

DIRECTIVE 2009-xx

May 1, 2009

To: ALL COUNTY BOARDS OF ELECTIONS

Re: Unofficial Canvass – May 5, 2009 Primary/Special Election

Pursuant to R.C. 3513.21 and R.C. 3505.27, the unofficial canvass must be conducted in full view of the board members and any observer appointed under R.C. 3505.21.

The "unofficial canvass" shall be conducted on election night in accordance with Revised Code sections 3505.27 (*counting regular ballots cast at polling locations*), 3505.28 (*ballots not counted*), 3509.06 (*counting absentee ballots*), 3509.07 (*absentee ballots not counted*) and 3511.11 through .13 (*armed service absentee ballot*).

- The unofficial canvass shall include all ballots that are determined by the board of elections under the Revised Code as eligible to be counted on election night (i.e. regular ballots cast at polling locations on the primary voting system and absentee ballots that are determined to be valid).
- The unofficial canvass shall not include ballots that are determined by the board as not eligible to be counted on election night (i.e., provisional ballots, absentee ballots postmarked on or before May 4, 2009 but received after May 5, 2009 but no later than May 15, 2009, and in-country, armed service, or overseas citizens absentee ballots that have not yet been received as of the closing of the polls).

Tabulation Instructions

The board of elections must designate teams having an equal number of individuals from each major political party to inspect and/or tabulate the ballots. Depending on the type of voting system used in the county, the teams either inspect or tabulate the ballots as follows:

- Optical Scan - Precinct Count

Verify that memory cards and a corresponding report of results from each precinct are received.

Tabulate votes cast that are stored on the memory cards.

- Optical Scan - Central Count

Set the tabulator to reject any blank ballot or ballot containing one or more overvotes. Tabulator may also be set to reject undervotes, if desired.

Tabulate optical scan ballots.

Inspect any ballot rejected by the tabulator to determine the cause(s) of rejection. The ballot must be examined to determine if the basis for rejection was

in whole or in part due to one or more overvotes. R.C. 3506.21 requires the board to attempt to determine voter intent (an activity to be *confirmed* by the board by majority vote in public session). Determining voter intent may include determining whether a voter attempted to remove a mark from the ballot (such as erasure or other indication of voter intent) to invalidate a choice and, in effect, eliminate an overvote.

If, upon examination of the ballot, the board determines that the basis for tabulator rejection is that a voter marked the ballot more than the permissible number of times for a particular race or issue and that there is no indication of intent otherwise, an overvote exists. If it is determined an overvote is the result of voter writing in the name of a candidate the voter has already voted for (known as a “double bubble” vote), that ballot should be set aside and the instructions in the “Tabulation Instructions for Ballots With Write-In Candidate Votes” Section of this Directive should be followed.

When an overvote exists that does not involve a write-in candidate, it is impossible to determine voter intent for that race or issue. However, the ballot must be examined for any other reasons for tabulator rejection in order to make effective voter intent in any other contest. Ballots may be remade using the guidelines provided in Directive 2008-69 and the guidelines provided in this Directive for ballots with write-in candidates (page 3). Contests where overvotes have been determined to exist should be reflected on remade ballots. Remade ballots must be marked with an identifying mark or code to identify the remade ballot with the original ballot as provided in Directive 2008-69 to allow a remade ballot to be compared at a later time to the original ballot that was rejected by the tabulator, to ensure integrity and accuracy.

Ballots for which it is determined that the *sole* reason for tabulator rejection is one or more overvotes shall *not* be remade, but they shall be included in the ballots that are tabulated after remakes of ballots. (See tabulation instructions below.)

Remake any ballot where the intent of the voter has been determined so that it may be processed by a tabulator. Please see Directive 2008-69 and the instructions in the previous paragraph for more information on the proper procedures to remake an optical scan ballot.

Set the tabulator to override overvoted races and issues which will allow the tabulator to tabulate votes for races and issues which were otherwise properly marked.

Tabulate all remade optical scan ballots and ballots determined to have been rejected by the tabulator earlier solely due to an overvote.

- Direct Recording Electronic Machines (DRE)

Verify that cartridges, PCMCIA cards or other removable memory devices and a corresponding report is received from each precinct.

Tabulate votes cast that are stored on cartridges, PCMCIA cards or other removable memory devices.

Tabulation Instructions For Ballots With Write-in Candidates

Assuming a candidate has filed a valid declaration of intent to be a write-in candidate, boards of elections are hereby instructed to count a ballot in which a voter has written in only the last name of the candidate, if there is only one candidate with that last name. If there are two or more write-in candidates with the same last name, however, the voter must provide sufficient information for election officials to determine the voter's intent in order for the vote to be counted. (For example, a voter who has written on the ballot the write-in candidate's first and last name, or the candidate's last name and the office sought should be considered to be a valid write-in vote.)

- Optical Scan Ballots – Precinct Count

The oval or box next to the candidate's name that has been written in by the voter must be filled in for a write-in vote to be valid, unless no other oval has been filled in by the voter for the office for which the voter voted for a write-in candidate who has filed a valid declaration of intent.

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 a “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. More detailed instructions will be included in the impending directive on the official canvass.

- Optical Scan Ballots – Central Count (Absentee)

The oval or box next to the candidate's name that has been written in by the voter must be filled in for a write-in vote to be valid.

If there is a write-in candidate for a particular office, the board of elections must inspect ballots for **purported overvotes that result in a voter writing in the name of a candidate the voter has already voted for (known as a “double bubble” vote)**. Such a vote is not an overvote if the board can determine the intent of the voter was to vote for only one candidate because the name of the write-in candidate can be determined to be the same as the name of the candidate for whom the voter has already voted on the printed ballot. In this case, ballots should be remade when “double bubble” votes are discovered using the guidelines for remaking a ballot outlined in Directive 2008-69. The remade ballots should then be tabulated and the results should be included in the unofficial canvass.

Otherwise, a voter's selection of a candidate whose name is printed on the ballot and the selection of and writing in the name of a write-in candidate (whose name is not already printed on the ballot), invalidates the voter's vote in that race, as the voter has overvoted by marking more choices than permitted for a particular race.

Required Reports for the May 5 Primary/Special Election

In accordance with R.C. 3505.30, each board of elections shall transmit a copy of your county's summary report indicating unofficial results for offices and issues on your ballot. Please transmit the results on election night or no later than noon on Wednesday, May 6, 2009. You

may transmit your results to the Elections Division to the attention of Serena Henderson by one of the following methods:

- Fax: 614-752-4360;
- Email: shenders@sos.state.oh.us; or
- Mail: Secretary of State Jennifer Brunner, Elections Division, P. O. Box 2828, Columbus, OH 43216.

If you are not the most populous county for a district (office or issue), you must report your county results to the most populous county of the overlapping district before your board office closes. The results may be reported by phone, fax or e-mail. It is imperative that you make a final report to them before you close.

The Secretary of State's Office will be staffed from 6:30 a.m. until 9:00 p.m. on Election Day to assist your board with any problems, questions or concerns that might arise.

If you have any questions regarding this directive, please contact your elections attorney assigned to your county at 614- 466-2585.

Sincerely,

Jennifer Brunner