot. R.C. 3505.20

If an application for the correction of a precinct registration list is filed or if a challenge to a voter's right to vote is filed, after the thirtieth (30th) day before the day of an election, the law provides that the board may postpone the hearing on the filing until after the election.

The Secretary of State has advised in Advisory 2008-23 that boards should not postpone such hearings but rather hold a hearing to provide each voter due process in the event the board seeks to remove a voter's name from the list of registered voters or the signature poll book

A voter seeking to vote a party ballot at a primary election who refuses to make a statement of party affiliation (e.g. to complete Form 10X or 10W) and who a majority of precinct officials find either lacks the qualifications to vote or is not affiliated with the party whose ballot the voter desires to vote must cast a *provisional* ballot.

6. Non-Matching Signature

If the election officials determine that the signature of an individual who appears and attempts to vote does not match the signature on file for that voter, that voter must cast a *provisional* ballot. However, if the voter has a form of identification as set forth in Directive 2008-80 on Voter Identification his or her name and current address appearing in the poll list or signature poll book, election officials are discouraged from determining that the voter must vote a provisional ballot. H.B. 3 recognizes that a voter's signature may change over time and permits a voter to update his or her signature in the records of the board of elections. Nevertheless, in the case where there may be two individuals in the same household with the same name (e.g. "senior" and "junior"), election officials may with justification determine that a provisional ballot must be cast by that voter.

PROVISIONAL BALLOT AFFIRMATION STATEMENTS

Generally

Every voter who votes a provisional ballot must seal his or her provisional ballot in an envelope provided by the election officials administering the election. The envelope, as required by statute, must contain an affirmation that must be executed by the voter for the vote to count. The voter must sign the affirmation, which must state both that:

- The voter is a registered voter in the jurisdiction in which the individual desires to vote; and
- The voter is eligible to vote in that election.

Additionally, please note that other spaces may be provided on the envelope for information such as the voter's date of birth, the voter's current and former addresses, the voter's driver's license or state ID card number, or the last four digits of the voter's Social Security number. **Poll workers must ask every provisional voter to complete this additional information. While Ohio law does not specifically require that provisional voters complete this additional information, boards of elections may need it to verify the voter's identity before the vote may be counted.**

If the voter does not provide required identification, including some of the additional information referred to above, either at the polling place or at the board of elections within ten (10) days after the election (see below), and the voter's identity cannot be verified using the information provided by the voter, the vote is not permitted by law to be counted.

Additionally, election officials must record, in the section of the provisional ballot ID envelope or form designated for election official use, all of the following that apply for every provisional voter:

- The type of ID provided, if any;
- The last four digits of that voter's Social Security number, if provided;
- The fact that the affirmation noted above was executed, if applicable; or

- That the voter refused to execute the affirmation.

The above information must be included with the voter's ballot if a provisional ballot is voted, or with the voter or address record information when transmitting ballots and materials to the county board of elections.

Reminder: Election officials must provide to every provisional voter a copy of the Provisional Voter Hotline Notice at the time the voter casts his or her provisional ballot. A copy of that notice is attached to this directive for your reference.

Provisional Ballot Affirmation Statements as Voter Registration Forms

The Secretary of State prescribed Provisional Ballot Affirmation Statement serves multiple purposes. For several years the form has served as a change of name or change of address form for already registered voters in addition to serving as an affirmation. However, the form has not served as a voter registration form for new voters. Because one of the leading statewide causes for rejection of provisional ballots has historically been that the person who voted the provisional ballot was not registered to vote, the most recent revision of the affirmation statement form (in June of 2008) also allows the form to be used as a voter registration form for new voters, if necessary.

Thus, while a provisional ballot cast by someone not registered to vote still cannot count, boards of elections may now use the information provided by the person who completed the form to register that person to vote for subsequent elections.

PROVIDING PROOF OF IDENTITY WITHIN 10 DAYS AFTER THE ELECTION

Before a provisional ballot can be included in the official count of an election, the board of elections must confirm the voter's eligibility to cast the ballot, as well as the validity of the ballot that was cast. In some cases, a provisional voter can establish his or her eligibility to vote by appearing in person at the board of elections office within 10 days immediately after Election Day and doing the following:

If the voter cast a provisional ballot because he or she had – but could not provide to election officials at the time of voting – a required form of identification or the last four digits of his or her Social Security number, the voter must provide to the board of the elections one of the following:

- **Required identification described in Directive 2008-80 on Voter Identification; or**
- **The last four digits of the voter's Social Security number.**

If the voter cast a provisional ballot because, at the time he or she voted, he or she had – but declined to provide – a required form of identification or the last four digits of his or her Social Security number, AND the voter declined to execute the written affirmation statement, the voter must provide to the board of the elections one of the following:

Dir. 2008-81 Guidelines for Provisional Voting

page 8 of 8

- **Required identification described Directive 2008-80 on Voter Identification; or**
- **The last four digits of the voter's Social Security number.**

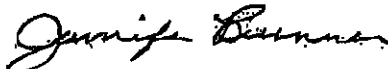
If the voter cast a provisional ballot because, at the time of voting, he or she **did not have any required form of identification or a Social Security number, AND** the elector **declined** to execute the written affirmation statement, the elector must do one of the following:

- **Required identification described in Directive 2008-80 on Voter Identification; or**
- **The last four digits of the voter's Social Security number; or**
- **Complete the affirmation statement.**

If the voter cast a provisional ballot because the voter's right to vote was challenged at the polling place under R.C. 3505.20, and the election officials either determined that the voter was ineligible to vote, or they were unable to determine the voter's eligibility, the voter must **provide identification or other documentation required to resolve the challenge, relevant to the nature of the challenge.**

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

Sincerely,



Jennifer Brunner

CLARK COUNTY BOARD OF ELECTIONS

VOTING PROCEDURES/POLICIES

The Ohio election laws describe the different methods of voting in terms of the ballot cast by the voter: a regular ballot, a regular absentee ballot, an armed service ("military") absentee ballot, a provisional ballot or, in federal elections only, a federal write-in absentee ballot. Any ballot that election officials determine is cast in accordance with law will be counted, regardless of the method used.

DEFINITIONS OF TERMS RELATING TO VOTER IDENTIFICATION

1. Current

"Current" means the document was issued on a date within one year immediately preceding the election day on which the form of identification was presented to permit the elector 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. In the case of an absent voter's ballot, "current" means the document was issued within one year immediately preceding the date on which the elector mailed or presented in person his or her request for an absent voter's ballot, or has on it an expiration date which has not passed as of the date the elector mailed or presented in person his or her request for an absent voter's ballot.

(SOS Directive 2007-06)

2. Conform

- a. 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 name appearing in the signature book. When a middle name or initial can be matched, the election official or poll worker should also verify these.
- b. For the purposes of verifying the identity of the voter by address, "conform" does not mean an exact match, but rather, the form of the address can reasonably be determined to match the address appearing in the signature book.

(SOS Directive 2007-06)

3. Photo Identification

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

- a. The photo identification has been issued by either the government of the **United States or the State of Ohio**. (Driver's licenses and photo ID cards from other states or countries are not acceptable forms of identification.)
- b. 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.
- c. The photo identification includes an **expiration date that has not passed**.
- d. The photo identification shows the **name of the individual** to whom it was issued, which shall conform to the name in the signature book for the person presenting the photo ID.
- e. The photo identification shows the **current address** of the individual to whom it was issued, which shall conform to the address in the signature book. **There is one exception; however. No voter shall be denied a regular ballot solely because**

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 signature book. *(Note: In this case, the poll worker accepts the photo ID to allow the individual to vote but must record the driver's license number on the appropriate box in the signature book.)*

If an absentee voter provides the number above his or her picture and not the driver's license number, the voter will be contacted, in writing, by the Clark County Board of Elections office, advising of such error, within two business days of receiving the application or voted ballot, and will be permitted to appear in person at the office 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.

