OHIO HOUSE OF REPRESENTATIVES SELECT COMMITTEE
ON THE ELECTION CONTEST IN THE
98TH HOUSE DISTRICT
IN THE NOVEMBER 2012 GENERAL ELECTION

APRIL 23, 2013
COLUMBUS, OHIO
STATEHOUSE ROOM 121
Chairman Huffman
Vice Chairman Stautberg
Ranking Member Clyde
Members of the Select Committee

My name is Andy Douglas. I am an attorney with the law firm of Crabbe, Brown & James in our Columbus office. By appointment of County Prosecutor Ryan Styer and the Tuscarawas Board of County Commissioners, I was appointed as special counsel to assist the County Prosecutor’s Office in representing the Tuscarawas County Board of Elections in the matter you are now considering.

In the case of Bruto v. United States, decided in 1968, with Justice Brennan writing for the Court, the Court, in deciding whether a defendant had received a fair trial pursuant to the constitutional guarantee of the Sixth Amendment to the United States Constitution said, in part, that “a defendant is entitled to a fair trial but not a perfect one.” Extrapolating that thought into our system of elections in our country, election officials and qualified academic commentators have universally agreed that candidates and issues appearing on a ballot for election or decision are entitled to a fair election – not a perfect one.
The contest for the November election for House District 98, for the Ohio House of Representatives was possibly not perfect, but it was fair.

Make no mistake. It is the desire and drive of all election officials to have “perfect” elections. We all know that, given the substantial human and machine factors involved in every election, errors occur. If errors occur that are substantive in nature, there are various ways to correct such errors. Those happenings do not make a particular election unfair. Imperfect – yes. Unfair – no.

I have personal experience with such an election. In each of the odd number years from 1961 to 1973, in races for seats on Toledo City Council, I had finished, generally, at the top of the ticket in votes counted. In 1973, on election night, I suddenly was in 10th place rather than the customary 1st place. I had lost the election. By noon on Saturday of that week, I was summoned to the Board of Elections and, after much discussion and explanation, I was advised that 10,000 of my votes had been lost – not counted if you will – and by Saturday evening, I was back in third place. A perfect election? No. A fair election? Yes.
R. Doug Lewis who was, in 2006, the Executive Director of the National Association of Election Officials, in testimony before the United States Election Assistance Commission, said, among other things, that "[a]s a profession we [election officials] seek a perfect election; as a society we are entitled to a fair election, not a perfect one."

In the matter now before this Honorable Committee, and throughout each election cycle, we have all heard the complaints about poll workers, but the reality is that we cannot run the election process without them. For every bad one (meaning one who makes an inadvertent error), there are many, many good ones. What needs to be recognized is that we, frankly, expect too much from poll workers. We expect them to know, after extensive training provided by the Board and staff, volumes of material on what to do in the polling place. We expect them to get all the legal provisions correct every time. We expect them to remain polite and cordial for the 14- to 16-hour day we work them when some voters or some partisans are not cordial in their dealings with poll workers. We expect them to be able to set up voting equipment and/or to repair the equipment when it doesn’t work. We expect them to be
able to explain to people how to vote using the equipment even when voters indicate they don’t want any assistance. Often we expect them to know secondary languages to assist voters – and we expect of them all of this and more and to continue doing this service even when some in society, or individual partisans, deride their efforts and their capabilities.

When, and if, a poll worker makes a mistake, we then have highly-trained and efficient bi-partisan staff at each Board of Elections to work out the problems. Where there is still some question, we then have 4-person Boards – 2 Democrats and 2 Republicans who look at the issues, apply the law to the facts and then issue, for the most part, their collective judgments. These are all dedicated, hardworking folks who, regardless of their political persuasions, have one goal in mind. That goal is to ensure that they abide by their oaths to conduct a fair election. All of this was done in the election in the contest for Representative in the 98th House District. The election may not have been perfect – but it was fair.

Now let me briefly turn to part of the evidence before you. I have prepared for each of you a binder that will, I believe, assist you in your
deliberations. For the most part, the contest now before you involves absentee and provisional ballots. As to the case law involving the casting of these ballots, I’ll leave that to others. My focus is to graphically show you the form of the documents involved and how and why a vast army of election officials, poll workers, staff and four persons experienced in election law – one a highly capable and well respected attorney, one a former United States Congressman and attorney, and the Chairs of each of the two major political parties, provided a fair election in the House District 98 contest.

First let me deal with the absentee ballot question.

(A)

Absentee Ballots

Absentee ballot applications may, after being properly completed with certain information, be either mailed to the Board of Elections or hand-delivered to the Board. If the application is not in proper order, the person requesting the ballot is notified in writing that the voter must submit a new, properly completed application or come to the Board to fill out a new application. The invalid application may not be amended
by a staff person and the defective application may not be returned to the voter because once it arrives at the Board office and is processed, it becomes a public record.

After a proper application is received and processed, the staff of the Board mails out (or gives to a voter voting at the Board office) certain documents. In your binder, at Tab 1, you will find a copy of the envelope that is sent to the voter. Inside that envelope there are instructions and a ballot. At Tab 2, you will find a page of a sample ballot obtained from the Board’s website and a copy of the instructions. I ask you, for possible discussion later, to now note that this is a copy of a ballot to be cast in Precinct 26 (top right corner). Also, please, note the rotation of the names in the contest for the 98th District seat.

Moving to Tab 3 you will find the Identification Envelope identified as Form 12-A. The form is provided for by statute (R.C. 3509.04) and is prescribed by the Secretary of State. Please note the oath at the bottom and that, in the middle of the page, appears the verbiage “You must provide your birth date” and then there is a place for month, day and year. This will be of interest to you in just a moment.
At Tab 4, there is a copy of the Return Envelope for the voter to send her or his ballot back to the Board.

At Tab 5, there is a copy of R.C. 3509.04 which sets forth the requirements for the Identification Envelope. Please note that the form set out in the statute contains the “date of birth” language.

Next, at Tab 6, I have provided two pages of Directive 2012-26, promulgated by the Secretary of State on November 2, 2012 – just a few days before the election. Please note that on page 9, under the “Processing and Counting Absentee Ballots” section, that the Board is instructed to “examine each returned absentee envelope for eligibility before the Board may remove the ballot from the envelope. At the top of page 10, the Secretary instructs that “[i]n order for an identification envelope to be opened and the absentee ballot to be counted, the absentee voter must provide, at a minimum, the following information on the absentee ballot identification envelope:

- Name
- Signature; and
- Proper ID”
Note that in this directive no birth date is required notwithstanding that
the statute (Tab 5) and the Identification Envelope itself (Tab 3) both
require a birth date.

