



**JENNIFER BRUNNER**  
**OHIO SECRETARY OF STATE**

180 East Broad Street, 15<sup>th</sup> floor  
Columbus, Ohio 43215-3726 USA  
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**DIRECTIVE 2008-01**  
January 2, 2008

To: All County Boards of Elections

Re: Optical Scan Ballots for Voters in Counties using DREs

Due to the concerns raised by the EVEREST report, and to avoid any loss of confidence by voters that their ballot has been accurately cast or recorded, I hereby direct all counties using direct recording electronic voting machines (DRE) to provide an optical scan ballot to any voter who requests it as an alternative method to casting a ballot on a DRE voting machine. This is similar to the procedures already in place for counties using a DRE for persons appearing at their office to cast an absent voter ballot (i.e. "Voting an Absent Voter's Ballot" in Directive 2007-06, specifically at page 8).

Therefore, effective January 3, 2008, all counties using DREs must provide an optical scan ballot to any voter making such a request at his or her polling place on Election Day.

**Determining Minimum Number of Optical Scan Ballots**

Boards shall determine the minimum number of optical scan ballots to provide for each precinct by multiplying the number of ballots cast in each precinct at a like election by 10%. This will provide the minimum number of optical scan ballots a board using DREs as their primary voting system must provide for each precinct.

**Secure Ballot Containers**

Boards shall provide a secure ballot container for the voter to place his or her optical scan ballot into after marking the ballot.

**Voter Privacy**

Boards shall provide a private area for a voter to mark his or her optical scan ballot. Privacy booths used by persons voting provisional ballots may be utilized for this purpose.

**Tabulation**

The optical scan ballots cast in a precinct are to be centrally counted at the Board on election night as part of the unofficial canvass.

**Documenting Additional Costs in Complying with this Directive**

Please document and itemize the additional costs incurred as a result of complying with this directive to allow the Secretary of State to compile them and seek federal or other reimbursement of these costs as funds may become available. A further directive and accompanying reporting form will be provided to you after the March 4, 2008 primary election to allow you to report these documented and itemized costs.



If you have any questions concerning this directive, please contact the election attorney assigned to your county.

Sincerely,



Jennifer Brunner

**COST INCREMENTS FOR 2008  
PRIMARY ELECTION BASED  
ON DUAL SYSTEMS  
VOTING REQUIREMENT**

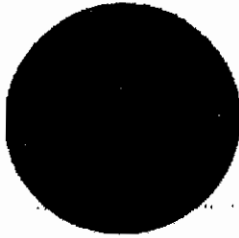
**UNION COUNTY  
BOARD OF ELECTIONS**

| Description of Expense     | Unit Cost | 2008     |             |          |             |
|----------------------------|-----------|----------|-------------|----------|-------------|
|                            |           | Quantity | Primary     | Quantity | General     |
| Poll Master / Voting Booth | \$219.50  | 150      | \$32,925.00 | 75       | \$16,462.50 |
| Ballot Secure Packs        | \$12.95   | 250      | \$3,237.50  | 0        | \$0.00      |
| Ballot Boxes               | \$81.95   | 50       | \$4,097.50  | 0        | \$0.00      |
| Stub Boxes                 | \$68.95   | 50       | \$3,447.50  | 0        | \$0.00      |
| Ballot Storage Containers  | \$59.50   | 50       | \$2,975.00  | 0        | \$0.00      |
| Printed Ballots            | \$0.70    | 10,420   | \$7,294.14  | 0        | \$0.00      |
| Ballot Envelopes           | \$0.30    | 1,840    | \$552.00    | 0        | \$0.00      |
| New Training Manuals       | \$750.00  | 1        | \$750.00    | 0        | \$0.00      |
| Additional Delivery        | \$500.00  | 1        | \$500.00    | 0        | \$0.00      |
| Additional Poll Workers    | \$100.00  | 46       | \$4,600.00  | 0        | \$0.00      |
| Training for Additional    | \$25.00   | 46       | \$1,150.00  | 0        | \$0.00      |
| Secrecy envelopes          | \$1.00    | 460      | \$460.00    | 0        | \$0.00      |
| Contingency                | 10%       |          | \$6,198.86  |          | \$0.00      |

Total \$68,187.50 \$16,462.50

Not included in this estimate is the additional training for Poll workers on how to instruct voters in determining over and under voting when using paper ballots.