(R.C. 3501.01 (AA))

4. Military ID

If a voter can provide a **military photo ID** showing BOTH his or her name and current address, ID shall be accepted. However, this office understands that **few, if any, military photo IDs contain the ID holder's address.** Absent clarification from the General Assembly, military photo IDs lacking an address cannot be accepted. The Clark County Board of Elections encourages voters attempting to vote using military photo IDs without the holder's address to use one of the other acceptable forms of ID instead, such as an Ohio driver's license or state issued photo ID, a bank statement, utility bill, government check, paycheck, or other government document meeting the ID requirements.

(SOS Directive 2007-06)

5. Utility Bill

A "utility bill" includes, but is not limited to, water, sewer, electric, natural gas, heating oil, cable or satellite television, Internet, telephone, and cellular-telephone service. A "bill" is a statement of fees owed for such services regardless of the amount 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 Clark County voter database, including the signature book.

(SOS Directive 2007-06)

6. 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 Clark County voter database, including the signature book.

(SOS Directive 2007-06)

7. 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 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 paycheck must conform to the voter's name and address in the voter database of the Clark County Board of Elections, including the signature book.

(SOS Directive 2007-06)

8. 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 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 voter database of the Clark County Board of Elections, including the signature book.

(SOS Directive 2007-06)

9. 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 voter database of the Clark County Board of Elections, including the signature book. "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; transcripts; etc.

(SOS Directive 2007-06)

However, 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.

VOTING AT THE PRECINCT POLLING PLACE**1. Elector Announces Name, Address and Provides Proof of Identity**

When an elector appears in a polling place to vote, the elector shall announce to the precinct election officials the elector's full name and current address and provide proof of the elector's identity in the form of a current and valid photo identification, a military identification that shows the voter's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document,

other than a notice of an election or a notice of voter registration mailed by the Clark County Board of Elections, that shows the name and current address of the elector. If the elector has provided an acceptable proof of identity as provided above *and* resides at the current residence address appearing in the signature book, the elector **shall vote a regular ballot.**

If the elector provides either a driver's license or a state identification card that does not contain the elector's current residence address, the elector shall provide the elector's driver's license number or state identification card number, and the precinct election official shall mark the signature book to indicate that the elector has provided a driver's license or state identification card number with a form address and record the number. If the elector has provided the acceptable proof of identity as provided above *and* resides at the current residence address appearing in the signature book, the elector **shall vote a regular ballot.**

If an elector has but is unable to provide to the precinct election officials any of the forms of identification required, but has a Social Security number, the elector may provide the last four digits of the elector's Social Security number. Upon providing the Social Security number information, the elector **may cast a provisional ballot**, the envelope of which ballot shall include the last four digits of the elector's Social Security number.

If an elector has but is unable to provide to the precinct election officials any of the forms of identification required and if the elector has a Social Security number, but is unable to provide the last four digits of the elector's Social Security number, the elector **may cast a provisional ballot.**

If an elector has but declines to provide to the precinct election officials any of the forms of identification required or if the elector has a Social Security number, but declines to provide the last four digits of the elector's Social Security number, the elector **may cast a provisional ballot.**

If an elector does not have any of the forms of identification required and cannot provide the last four digits of the elector's Social Security number because the elector does not have a Social Security number, the elector may execute an affirmation under penalty of election falsification that the elector cannot provide any form of identification required or the last four digits of the elector's Social Security number for the reason the elector does not have a Social Security number. Upon signing the affirmation, the elector **may cast a provisional ballot.**

(R.C. 3505.18, 3505.181)

2. Voting a Regular Ballot at the Precinct

After the elector has announced the elector's full name and current address and provided any of the forms of identification required, the elector shall sign their name in the appropriate box in the signature book, except that if, for any reason, an elector is unable to sign their name in the signature book, the elector may make the elector's mark at the place intended for the signature, and a precinct election official shall write the name of the

elector at the proper place in the signature book following the mark. The making of such a mark shall be attested by the precinct election official, who shall evidence the same by signing the precinct election official's name in the signature book as a witness to the mark.

The elector's signature in the signature book shall then be compared with the elector's signature printed in the signature book. (The signature printed in the signature book will be the most currently filed copy of the elector's signature as received by the Clark County Board of Elections.) If, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the election officials shall enter the name of the elector in the precinct poll book, along with the ballot stub number assigned to that voter. If the right of the elector to vote is not then challenged, or, if being challenged, the elector establishes the elector's right to voter, the elector shall be allowed to proceed to mark an optical scan ballot.

(R.C. 3506.18(B), 3505.23)

3. Optical Scan Ballots

The judge in charge of ballots shall then detach the next ballot to be issued to the elector, and call the stub number so it can be recorded in both the signature book and poll book. The elector shall then retire to one of the voting compartments to mark the elector's ballot. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted the ballot.

If an elector tears, soils, defaces, or erroneously marks a ballot, the elector may return it to the precinct election officials and a second ballot shall be issued to the elector. Before returning a torn, soiled, defaced, or erroneously marked ballot, the elector shall fold it so as to conceal any marks the elector made upon it. If the elector tears, soils, defaces, or erroneously marks such second ballot, the elector may return it to the precinct election officials, and a third ballot shall be issued to the elector. In no case shall more than three ballots be issued to an elector. Upon receiving a returned torn, soiled, defaced, or erroneously marked ballot, the precinct election officials shall write "Soiled & Defaced" on the front and back of such ballot, and place this ballot in the "Soiled & Defaced" envelope provided with the precinct supplies.

Once the elector is satisfied with his or her ballot selections, the elector inserts the ballot into the scanner. Should the scanner detect an under-voted or over-voted ballot, an audible beep will be heard. A message will display on the M-100 screen indicating which race/question was incorrectly voted. The display will also give the elector the option of having the ballot returned for inspection and/or correction, OR the ballot can be accepted by the scanner, as is. NOTE: Any race or question which has been over-voted will NOT be tabulated. However, the other correctly voted races or questions will be counted.

No elector shall leave the polling place until the elector returns to the precinct election officials every ballot issued to the elector, regardless of whether the elector has or has not placed any marks upon the ballot.

If a write-in candidate has filed the proper paperwork with the Clark County Board of Elections, the ballot will be constructed with an oval and a write-in line for that race. To vote for a write-in candidate, the elector shall fill in the oval next to the write-in line provided AND write the name of the candidate for whom the elector desires to vote on such blank line and on no other place on the ballot. Any name written on a ballot other than the name of a qualified write-in candidate or a name written on the ballot other than on the blank line provided, shall not be counted or recorded.

(R.C. 3505.23)

ABSENTEE VOTING

1. Authority for Absentee Voting

Any qualified elector eligible to vote by absent voter's ballots may do so from the 35th day before a primary or general election, or the 25th day before a presidential primary election, until the polls close at 7:30 p.m. on the day of the election. Absent voter's ballots for special elections held on days other than the day on which general or primary elections are held shall be ready for use as many days before the day of the election as reasonably possible under the laws governing the holding of that special election.

The Clark County Board of Elections office will be open until noon on the third day before every election, and during regular business hours (8:00 a.m. to 4:30 p.m.) on the day before every election for the purpose of absentee voting.