Why is this important? It is pertinent because the Board received 6
ballots with no birth date information filled in. Faced with this
dichotomy, the Board discussed the issue and in its best bi-partisan
fashion, authorized the ballots to be counted. On those envelopes
(maybe 6 others) with incomplete or inaccurate birth date information
(that is the date did not conform to the Board’s records), the votes were
not counted.

At Tab 7 is a copy of R.C. 3509.05. The statute is clear. The
absentee ballot identification envelope must be mailed or delivered to
the Board. One voter had another voter drop off his envelope at the
precinct where the other voter went to vote. That ballot was not counted
nor should it have been counted.

At Tab 8 you will find a copy of yet another directive from the
Secretary of State. The directive (2012-48-2) requires Boards to contact,
in writing, absentee voters who have not provided the required
information on their identification envelope. The Tuscarawas Board did that and one such letter, as an example, is included at Tab 9. In this case, the voter used her maiden (or previous) name but signed in her married name. She was notified but never responded. Her vote was not counted.

At Tab 10, you will find a copy of R.C. 3509.07. This section provides various reasons why and when a ballot should not be accepted or counted. One of the ballots not counted, and being contested here, came in with a Stub A having been detached and then carefully taped back on to the ballot. The Board voted not to count it and, I believe, properly so.

(B)

Board Actions

With all of this you can see that this bi-partisan Board in exemplary fashion carried out its responsibilities. But there is more. At 5:00 p.m. on November 6, 2012, the Board Members started a review of absentee ballots that were rejected by the scanners. Seven (7) ballots had been returned without any Identification Security Envelope. The
Board unanimously voted not to count. Ten (10) ballots were “double bubble” — that is the voter circled in a vote for a candidate then also wrote the same candidate’s name in, in the write-in space. Board Member Space moved to remake those ballots with the voters’ intents so they could be scanned and counted. The vote on the motion was unanimous.

The Board next considered 65 ballots where the voters erased or used whiteout to change their votes. On the motion of Mr. Space, the Board voted unanimously to remake and tabulate the ballots.

Next, 37 voters had voted for 2 candidates in a race where the voter was allowed to vote for only 1 candidate. The Board voted unanimously to have the IT person for the Board hit the override button when scanning these ballots so the double-voted race would not be counted but all other ballot matters would be tabulated.

From all of this, it should be clear that this is a Board that worked hard to follow the law and the directives of the Secretary of State. All of the absentee ballots that should have been counted — were counted. The election in House District 98 was fair.
Provisional Ballots

Having shown, I hope and believe conclusively, that there was no election irregularity with the absentee ballots, I now move to the other ballots – provisional ballots – which are the subject of your inquiry. To assist you in your search for truth, I have provided information at 2 additional tabs.

At Tab 11, you will find a copy (front and back) of the Secretary of State’s Form 12-B, the envelope into which a provisional voter inserts a completed ballot. I respectfully request you pay particular attention to the section denoted as steps 1 and 3.

At Tab 12, I provide a full copy of yet another directive of the Secretary of State – Directive 2012-54. For our discussion and your deliberations, I believe that information on pages 1, 2 and 5 is pertinent. You will note (page 1) that the purpose of the directive is for “Determining the Validity of Provisional Ballots.” Also on page one, the directive provides that “All Boards must use SOS Form 12-B . . . for the November 2012 General Election.” On pages 2 through 5, the
directive sets forth the steps to be used in determining the validity of provisional ballots.

At the Board meeting held on November 19, 2012 at 8:30 a.m., under "Old Business" on the agenda, Board Member Wills moved to adopt Secretary of State Directive 2012-54 as the provisional ballot policy for the Office of the Tuscarawas Board of Elections. The motion was seconded by Mr. Space and the vote to approve was unanimous. What does this directive and office policy provide?

In Step 1 (page 2), it is clear that if the affirmation statement does not contain both the voter's printed name and a valid signature, then the Board must reject the provisional ballot. One envelope had no signature. This contested vote was not counted nor should it have been counted.

The last bullet point in Step 5, found on page 5, provides that if the voter cast the provisional ballot in the wrong precinct and wrong polling location, the Board must reject the provisional ballot. This is the crux of this election contest. The Board rejected 18 ballots that were cast in the wrong location and, of course, the wrong precinct. The Contester
believes these votes should have been counted. They were not nor should they have been counted. The directive is clear as is the case law.

In passing and just for your information, the Board also rejected 53 ballots where the persons marking a ballot were not registered; 2 where the voter had voted absentee; 1 where the voter used the voting machine and then went back and asked for a paper ballot; 1 where the provisional envelope was completely blank and 6 who were voters living in another County.

Of the 18 wrong precinct/wrong location voters, I believe 15 were deposed. I attended each deposition and asked each deponent if they had read the oath found in Step 3 of the Provisional Ballot Affirmation found at Tab 11. The responses varied. I asked each of them to read the oath out loud. Most had not read the oath before signing. A few said they glanced at it but did not give it much attention. One or two said they read it, understood it but signed anyway because they had been given a provisional ballot. I asked each of them if they suspected something was amiss when their name could not be found in the poll book or they gave an address different than was in the book. The answers were generally
“yes” but, again, they had been given a ballot so they marked it. I then asked if now, having read the statement, if they understood that if the Board determined that in fact they were not a registered voter in the precinct where they were casting the provisional ballot that their vote would not be counted, all answered “yes.” Finally, I asked if having now read and understanding the oath and its penalties would they sign the statement again. Each of the deponent’s answered “no.”

These contested votes were not counted nor should they have been counted. There was no election irregularity. The election for the House seat in District 98 was a fair election.

(D)

Press Conference Information

Mr. Chairman and Honorable Members of this Select Committee, I close with one more brief thought. I’m sure all of you are privy to the packet of materials (show packet) that was distributed on March 20, 2013 at a press conference. I have, today, already dealt with most of the issues and allegations contained in this packet. Only one do I single out for further attention. That exhibit, if you will, is found at Tab 13.
Speaking only for myself, if I were a State Representative and a member of this Committee, regardless of political persuasion, I would be, at the least, disappointed if not outraged that I was given this document as an exhibit for the purpose of influencing me to reach a conclusion. As kindly as I can say it, this document is a fraudulent misrepresentation of what it purports to tell you. The document clearly says that the image portrayed was of a ballot that was cast in Precinct 26 and that it was not counted but should have been counted. The exact statement is “[t]his one is from Precinct 26.” Plainly and simply – not true.