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January 15, 2008

James L. Crates, Chairman  
Hardin County Board of Elections  
Hardin County Courthouse  
One Courthouse Square, Suite 170  
Kenton OH 43326-1575

Dear Chairman Crates:

I have received your letter of January 11, 2008, in which you have informed me that the following motion passed in the Hardin County Board of Elections on a 3-0 vote:

"Motion:

"Hardin County Board of Elections will not provide paper ballots to the precincts as per the Secretary of State's Directive 2008-1 dated January 2, 2008 due to the logistical and financial costs without any guarantee of reimbursement by the State or any other entity. The Board will encourage voters who do not want to vote on the touch screen voting machine at the voting location to vote absentee within 35 days prior to the Election."

Let me first support the Board's decision to educate and encourage Hardin County voters concerning the availability of "no fault" absentee voting. Like you, I believe that voters should be informed of their legal right to vote prior to Election Day. This may be accomplished either through in-person voting at the Board office prior to Election Day or through mail-in absentee voting where ballots will reach your office prior to Election Day. Voters who take advantage of the process may contribute to increased efficiency in administering the election on March 4, 2008.

As you know, the Board is already required to provide each precinct polling place with paper ballots for provisional and curbside voting. I therefore do not agree that increasing the number of printed ballots by the 10% number contemplated in Directive 2008-01 is likely to create unmanageable "logistical and financial costs."

Accordingly, your Board's vote to reject the clear direction given to you in Directive 2008-1 concerns me greatly. Perhaps you have misunderstood the weight of legal authority that this Directive carries. As recently stated by an Ohio Court of Appeals: "The Secretary of State is the Chief Election Officer of the State of Ohio, and has authority over the county boards of elections. R.C. 3501.05. The Secretary of State has authority to issue directives and advisories to the various boards of elections, and to compel election officials to observe the requirements of the law. R.C. 3501.05(B), (M)."<sup>1</sup>

<sup>1</sup> State ex rel. Lorenzi v. Mahoning Cty. Bd. of Elections, 2007 WL 3227667, October 25, 2007.



Similarly, the Cuyahoga County Court of Appeals has summarized controlling law as follows:

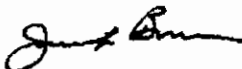
"The Secretary of State has the duty to advise boards of election as to the proper methods of conducting elections, to prepare rules and instructions for the conduct of elections, and to compel the observance by election officials of the requirements of the election laws. R.C. 3501.05(B),(C),(M). The board of elections "is the supervisor of elections under the direction of the Secretary of State." State ex rel. Donnelly v. Green (1958), 106 Ohio App. 61, 63, 6 O.O.2d 340, 341, 148 N.E.2d 519, 521. The board has the duty to perform all duties imposed by law, R.C. 3501.11, and such other duties prescribed by law or the rules of the Secretary of State, R.C. 3501.11(P). The Attorney General has advised that the rules, regulations and *instructions of the Secretary of State* relating to the conduct of elections, so long as in force and effect and not superseded by higher authority, *are binding upon subordinates in that violations may constitute grounds for removal*, and that it is within the authority of the Secretary of State to adopt such rules, regulations and instructions, so long as the laws of the General Assembly were not thereby amplified. 1930 Ohio Atty.Gen.Ops. No. 1423." (Emphasis added.)<sup>2</sup>

When you became a member of the Board, you swore that you would enforce the election laws and perform your duties as a Member of the Board of Elections to the best of your ability. I'm sure you do not intend to break that oath. Ignoring Directive 2008-01 is tantamount to insubordination and could be considered a violation of your oath.

Accordingly, pursuant to the statutory authority vested in me by R.C. 3501.04 as chief election officer of the state, and pursuant to R.C. 3501.05(B), (G) and (M) and R.C. 3501.30(B), I hereby compel and direct the Hardin County Board of Elections to accomplish the following:

1. **No later than the close of business Wednesday, January 23, 2008**, rescind the motion adopted on January 10, 2008, that is quoted above.
2. Follow the instructions contained in Directive 2008-01 and provide an optical scan ballot to any voter who requests one at his or her polling place on March 4, 2008. To accommodate this service to the voters of Hardin County, the Board shall print ballots in a number that represents 10% of the number of ballots cast in each precinct in a like election and provide optical scan ballots in that number to each corresponding precinct.

Sincerely,



Jennifer Brunner

Cc: Shirley J. Howard  
Donald L. Traxler  
S. Anne Boston

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<sup>2</sup> State ex rel. Donegan v. Cuyahoga Cty. Bd. of Elections, (2000), 136 Ohio App.3d 589, 737 N.E.2d 545.