(R.C. 3509.01, 3509.02, 3509.03, 3509.08)

2. Application

Any person wanting to vote by absentee ballot must submit a written, signed application to the director of the Clark County Board of Elections. The board office strongly recommends that voters use the application form prescribed by the Secretary of State's office for absentee voting, but are not required to do so. The written application need not be in any particular format, but it MUST contain ALL of the following information:

- Elector's name;
- Elector's signature;
- The address at which the elector is registered to vote;
- Elector's date of birth;
- A statement identifying the election for which the absentee voter's ballot is requested;
- A statement that the person is a qualified elector;
- If the request is for a partisan primary election ballot, political party affiliation;
- If the ballot is to be mailed, the address to which the ballot is to be mailed; and
- One of the following items showing proof of the elector's identification:
 - a. Ohio driver's license number; or
 - b. The last four digits of the elector's Social Security number; or
 - c. A copy of a current and valid photo identification, military identification, current utility bill, bank statement, government check, paycheck, or other government

document that shows your name and current address. (Note: A notice that the board of the elections mailed to an elector may not be used as proof of identification.)

A properly completed and signed absent voter's application for each election must be submitted by an elector requesting a ballot regardless of whether the person is voting in the Clark County Board of Elections office, picking up his or her ballot at the board office or requesting the ballot be mailed. In order for an absentee ballot to be mailed to the elector, the Clark County Board of Elections must receive a valid application by noon on the third day before the election.

(R.C.3509.03)

Special Absentee Application Situations:

- a. **FAXED APPLICATIONS:** Although an application for an absentee ballot need not be in any particular form, the application must bear the applicant's original signature or mark, with two exceptions: Applications absentee ballots for that are transmitted to the Clark County Board of Elections via facsimile by a member of the state militia or a U.S. uniformed Services member or the member's spouse or dependent who resides outside of Ohio for the purpose of being with or near the member and contains his or her facsimile will be accepted by the board per the Revised Code.
- b. **VOTERS WHO ARE OUT OF THE COUNTRY:** In addition to the general application procedure described above, an elector who is out of the country may use the *Federal Postcard Application* (FPCA) to request absentee ballots. An FPCA will serve as a request for absentee ballots for all elections held in the applicant's precinct during the calendar year for which it was received and for all federal elections held in the applicant's precinct through the next two regularly scheduled general elections for federal office.

(R.C. 3509.022)

- c. **VOTERS IN THE UNIFORMED SERVICES:** In addition to the general application procedure described above, members of the Armed Services stationed outside Ohio may request absentee ballots using the FPCA and the *Application for Military Armed Services Absent Voter's Ballots* (SOS Form 11-D).
- d. **VOTERS IN THE STATE MILITIA:** A member of the organized state militia stationed in a county other than Clark County may request absentee ballots using the general application procedure described above. Additionally, a relative of a militia member may submit an *Application by Relative for Absent Voter's Ballots for Member of Organized State Militia* (SOS Form 11-E) in order to have the Clark County Board of Elections send absentee ballots to the militia member.

(R.C. 3509.03, 3509.031, 3511.02; 104(a) of the *Uniformed and Overseas Absentee Voting Act* (as amended by 704 of the *Help America Voter Act of 2002*)

3. Delivering the Absentee Ballot to the Voter

a. Ballot

The Clark County Board of Elections shall provide absent voter's ballots ("absentee ballots") for use at every election. The ballots shall be the same size, shall be printed on the same kind of paper and in the same form as has been approved for use at the election. The rotation of names of candidates and the order of questions and issues shall be substantially complied with on the absent voter's ballots, and such ballots shall be designated as "Absent Voter's Ballots."

A copy of absent voter's ballots from each precinct shall be forwarded by the director of the Clark County Board of Elections to the Secretary of State at least 25 days before each election.

The Clark County Board of Elections will keep an electronic and written record for each application received:

- Name and address of the elector submitting the application;
- Date the application was received;
- If required information is missing from the application, how and when the elector was contacted;
- Type of request: civilian in county, out of county, out of state, out of country, military out of state or out of country;
- Category of request: mail, in person, FPCA;
- If mailing the ballot, date ballot mailed along with the mailing address if different than voting residence address;
- The ballot type and ballot number issued;
- Date ballot is returned.

(R.C. 3509.01)

b. Identification Envelope

If the application contains all the required information and the applicant is a qualified elector, the director must deliver the proper absentee ballot to the applicant whether in person, or by mailing it directly to the applicant. The director must also provide an unsealed identification envelope which conforms with the Revised Code standard for such envelope.

(R.C. 3509.04)

c. Return Envelope

The director shall mail with the ballots and the unsealed identification envelope an unsealed return envelope upon the face of which shall be printed the official title and post-office address of the director. In the upper left corner on the face of the return envelope, several blank lines shall be printed upon which the voter may write the voter's name and return address, and beneath these lines there shall be printed a box beside the words "check if out-of-country." The voter shall check this box if the voter will be outside the United States on the day of the election. The return envelope shall

be of such size that the identification envelope can be conveniently placed within it for returning the identification envelope and voted ballot to the director.

(R.C. 3509.04)

4. Absentee Voting Procedure
a. Ballot Mailed to Voter

When an elector receives an absent voter's ballot pursuant to the elector's application, the elector shall, before placing any marks on the ballot, note whether there are any voting marks on it. If there are any voting marks, the ballot shall be returned immediately to the Clark County Board of Elections; otherwise, the elector shall cause the ballot to be marked, folded and placed and sealed within the identification envelope received from the director for that purpose.

The elector to whom an absentee ballot is mailed shall 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 Statement of Voter on the identification envelope, the elector also shall include in the return envelope with the identification envelope a copy of the elector's current valid photo identification, a copy of the military identification that shows the elector's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, that shows the name and address of the elector. NOTE: A notice of an election mailed by the Clark County Board of Elections or a notice of voter registration mailed by the Clark County Board of Elections is not a valid form of voter identification per the Revised Code.

The elector must either mail the identification envelope to the director of the Clark County Board of Elections in the return envelope, postage prepaid, or personally deliver it to the director, or have the elector's spouse, father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece deliver it to the director. The return envelope shall be transmitted to the director in no other manner, except as provided in the Revised Code for absentee voters who are confined.

(R.C. 3509.05(A))

b. Voting Absentee at the Clark County Board of Elections Office

After submitting a properly completed and signed absent voter ballot application, the elector may go to a voting compartment to mark the optical scan ballot or take the optical scan ballot with him or her to mark and return by the appropriate deadline. The voter shall fold the ballot, place it in the identification envelope provided, seal the identification envelope, fill and sign the statement thereon under penalty of election falsification, and deliver the envelope to the director of the board.

(R.C. 3509.05(A))

c. Deadline for Absentee Ballots returned from Within the United States

Absentee ballots returned from within the United States must be delivered to the director not later than the close of the polls on the day of an election. Absentee ballots delivered to the director after the close of the polls on the day of an election shall not be counted, but shall be kept by the board in the sealed identification envelopes in which they are delivered to the director, until the time provided in the Revised Code for the destruction of all other ballots used at the election for which ballots were provided, at which time they shall be destroyed.

(R.C. 3509.05(A))

d. Deadline for Absentee Ballots Returned from Outside the United States

Any return envelope that indicates that the voter will be outside the United States on the day of any election other than a presidential primary election must be delivered to the director on or before the 10th day after the election (see exception below for presidential primary). Ballots delivered in such envelopes that are received after the close of the polls on election day through the 10th day after the election are eligible to be counted if determined to be valid. Any such ballots that are signed or postmarked after the close of the polls on the day of the election or that are received by the director later than the 10th day following the election shall not be counted, but shall be kept by the board in the sealed identification envelopes as provided in the Revised Code.

In any year in which a presidential primary election is held, any return envelope that indicates that the voter will be outside the United States on the day of the presidential primary election shall be delivered to the director prior to the 21st day after that election. Ballots delivered in such envelopes that are received after the close of the polls on election day through the 20th day thereafter shall be counted on the 21st day. Any such ballots that are signed or postmarked after the close of the polls on the day of that election or that are received by the director later than the 20th day following the election shall not be counted, but shall be kept by the board in the sealed identification envelopes as provided in the Revised Code.

