



Jon Husted Ohio Secretary of State

180 East Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: (877) 767-6446 Fax: (614) 644-0649
www.OhioSecretaryofState.gov

DIRECTIVE 2012-22

June 13, 2012

To: All County Boards Of Elections

Re: Remaking Optical Scan Ballots

SUMMARY

This Directive instructs boards of elections on the proper procedure for remaking optical scan ballots that cannot be accurately read by automatic tabulating equipment. The intent is to ensure that every validly cast ballot is properly counted. This Directive replaces Directives 2008-110, 2008-69, and 2007-031, which are rescinded.

DETERMINING WHICH BALLOTS MAY BE REMADE

To enable board members to efficiently and effectively confirm which ballots must be remade, designated teams, consisting of an equal number of board employees from each major political party, may sort ballots with similar problems into separate categories for board members to review. For example, one category might include all ballots that were marked correctly, but are torn or mutilated. Another category might include ballots on which all the ovals were consistently circled, rather than filled in. The board members must review the categories of ballot to determine which ballots to remake.

A. Categories of Ballots to be Remade

1. Folded, Torn, and Mutilated Ballots and/or Ballots with Technical and Printing Deficiencies

If a designated team determines that a voter marked the ballot in accordance with the instructions printed on the ballot, but the automatic tabulating equipment is unable to read the ballot because the ballot is folded, torn or mutilated, or the ballot has technical or printing deficiencies (e.g., timing marks on the ballot are misaligned, improperly cut ballots causing skew, etc.), the designated team may remake the ballot in anticipation of the board's determination. The remade ballot must continue to be segregated, along with the original ballot, and uncounted until the board of elections acts.

2. Voter Failed to Follow Instructions -- Determining Voter Intent

A board of elections has statutory authority to determine the intent of a voter who marked the entire ballot contrary to the instructions provided and to remake the ballot

to reflect that intent.¹ If a voter failed to mark any of the ballot according to the instructions printed on the ballot, the board of elections, by majority vote in public session, must determine voter intent before remaking the ballot. Voter intent is determined by examining the ballot for a mark that was consistently made, contrary to voting instructions.

If a voter marked the entire ballot contrary to the instructions provided, the board must follow the guidelines set forth in R.C. 3506.21(B)(1) to determine voter intent on that ballot:

- (B)(1) *** any of the following marks, if a majority of those marks are made in a consistent manner throughout an optical scan ballot, shall be counted as a valid vote:
- (a) A candidate, question, or issue choice that has been circled by the voter;
 - (b) An oval beside the candidate, question, or issue choice that has been circled by the voter;
 - (c) An oval beside the candidate, question, or issue choice that has been marked by the voter with an "x," a check mark, or other recognizable mark; or
 - (d) A candidate, question, or issue choice that has been marked with a writing instrument that cannot be recognized by automatic tabulating equipment.

After a majority of board members determine voter intent, the board shall follow the procedures for remaking the optical scan ballot set forth in this Directive. If three of the board members do not agree as to how any part of the ballot shall be counted, only that part of the ballot on which three board members do agree shall be counted.²

If a voter's intent for any one contest on a ballot is indeterminate, a board is prohibited from remaking the ballot when any part of the ballot is correctly marked and is able to be scanned by automatic tabulating equipment.³ In such a case, the board shall tabulate the ballot using the automatic tabulating equipment, which will record only the votes that the voter marked in accordance with the instructions.

B. Procedure for Remaking Ballot

If the board has determined that a ballot needs to be remade because (1) it is folded, torn and/or mutilated, or the ballot has technical and/or printing deficiencies, or (2) because the voter marked the entire ballot contrary to the instructions, then a designated team remakes the ballot as follows:

1. One team member must read aloud the voter's choice for a particular office or question/issue.

¹ RC 3506.21

² Tie votes on voter intent are not submitted to the Secretary of State. RC 3505.27

³ RC 3506.21(B)(2).

2. Another team member, of the opposite political party, must fill in the corresponding oval consistent with the voter's choice.

Note: Both members of the team should verify that the remade ballot was marked consistent with the voter's choice.

3. The team must mark the original ballot with an identifying mark or code, such as "OVB1" (Original Voted Ballot 1).
4. The team shall mark the remade ballot with an identifying mark or code to identify this remade ballot with the original ballot, such as "RB1" (Remade Ballot 1).

Note: Place the identifying mark or code in an area on the ballot that will not interfere with the tabulation process.

5. After all the eligible ballots have been remade, the ballots shall be tabulated.

No remade ballot shall be tabulated unless and until a majority of board members has confirmed or determined its eligibility.

RETENTION OF ORIGINAL AND REMADE BALLOTS

All boards of elections remaking any ballots under these procedures shall keep both the original voted ballot and the remade ballot for the duration of the applicable document retention period.

If you have questions concerning this Directive, please contact the Secretary of State elections attorney assigned to your county at (614) 466-2585.

Sincerely,



Jon Husted