First, please turn to Tab 2. Note the “E’s” at the end of the words “sample.” Now turn back to Tab 13 and note in the lower left corner the enlarged “E.” This document, being presented to you as authentic, was concocted from a sample ballot obtained from the web site of the Board. Even more egregious is that this alleged ballot cannot be from Precinct 26. Please again turn to Tab 2 and note in the upper right corner the letter and numbers “X026.” This is a copy of a ballot used for Precinct 26. Note further the rotation of the names on the ballot for the 98th District race. Mr. O’Farrell is on top and Mr. Landis below. Now look
again at Tab 13. The alleged ballot shows Mr. Landis on top and Mr. O’Farrell below. Pure and simple. Even though the exhibit says: quote “This one is from Precinct 26” end quote – it is impossible for that to be true.

Conclusion

In the press release accompanying the packet of documents distributed on March 20, 2013, my friend, for whom I have the highest respect for his knowledge, his candor, his ability and his ethics, Representative Mike Curtin, a member of this Committee, was quoted as saying “[i]t is my hope that this Special Committee can put partisanship aside and do what is right for the voters of the 98th House District and Ohio, and ensure all the votes are counted.” I assume, knowing Representative Curtin, that he, of course, means that all of the votes legally cast should be counted. My clients, the Tuscarawas County Prosecutor Ryan Styer (who is here today), the Board of Elections of Tuscarawas County and, by extension the voters of Tuscarawas County and the Tuscarawas County Commissioners all agree, I believe, that all votes legally cast in the 98th House District race contested on November
6, 2012 should have been counted – and they were counted. The
election held on November 6, 2012 for House District 98 was maybe not
perfect – but it was fair.

Supporting this proposition is the further actions of the Board. The
Board again met, on November 26, 2012, to review the results of the
official canvass of the votes for the 2012 General Election. After
reviewing the official report against the unofficial report from election
night, Board Member Wills moved to certify the results as official.
Board Member Space seconded the motion and the vote of the Board
was unanimous. There being just a 14-vote difference between the
candidates, a recount was ordered.

There were several additional meetings of the Board while the
recount was in process. Representatives of both candidates attended and
observed. After reviewing a number of individual and groups of ballots
and voting on each, including a number of compromise votes, and after
reviewing the official report with the recount report, Mr. Wills moved
and Mr. Space seconded that the recount totals in the 98th House District
race be certified as official. All four Board Members voted in the affirmative.

You and your House colleagues are now the Judges. Socrates once said that:

"Four things belong to a judge; to hear courteously, to answer wisely, to consider soberly, and to decide impartially.”

I submit that considering all of the evidence, reasonable minds can come to only one conclusion. That conclusion is that the Tuscarawas County Board of Elections followed the laws of Ohio and the Directives of the Secretary of State and that no election irregularity of substance occurred in the conduct of the fair election that took place on November 6, 2012 in the election contest for the Ohio House of Representatives Seat in the 98th District of Ohio. We respectfully ask you to so find.

Thank You.
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Envelope Sent to Voter</td>
</tr>
<tr>
<td>2</td>
<td>Sample Ballot (from website)</td>
</tr>
<tr>
<td>3</td>
<td>Identification Envelope (SOS Form 12-A)</td>
</tr>
<tr>
<td>4</td>
<td>Return Envelope</td>
</tr>
<tr>
<td>5</td>
<td>R.C. 3509.04</td>
</tr>
<tr>
<td>6</td>
<td>SOS Directive 2012-26</td>
</tr>
<tr>
<td>7</td>
<td>R.C. 3509.05</td>
</tr>
<tr>
<td>8</td>
<td>SOS Directive 2012-48-2</td>
</tr>
<tr>
<td>9</td>
<td>Tuscarawas Board Letter</td>
</tr>
<tr>
<td>10</td>
<td>R.C. 3509.07</td>
</tr>
<tr>
<td>11</td>
<td>Provisional Ballot Envelope (SOS Form 12-B)</td>
</tr>
<tr>
<td>12</td>
<td>SOS Directive 2012-54</td>
</tr>
<tr>
<td>13</td>
<td>Press Conference Document</td>
</tr>
<tr>
<td>14</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
</tr>
</tbody>
</table>
SUPPLIES ENVELOPE
For
ABSENT VOTERS
Form No. 11, Prescribed by Secretary of State, 01-12
Dayton Legal Blank, Inc.
INSTRUCTIONS TO VOTERS OF ABSENT VOTER’S BALLOTS
(O.R.C. 3509.04, 3509.05, 3509.08, 3505.181)

1. **INSPECT YOUR BALLOT:** Before voting your ballot, ensure that there are no marks on your ballot. If there are any marks on your ballot, immediately return it to the Board of Elections and ask for a new ballot.

2. **MARK YOUR BALLOT:** Mark your ballot according to the specific instructions provided on the ballot. Use a #2 pencil or dark ink pen.
   - Correct:
     - George Washington
   - Incorrect:
     - George Washington

3. **IF YOU MAKE A MISTAKE:** If you make a mistake when marking your ballot, please contact the Board of Elections for a replacement ballot. You may request a replacement ballot only two times. Do not erase!

4. **PREPARE YOUR BALLOT FOR SUBMISSION:**
   - The numbered stub must remain attached to your ballot. Your ballot cannot be counted if the stub is removed.
   - Place the ballot into the Identification Envelope. If necessary, fold your ballot. Seal the Identification Envelope. Your ballot cannot be counted if it is not sealed in the Identification Envelope.
   - Complete and sign the Statement of Voter on the outside of the Identification Envelope. Your ballot cannot be counted if the Statement of Voter is not completed and signed.
   - Place the sealed, completed, and signed Identification Envelope into the Return Envelope.
   - If you did not write your Ohio’s driver’s license number or the last four digits of your social security number on the Identification Envelope, then include a copy of an ID document (such as a copy of a military ID, utility bill, or government document) in the Return Envelope separate from the Identification Envelope. Election officials must be able to see you have provided ID in order to count your ballot.
   - Seal the Return Envelope containing your completed and sealed Identification Envelope and, if appropriate, your separate ID document.

5. **RETURN YOUR VOTED BALLOT:**
   - You or a near relative may personally deliver your ballot to the Board of Elections until the close of the polls on Election Day (7:30 p.m.), or you may return your ballot by mail. If you return your ballot by mail, it must be postmarked (not a date marked by a postage evidence system such as a postage meter) no later than the day before Election Day and received by the Board of Elections not later than 10 days after Election Day in order to be counted. Please affix sufficient postage for the prompt delivery of your ballot.
   - You may not return your absentee voter ballot to your polling location.

**NOTICE:** If you change your mind about voting absentee and decide to vote at the polling place on Election Day, then you will be required to vote a provisional ballot.

