

DIRECTIVE 2010-72

October 27, 2010

To: ALL COUNTY BOARDS OF ELECTIONS

Re: Unofficial Canvass – November 2, 2010 General Election

Unofficial Canvass

Pursuant to 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" must 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-.13 (*uniformed service and overseas absentee ballots*).

The unofficial canvass must 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 November 1, 2010 and received after November 2, 2010, but no later than November 12, 2010, and timely mailed but late received general absentee ballots, in-country uniformed service, out-of-country uniformed service, or overseas absentee ballots that have not yet been received as of the closing of the polls).

SOS ELECTION NIGHT REPORTING REQUIREMENTS

All boards of elections are required to report results electronically to the Secretary of State's office on election night. Instructions for reporting election results electronically have previously been transmitted to all boards of elections. All boards have received instructions on alternative reporting methods if technical difficulties prevent a board from reporting electronically.

PROCESSING AND TABULATION INSTRUCTIONS FOR COUNTIES USING PRECINCT BASED OPTICAL SCAN VOTING SYSTEMS

In accordance with R. C. 3506.14(B), each board of elections must test automatic tabulating equipment just prior to and just after the tabulation of ballots to ascertain that the central tabulation system will accurately count the votes cast for all offices and on all questions and issues. Please see Directive 2008-90 for detailed instructions for conducting the test prior to commencing the tabulation and after completing the tabulation of ballots on election night.

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 (ballots tabulated in the precincts)

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.

Note that when a ballot is rejected by a tabulator for one or more detected overvotes on the ballot, all votes on that ballot, except for overvotes, are tabulated by the precinct based optical scanner. Each optical scanner provides a report on the number of overvotes for each race or issue, and that information is transferred to the tabulator for a cumulative report of overvotes by race or issue.

Optical Scan - Central Count (ballots tabulated at the board of elections)

Before Election Day, beginning ten days before Election Day, absentee ballots may be scanned but not tabulated. Set the machine to reject any blank ballot or ballot containing one or more overvotes.

Inspect any and every ballot rejected by the tabulator being used for ballot scanning purposes to determine the cause(s) of rejection. The ballot must be examined to determine if the basis for rejection was because of:

- folded, torn or mutilated ballot; or
- misaligned timing marks on the ballot; or
- voter consistently failed to follow marking instructions; or
- one or more overvotes.

R.C. 3506.21 requires the board to attempt to determine voter intent for ballots that were rejected by the central count tabulator – 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 (e.g., erasure or other indication of voter intent) to invalidate a choice and, in effect, eliminate an overvote. More information on determining or confirming voter intent can be found in Directive 2008-69 (Remake of Optical Scan Ballots).

If it is determined that a voter selected a candidate whose name is on the ballot for an office and also cast a write-in vote for that same candidate for the same office (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. If a board of elections reasonably believes it cannot remake absentee ballots containing double bubbles before the deadline for completion of the unofficial canvass, it shall seek a waiver of this requirement from the secretary of state. The waiver request should be submitted to an SOS administrator no later than 12 noon on Tuesday, November 2, 2010. Otherwise, it must comply with the provisions of this directive.

If, upon examination of the ballot, the board determines that the basis for rejection by the tabulator being used for scanning purposes is that a voter marked the ballot more than the permissible number of times for a particular race or issue, and there is no indication of intent otherwise, an overvote exists. When an overvote exists that does not

involve a write-in candidate, it is impossible to determine voter intent for the race or issue overvoted, and no vote is counted on the ballot for that race or issue. However, the ballot must be examined for any other reasons for tabulator rejection, and the board must make an effective determination of voter intent in any other contest on such ballot.

Ballots for which it is determined that the *sole* reason for rejection by the tabulator being used for scanning purposes is one or more overvotes that do not involve a write-in candidate shall *not* be remade, but they shall be included in the ballots that are tabulated after remakes of ballots have been completed. (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 section (above) for more information on the proper procedures to remake an optical scan ballot.

Directive 2008-69 (Remake of Optical Scan Ballots) provides instructions to boards of elections on the proper procedure to remake optical scan ballots. Remade ballots must be marked with an identifying mark or code to allow for the remade ballot to be matched with the original ballot as provided in Directive 2008-69. Linking original and remade ballots will allow the ballots to be compared at a later time, to ensure integrity and accuracy.

On Election Day process and scan all other absentee ballots received but not previously processed or scanned in the same manner as above, including inspecting and remaking rejected ballots as prescribed above.

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 absentee ballots, including all remade optical scan absentee ballots and ballots determined to have been rejected by the tabulator solely due to an overvote.