(R.C. 3509.05(B), 3509.05(C))

e. Confined Voters

1. APPLICATION AND DELIVERY: Any qualified elector, who, on account of the elector's own personal illness, physical disability, or infirmity, or on account of the elector's confinement in a jail or workhouse under sentence for a misdemeanor or awaiting trial on a felony or misdemeanor, will be unable to travel from the elector's home or place of confinement to the voting booth in the elector's precinct on the day of any general, special, or primary election may make application in writing for an absent voter's ballot to the director of the Clark County Board of Elections. The application shall include all of the information required under the Revised Code and shall state the nature of the elector's illness, physical disability, or infirmity, or the fact that the elector is confined in a jail or workhouse and the elector's resultant inability to travel to the

election booth in the elector's precinct on election day. The application shall not be valid if it is delivered to the director before the 90th day or after noon of the third day before the day of the election at which the ballot is to be voted.

The absent voter's ballot may be mailed directly to the applicant at the applicant's voting residence or place of confinement as stated in the applicant's application, or the board may designate two board employees belonging to the two major political parties for the purpose of delivering the ballot to the disabled or confined elector and returning it to the board, unless the applicant is confined to a public or private institution within Clark County, in which case the board shall designate two board employees belonging to the two major political parties for the purpose of delivering the ballot to the disabled or confined elector and returning it to the board. In all other instances, the ballot shall be returned to the office of the Clark County Board of Elections in the manner described above.

(R.C. 3509.08(A))

2. ASSISTANCE TO DISABLED ABSENTEE VOTERS: Any disabled or confined elector who declares to the two board employees belonging to the two major political parties that the elector is unable to mark the elector's ballot by reason of physical infirmity that is apparent to the employees to be sufficient to incapacitate the voter from marking the elector's ballot properly, may receive, upon request, the assistance of the employees in marking the elector's ballot, and they shall thereafter give no information in regard to this matter. Such assistance shall not be rendered for any other cause.

When two board employees belonging to the two major political parties deliver a ballot to a disabled or confined elector, each of the employees shall be present when the ballot is delivered, when assistance is given, and when the ballot is returned to the office of the Clark County Board of Elections, and shall subscribe to the declaration on the identification envelope.

(R.C. 3509.08(A))

3. ABSENTEE VOTING ON ELECTION DAY – HOSPITALIZED VOTERS: Any qualified elector who is unable to travel to the voting booth in the elector's precinct on the day of any general, special, or primary election may apply to the director of the board of elections of the county where the elector is a qualified elector to vote in the election by absent voter's ballot if either of the following apply:

- The elector is confined in a hospital as a result of an accident or unforeseeable medical emergency occurring before the election;
- The elector's minor child is confined in a hospital as a result of an accident or unforeseeable medical emergency occurring before the election.

The application shall be made in writing, shall include all of the information required under section 3509.03 of the Revised Code, and shall be delivered to the director not later than 3:00 p.m. on the day of the election. The application shall indicate the hospital where the applicant or the applicant's child is confined, the date of the

applicant's or the applicant's child's admission to the hospital, and the offices for which the applicant is qualified to vote. The applicant may also request that a member of the applicant's family as listed in section 3509.05 of the Revised Code, deliver the absent voter's ballot to the applicant. The director, after establishing to the director's satisfaction the validity of the circumstances claimed by the applicant, shall supply an absent voter's ballot to be delivered to the applicant. When the applicant or the applicant's child is in a Clark County hospital and no request is made for a member of the family to deliver the ballot, the director shall arrange for the delivery of an absent voter's ballot to the applicant, and for its return to the office of the board, by two board employees belonging to the two major political parties. When the applicant or the applicant's child is in a hospital outside Clark County and no request is made for a member of the family to deliver the ballot, the director shall arrange for the delivery of an absent voter's ballot to the applicant by mail, and the ballot shall be returned to the office of the Clark County Board of Elections as described above.

(R.C. 3509.08(B))

"MILITARY" ABSENTEE VOTING

Absentee voting of members of the armed forces is governed by state law and federal law.

Any section of the Revised Code to the contrary notwithstanding, any person serving in the U.S. armed forces, or the spouse or dependent of any person serving in the U.S. armed forces who resides outside the state of Ohio for the purpose of being with or near such service member, who will be 18 years of age or more on the day of a general or special election and who is a U.S. citizen, may vote an armed service absent voter's ballot in that general or special election as follows:

- a. If the service member is the voter, the service member may vote only in the precinct in which he or she has a voting residence in the county and that voting residence shall be that place in the precinct in which the service member resided immediately preceding the commencement of such service, provided that the time during which the service member continuously resided in the county immediately preceding the commencement of such service plus the time subsequent to such commencement and prior to the day of such general, special, or primary election is equal to or exceeds 30 days.
- b. If the service member's spouse or dependent is the voter, the spouse/dependent may vote only in the precinct in which the spouse/dependent has a voting residence in the county and that voting residence shall be that place in the precinct in which he or she resided immediately preceding the time of leaving the county for the purpose of being with or near the service member, provided that the time during which the spouse/dependent continuously resided in the county immediately preceding the time of leaving the county for the purpose of being with or near the service member plus the time subsequent to such leaving and prior to the day of such general, special, or primary election is equal to or exceeds 30 days.

- c. If the service member, spouse or dependent establishes a permanent residence in a precinct other than the precinct in which that person resided immediately preceding the commencement of the service member's service, the voting residence of both the service member and the spouse or dependent shall be the precinct of such permanent residence, provided that the time during which the person continuously resided in the county immediately preceding the commencement of such service plus the time subsequent to such commencement and prior to the day of such general, special, or primary election is equal to or exceeds 30 days.

(R.C. 3511.01)

The voter registration deadline is waived for members of the uniformed services who use the *Federal Postcard Application (FPCA)* to register to vote. If an FPCA from a member of the uniformed services is received after the close of registration for an election, the Clark County Board of Elections will process the registration for the election and, if requested, issue an absentee ballot to that person. *Note: Spouses and dependents may use the FPCA or Armed Services Absentee Ballot Application (Form 11-D) to request ballots only if they left Ohio to be with or near a service member.*

(R.C. 3511.01, 3511.02)

The applicant must deliver by U.S. mail, via facsimile machine, or in person to the Clark County Board of Elections a written and signed application for an armed service absent voter's ballot.

Military absentee voters may use the *Application for Military Armed Services Absentee Ballot (Form 11-D)* or the *Federal Postcard Application (FPCA)*. An application must contain *all of* the following:

- a. The elector's name;
- b. The elector's signature;
- c. The address at which the elector is registered to vote;
- d. The elector's date of birth;
- e. One of the following:
 - The elector's driver's license number;
 - The last four digits of the elector's Social Security number;
 - A copy of the elector's current and valid photo identification, a copy of a military identification that shows the elector's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector, other than a notice of an election or notice of voter registration mailed by the Clark County Board of Elections.
- f. A statement identifying the election for which absent voter's ballots are requested;
- g. A statement that the person requesting the ballots is a qualified elector;
- h. A statement that the elector is an absent uniformed services voter as defined in 42 U.S.C. 1973ff-6;

- i. A statement of the elector's length of residence in the county immediately preceding the commencement of service or immediately preceding the date of leaving to be with or near the service member, whichever is applicable;
- j. If the request is for primary election ballots, the elector's party affiliation;
- k. If the elector desires ballots to be mailed to the elector, the address to which those ballots shall be mailed;
- l. If the elector desires ballots to be sent to the elector by facsimile machine, the telephone number to which they shall be so sent.

(R.C. 3511.02)

A uniformed services member may use the *FPCA* to register to voter and/or to request absentee ballots. A uniformed services voter may use a single *FPCA* to request armed services absentee ballots for all elections in which that individual is eligible to voter during the calendar year for which ballots are requested. An *FPCA* also will serve as a request for absentee ballots for all federal elections held in the applicant's precinct through the next two regularly scheduled general elections for federal office.

