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**Instructions pursuant to R.C. 3501.05(C) for Implementing Federal Court Decision
on Election Observers During In Person Absentee Voting**

September 29, 2008

To: All County Boards of Elections

Re: Federal Court Order on Observers During Absentee Voting

This afternoon, Judge George C. Smith, Senior U.S. District Court Judge for the Southern District of Ohio, issued a temporary restraining order "to rescind Advisory 2008-24," holding that "Advisory 2008-24 has no effect and cannot be enforced to prevent observers from attending such locations that facilitate same-day registration, application for absent voter's ballot and ballot casting." A copy of Judge Smith's Temporary Restraining Order is attached to these instructions and has been appealed to the U.S. Sixth Circuit Court of Appeals to be considered by a panel tomorrow morning.

Our office has been contacted by a number of boards of elections who have conveyed that they have received lists of names of people who wish to observe the in person absentee voting process, starting tomorrow, when boards or satellite voting locations open for the start of in person absentee voting. Because of the absence of specifics in Judge Smith's orders as to rules for observers and the uncertain nature of the permanence of Judge Smith's order (a temporary restraining order remains in effect for a period of two weeks, and it is our understanding that this order is to be reviewed by the Sixth Circuit Court of Appeals tomorrow morning), I exercise my authority pursuant to R.C. 3501.05(C) to provide you with instructions for the conduct of this election, pending further court orders. I hereby temporarily rescind Advisory 2008-24 until further notice.

While Judge Smith quoted from R.C. 3505.21 in his order, neither that statute nor the Judge's order provide a process for appointing observers during in person absentee voting. R.C. 3505.21 requires the filing of a notice of appointment of observers by the appointing authority "not less than eleven days before the election on forms prescribed by the secretary of state." However, absentee voting begins a full two weeks prior to that filing deadline. Additionally, Judge Smith did not provide any additional guidance concerning the presence of observers during in person absentee voting.

In the absence of clear instructions in state law or from the Court, and pursuant to my authority under R.C. 3501.05(C), I instruct boards of elections to implement Judge Smith's order as follows:

- "Appointing authorities," as defined in Directive 2008-29, must file notices of appointment before observers may begin observing at a board of elections office or satellite location for absentee voting site (such notices of appointment must identify each individual appointed to serve as an observer for the political party or group of candidates

and must be on the forms prescribed by the Secretary of State, as is set forth in Directive 2008-29, entitled “Rights of and Limitations on Election Observers.”)

- Each individual observer must have his or her own certificate of appointment.
- All board of elections observers must be qualified electors of the State of Ohio, pursuant to R.C. 3505.21.
- All observers appointed to boards of elections must present a certificate of appointment to the Director or Deputy Director of the appropriate board of elections before observing.
- As reiterated by Judge Smith in his written order, R.C. 3505.21 provides that appointing authorities may appoint **one person** to observe at a board of elections office.
- In situations where appointing authorities have provided a list of names to the board of elections, no observation may occur until a certificate of appointment for an individual, identifying that individual for the day specified, has been presented to the Director or Deputy Director and the individual is administered the oath to observers.¹
- Only one individual per day per appointing authority (who has been appointed by that appointing authority) may observe at an in person absentee voting location.
- All appointments of observers for in person absentee voting must be filed no later than eleven (11) days before the November 4, 2008 general election.
- Each observer observing at a board of elections must be given a copy of Directive 2008-29, and must be instructed to follow the guidelines in that directive. Boards of elections must follow that directive, to the extent it applies, as well.
- Advisory 2008-03, entitled, “Polling Place Conduct; Media Access to Polling Locations; and Exit Polling Within 100 Feet of a Polling Place,” applies to in person absentee voting locations to the same extent that it would on Election Day.

These instructions should be followed until further notice. This office will promptly notify all boards of elections of changes that may be applicable upon further court review or order. Thank you for your cooperation and efforts in this regard.

If you have any questions about this advisory, you may contact the elections attorney assigned to your board of elections.

Sincerely,



Jennifer Brunner

Enclosures: Advisory 2008-24, Directive 2008-29, Forms for Observers and Appointing Authorities, and Advisory 2008-03

¹ The oath to observers is as follows: “You do solemnly swear that you will faithfully and impartially discharge the duties as an official observer, assigned by law; that you will not cause any delay to persons offering to vote; and that you will not disclose or communicate to any person how any elector has voted at such election.”