**FYI:** The cost to mail your ballot back to the Board of Elections is $1.30 (in the US), and $3.31 (outside the US except Canada and Mexico).
IDENTIFICATION ENVELOPE
STATEMENT OF VOTER
R.C. 3509.04, 3511.05

I, ________________________, declare under penalty of election falsification that the within ballot or ballots contained no voting marks of any kind when I received them, and that I caused the ballot or ballots to be marked, enclosed in the identification envelope, and sealed in the envelope.

I am a qualified elector of the state and my voting residence in Ohio is:

__________________________________________
(Street Address)

__________________________________________
(City or Village and Zip)

You must provide your birth date: ___/___/___ and ONE of the following:

month day year

☐ Your Ohio driver's license number: ______________________, OR
   (located left hand side, middle of card beginning with two letters)

☐ The last four digits of your social security number: ____________ OR

☐ In lieu of providing either of the above numbers, I am enclosing a COPY of one of the following in the return (outside) envelope in which this identification envelope will be mailed: a current and valid photo identification, a military identification, or a current (within 12 months) utility bill, bank statement, government check, paycheck, or other government document (other than a voter registration notification mailed by a board of elections) that shows my name and current address.

Election at which I am voting (check which election, and if a primary election, specify which ballot you have returned):

Check ONLY one:

1. ☐ Primary Election (for primary elections, select type of ballot):
   ☐ Party ______________________ ☐ Nonpartisan or issues only

2. ☐ General Election (month and year) ______________________
3. ☐ Special Election (month and year) ______________________

I hereby declare, under penalty of election falsification, that the statements above are complete and true to the best of my knowledge and belief.

X ______________________
SIGNATURE OF VOTER

Date Signed

WHOMEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE

(A) If a director of a board of elections receives an application for absent voter's ballots that does not contain all of the required information, the director promptly shall notify the applicant of the additional information required to be provided by the applicant to complete that application.

(B) Upon receipt by the director of elections of an application for absent voter's ballots that contains all of the required information, as provided by section 3509.03 and division (G) of section 3503.16 of the Revised Code, the director, if the director finds that the applicant is a qualified elector, shall deliver to the applicant in person or mail directly to the applicant by special delivery mail, airmail, or regular mail, postage prepaid, proper absent voter's ballots. The director shall deliver or mail with the ballots an unsealed identification envelope upon the face of which shall be printed a form substantially as follows:

"Identification Envelope Statement of Voter

I, .................................................(Name of voter), declare under penalty of election falsification that the within ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked, enclosed in the identification envelope, and sealed in that envelope.

My voting residence in Ohio is

..........................................................................................................

(Street and Number, if any, or Rural Route and Number)

of .................................................(City, Village, or Township) Ohio, which is in Ward .............. Precinct ................. In that city, village, or township.

The primary election ballots, if any, within this envelope are primary election ballots of the ............ Party.

Ballots contained within this envelope are to be voted at the ............ (general, special, or primary) election to be held on the ...................... day of ......................, ............

My date of birth is .............. (Month and Day), ............ (Year). (Voter must provide one of the following:)

My driver's license number is .............. (Driver's license number).

The last four digits of my Social Security Number are .............. (Last four digits of Social Security Number).

...... In lieu of providing a driver's license number or the last four digits of my Social Security Number, I am enclosing a copy of one of the following in the return envelope in which this identification envelope will be mailed: a current and valid photo identification, a military identification, or 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, that shows my name and address.

I hereby declare, under penalty of election falsification, that the statements above are true, as I verily believe.

(Signature of Voter)

WHOEVER COMMTS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE."

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 address.
Once the board receives an application that meets the requirements explained above, it must provide the voter with the correct ballot for the voter's precinct, based on the voter's residence address. Boards of elections may not outsource the mailing of absentee ballots to vendors or any other third party except when the board has received prior written authorization from the Director of Elections, conditioned upon submission of appropriate quality assurance procedures, including the on-site presence of board personnel during every phase of the vendor or third party's possession of ballots, supplies, and/or data.

Ohio law requires boards of elections to provide an identification envelope with the absentee ballot (see Secretary of State prescribed forms 12-A and 12-C).²¹

III. PROCESSING AND COUNTING ABSENTEE BALLOTS

Boards of elections may begin processing, but not tabulating, absentee ballots not earlier than ten days prior to Election Day. “Processing” includes:

- Opening absent voter's ballot envelopes having been examined and accepted as valid;
- Determining whether the stub is still attached;
- Preparing the absent voter's ballot for scanning; and
- Scanning of the absent voter's ballot using automatic tabulating equipment at a central counting station²²; and identifying absent voter's ballots that cannot be "read" or are "rejected" by the ballot scanning device to determine whether the ballot needs to be remade so that it can be read by the scanner. This includes remaking of UOCAVA ballots transmitted by email or fax.

All absentee ballots returned by the close of polls on Election Day, whether returned in person or by mail, must be included in the unofficial results if the ballots meet all other requirements of law.

Valid absentee ballots received after the close of polls on Election Day through the 10th day after the election must be included in the official canvass.

The board must examine each returned absentee ballot envelope for eligibility before the board may remove the ballot from the envelope.

²¹ RC 3509.04
²² In no circumstance may any board initiate the human-readable reporting of election results from absentee ballots processed prior to 7:30 p.m. on Election Day. RC 3505.26
in order for an identification envelope to be opened and the absentee ballot to be counted, 
the absentee voter must provide, at a minimum, the following information on the 
absentee ballot ID envelope:

- Name;
- Signature; and
- Proper ID.

Ohio law requires all absentee voters to place their ballot in the ID envelope and seal the 
envelope. The board of elections must clearly indicate that the ballot must be sealed 
within the ID envelope in order to count. If the board receives an absentee ballot that is 
not sealed in its identification envelope, the board must seal the envelope. If the ballot is 
not inside the identification envelope, the board must put the ballot in the identification 
envelope and seal it.

Pursuant to a Court Order,23 if an absentee voter provides the number above his or her 
picture and not the driver's license number (two alphabet letters followed by six 
numbers), the board must notify the voter of such error by telephone or in writing, within 
two business days of receiving the application or voted ballot. The voter so notified must 
be permitted to appear in person at the office of the board to provide the correct 
information. In the case of a returned absentee 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.