(R.C. 3511.02)

Relatives of service members may use the Application by Relative for Armed Services Absent Voter Ballots (Form 11-E) to request absentee ballots for service members.

The director of the Clark County Board of Elections shall promptly, upon receipt of valid applications, mail or send by facsimile machine to the proper persons all armed service absent voter's ballots when ready for use. Each ballot that is mailed must be accompanied by an identification envelope and return envelope. Each ballot that is faxed shall be transmitted as provided in law. The director shall take all necessary precautions in mailing or transmitting each ballot.

(R.C. 3511.02, 3511.04, 3511.05, 3511.06, 3511.07)

The director of the Clark County Board of Elections shall keep a record of the name and address of each person to whom the director mails or delivers armed service absent voter's ballots, the kinds of ballots so mailed or delivered, and the name and address of the person who made the application for such ballots. After the director has mailed or delivered such ballots the director shall not mail or deliver additional ballots of the same kind to such person pursuant to a subsequent request unless such subsequent request contains the statement that an earlier request had been sent to the director prior to the 13th day before the election and that the armed service absent voter's ballots so requested had not been received by such person prior to the 15th day before the election, and provided that the director has not received an identification envelope purporting to contain marked armed service absent voter's ballots from such person.

(R.C. 3511.08)

Upon receiving armed service absent voter's ballots, the elector shall cause the questions on the face of the identification envelope to be answered, and, by writing the elector's usual signature in the proper place on the identification envelope, the elector shall declare under

penalty of election falsification that the answers to those questions are true and correct to the best of the elector's knowledge and belief. Then, the elector shall note whether there are any voting marks on the ballot. If there are any voting marks, the ballot shall be returned immediately to the Clark County Board of Elections; otherwise, the elector shall cause the ballot to be marked, folded separately so as to conceal the markings on it, deposited in the identification envelope, and securely sealed in the identification envelope. The elector then shall cause the identification envelope to be placed within the return envelope, sealed in the return envelope, and mailed to the director of the Clark County Board of Elections. 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 statement of voter on the identification envelope, the elector also shall include in the return envelope with the identification envelope a copy of the elector's current valid photo identification, a copy of a military identification that shows the elector's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector. NOTE: Notices of an election or notices of voter registration mailed by the Clark County Board of Elections are NOT valid identification under the Revised Code. Each elector who will be outside the United States on the day of the election shall check the box on the return envelope indicating this fact and shall mail the return envelope to the director prior to the close of the polls on election day.

(R.C. 3511.09)

If, after the 35th day before and until the close of the polls on the day of a general or primary election, the Clark County Board of Elections receives a valid application for an armed service absentee ballot from a person making the application on his own behalf, the director shall immediately deliver to the person the armed service absentee ballot when ready for use, together with an identification envelope. The person shall then immediately retire to a voting booth in the office of the board and mark the ballot, place it inside the identification envelope and seal it. The person then must fill in answers to the questions on the face of the identification envelope, and by writing the person's usual signature in the proper place thereon, shall declare under penalty of election falsification that the answers to those questions are true and correct. The person must then deliver the identification envelope to the director.

If any person serving in the U.S. armed forces is discharged after the closing date of registration, and that person or the person's spouse, or both, meets all the other qualifications of the Revised Code, he or she is allowed to vote prior to the date of the election in the Clark County Board of Elections office.

(R.C. 3511.10)

All armed services absentee ballots received by the Clark County Board of Elections will be handled, counted and preserved in accordance with law.

(R.C. 3511.11, 3511.12)

PROVISIONAL VOTING

1. General Information

Provisional ballots are named as such because it will be counted in the official canvass *provided that* the Clark County Board of Elections confirms:

- a. The voter's eligibility to cast the ballot such as the person was timely registered to vote for the election in another Ohio precinct;
- b. The person did not vote or attempt to vote in that election using the person's former voting residence address; and
- c. The voter cast a ballot in his or her correct precinct.

(R.C. 3503.16, 3505.181, SOS Directive 2007-06)

2. Requirements

a. Time frame for provisional balloting for voters failing to update their voter record:

In accordance with R.C. 3503.16(B), (C) provisional balloting may begin on the 28th day before an election except for a presidential primary election which begins on the 25th day before the presidential primary.

An elector who moved from one Ohio precinct to another Ohio precinct and did not submit a change of address or change of name by the 29th day before an election, may vote a provisional ballot by appearing "at anytime during regular business hours on or after the twenty-eighth day prior to the election in which that registered elector wishes to vote...through noon of the Saturday prior to the election," or "at any time during regular business hours on the Monday prior to the election at the Clark County Board of Elections, or...on the day of the election at either:

- The polling place in the precinct in which that registered elector resides; or
- The Clark County Board of Elections.

b. The following procedures are necessary for an elector to vote a provisional ballot:

- Election officials must ask a provisional voter for the **last four digits of his or her Social Security number**.
- If an elector **cannot or will not** provide the last four digits of his or her Social Security number, the election officials must ask the voter **whether or not the voter has a Social Security number**.
- An elector who **has** a Social Security number, whether or not provided to the election officials, may vote a **provisional** ballot **AND** must complete an **affirmation statement**.
- An elector who **does not have a Social Security number** may cast a **provisional** ballot after completing an **affirmation statement** stating that he or she does not have a Social Security number (Form 10-T).
- If the elector **declines** to complete the affirmation statements noted above, the **election officials must comply with the following:**
- **Even if an elector refuses to complete the affirmations**, he or she may cast a **provisional** ballot, and the election officials must record that voter's name and shall include that information with the ballot when transmitting it to

the Clark County Board of Elections. The election officials should inform the voter that the ballot will not be counted unless the voter appears at the Clark County Board of Elections office within 10 days of the election and provides the required identification. **PROVISIONAL VOTER ENVELOPES THAT ARE MISSING ID INFORMATION OR AN AFFIRMATION STATEMENT WILL NOT BE COUNTED.**

For every provisional voter, the election officials must review the voter's provisional ballot ID envelope to ensure that all of the following apply:

- The type of ID provided, if any;
- The last four digits of that voter's Social Security number, if provided;
- The fact that the affirmation noted above was executed, if applicable; or
- That the voter refused to execute the affirmation.

The above information must be included with the voter's ballot if a provisional ballot is voted, or with the voter or address record information when transmitting ballots and materials to the Clark County Board of Elections.

Election officials must provide to every provisional voter a copy of the Provisional Voter Hotline Notice at the time the voter casts his or her provisional ballot. This notice provides a toll-free number that the voter may call to find out if his or her ballot was counted. The notice includes the dates the toll-free number is in operation and reminds provisional voters that need to provide additional information of the 10-day period for bringing the additional information into the Clark County Board of Elections office.

(R.C. 3505.18, 3505.181, SOS Directive 2007-06)

c. Situations when Provisional Ballots are Used (with noted exceptions)

1) Changes of address – voters who have moved

A voter who has moved:

- from one precinct to another within Clark County, or
- from another Ohio county to Clark County, and
- who has moved on or before the date of an election, and
- who did not update his or her voter registration record at least thirty (30) days prior to the date of the election in which that voter wishes to vote,

must vote a *provisional* ballot at the Clark County Board of Elections or at his or her polling location on election day.

However, a voter who has moved *within a precinct* on or before the date of an election may vote a *regular* ballot, even if that voter did not update his or her voter registration record. Note, however, that such voters must still provide their new current address to elections officials at their designated polling location or at the Clark County Board of Elections to update their voter registration record. This is done by completing a voter registration card at either location at the time of voting.