Tabulate ballots from the Election Day voting precincts according to the instructions prescribed above for “Optical Scan – Precinct Count.” When possible, inspect and remake ballots from Election Day precinct voting and include in the unofficial canvass. When this is not possible, document the number of overvotes by race or issue as recorded or reported by the precinct based optical scanners and cumulated by the tabulator at the board of elections.

PROCESSING AND TABULATION INSTRUCTION FOR COUNTIES USING A COMBINATION OF DIRECT RECORDING ELECTRONIC MACHINES (DRE) AND CENTRAL COUNT OPTICAL SCAN UNITS

Direct Recording Electronic Machines (DRE) (ballots tabulated in the precincts)

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

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

Optical Scanned Absentee and Back Up Paper Ballots (ballots tabulated at the board of elections)

Before Election Day, beginning ten days before Election Day, absentee ballots may be scanned but not tabulated. If the optical scan machine cannot scan without tabulating, no scanning may occur until Election Day, beginning at 12:01 a.m. Set the machine to reject any blank ballot or ballot containing one or more overvotes.

Inspect any and every ballot rejected by the scanner to determine the cause(s) of rejection. The ballot must be examined to determine if the basis for rejection was because of:

- folded, torn or mutilated ballot; or
- misaligned timing marks on the ballot; or
- voter consistently failed to follow marking instructions; or
- one or more overvotes.

R.C. 3506.21 requires the board to attempt to determine voter intent for ballots that were rejected by the central count tabulator – 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 (e.g., erasure or other indication of voter intent) to invalidate a choice and, in effect, eliminate an overvote. More information on determining or confirming voter intent can be found in Directive 2008-69 (Remake of Optical Scan Ballots).

If it is determined that a voter selected a candidate whose name is on the ballot for an office and also cast a write-in vote for that same candidate for the same office (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. If a board of elections reasonably believes it cannot remake ballots containing double bubbles before the deadline for completion of the unofficial canvass, it shall seek a waiver of this requirement from the secretary of state. Otherwise, it must comply with the provisions of this directive. The waiver request should be submitted to an SOS administrator no later than 12 noon on Tuesday, November 2, 2010.

If, upon examination of the ballot, the board determines that the basis for rejection by the scanner is that a voter marked the ballot more than the permissible number of times for a particular race or issue, and there is no indication of intent otherwise, an overvote exists. When an overvote exists that does not involve a write-in candidate, it is impossible to determine voter intent for the race or issue overvoted, and no vote is counted on the ballot for that race or issue. However, the ballot must be examined for any other reasons for tabulator rejection, and the board must make an effective determination of voter intent in any other contest on such ballot.

Ballots for which it is determined that the *sole* reason for scanner or tabulator rejection is one or more overvotes that do not involve a write-in candidate shall *not* be remade, but they shall be included in the ballots that are tabulated after remakes of ballots have been completed. (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 section (above) for more information on the proper procedures to remake an optical scan ballot.

Directive 2008-69 (Remake of Optical Scan Ballots) provides instructions to boards of elections on the proper procedure to remake optical scan ballots. Remade ballots must be marked with an identifying mark or code to allow for the remade ballot to be matched

with the original ballot as provided in Directive 2008-69. Linking original and remade ballots will allow the ballots to be compared at a later time, to ensure integrity and accuracy.

On Election Day process and scan all other absentee ballots received but not previously processed or scanned in the same manner as above as well as back up paper ballots, including inspecting and remaking rejected ballots as prescribed above.

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 absentee ballots and back up paper ballots, including all remade optical scan absentee and back up paper ballots and ballots determined to have been rejected by the tabulator solely due to an overvote.

Tabulate ballots from the Election Day voting precincts according to the instructions prescribed above for "Direct Recording Electronic Machines (DRE)."

TABULATION INSTRUCTIONS FOR BALLOTS WITH WRITE-IN CANDIDATES

Optical scan ballots containing potential write-in votes should be segregated for inspection. Inspection of potential write-in votes should be made by designated team(s) consisting of an equal number of board employees from each major political party.

Optical Scan Ballots - General Guidelines:

If the oval next to a line where the voter has written in an eligible write-in candidate's first and last name has been filled in, boards of elections are instructed to count this as a valid write-in vote. In this case, the board shall follow the manual hand count instructions explained in Directive 2008-34. The board should enter the results from the hand count of write-in votes onto the server that tabulated elections results for inclusion in the unofficial canvass.

If the oval next to a line where the voter has written in *part of* an eligible write-in candidate's name has been filled in, boards of elections are hereby instructed as part of the unofficial canvass to count a vote 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. In this case, the board shall follow the manual hand count instructions explained in Directive 2008-34. The board should enter the results from the hand count of write-in votes onto the server that tabulated elections results for inclusion in the unofficial canvass.