Boards may not count an absentee ballot in the following situations:24

- The absentee ballot identification envelope contains insufficient information;
- The signature of the voter does not correspond with the voter's registration 
signature;
- The applicant is not a qualified elector in the precinct as of Election Day;
- The ballot envelope contains more than one ballot of any one kind, or any voted 
ballot that the elector is not entitled to vote;
- Stub A is detached from the absentee ballot;
- The voter provides a different address than the address at which the voter is 
registered. Ohio law does not permit an absentee ballot identification envelope to 
be used as a voter registration form, change of name form, or change of address 
form. If the address on the absentee ballot identification envelope indicates that

24 RC 3509.07, 3503.16
3509.05 Voting and return procedure.

(A) When an elector receives an absent voter's ballot pursuant to the elector's application or request, 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 board of elections; otherwise, the elector shall cause the ballot to be marked, folded in a manner that the stub on it and the indorsements and facsimile signatures of the members of the board of elections on the back of it are visible, and placed and sealed within the identification envelope received from the director of elections for that purpose. Then, the elector shall cause the statement of 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 a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, that shows the name and address of the elector.

The elector shall mail the Identification envelope to the director from whom it was received in the return envelope, postage prepaid, or the elector may personally deliver it to the director, or the spouse of the elector, the 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 of the elector may deliver it to the director. The return envelope shall be transmitted to the director in no other manner, except as provided in section 3509.08 of the Revised Code.

http://codes.ohio.gov/orc/3509.05 3/28/2013
DIRECTIVE 2012-48-2
October 23, 2012

To: All County Boards of Elections
Directors, Deputy Directors, and Board Members

Re: Contacting Absentee Voters

INSTRUCTIONS

As provided in Directive 2012-48:

All county boards of elections must contact any absentee voter who provided insufficient
information on their absentee ballot identification envelope to give the voter an opportunity
to supplement the voter's identification envelope so the voter's ballot can be tabulated. This
Directive applies to all absentee ballots regardless of whether UOCAVA or non-UOCAVA,
in-person or by mail.

When a county board of elections has determined that an absentee voter provided insufficient
information (i.e. name, identification, signature) on their identification envelope, or the information
supplied by the voter for the required fields on the identification envelope do not match information
contained in the voter's registration record, the board must notify the voter in writing at the voter's
registration address, or the address to which the voter had requested the absentee ballot to be mailed.

The notice must include a copy of SOS Form 11-S and inform the voter that in order for the voter's
absentee ballot to be valid and tabulated, the voter must either:

- Complete SOS Form 11-S and return it by mail such that the board of elections receives it on
  or before November 16, 2012; or
- Appear in person at the main office of the board of elections during the uniform days and
  hours for in-person absentee voting (see Directives 2012-35 and 2012-50), between 6:30 a.m.
  and 7:30 p.m. on Election Day, or during the Board's normal weekday business hours from

Paragraph D of Directive 2012-48 remains applicable in order to appropriately serve UOCAVA and
home-bound absentee voters.

If you have any question regarding this Directive, please contact the Secretary of State's elections
attorney assigned to your county at (614) 466-2585.

Sincerely,

Jon Husted
Dear Voter:

According to Ohio Election Laws, any qualified Ohio elector whose current voting residence is at the address appearing in the records of the board of elections may request an absentee ballot without stating a reason. Your Absentee Ballot has been received, and after processing we have found that you have a CHANGE OF NAME and did not update your voter record. We cannot count your Absentee Ballot at this time.

Under Ohio Election Laws, “whenever a registered elector changes his name, he shall report the change to the Board of Elections.” You may change your name:
- in person at the Board of Elections,
- in person at the Bureau of Motor Vehicles,
- in person at any public library in Tuscarawas County,
- by downloading a Registration Form from the Secretary of State’s website or our website: [http://boe.co.tuscarawas.oh.us](http://boe.co.tuscarawas.oh.us), filling in the information, and sending it to our office, or
- by completing the enclosed Registration Form and returning it to our office

Changes to voter registration records need to be completed prior to the poll lists being printed. Poll lists must be available fourteen days before the election. In order to process your request for an absentee ballot, we must receive the enclosed Registration Form containing your change of name no later than October 19, 2012.

After this date, we will not be able to mail you an Absentee Ballot. You will have to vote a Provisional Ballot. If you choose to vote at the polls on Election Day the poll workers will have you complete a provisional envelope and issue you an optical scan ballot. You will sign in the signature book with your new signature, vote the ballot, seal it in the envelope, and return it to the poll workers. This office will change your name on your voter records after this election. A new voter identification card will then be issued to you.

If you are wishing to vote an absentee ballot instead of voting at the polling site, then you may come to the Board of Elections office and vote a provisional ballot here. By law provisional ballots may not be mailed. Office hours are Monday through Friday from 8:00 am to 4:30 p.m. and Friday November 2nd from 8:00 am - 6:00 pm.

If you have any questions, please feel free to contact our office Monday through Friday from 8:00 a.m. to 4:30 p.m. at 330-343-8819.

Sincerely,

TUSCARAWAS COUNTY BOARD OF ELECTIONS

Charles E. Miller, Director

Sarah E. Kneuss, Deputy Director

THOMAS H. HISRICH, Chairman
IDA B. BARLOCK
DOUGLAS S. WILLS
ZACK SPACE
3509.07 Rejection and challenge of absent voter ballots.

If election officials find that the statement accompanying an absent voter's ballot or absent voter's presidential ballot is insufficient, that the signatures do not correspond with the person's registration signature, that the applicant is not a qualified elector in the precinct, that the ballot envelope contains more than one ballot of any one kind, or any voted ballot that the elector is not entitled to vote, that Stub A is detached from the absent voter's ballot or absent voter's presidential ballot, or that the elector has not included with the elector's ballot any identification required under section 3509.05 or 3511.09 of the Revised Code, the vote shall not be accepted or counted. The vote of any absent voter may be challenged for cause in the same manner as other votes are challenged, and the election officials shall determine the legality of that ballot. Every ballot not counted shall be endorsed on its back "Not Counted" with the reasons the ballot was not counted, and shall be enclosed and returned to or retained by the board of elections along with the contested ballots.

Amended by 129th General Assembly File No.105, SB 295, §1, eff. 8/15/2012.

Amended by 129th General Assembly File No.46, HB 224, §1, eff. 10/27/2011.

Amended by 129th General Assembly File No.40, HB 194, §1 Made subject to referendum in the Nov. 6, 2012 election. The version of this section thus amended was repealed by 129th General Assembly File No.105, SB 295, §1, eff. 8/15/2012.

Effective Date: 08-28-2001; 05-07-2004; 01-27-2006

http://codes.ohio.gov/orc/3509.07

3/28/2013
PROVISIONAL BALLOT AFFIRMATION
(C. 3503.16, 3505.181, .182, .183)

STEP 1 - Clearly PRINT your full name: __________________________

STEP 2 - Provide ONE of the following forms of identification:
The Secretary of State and the Board of Elections recommend that you write the last four digits of your Social Security number.