(R.C. 3503.16, 3505.181)

2) Changes of name

An elector who has changed his or her name on or before the date of an election in which that elector seeks to vote, and who has not updated his or her voter registration record at least 30 days prior to the date of that election, must complete a change of name form on or before the date of that election either at his or her designated polling location or at the Clark County Board of Elections, and must vote a *provisional* ballot.

(R.C. 3503.16, 3505.181)

3) Elector's name does not appear in the signature book

An elector whose name does not appear in the signature book must vote a provisional ballot. HOWEVER, before an election official issues such an elector a provisional ballot, the election official must verify that the elector is in the correct polling location and precinct. If the elector is not in the correct polling location and precinct, the election official shall first notify the elector:

- That the elector is in an incorrect precinct; and
- The location of that elector's correct polling location and precinct and/or the Clark County Board of Elections location. The correct polling location for the voter can be found using the red street listing book provided with the election material/supplies for each precinct.

If the elector makes clear to the election official that the elector still desires to vote in that precinct, the election official shall notify the elector of both of the following:

- The elector has the right to cast a *provisional* ballot at that precinct;
- That, according to law, all provisional ballots cast at an incorrect precinct *shall not* be counted.

(R.C. 3505.181)

4) Elector lacks required identification to vote a regular ballot

All voters appearing to vote at a polling place on the date of an election must provide one of the acceptable forms of ID in order to vote a regular ballot. An elector who is unable or unwilling to provide any of these forms of ID may still, under the law, vote a provisional ballot.

(R.C. 3505.18, 3505.181)

5) Exception: Provisional voters whose illness or disability prevent them from voting in person

A registered elector who otherwise would qualify to vote under but is unable to appear at the Clark County Board of Elections on account of personal illness, physical disability, or infirmity, may vote on the day of the election if that registered elector does all of the following:

- Makes a written application that includes all of the information required under Section 3509.03 of the Revised Code to the Clark County Board of Elections for an absent voter's ballot on or after the 27th day prior to the election in which the registered elector wishes to vote through noon of the Saturday prior to that election and requests that the absent voter's ballot be sent to the address to which the registered elector has moved if the registered elector has moved, or to the address of that registered elector who has not moved but has had a change of name; and
- Declares that the registered elector has moved or had a change of name, whichever is appropriate, and otherwise is qualified to vote, but that the registered elector is unable to appear at the Clark County Board of Elections because of personal illness, physical disability, or infirmity; and
- Completes and returns along with the completed absent voter's ballot a notice of change of residence indicating the address to which the registered elector has moved, or a notice of change of name, whichever is appropriate (a voter registration card is the preferred method for this); and
- Completes and signs, under penalty of election falsification, a statement attesting that the registered elector has moved or had a change of name on or prior to the day before the election, has voted by absent voter's ballot because of personal illness, physical disability, or infirmity that prevented the registered elector from appearing at the Clark County Board of Elections, and will not vote or attempt to vote at any other location or by absent voter's ballot mailed to any other location or address for that particular election.

(R.C. 3503.16(G))

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH OCTOBER 13, 2008 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 ***

TITLE 35. ELECTIONS
CHAPTER 3505. GENERAL AND SPECIAL ELECTION BALLOTS
CASTING AND COUNTING BALLOTS

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ORC Ann. 3505.183 (2008)

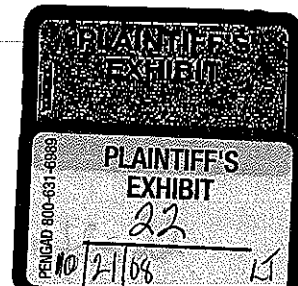
§ 3505.183. Determination whether provisional ballot is eligible to be counted; record-keeping

(A) When the ballot boxes are delivered to the board of elections from the precincts, the board shall separate the provisional ballot envelopes from the rest of the ballots. Teams of employees of the board consisting of one member of each major political party shall place the sealed provisional ballot envelopes in a secure location within the office of the board. The sealed provisional ballot envelopes shall remain in that secure location until the validity of those ballots is determined under division (B) of this section. While the provisional ballot is stored in that secure location, and prior to the counting of the provisional ballots, if the board receives information regarding the validity of a specific provisional ballot under division (B) of this section, the board may note, on the sealed provisional ballot envelope for that ballot, whether the ballot is valid and entitled to be counted.

(B) (1) To determine whether a provisional ballot is valid and entitled to be counted, the board shall examine its records and determine whether the individual who cast the provisional ballot is registered and eligible to vote in the applicable election. The board shall examine the information contained in the written affirmation executed by the individual who cast the provisional ballot under division (B)(2) of section 3505.181 [3505.18.1] of the Revised Code. If the individual declines to execute such an affirmation, the individual's name, written by either the individual or the election official at the direction of the individual, shall be included in a written affirmation in order for the provisional ballot to be eligible to be counted; otherwise, the following information shall be included in the written affirmation in order for the provisional ballot to be eligible to be counted:

- (a) The individual's name and signature;
- (b) A statement that the individual is a registered voter in the jurisdiction in which the provisional ballot is being voted;
- (c) A statement that the individual is eligible to vote in the election in which the provisional ballot is being voted.

(2) In addition to the information required to be included in an affirmation under division (B)(1) of this section, in



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determining whether a provisional ballot is valid and entitled to be counted, the board also shall examine any additional information for determining ballot validity provided by the provisional voter on the affirmation, provided by the provisional voter to an election official under *section 3505.182 of the Revised Code*, or provided to the board of elections during the ten days after the day of the election under division (B)(8) of *section 3505.181 [3505.18.1] of the Revised Code*, to assist the board in determining the individual's eligibility to vote.

(3) If, in examining a provisional ballot affirmation and additional information under divisions (B)(1) and (2) of this section, the board determines that all of the following apply, the provisional ballot envelope shall be opened, and the ballot shall be placed in a ballot box to be counted:

(a) The individual named on the affirmation is properly registered to vote.

(b) The individual named on the affirmation is eligible to cast a ballot in the precinct and for the election in which the individual cast the provisional ballot.

(c) The individual provided all of the information required under division (B)(1) of this section in the affirmation that the individual executed at the time the individual cast the provisional ballot.

(d) If applicable, the individual provided any additional information required under division (B)(8) of *section 3505.181 [3505.18.1] of the Revised Code* within ten days after the day of the election.

(e) If applicable, the hearing conducted under division (B) of *section 3503.24 of the Revised Code* after the day of the election resulted in the individual's inclusion in the official registration list.

(4) (a) If, in examining a provisional ballot affirmation and additional information under divisions (B)(1) and (2) of this section, the board determines that any of the following applies, the provisional ballot envelope shall not be opened, and the ballot shall not be counted:

(i) The individual named on the affirmation is not qualified or is not properly registered to vote.

(ii) The individual named on the affirmation is not eligible to cast a ballot in the precinct or for the election in which the individual cast the provisional ballot.

(iii) The individual did not provide all of the information required under division (B)(1) of this section in the affirmation that the individual executed at the time the individual cast the provisional ballot.

(iv) The individual has already cast a ballot for the election in which the individual cast the provisional ballot.

(v) If applicable, the individual did not provide any additional information required under division (B)(8) of *section 3505.181 [3505.18.1] of the Revised Code* within ten days after the day of the election.

(vi) If applicable, the hearing conducted under division (B) of *section 3503.24 of the Revised Code* after the day of the election did not result in the individual's inclusion in the official registration list.

(vii) The individual failed to provide a current and valid photo identification, a military identification, 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*, with the voter's name and current address, or the last four digits of the individual's social security number or to execute an affirmation under division (A) of *section 3505.18* or division (B) of *section 3505.181 [3505.18.1] of the Revised Code*.

(b) If, in examining a provisional ballot affirmation and additional information under divisions (B)(1) and (2) of this section, the board is unable to determine either of the following, the provisional ballot envelope shall not be opened,

and the ballot shall not be counted:

(i) Whether the individual named on the affirmation is qualified or properly registered to vote;

(ii) Whether the individual named on the affirmation is eligible to cast a ballot in the precinct or for the election in which the individual cast the provisional ballot.

