

DIRECTIVE 2008-xxx
November 4, 2008

To: ALL COUNTY BOARDS OF ELECTIONS

Re: Ensuring Voter Intent Is Carried Out In Precinct-Based Optical Scan Counties

Directive 2008-105 (“Unofficial Canvass – for the November 4, 2008 General Election”) directs boards of elections concerning the processing of ballots where the voter has written in the name of a candidate in addition to filling in the oval next to the candidate’s name (known as a “double bubble” vote). The last paragraph on page 3 specifically directs boards of elections to process “double bubble” votes cast on optical scan ballots that will be scanned in the precinct on Election Day. That paragraph states:

If there is a write-in candidate for a particular office in which the **voter has written in the name of a candidate for which the voter has already voted (known as “double bubble” vote)**, such a write-in vote is **NOT** an overvote. In this case, the ballot should be segregated and preserved for remake and separate tabulation at the official canvass, and at any subsequent recount or post-election audit.

Some precinct-based optical scan machines, such as the ES&S M100, are not programmed to segregate ballots with “double bubble” votes. Instead, the voting machine treats the “double bubble” vote as an overvote, and if the voter overrides the overvote, the ballot is deposited into the ballot box with the other regular ballots cast and counted on Election Day. Therefore, after the polls close on Election Day, the “double bubble” vote may not be counted without additional steps – even though the voter’s intent was clear – while the votes cast for other races on the ballot will be counted.

As election officials, it is our duty to ensure that votes for a candidate are counted where the voter’s intent is clear.¹ To fulfill that duty, boards of elections are hereby directed that if they use precinct-based optical scan machines that do not segregate or divert ballots with “double bubble” votes, the board must follow additional procedures during the official canvass to ensure that all eligible votes are counted and that the official canvass totals are accurate.

More detailed instructions will be included in the impending directive on the official canvass. In general, however, boards using precinct-based optical scan machines that do not segregate or

¹ See *e.g.*, R.C. 3506.21 (requiring election officials to count ballots where the elector circled, check marked, or made another mark on his or her candidate or issue selection rather than filled in the oval); R.C. 3505.25 (“No ballot shall be counted which is marked contrary to law, except that no ballot shall be rejected for any technical error unless it is impossible to determine the voter’s choice.”).

divert “double bubble” votes must follow procedures in the 2008-105 Directive and this directive to tabulate votes for all candidate races for which a write-in candidate has filed a valid declaration of intent to be a write-in candidate

1. **Segregate.** During the official canvass, which may not begin earlier than the eleventh day or later than the fifteenth day after the election, the board shall segregate all optical scan ballots with a “double bubble” vote that were not machine-segregated and remade on election night. To accomplish this, boards must first inspect ballots for purported overvotes that result in a voter filling in the oval adjacent to the write-in space and writing in the name of the candidate for which the voter has already voted by filling in the oval next to the candidate’s printed name on the ballot. The board may inspect ballots either manually (visual inspection) or by re-scanning all ballots, not to tabulate, but simply to identify overvotes. If the board can determine that the intent of the voter was to vote for only one candidate because the name of the “write-in candidate” is the same as the name of the candidate for whom the voter has already voted on the printed ballot, the board shall segregate the ballot as one with a “double bubble” vote.
2. **Hand Count.** After the ballots with “double bubble” votes are segregated, the board shall hand count the “double bubble” votes on the segregated ballots. The board shall follow the manual hand count instructions explained in directives on recounts and post-election audits.
3. **Manually Enter.** Rather than remake the ballot, the board shall manually enter the results from the hand count onto the server that tabulated election results. This will ensure that no votes for other races are counted twice when the board uploads memory cards for the official canvass. Audit logs must be turned on to document the manual entry.

When handling and processing ballots, the board must ensure that each team segregating and hand counting ballots is composed of an equal number of election officials from the two major political parties.

Additionally, because the segregating and hand counting of ballots with “double bubble” votes will be part of the board’s official canvass, observers may be present in accordance with R.C. 3505.32(B), R.C. 3505.21, and Secretary of State Directive 2008-29. The board’s requirement to report “double bubble” votes in the official canvass will be clarified in the directive on the official canvass.

If you have any questions, please contact the elections attorney in this office assigned to assist your county.

Sincerely,

Jennifer Brunner