A. Write the last four digits of your Social Security number: __________
   - or -
B. Write your full eight-digit Ohio driver’s license number, which begins with two alphabet letters followed by six numbers: __________
   - or -
C. If you did not write the last four digits of your Social Security number or your full Ohio driver’s license number, you must show to your precinct election official one of the forms of identification listed below:

   If you do not check one of the following boxes affirming the type of ID you showed to the precinct election official or do not complete Form 10-T (only if you are eligible to do so), the board of elections will conclude that you did NOT show ID to your precinct election official and you must show ID at the board of elections during the 10 days after the election for your vote to be eligible to be counted.

   - ☐ your military identification card, or
   - ☐ a current (within 12 months) utility bill, bank statement, government check, paycheck, or other government document (except a document from your county board of elections) containing your name and current address, or
   - ☐ a form of photo identification (except U.S. Passport) that was issued by the United States government or the State of Ohio containing your name, current address (or former address if ID is a driver’s license or state identification card), and an expiration date that has not passed, or
   - ☐ complete Form 10-T only if you do not have a Social Security number AND do not have any of the forms of identification listed above.

   NOTE: if you fail to provide identification at this time you must go to your county board of elections on or before the 10th day following this election to provide a qualifying form of identification in order for this ballot to count.

STEP 3 - Sign the following statement:

I solemnly swear or affirm that I am a registered voter in this precinct in which I am voting the provisional ballot and that I am eligible to vote in this election, or for which I am casting this provisional ballot, I understand that the information I provide on this provisional ballot affirmation is true and correct, and, if the board of elections determines that I am not registered to vote, or ineligible to vote in this election, and, if the board of elections determines that I have already voted in this election, this provisional ballot will not be counted. I further understand that knowingly providing false information is a violation of law and subjects me to possible criminal prosecution. I hereby declare, under penalty of election falsification, that the above statements are true and correct to the best of my knowledge and belief.

VOTER’S SIGNATURE __________________________

WHOEVER COMPLANTS ELECTION FALSIFICATION IS GUILTY OF A FIFTH DEGREE FELONY

PRECEPT ELECTION OFFICIAL INFO

Failure by the precinct election official to complete this section will not affect whether or not this provisional ballot is counted.

- This ballot is cast in precinct (list name or number of voter’s precinct) __________________________
- The name or number of this location is __________________________
- Precinct election official’s printed name __________________________ Date __/__/____

*Byton Legal Blauk, Inc. Form No. 02067*
# Notification of Change of Address/
Change of Name for Provisional Ballot Voters

Failure to complete this form will not cause your provisional ballot to be rejected.

**Provisional voters should complete this form in order to notify their county board of elections that they have changed their:**
- address, or
- name.

If you are completing this form notifying the board of elections that you changed your residence from one Ohio county to another Ohio county then your voter registration in your previous Ohio county will be cancelled and your voter registration will be activated in your new Ohio county.

If the board of elections determines that you were not previously registered to vote in the State of Ohio, by completing this form you are registering to vote in this county in the State of Ohio.

**Important Reminders**
- Please read instructions carefully.
- Use blue or black ink.
- When completing boxes 1 through 13 below, print clearly so that your handwriting can be read by your board of elections.

**WHOEVER COMITS ELECTION FALSIFICATION IS GUILTY OF A FIFTH DEGREE FELONY.**

### Instructions
- Boxes 1 and 2 are required by federal law.
- Boxes 3 through 9 are required by state law.
- Box 10 is required by federal law. If you have a current and valid Ohio driver's license you must provide that number for Box 10. If you do not have an Ohio driver's license, you must provide the last four digits of your Social Security number. If you have neither, please write "None."
- If you were previously registered in the State of Ohio and have moved from one residence to another or from one county to another, please complete Box 12.
- If you were previously registered in the State of Ohio under a different name, please complete Box 13.
- Your signature is required by state law. In the area next to the arrow in Box 14, please write your curvilinear, handwritten signature or make your legal mark, taking care that it does not touch the surrounding lines or type so when it is digitally imaged by your county board of elections it can effectively be used to identify your signature.

---

### Form Information

1. Are you a U.S. citizen? [ ] Yes  [ ] No
2. Will you be at least 18 years of age on or before the next general election? [ ] Yes  [ ] No
   *If you answered NO to either of the questions, do not complete this form.

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>First Name</td>
</tr>
<tr>
<td>4.</td>
<td>Last Name</td>
</tr>
<tr>
<td>4.</td>
<td>Mailing Address</td>
</tr>
<tr>
<td>5.</td>
<td>City or Post Office</td>
</tr>
<tr>
<td>6.</td>
<td>ZIP Code</td>
</tr>
<tr>
<td>7.</td>
<td>City where you live</td>
</tr>
<tr>
<td>8.</td>
<td>County where you live</td>
</tr>
<tr>
<td>9.</td>
<td>Date of Birth (MM/DD/YY)</td>
</tr>
<tr>
<td>10.</td>
<td>Ohio driver's license No. or last 4 digits of Social Security No.</td>
</tr>
<tr>
<td>11.</td>
<td>Phone No. (voluntary)</td>
</tr>
<tr>
<td>12.</td>
<td>Previous City or Post Office</td>
</tr>
<tr>
<td>13.</td>
<td>Former Legal Name</td>
</tr>
<tr>
<td>14.</td>
<td>Your Signature</td>
</tr>
<tr>
<td>15.</td>
<td>Date (MM/DD/YY)</td>
</tr>
</tbody>
</table>

---

**FOR BOARD USE ONLY**

SEC4010 (Rev. 10/11)

City, Village, Town

City

County

State

School Dist.

State Dist.

House Dist.

Signature

I declare under penalty of election falsification I am a citizen of the United States, will have lived in this state for 30 days immediately preceding the next election, and will be at least 18 years of age at the time of the general election.

---

MD DAY VR
DIRECTIVE 2012-54
November 2, 2012

To: All County Boards of Elections
   Members, Directors, and Deputy Directors

Re: Determining the Validity of Provisional Ballots and the Modified NEOCH Consent Decree

SUMMARY

The validity of certain provisional ballots has been the subject of ongoing litigation since 2006. Based on very recent court decisions, some provisional ballots cast at the wrong precinct but at either the correct polling place on Election Day or at the correct board of elections office¹ on or after the 28th day before the election must be remade (consistent with Directive 2012-22) and counted for those races in which the voter was eligible to cast a ballot.

Because of these eve-of-election court decisions, I am required to issue these instructions at this late hour. In order to avoid confusion, Directives 2012-01 and Directive 2012-44 are hereby rescinded.

Additionally, to avoid voter confusion and conflicts with recent court decisions, boards of elections must not post the “Judge Carr Notice.” As such, Advisory 2011-04 is rescinded.