(C) (1) For each provisional ballot rejected under division (B)(4) of this section, the board shall record the name of the provisional voter who cast the ballot, the identification number of the provisional ballot envelope, the names of the election officials who determined the validity of that ballot, the date and time that the determination was made, and the reason that the ballot was not counted.

(2) Provisional ballots that are rejected under division (B)(4) of this section shall not be counted but shall be preserved in their provisional ballot envelopes unopened until the time provided by *section 3505.31 of the Revised Code* for the destruction of all other ballots used at the election for which ballots were provided, at which time they shall be destroyed.

(D) Provisional ballots that the board determines are eligible to be counted under division (B)(3) of this section shall be counted in the same manner as provided for other ballots under *section 3505.27 of the Revised Code*. No provisional ballots shall be counted in a particular county until the board determines the eligibility to be counted of all provisional ballots cast in that county under division (B) of this section for that election. Observers, as provided in *section 3505.21 of the Revised Code*, may be present at all times that the board is determining the eligibility of provisional ballots to be counted and counting those provisional ballots determined to be eligible. No person shall recklessly disclose the count or any portion of the count of provisional ballots in such a manner as to jeopardize the secrecy of any individual ballot.

(E) (1) Except as otherwise provided in division (E)(2) of this section, nothing in this section shall prevent a board of elections from examining provisional ballot affirmations and additional information under divisions (B)(1) and (2) of this section to determine the eligibility of provisional ballots to be counted during the ten days after the day of an election.

(2) A board of elections shall not examine the provisional ballot affirmation and additional information under divisions (B)(1) and (2) of this section of any provisional ballot for which an election official has indicated under division (B)(7) of *section 3505.181 [3505.18.1] of the Revised Code* that additional information is required for the board of elections to determine the eligibility of the individual who cast that provisional ballot until the individual provides any information required under division (B)(8) of *section 3505.181 [3505.18.1] of the Revised Code*, until any hearing required to be conducted under *section 3503.24 of the Revised Code* with regard to the provisional voter is held, or until the eleventh day after the day of the election, whichever is earlier.

HISTORY:

151 v H 3, § 1, eff. 5-2-06; 152 v H 562, § 101.01, eff. 9-23-08.

NOTES:

Section Notes

The effective date is set by § 812.10 of 152 v H 562.

The following questions are of a general nature. The answer provided here may not be the appropriate answer if your county's circumstances are not identical. For more detailed information, please refer to directives, advisories, the appropriate statutes or municipal charters (if applicable), or call the Elections Division at (814) 466-2505.

Click on a question to see the answer. Click on the question again to hide the answer.

Provisional Ballots

▼ May a Board of Elections update a voter's record after the 25th day before a Presidential Primary?

R.C. 3503.16 is very specific with regard to how an elector who has moved prior to election day must vote if the elector's change of address is received by the board of elections after the deadline.

The deadline for a change of address form to be received by the board of elections before the presidential primary election is the 25th day (February 8, 2008). If a change of address form is received after that date, then the change will not be effective for the presidential primary election. So, you must take the statutory deadline into account with regard to the updating of your poll books prior to the election. If the 25-day deadline has not passed, then you may update your poll books with regard to that elector.

If the elector moves within the same precinct in the county and fails to file a change of address on or before the 25th day before the presidential primary election, then that voter may still vote a regular ballot in that precinct polling place under the procedures in R.C. 3503.16(B)(1)(a).

If the elector moves to a different precinct within the county and fails to file a change of address with the board of elections on or before the 25th day before the presidential primary election, then that voter must vote a provisional ballot at the board of elections between the 24th day and the day before the election OR at that elector's new precinct polling place or at the board of elections on the day of the presidential primary election under the procedures in R.C. 3503.16(B)(2).

If the elector moves to a different county within the state and fails to register to vote in the new county within the state on or before the 25th day before the presidential primary election, then that voter must vote a provisional ballot either at the board of elections in the county where the elector now resides starting on 24th day before the presidential primary election through the day of the presidential primary election under the procedures in R.C. 3503.16(C) OR at the elector's new precinct polling place on the day of the presidential primary election under R.C. 3505.181(A)(9), (B), and (C).

The only exception is for electors who, due to illness, physical disability, or infirmity, cannot appear at the board of elections and vote an absentee ballot under R.C. 3503.16(G) (a provisional absentee ballot).

Please note that after the 25-day deadline has passed, electors who move to a different precinct in the county or to a different county within the state must vote a provisional ballot regardless if your poll books have been printed or not.

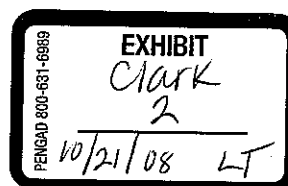
(as of March 3, 2008)

▼ Is a Board of Elections required to label Provisional Ballots in some way or print them on special paper stock to ensure they are designated as "provisional?"

No. The Secretary of State's office is not aware of any provision in law that requires some type of label or special designation for provisional ballots. (Absentee ballots, yes; but provisional ballots, no.) (as of November 21, 2007)

▼ Is the SOS prescribed Affirmation Statement that has been printed on a provisional ballot envelope sufficient to register a non-registered voter for future elections?

No. The form cannot be used to register a previously unregistered person. However, the SOS prescribed Provisional Ballot Affirmation Statement (SOS form 12-B) printed on a provisional ballot envelope, if completed properly, may serve several purposes. For example, it is an affirmation for providing a provisional voter's identity and qualifications to vote, and it may be used for voters who are currently registered by need to update their registration due to an address or name change. (as of 3/7/08)



▼ Is a voter who is casting a provisional ballot at a precinct polling place required to complete a voter registration card for a change of address?

No. Election officials may request, but shall not require, that a provisional voter complete a new voter registration card. It should be noted that the provisional ballot affirmation statement prescribed by the Secretary of State in 2006 serves two functions: It serves as a provisional voter affirmation statement as well as a change of name/address form (voter registration card).

Therefore, Boards of Elections need not attach a voter registration form to a provisional ballot envelope because the affirmation statement printed on the envelope, as designed by the SOS office, serves as a multi-function document; if properly completed it will serve to provide proof of identity and voter qualification, AND as a change of address form. Using the SOS prescribed affirmation statement as a multi-purpose form in this way will likely reduce confusion and BOEs are STRONGLY encouraged to do. (as of 3/7/08)

▼ Our BOE office stapled a voter registration form to all our provisional ballot envelopes that went to the polling locations. We have some provisional voters that didn't put their ID information on the provisional ballot envelope but did put the ID information on the attached voter registration form. Can we use their ID information from the registration form as a valid reason to count the provisional ballot?

Maybe. As stated in Directive 2007-06, on Pages 14-15, Section III.E., all that is required of a voter who casts a provisional ballot is that the voter affirm certain things by signing an affirmation statement. This affirmation statement should be preprinted on the provisional ballot envelope, so all a voter should have to do is sign it.

However, before counting the ballot, additional information may be needed for the BOE to verify the voter's identity and qualifications to vote - which is why we encourage election officials to ask the voter to complete the rest of the info requested in our office's prescribed affirmation statement for provisional ballot envelopes. If - based on the information provided by the voter - the BOE can verify the voter's identity and qualifications, the BOE may count the provisional vote. The process a BOE uses to verify the voter's ID and qualifications is up to the Board - and there should be a policy in place regarding this.

