Directive 2004-44  
October 26, 2004

ALL COUNTY BOARDS OF ELECTIONS

TO: Members, Directors & Deputy Directors

Procedures for pre-challenges to voter registration

R.C. 3503.24 states that a hearing must be held on any pre-challenge brought against the voter registration of a voter. R.C. 3503.24 states that the board shall reach a decision on all applications and challenges immediately after this hearing. In an effort to bring consistency to the handling of these pre-challenges, I am directing the boards to follow the below procedure for handling any voter removed from the voter registration list. Again, the determination of the removal of any voter from the voter registration list is made by the members of the boards of elections based on the individual circumstances of each voter.

Any pre-challenged voter the board determines to be removed from the voter registration list shall be so removed on a conditional basis. If a voter who has been pre-challenged and removed from the voter registration list attempts to vote on Election Day, poll workers should be instructed to provide the voter with a provisional ballot. The poll worker must ask the voter to sign all required affirmation statements as required by law. If the voter signs all required affirmations and is then determined by the board after Election Day to be a qualified elector at an address in the proper voting precinct, that voter will be reinstated to the voter registration list and their provisional ballot will be counted if it was cast in the proper precinct. Any voter who refuses or otherwise fails to sign the required affirmations or who casts a ballot in an incorrect precinct shall not have their provisional ballot counted in accordance with state law. Any voter who is determined to be legally qualified at the hearing shall remain on the voter registration list and is to be given a regular ballot if they come to vote.

With this direction, counties must keep the voter registration records of all conditionally removed voters in order to be able to check any provisional ballots that may be cast. Any tie-vote of a board of elections on the removal of a voter from the voter registration list shall be determined by this office to be a non-decision by the board. In this situation the board should instruct poll workers to provide these voters with undetermined registrations a provisional ballot if they appear at the polls. This will then allow the board of elections to make a determination of the validity of these voter registrations after the election as the board considers the provisional ballot of each voter.
Also, our office has been asked if during the hearing process the board can consolidate like cases into one motion. If any pre-challenged voters do not appear before the hearing, our advice is that boards may consolidate these types of cases instead of voting on each individual challenge. Please remember though that any person challenged has the right to appear and testify, call witnesses, and be represented by counsel. We also do recommend that you keep your county prosecutor involved with every step of your process.

If you have any additional questions regarding this process, do not hesitate to contact our Elections Division at (614) 466-2585.

Sincerely,

J. Kenneth Blackwell