The Directive is issued to provide uniformity across Ohio’s 88 county boards of elections in reviewing provisional ballot affirmations on provisional ballot envelopes to determine the eligibility of the ballots to be counted by providing county boards of elections with a mandatory six-step procedure.

PROVISIONAL BALLOT AFFIRMATION ENVELOPES

All Boards must use SOS Form 12-B, originally provided with Directive 2012-01 and attached to this Directive, on provisional ballot affirmation envelopes for the November 2012 General Election.

All Boards must also provide precinct election officials SOS Form 12-D, originally provided with Directive 2012-44 and attached to this Directive, for the precinct election official to

¹ Throughout this Directive, when referring to the “board of elections office” this also includes another site designated by the board to hold in-person absentee voting. R.C. 3501.11(Z)
complete when a voter is in the wrong precinct of the correct multiple-precinct polling place and the voter insists on casting a provisional ballot in the wrong precinct.

**GENERAL REMINDERS ON PROCESSING PROVISIONAL BALLOTS**

- Boards of elections may begin examining provisional ballot envelopes the day after the election.\(^2\)

- The board of elections must adopt a provisional ballot policy, under which it may designate bipartisan teams to examine and categorize provisional ballot envelopes; however, only the board members themselves can determine the validity of each provisional ballot.

- The board members themselves determine the validity of each provisional ballot by majority vote at a properly noticed public meeting.

- A board of elections must not start counting ANY provisional ballot until AFTER the board members themselves have determined the validity or invalidity of ALL provisional ballots cast in that county.\(^3\)

- Boards must complete the examination and counting of provisional ballots no later than the twenty-first day after the election.\(^4\)

**DETERMINING THE VALIDITY OF PROVISIONAL BALLOTS**

**Step 1:** Determine whether the affirmation statement on the provisional ballot envelope contains **both** the voter's printed name and either a valid signature or a note by the precinct election official on the signature line indicating that the voter declined to execute an affirmation.

- If the affirmation statement **contains both** the voter's printed name and either a valid signature or a note on the signature line that the voter declined to sign, **proceed to Step 2.**

- If the affirmation statement **does not contain both** the voter's printed name and either a valid signature or declination, then the **Board must reject the provisional ballot.**\(^5\)

The presence of the voter's printed name and signature is a requirement of state law, affirmed by the Ohio Supreme Court in *Skaggs v Brunner*, and the Sixth Circuit Court of Appeals in *SEIU v. Husted.*

---

\(^2\) R.C. 3505.183(B)(1)
\(^3\) R.C. 3505.183(D)
\(^4\) R.C. 3505.183(A)
\(^5\) R.C. 3505.183(B)(4)(a)(iii)
Directive 2012-54  Determining the Validity of Provisional Ballots and NEOCH Consent Decree  Page 3 of 8

Step 2: Determine whether the provisional voter provided at least one of the following: the last four digits of the voter’s social security number, the voter’s driver’s license number, or a notation that the voter provided another form of acceptable identification.

- If the voter provided one of the acceptable forms of identification proceed to Step 3.
- If the voter did not provide one of the acceptable forms of identification but completed a Form 10-T, proceed to Step 3.
- If the voter did not provide identification on the provisional ballot affirmation but returned to board of elections within ten days after the election and provided identification or signed the SOS Form 10-T proceed to Step 3.
- If the voter did not provide identification on the provisional ballot affirmation, did not complete SOS Form 10-T, and did not return to the Board within the ten days after the election to remedy the missing item, the Board must reject the provisional ballot.

Step 3: Determine whether the Board can verify the identity of the voter based on the voter’s printed name, signature, and identification information provided on the provisional ballot affirmation or provided by the voter within the ten day period.

- If the Board can verify the identity of the voter based upon the information provided on the provisional ballot affirmation and/or provided by the voter within ten days of the election, proceed to Step 4.
- If the Board cannot verify the identity of the voter based upon the information provided on the provisional ballot affirmation and/or the information provided by the voter within ten days of the election, the Board must reject the provisional ballot.\(^\text{7}\)

Note that verification of identity includes at least one search of the county’s local voter registration database by entering as much or as little information as is available, and by using “wildcard” searches if available, and at least one

\(^6\) The only four reasons to require a provisional voter to provide additional information to the board of elections during the ten days after the day of an election are:
- The voter possesses a social security number or proper identification, but was unable to provide it to the precinct election official; R.C. 3505.181(A)(3)
- The voter possesses a social security number or proper identification, but declined to provide it to the precinct election official; R.C. 3505.181(A)(13)
- The voter does not possess a social security number or proper identification, and refused to sign a SOS Form 10-T; R.C. 3505.181(A)(12)
- The voter was challenged at the polling place and his or her eligibility to vote could not be determined by the precinct election officials; R.C. 3505.181(A)(7)

\(^7\) R.C. 3505.183(B)(4)(b)(O); State ex rel. Skaggs v. Brunner (2008), 120 Ohio St. 3d 506.
search of all counties using the statewide voter registration database by entering as much or as little information as is available.

Unlike a voter registration card or absentee ballot application, date of birth and address are not required on a provisional ballot affirmation. Therefore, a provisional ballot affirmation that does not have the voter's date of birth and/or address is valid so long as the board can verify the voter's identity and registration status in the State of Ohio.

**Step 4:** Determine whether the voter is a registered voter anywhere in the State of Ohio at least 30 days before the election.

- If the voter was registered to vote anywhere in the State of Ohio at least 30 days before the election, proceed to Step 5.
- If the voter was not registered to vote anywhere in the State of Ohio at least 30 days before the election, then the Board must reject the provisional ballot.\(^8\)

**Step 5:** Determine whether the voter is a resident of the county and precinct in which the voter offers to vote.\(^9\)

- If the voter is a resident of the county and precinct in which the provisional ballot was cast, then the Board must accept and count the provisional ballot;
- If the voter moved and provided a new address within the precinct on the back of the provisional ballot envelope, then the voter is considered a resident of the new county and precinct and the Board must accept and count the provisional ballot;
- If the voter cast the provisional ballot in the wrong precinct, but in the correct polling place, including the board of elections office, and a precinct election official did not complete and attach SOS Form 12-D to the provisional ballot envelope, the Board must remake and count the provisional ballot for only those contests for which the voter was otherwise eligible to vote.
- If the voter cast the provisional ballot in the wrong precinct, but in the correct polling place, including the board of elections office, and a precinct election official did complete and attach SOS Form 12-D, but the Board verified that the precinct to which the poll worker directed the voter was the incorrect precinct, the Board must remake and count the provisional ballot for only those contests for which the voter was otherwise eligible to vote.
- If the voter cast the provisional ballot in the wrong precinct, but correct polling place, including the board of elections office, and (1) a precinct election official completed

---

\(^8\) Ohio Constitution Article V, Section 1; R.C. 3505.183(B)(4)(a)(i); R.C. 3505.183(B)(4)(a)(iv); R.C. 3505.183(B)(4)(a)(v)

\(^9\) R.C. 3503.01(A)
Directive 2012-54 Determining the Validity of Provisional Ballots and NEOCH Consent Decree  Page 5 of 8

SOS Form 12-D and (2) the Board verified that the precinct to which the precinct election official directed the voter was the correct precinct, the Board must reject the provisional ballot.