In a race where only one candidate is to be selected, 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 (**other than** the name of the candidate already selected by filling in the oval next to the sole candidate's printed name), invalidates the voter's vote in that race, as the voter has overvoted by marking more choices than permitted for a particular race.

“DOUBLE BUBBLE” VOTES AND WRITE-IN VOTES WITH UNFILLED OVALS

If it is determined that a **voter cast a vote for a candidate whose name is on the ballot for an office and also cast a write-in vote for that same candidate for the same office (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 on election night for processing prior to the completion of the official canvass and for separate tabulation at the official canvass, and at any subsequent recount or post-election audit. More detailed instructions will be included in the pending directive on the official canvass.

Optical Scan Ballots – Precinct Count:

If the oval or box next to a line where the voter has written in an eligible write-in candidate's name has *not* been filled in, and no other oval has been filled in by the voter for the office for which the voter voted for a write-in candidate who filed a valid declaration of intent form, such a write-in vote is NOT an undervote. The Secretary of State's office recognizes that due to budgetary and staffing constraints, county boards of elections may not have the staff necessary on election night to inspect and segregate precinct count optical scan ballots that may contain a write-in vote known as a “double-bubble” vote or where the oval or box was not filled in next to a line where the voter has written in an eligible write-in candidate's name. Therefore, the ballot should be preserved on election night for processing prior to the completion of the official canvass and for separate tabulation at the official canvass, and at any subsequent recount or post-election audit. More detailed instructions will be included in the pending directive on the official canvass.

Optical Scan Ballots – Central Count:

If the oval or box next to a line where the voter has written in an eligible write-in candidate's name has *not* been filled in, and no other oval has been filled in by the voter for the office for which the voter voted for a write-in candidate who filed a valid declaration of intent form, such a write-in vote is NOT an undervote. Boards of elections are hereby instructed as part of the unofficial canvass to count this as a valid write-in vote. In this case, the board shall follow the manual hand count instructions explained in Directive 2008-34. The board should enter the results from the hand count of write-in votes onto the server that tabulated elections results for inclusion in the unofficial canvass.

The Secretary of State's office recognizes that due to budgetary and staffing constraints, county boards of elections may not have the staff necessary to inspect and segregate central count optical scan ballots that may contain a write-in vote known as a “double-bubble” vote or where the oval or box was not filled in next to a line where the voter has written in an eligible write-in candidate's name. Consequently, boards of elections may apply for a “waiver” for this election and request that these inspections and segregations be done during the time period beginning 11 days after the unofficial canvass but before the official canvass is complete. The waiver request should be submitted to an SOS administrator no later than 12 noon on Tuesday, November 2, 2010.

REQUIRED REPORTS FOR THE NOVEMBER 2 GENERAL ELECTION

In addition to the electronically reported results on election night and in accordance with R.C. 3505.30, each board of elections shall submit certified unofficial results for the November 2, 2010, general election by using the report forms accompanying this directive. Those forms are:

- Unofficial Vote for Statewide Candidates
- Unofficial Vote for District Candidates

- Unofficial Vote for County Candidates
- Supplemental Report
 1. Number of Regular Ballots Counted
 2. Total Number of Back Up Paper Ballots Counted
 3. Number of Absentee Ballots Counted
 - In-country (in-country uniformed services and regular absentee ballots)
 - Uniformed Services
 - Overseas Civilians
 - Total Number of Absentee Ballots Counted
 4. Grand Total of Regular Ballots and Absentee Ballots Counted
 5. Number of Outstanding Absentee Ballots
 - In-country (regular absentee ballots)
 - In-country (uniformed services)
 - Out-of-country Uniformed Services
 - Overseas Civilians
 - Total Number of Outstanding Absentee Ballots
 6. Number of Provisional Ballots Cast
 7. Number of Remade Ballots
 8. Number of Ballots Containing Overvoted Races or Issues
 9. Number of centrally counted Optical Scan Ballots remaining to be Inspected and Segregated for double bubble votes and where the oval or box was not filled in next to a line where the voter has written in an eligible write-in candidate's name (via waiver)

Please transmit the reports on election night or no later than noon on Wednesday, November 3, 2010. You may transmit your reports to the Elections Division to the attention of Kathy Malott by one of the following methods:

- Fax: 614-485-7590;
- Email: kmalott@sos.state.oh.us; or
- Mail: Secretary of State Jennifer Brunner, Elections Division, P. O. Box 2828, Columbus, OH 43216.

If your county is not the most populous county for a district (for an office or issue), you must report your county results to the most populous county of a district for which you have conducted your county's portion of the election before your board office closes. The results may be reported by telephone, fax or e-mail. It is imperative that you make a final report to the most populous county of a district for which part of the district is in your county, before you close your board office.

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

Sincerely,

Jennifer Brunner