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DIRECTIVE 2012-10

February 3, 2012

To: All County Boards of Elections

Re: Official Canvass and Report Forms for March 6, 2012 Primary Election

SUMMARY

This Directive outlines the procedures that county boards of elections must follow in conducting the official canvass of the March 6, 2012 Primary Election.

I. TIMELINE FOR OFFICIAL CERTIFICATION

Boards of elections may begin the official canvass of the March 6, 2012 Primary Election no earlier than the 11th day after the election (Saturday, March 17, 2012), and must begin no later than the 15th day after the election (Wednesday, March 21, 2012). Each board of elections must complete its official canvass no later than the 21st day after the election (Tuesday, March 27, 2012).¹

II. PERMISSIBLE PRE-CANVASS ACTIVITY

Prior to March 17, 2012, a board of elections may examine its poll books, poll lists or signature poll books, and tally sheets, and compare the information contained in those documents to the summary statements prepared by the precinct election officials.² The board must note and reconcile any error, defect, or omission that it detects during its examination of those records.

Additionally, the board must verify the eligibility of persons who cast provisional ballots and the validity of the required provisional voter statements. Procedures for determining the validity of provisional ballots are provided in Directive 2012-01.

Reminder: A board of elections must determine the eligibility of every provisional ballot cast in that county before the board may open and canvass any provisional ballot.³ Further, observers may be present, as provided by law, while the board determines the eligibility of provisional ballots.⁴

¹ R.C. 3513.22(A).

² R.C. 3505.32(D).

³ R.C. 3505.183(D).

⁴ R.C. 3505.183(D) and 3505.21.

III. INSTRUCTIONS FOR OFFICIAL CERTIFICATION

A. All Voting Systems

All valid ballots cast in the March 6, 2012 election – including eligible ballots cast at the polling places on Election Day, eligible provisional ballots, and eligible absentee ballots – must be included in the official canvass.

Each board of elections must test its automatic tabulating equipment before starting the count, and after concluding the count, to verify the central tabulation system's accurate count of the votes cast for all offices and on all questions and issues.⁵ Directive 2008-90 ("Pre-Election Tests of Central Tabulation Systems") provides detailed instructions for conducting the tests.

B. Tabulation Instructions for Ballots Containing Votes NOT Included in the Unofficial Canvass

The board of elections first must tally all eligible ballots that were *not* included in its unofficial canvass.⁶ Those ballots include the following: provisional ballots; absentee ballots postmarked on or before March 5, 2012 that had not been received by the closing of the polls but were received no later than March 16, 2012; timely mailed in-country uniformed service, out-of-country uniformed service, or overseas citizen absentee ballots that had not been received as of the closing of the polls but were received not later than March 16, 2012; and challenged ballots that the board has determined are eligible.⁷

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 in accordance with the inspection and tabulation instructions for central count optical scan ballots provided in Directive 2012-08 ("Unofficial Canvass – March 6 Primary Election"), issued on January 25, 2012.

C. Special Reminder re: Vote Requirements for Write-in Candidates Seeking Party Nomination

In no event shall a write-in candidate be nominated as a political party's candidate in any contest in which the only candidates are write-in candidates unless the total number of votes cast for the write-in candidate receiving the highest number of votes is equal to or greater than the number of petition signatures that would have been required for printing the write-in candidate's name on the primary ballot pursuant to R.C. 3513.05.⁸

⁵ R.C. 3506.14(B).

⁶ R.C. 3513.22 and 3505.32(C).

⁷ R.C. 3513.21.

⁸ R.C. 3513.23(B).

D. Tabulation of Results for the Official Certification

This procedure will produce the totals to be certified as the official results for the March 6, 2012 Primary Election. After tabulating all ballots that were *not* included in the unofficial canvass, the board of elections must continue the official canvass certification process as follows:

1. Optical Scan Ballots

The board must:

- upload the memory cards containing votes that were centrally counted during the unofficial canvass (a county using a GEMS server may “re-import” the data containing votes that were centrally counted during the unofficial canvass in lieu of using external media, if the system is capable of doing so, or by rescanning all of the ballots),
- upload the precinct/polling place memory cards containing votes that were counted during the unofficial canvass, if applicable, and
- verify the count matches the unofficial count.

If the count does not match the unofficial count, the board must contact the Secretary of State’s Elections Administrator for additional instructions.

If the counts match, the board must combine the results of the re-run memory card tabulation of the unofficial canvass with the results of those ballots just tabulated that had not been included in the unofficial canvass.

2. Direct Recording Electronic Voting Machines (DREs)

The board must:

- upload the precinct cartridges, PCMCIA cards, and other removable memory devices containing votes that were counted during the unofficial canvass, and
- verify the count matches the unofficial count.

If the count does not match the unofficial count, the board must contact the Secretary of State’s Elections Administrator for additional instructions.

Note: The seal on the canister or the tape on the voter verified paper audit trail (VVPAT) shall not be broken to determine official results. If the seal must be broken for any auditing reason other than for recount purposes or a statewide post-election audit as prescribed by the Secretary of State, the board must notify the Secretary of State’s Elections Division before proceeding.

If the counts match, the board shall combine the re-run results of the unofficial canvass with the results of those ballots just tabulated that had not been included in the unofficial canvass.