- If the voter cast the provisional ballot in the wrong precinct and wrong polling place the Board must reject the provisional ballot.

Step 6: If you have completed Steps 1 through 5 and determined that the provisional ballot should be rejected, consider the following:

Under the consent decree issued by the federal court in Northeast Ohio Coalition for the Homeless v. Brunner, S.D. Ohio No. 2:06-cv-896, ("NEOCH"), boards of elections may not reject provisional ballots cast by voters who use only the last four digits of their Social Security number as identification for the following reason:

The poll worker did not complete or properly complete and/or sign the provisional ballot application witness line and/or the provisional ballot affirmation form, except for reasons permitted by the governing statutes.

As noted on SOS Form 12-B, failure by the precinct election official to complete the "Precinct Election Official Info" section will not result in the provisional ballot being rejected.

Consent Decree as Modified

Boards of elections are instructed to comply with the injunctive relief cited below as provided in the April 19, 2010 Consent Decree and modified by the Court on October 26, 2012 and November 2, 2012.

Additionally, each board of elections must post a notice that contains the text of the injunctive relief granted in a conspicuous place in every location in which provisional ballots are processed after an election. A copy of the notice to be posted is attached.

The injunctive relief in the Consent Decree as modified is as follows:

III. GENERAL INJUNCTIVE RELIEF.

4. The Court ADOPTS and annexes hereafter Directive 2008-80 as an Order of this Court.

5. Defendant Secretary of State, her agents, employees and representatives will instruct Ohio's county Boards of Elections to adhere to the following rules regarding the casting and counting of provisional ballots for persons without identification other than a social security number:

   a. Boards of Elections must count the provisional ballot cast by a voter using only the last four digits of his or her social security number as identification if all of the following conditions are met:
i. The individual who cast the provisional ballot is registered to vote;

ii. The individual is eligible to cast a ballot in the precinct and for the election in which the individual cast the provisional ballot;

iii. The provisional ballot affirmation includes a statement that the individual is registered to vote in the precinct in which the provisional ballot was cast and a statement that the individual is eligible to vote in the election in which the provisional ballot was cast;

iv. The individual’s name and signature appear in the correct place on the provisional ballot affirmation form, unless the voter declined to execute the affirmation and the poll workers complied with their statutory duties under R.C. 3505.182 and R.C. 3505.181(B)(6) when a voter declines to execute the affirmation;

v. The signature of the voter substantially conforms to the signature contained in the Board of Election’s records for that voter;

vi. The provisional ballot affirmation includes the last four digits of that voter’s social security number, which is not found to be invalid;

vii. The individual’s right to vote was not successfully challenged;

viii. The individual did not already cast a ballot for the election in which the individual cast the provisional ballot; and

ix. Pursuant to R.C. 3505.183(B)(2), the Board of Elections determines that, in addition to the information included on the affirmation, there is no additional information for determining ballot validity provided by the provisional voter or to the Board of Elections during the ten days after the day of the election that casts doubt on the validity of the ballot or the individual’s eligibility to vote.

b. Boards of Elections may not reject a provisional ballot cast by a voter, who uses only the last four digits of his or her social security number as identification, for any of the following reasons:

i. The voter provided the last four digits of a Social Security Number but did not provide a current driver’s license, state issued identification, or other document which serves as identification under Ohio law;

ii. The voter did not provide a date of birth;

iii. The voter did not provide an address that is tied to a house, apartment or other dwelling provided that the voter indicated that he or she resides at a non-building location, including but not limited to a street corner, alley or highway overpass located in the precinct in which the
voter seeks to cast a ballot and that the non-building location qualifies as the individual’s voting residence under R.C. 3503.02;

iv. The voter indicated that he or she is homeless;

v. In light of the injunction issued in SEIU Local 1 v. Husted, Section III (5) (b) (v) of the April 19, 2010 Consent Decree has been removed for the purposes of the November 6, 2012 election. County boards of election are ORDERED to comply with the Directives that govern the counting of provisional ballots cast in the correct polling location, but in the wrong precinct;

vi. The Court has removed this provision of the Consent Decree. See NEOCH v. Husted First Order issued October 26, 2012; or

vii. The poll worker did not complete or properly complete and/or sign the provisional ballot application witness line and/or the provisional ballot affirmation form, except for reasons permitted by the governing statutes.

c. Boards of Elections must observe the following rules regarding the delegation of processing provisional ballots, and determining their validity, to board staff:

i. Ultimately, the members of Boards of Elections must determine the validity of all votes cast in an election and must certify the results of all elections. However, nothing in Ohio law requires that the members of a Board of Elections must personally complete all tasks associated with preparing for that certification.

ii. Thus, Boards of Elections may, under a policy adopted by the Board, delegate the processing and some aspects of counting provisional ballots to board staff. Such processing must be done in bipartisan teams.

iii. If a Board of Elections delegates the processing of provisional ballots, it must first adopt a policy setting forth procedures for the processing of provisional ballots. Under that policy, board staff responsible for processing provisional ballots must make a recommendation to the Board as to the eligibility of each provisional ballot cast in the county, either on an individual basis, or as to groups or categories of similarly situated provisional ballots.

iv. Ultimately, the members of Board of Elections must determine the eligibility or ineligibility of all provisional ballots cast within the county in accordance with Ohio law. Boards may not delegate this task.
v. Each Board of Elections must then cause the ballots to be counted by board staff, and must include the tabulation of that count in its official canvass of the election results and, to the extent required, its certification of the election results to the Secretary of State.

If you have any questions concerning this Directive or the examination and evaluation of provisional ballots, please contact the Secretary of State’s elections counsel assigned to your county at (614) 466-2585.

Sincerely,

[Signature]
Jon Husted
12 Ballots not yet Counted
Some ballots likely not counted by scanners

- Other ballots had similar alternative markings but were not remade to ensure the scanner read them correctly.
- This one is from Precinct 26:

For State Representative
(98th District)
(Vote for not more than 1)

- Al Landis
  Republican

- Joshua E. O'Farrell
  Democratic