

DIRECTIVE 2010-44

March 26, 2010

To: ALL COUNTY BOARDS OF ELECTIONS

Re: Challenges of absent voter's ballots

This Directive instructs the boards of elections on how to administer challenges of electors requesting the absent voter's ballot of a major political party (Democratic or Republican) if the elector is currently affiliated with another major political party.

Challenges of Electors Requesting Absent Voter's Ballots

R.C. 3513.19(A)(3) requires judges of elections at the primary election to challenge any elector who requests the primary election ballot of a political party that is different than the political party with which the elector is currently affiliated. Additionally, R.C. 3509.06(D) permits election officials processing absent voter's ballots to challenge the right of an elector on any grounds upon which the right to vote may be lawfully challenged.

However, as explained in Directive 2009-21, section G.3, page 5, for the 2010 primary election only (because of the first-time appearance on the primary ballot of minor political parties) any elector may request the ballot of a minor political party at the 2010 primary election regardless of the elector's current political affiliation and may not be challenged by judges of election based upon political affiliation.

Consequently, only electors who are currently affiliated with a major political party (Democratic or Republican) and who request the political party ballot of the **other major political party** are subject to being challenged at the 2010 primary election based upon political affiliation. For example, an elector who is affiliated with the Democratic Party and who requests a Republican Party ballot at the primary election must be challenged. Also, an elector who is affiliated with the Republican Party and who requests a Democratic Party ballot at the primary election must be challenged.

Under R.C. 3513.19(B) and R.C. 3513.20, the right of an elector, who is challenged as described above, to vote in a political party's primary election shall be determined by election officials based upon the elector's statement of affiliation made under penalty of election falsification.

Consequently, if a board of elections receives an application for an absent voter's ballot from an elector who is currently affiliated with a major political party (Democratic or Republican) and requests to vote the primary election ballot of the other major political party, the board of elections must send a challenge form to the elector along with the absent voter's ballot. New Secretary of State Form 10-Z (attached to this directive) must be used for challenges regarding political affiliation of electors who request absent voter's ballots.

Form 10-Z must be printed on a separate sheet of colored paper. When mailing form 10-Z with the absent voter's ballot to the voter, please ensure that it is not placed in the ID envelope or the secrecy envelope. Instructions must be included that Form 10-Z must be completed and returned to the board of elections but must remain outside the ID envelope with the absent voter's ballot. **Only electors who are affiliated with a major political party (Democratic or Republican) and who request the primary election ballot of the other major political party are to receive a Form 10-Z.**

If an elector fails to complete the Form 10-Z or fails to return the completed Form 10-Z to the board of elections with the absent voter's ballot, then the voter should be contacted by telephone or by mail and instructed to provide the form to the board of elections by mail or in person on or before Election Day. Otherwise, an absent voter's ballot for which a Form 10-Z is required may not be counted under R.C. 3509.07.¹

If you have any questions or need additional information, please contact the elections attorney assigned to your county at (614) 466-2585.

Sincerely,

Jennifer Brunner

¹ R.C. 3509.07 reiterates that absent voter's ballots may be challenged for cause (such as current political affiliation under R.C. 3513.19(A)(3)) and that election officials shall determine the legality of the ballot before the ballot may be counted. R.C. 3509.07 also provides that an absent voter's ballot that an elector is not entitled to vote may not be counted.