It should be noted that Boards of Elections need not attach a voter registration form to a provisional ballot envelope because the affirmation statement printed on the envelope, as designed by the SOS office, serves as a multi-function document; if properly completed, it will serve to provide proof of identity and voter qualification, AND as a registration form. Using the SOS prescribed affirmation statement as a multi-purpose form in this way will likely reduce confusion and BOEs are STRONGLY encouraged to do. (as of 9/10/07)

▼ Our Board of Elections printed its SOS prescribed Affirmation Statements for provisional voters on a piece of paper separate from the provisional ballot envelopes (we were trying to use up our old supply of plain envelopes). The precinct Election Official sealed the Affirmation Statement in the provisional ballot envelope. How should this be handled?

This should not have happened because the SOS prescribed provisional voter affirmation statement was redesigned based on changes in law and the current version should now be printed on the outside of the provisional ballot envelopes used by boards; old provisional ballot envelopes without affirmation statements printed on them, or with outdated affirmation statements printed on them, should not be used. Please refrain from using old envelopes and affirmation statements in the future, and please address this situation with your poll workers in case the poll workers don't understand the purpose of the affirmation statement or the need for an affirmation to be accessible without also accessing the ballot.

Because state law seems to indicate that the determination as to the sufficiency of the affirmation statement must be made before the envelope is opened, there is an argument that there is no way to count these ballots without violating state law. As such, you should certainly make your legal counsel, the county prosecutor, aware of the circumstances.

As for dealing with these particular ballots, there are two options:

1. First, the voter should not be disenfranchised because of mistakes made by election officials and, after discussing the situation with others here in the office, I think the situation can be resolved without jeopardizing the secrecy of the ballot by following the process outlined below:
 - o First, a Democrat and a Republican, together, should carefully unseal the envelope, without looking at the contents of the envelope, so that the envelope may be resealed with tape later in the process. During this step, the team of election officials MUST NOT remove anything from the envelope.

- o Second, the team should carefully look in the envelope to determine whether or not the affirmation statement was in fact sealed in the envelope. If it was, remove ONLY the affirmation statement, reseal the envelope with the ballot still inside, and mark the envelope with an explanation why the envelope was opened prematurely. If no affirmation statement is found inside, the ballot cannot be counted and the envelope should be resealed and marked as rejected with an explanation as to why the envelope was opened at all. At no time should either member of the team look at the actual provisional ballot.
 - o Third, assuming an affirmation statement was found and the envelope was resealed, review the affirmation statement to verify the voter's identity and qualifications to vote. If the affirmation statement is sufficient, follow office procedures for processing the envelope and ballot as you would for any other valid provisional ballot.
2. Alternatively, the Board could simply determine, in consultation with its legal counsel, not to count these ballots on the grounds that the Board may violate state law by doing so. Of course, if the Board chooses this option, it will need to deal with whatever public response may arise because of the mistake and subsequent decision not to count the provisional ballots in question. (as of 9/10/07)

▼ A precinct Election Official failed to sign the SOS prescribed Affirmation Statement printed on the outside of the provisional ballot envelope. Should the provisional ballot be counted?

The BOE should ask the election official who failed to comply with his or her statutory duty why they failed to do so. If the election official failed to do so because of a perceived problem with the affirmation statement, then the affirmation statement should be reviewed for sufficiency with the election official's concern in mind. If there is no good reason for the official's failure to sign the statement, then, assuming the BOE can verify the voter's identity and qualifications to vote based on the information provided by the voter, the ballot should be counted. The voter should not be penalized for the mistake of an election official, but the BOE should deal with the election official as necessary and appropriate. (as of 9/10/07)

▼ A provisional voter provided no ID and completed the SOS prescribed Affirmation Statement printed on the provisional ballot envelope. The Election Official signed the Affirmation Statement but did not record any information on the Election Official Verification Statement form. May the ballot be counted?

Maybe. As noted at p. 14, Section III.E., of Directive 2007-06, all that is required of a voter to vote a provisional ballot is that the voter complete the provisional ballot affirmation statement. Thus, a provisional voter may cast a provisional ballot without providing ID. If the BOE can verify the voter's identity and qualifications to vote based on the information provided by the voter, then the BOE shall count the ballot.

However, if the BOE cannot verify the voter's identity and qualifications to vote based on the information provided by the voter, and the voter does not provide additional identification information within 10 days after the election, then the vote shall not count. (as of 9/10/07)

▼ If the name and address of the voter are missing on a provisional ballot envelope's Affirmation Statement prescribed by the SOS, but it contains the voter's signature, should the ballot be counted?

No. According to the provisional ballot affirmation statement requirements in R.C. 3505.181, and described in R.C. 3505.182, the voter's name must appear in the statement, but the voter's address need not. So based on the fact that the name is missing, the ballot should not be counted.

Although the voter's address is not required, it should still be noted that on Page 14 of Directive 2007-06 ("Section E - Provisional Ballot Affirmation Statement"), election officials should encourage provisional voters to provide additional information on the Affirmation Statement (such as the voter's date of birth, current address, etc.), which may be needed to verify the voter's identity before the ballot can be counted. If the board cannot verify the voter's identity and eligibility using the information provided, then the ballot cannot be counted. (as of 9/10/07)

▼ May a board count a provisional ballot if it was cast in a precinct in which the voter does not currently reside?

In general, the answer is "no." R.C. 3505.183(B)(4)(a) provides: "If, in examining a provisional ballot affirmation and additional information under divisions (B)(1) and (2) of this section, the board determines that any of the following applies, the provisional ballot envelope shall not be opened, and the ballot shall not be counted:

(I) The individual named on the affirmation is not eligible to cast a ballot in the precinct or for the election in which the individual cast the provisional ballot."

The exception is if the voter is registered in Ohio and has moved into a new precinct and has not updated his or her registration. In that case, if the voter has cast his or her provisional ballot in a new precinct in which he or she now resides, the ballot is counted. (as of 9/10/07)

▼ If a voter provides the wrong number from his/her Ohio driver's license on the SOS prescribed Affirmation Statement that is printed on a provisional ballot envelope, I've heard the Board of Elections has two days to contact voter. Where is this in the Revised Code?

It is not in the Revised Code; it is part of Directive 2007-06 issued by Secretary Brunner, acting in her capacity as the state's chief elections officer. (as of 9/10/07)

▼ Can the last 4 digits of the Driver's License be used, instead of the last four digits of the SSN, as verification of identity for a provisional voter when the BOE is reviewing the SOS prescribed Affirmation Statement printed on the provisional ballot envelope to determine whether or not the provisional ballot should be counted?

A: If the BOE can verify the identity of the voter and his or her qualifications to vote, based on the information provided on the SOS prescribed Affirmation Statement while following the identity verification process implemented by Board, then the ballot may be counted. While electors are required to provide ID, the ORC only requires that a provisional voter complete the SOS prescribed Affirmation Statement. If, based on information in the statement, the BOE can verify the identity of the voter, then the ballot should be counted. (as of 9/10/07)

▼ Are Observers allowed to view the verification process of provisional ballots and if so how do we hide Social Security Numbers from them?

Yes, official "observers" as described in R.C. 3505.21 are allowed to view the verification process of provisional ballots, as provided by R.C. 3505.181(D):

"Provisional ballots that the board determines are eligible to be counted under division (B)(3) of this section shall be counted in the same manner as provided for other ballots under section 3505.27 of the Revised Code. No provisional ballots shall be counted in a particular county until the board determines the eligibility to be counted of all provisional ballots cast in that county under division (B) of this section for that election. Observers, as provided in section 3505.21 of the Revised Code, may be present at all times that the board is determining the eligibility of provisional ballots to be counted and counting those provisional ballots determined to be eligible. No person shall recklessly disclose the count or any portion of the count of provisional ballots in such a manner as to jeopardize the secrecy of any individual ballot." (Emphasis added.)

Election officials should cover Social Security numbers using non-permanent tape that is of an appropriate size and which can be removed without damaging, or leaving residue on, the provisional ballot envelope's affirmation statement. as of (9/10/07)