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DIRECTIVE 2011-10

March 17, 2011

To: ALL COUNTY BOARDS OF ELECTIONS

Re: Unofficial Canvass – May 3 Primary/Special Election

SUMMARY

This Directive outlines the procedures that county boards of elections are required to follow in conducting the unofficial canvass of the May 3, 2011 primary/special election.

Please note that the Office of the Secretary of State will be staffed from 6:30 a.m. until 9:00 p.m. on the day of the election to assist county boards of elections with any problems, questions, or concerns that may arise.

UNOFFICIAL CANVASS

Pursuant to R.C. 3513.21 and R.C. 3505.27, the unofficial canvass of the May 3, 2011 primary/special election 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 to be eligible as defined by state law 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 2, 2011 and received after May 3, 2011 but no later than May 13, 2011, and timely mailed but late received 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).

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.

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 is because:

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

R.C. 3506.21 requires the board to attempt to determine voter intent, using that statute's definitions to ensure uniform application, for ballots that were rejected by the central count tabulator – an activity to be *confirmed* by the board by a majority vote in public session. Determining voter intent may include determining whether a voter attempted to remove a mark from the ballot (e.g., erased a mark or made some other indication of his/her intent to remove a mark) 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, 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

contrary intent, an overvote exists. When an overvote exists, 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.

If it is determined that a voter filled in the oval next to a candidate for an office and also cast a write-in vote for that same candidate for the same office by filling in the oval next to the blank space provided for write-in candidates, that ballot should be set aside and remade in accordance with the instructions in the "Tabulation Instructions for Ballots With Write-In Candidate Votes" section of this directive.

Ballots for which it is determined that the *sole* reason for rejection by the tabulator is one or more overvotes 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.

Any ballot (other than a provisional ballot) that was cast at the precinct but was not fed into the precinct-based optical scanner should be processed or scanned in the same manner as above, including inspecting and remaking rejected ballots as prescribed above (e.g., depending upon your local processes, examples of this could include a curbside ballot, 17-year old ballot, ballots cast and placed into the emergency slot of the ballot box during rare instances that the precinct-based scanner was offline, etc.)

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.

PROCESSING AND TABULATION INSTRUCTIONS 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 Scan– Central Count (ballots tabulated at the board of elections)

See instructions above for Optical Scan – Central Count under Processing and Tabulation Instructions for Counties Using Precinct Based Optical Scan Voting Systems

TABULATION INSTRUCTIONS FOR BALLOTS WITH WRITE-IN CANDIDATES

Ballots containing potential write-in votes should be segregated for inspection. Inspection and tallying 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.

If the voter has written in an eligible write-in candidate's first and last name, 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.

If the voter has written in *part of* an eligible write-in candidate's name, boards of elections are hereby instructed to count a vote in which a voter has written in only the first or last name of the candidate, if there is only one candidate with that first or last name. If there are two or more write-in candidates with the same first or 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. In this case, the board shall follow the manual hand count instructions explained in Directive 2008-34.

The unofficial canvass must include write-in votes for eligible write-in candidates consistent with these instructions. To the extent that this requirement impedes a board's ability to produce accurate and timely certified unofficial results, a board may report as its unofficial canvass for write-in candidates the write-in vote totals reported by the voting system, which is a count of the number times write-in votes for that contest were recorded regardless of whether the vote was for an eligible write-in candidate.

Optical Scan Ballots - General Guidelines

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 the writing in of the name of a write-in candidate (other than an optical scan ballot that is to be centrally counted as

discussed below), invalidates the voter's vote in that race, as the voter has overvoted by marking more choices than permitted for a particular race.

Optical Scan Ballots – Central Count Only

A voter casting an optical scan ballot that is centrally counted at the board of elections' office does not receive an opportunity or a second chance either to correct the overvote or to override the rejection of the vote by a precinct-based optical scanner. Therefore, on an optical scan ballot that is centrally counted only, if a voter filled in the oval next to a candidate for an office and also cast a write-in vote for that same candidate for the same office by filling in the oval next to the space provided for a write-in candidate within that contest, such vote is not to be treated as an overvote. In this case, the ballot should be set aside and remade in accordance with the instructions in Directive 2008-69.

Direct Recording Electronic Machines (DRE)

The board of elections may use the summary reports produced by each individual DRE or group of DREs, additional reports created by the precinct election officials as may be required by the board of elections or by uploading to the central tabulation system the removable electronic storage media from the voting machines to tally the number of votes for eligible write-in candidates.

REQUIRED REPORTS FOR THE MAY 3 PRIMARY/SPECIAL ELECTION

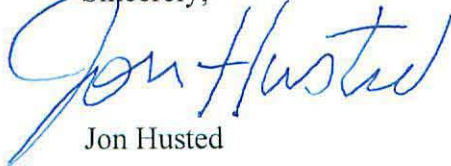
In accordance with R.C. 3505.30, each board of elections shall transmit a copy of your county's summary report indicating unofficial results for offices and issues on your ballot. Please transmit the results **on election night** or no later than noon on Wednesday, May 4, 2011. You may transmit your results to the Elections Division to the attention of Serena Henderson by one of the following methods:

- Fax: 614-752-4360; or
- Email: shenders@sos.state.oh.us

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 the elections attorney assigned to your county at 614-466-2585.

Sincerely,



Jon Husted