E. Tie Votes (Candidate Contest Only)

If, after canvassing all votes of a party primary election, more than the number of candidates to be elected or nominated by the political party to an office received the largest and an equal number of votes, the chairperson of the board of elections, in the presence of a majority of the board members, immediately shall break the tie by lot⁹ and declare the winner *before* the board certifies the results of the election for that office and orders a recount.¹⁰ A majority of the board members must sign the declaration, which must be dated. The board must post a copy of the declaration in a conspicuous, accessible place in the board office for at least five days.¹¹

IV. FORMS FOR OFFICIAL CERTIFICATION

Included with this Directive are the abstract and certification forms for reporting candidate and issues results to the Secretary of State and, in some instances, to other boards of elections or public agencies.

Additionally, because the Secretary of State must publish a report on the number of absentee and provisional ballots cast and counted, the *Official Certification for Absentee Ballots* form, and the *Official Certification of Provisional Ballots Issued, Provisional Ballots Counted and Rejected and Provisional Ballots Summary* form also are provided for each board to report those totals.¹² Please be advised that the new Provisional Summary form will auto populate from the totals entered on your certification of issued and counted and rejected worksheets. All certifications, abstracts and reports must be signed by the appropriate board personnel before being submitted to the Secretary of State's office, to another board of elections, or to another public agency.

The following reporting forms are included with this Directive:

1. Certification of Official Results for Presidential Delegates & Supplemental Information, Statewide Offices, District Offices and County Offices

- If the district office appears on the ballot in more than one county, the board of elections of an overlapping (less populous) county must send a copy of the properly completed and signed certification to the board of elections of the most populous county of the district.
- If a non-judicial county office (e.g., Commissioner or County Auditor) for an unexpired term appeared on the ballot, use the form designated for this purpose.

2. Certification of Official Results by Most Populous County for District Office Major Parties

⁹ R.C. 3513.22(C). Examples of methods used to break a tied candidate race "by lot" include, but are not limited to, the chairperson tossing a coin, drawing straws, picking a name written on paper out of a hat, or cutting cards.

¹⁰ By contrast, a board does not break a tie in the case of a ballot issue that received an equal number of votes for and against the issue; that issue failed by operation of law, because it did not receive a majority of affirmative votes. A tie in an issue election results in the failure of the issue.

¹¹ R.C. 3513.22(C).

¹² R.C. 3501.05(Y)

3. Certification of Official Results by Most Populous County for District Office Minor Parties**4. Certification of Official Results for Local Questions and Issues (Form No. 5)**

When reporting local questions and issues on Form No. 5, please indicate by use of an asterisk (*) any subdivisions that overlap into another county; however, report only your county's results on Form No. 5.

Note: The board of elections of the most populous county for a multi-county ballot question or issue must use Form No. 5-U (described at #6, below) for reporting vote totals for questions or issues that overlap into other counties.

5. Certification of Official Results by Most Populous County for Local Questions and Issues (Form No. 5-U)

If your county contains the most populous portion of a multi-county district, report the total vote for the question or issue on Form No. 5-U, indicating the vote for each county.

6. Certificate of Official Results for Local Liquor Option Questions (Form No. 126-B)

Send a copy of Form No. 126-B to the Secretary of State's office, *and* a separate copy of the form to the Division of Liquor Control at the following address:

Division of Liquor Control
PO Box 4005
Reynoldsburg, OH 43068-9005

7. Abstract of Precinct-Level Official Results for Candidates for Certain Offices

Each board of elections must submit an abstract reporting all the following information on a precinct-by-precinct basis:

- Final official vote totals for all candidates (including write-ins) for President, U.S. Senator, Ohio Supreme Court Justice, Representative to Congress, State Senator and State Representative, etc.,
- The total number of persons who voted the primary ballot of each political party that participated in the primary election,
- The total number of registered voters for the March 6, 2012 primary election, and
- The number of persons who voted.

The grand total of the votes on the abstract must agree with the totals entered on the board's certification forms. The required file format will be sent via electronic mail to each county.

8. Supplemental Precinct-Level Report

Each board of elections must enter on the appropriate lines of the forthcoming Excel spreadsheet the following data for each of its precincts:

- number of provisional ballots issued and the corresponding reason,
- number of provisional ballots counted,

- number of provisional ballots rejected and the reason for rejection,
- number of votes cast by absentee ballot, and
- number of votes cast at the polling place on Election Day.

V. TIMELINE FOR REPORTS

The Secretary of State's office must receive each board of elections' properly completed and signed certification, abstract and report forms no later than the close of business on Friday, April 6, 2012.

Submit completed forms by one of the following methods:

- Electronically to Kathy Malott at kmalott@ohiosecretaryofstate.gov.
- Fax to Kathy Malott at 614-485-7590.
- In person at the Elections Division, 180 East Broad Street, 15th Floor, Columbus.

Every board of elections must maintain a copy of each of its completed certification and report forms at its office.

VI. RECOUNTS

Do not delay submitting the official certification forms due to a recount for any race or issue. Before scheduling and conducting a recount, please review the procedures set forth in statute¹³ and Directive 2012-11 ("Recounts"), which is forthcoming.

If a recount is to be conducted, please send notice of the recount to Elections Administrator Melanie Poole via fax at 614-485-7697, or email to mpoole@ohiosecretaryofstate.gov. If a recount should result in vote totals changing, the board of elections must submit a properly completed and signed amended certification and abstract.

If you have any questions regarding this directive, please contact your county's assigned elections counsel at (614) 466-2585 or via email.

Sincerely,



Jon Husted

¹³ R.C. 3515.01 - .072.