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DIRECTIVE 2012-27

July 12, 2012

To: All Boards of Elections
Directors, Deputy Directors, and Board Members

Re: Backup Optical Scan Ballots for Voters in Counties using DRE Voting Machines as their Election Day Voting System for the November 6, 2012 Presidential General Election

SUMMARY

This Directive requires every board of elections using DRE voting machines as its Election Day voting system to print and supply all precincts with centrally counted optical scan ballots as backup paper ballots at the November 6, 2012 presidential general election. Directives 2012-04, 2010-61, 2008-107, 2008-59, and 2008-01, and the Memorandum of July 25, 2008 are hereby rescinded.

BACKGROUND

In 2009, the Secretary of State's Office entered into a settlement agreement with the League of Women Voters. Under the terms of the Agreement, the Secretary of State's Office must require all boards of elections using DRE voting machines as their Election Day voting system to distribute backup optical scan ballots "in the event of long lines"¹ and to "offer paper ballots to voters in the event of machine problems or breakdowns."² Although the Agreement does not require the Secretary of State or boards of elections to give voters the "paper or plastic" choice between casting a ballot on the DRE or by using centrally counted optical scan ballots, it is acceptable for a board of elections to make the local decision to do so. If a board of elections permits a voter to cast a centrally counted optical scan ballot instead of voting on a DRE, it should do so for all elections, so as to not create voter confusion from one election to the next.

INSTRUCTIONS

I. Establishing a Wait Time Policy

County boards of elections are best suited to make the determination of what constitutes "long lines" based upon turnout in previous, similar elections, equipment

¹ LWV Settlement Agreement, Exhibit B, Section I, Division A, Paragraph 1

² LWV Settlement Agreement, Exhibit B, Section VII, Paragraph 2

allocation, availability and training of precinct election officials, and ballot length, in addition to other factors a board may choose to consider. To provide all voters and precinct election officials with consistent minimum standards, all boards of elections must establish a wait time policy. When wait times reach the threshold established by the board's wait time policy in any given precinct, precinct election officials must verbally announce the availability of centrally counted optical scan ballots to voters every half hour until the wait time is less than the board-established maximum wait time. Boards must ensure that this required policy is communicated to presiding judges and other precinct election officials before Election Day.

II. Determining Minimum Number of Paper Ballots

Boards must determine the minimum number of optical scan ballots to provide for each precinct by multiplying the number of ballots cast in the precinct (public count) from the 2008 presidential general election by 20 percent. This is the minimum number of optical scan ballots that must be provided for that precinct. Boards of elections may print ballots totaling more than the calculated minimum number so long as the increase is uniform across the county. Although the ballots are labeled and look the same, this 20 percent is in addition to the quantity the board of elections determines is necessary to accommodate all provisional ballot voters at each precinct.

III. Funding for Ballot Printing Costs Incurred

Reimbursement funding is available for the cost of ballots printed to comply with minimum requirements of this Directive. Boards of elections must document and itemize the printing costs incurred as a result of complying with this Directive. The Secretary of State's Office will send a reporting form to each board before the presidential general elections to allow the board to report this expense.

IV. Voter Privacy

Boards must provide a private area for voters to mark their centrally counted optical scan ballots. Privacy booths used by persons voting provisional ballots may be used for this purpose.

V. Voter Instructions

To satisfy the requirements of the Help America Vote Act of 2002,³ each voter receiving a centrally counted, optical scan ballot must receive the instructions attached to this Directive.

³ 42 U.S.C. 15482, Pub. L. 107-252, title III, § 302(b), Oct. 29, 2002, 116 Stat. 1706.

VI. Backup Paper Ballots are not Provisional Ballots

A centrally counted, optical scan ballot voted under the terms of the settlement agreement with the League of Women Voters is NOT a provisional ballot and must NOT be placed into a provisional ballot envelope. A provisional ballot is ONLY to be cast under the circumstances set forth in R.C. 3503.16 and 3505.181. In the event that a ballot cast under the terms of the settlement agreement with the League of Women Voters is placed into a provisional ballot envelope, it must be counted as a regular ballot at the official canvass.

VII. Secure Ballot Containers

Boards must provide a secure ballot container into which the voter may place his or her centrally counted, optical scan ballot after marking the ballot. A ballot cast under the terms of the settlement agreement with the League of Women Voters need not be sealed inside an envelope when placed into the ballot box. However, if such ballots are to be placed into the same container as provisional ballot envelopes, the container shall not be labeled "Provisional Ballots," and provisional ballots must be placed into the appropriate provisional ballot bag, large envelope, or other container that the board of elections provided in the precinct supply kit for that purpose.

VIII. Tabulation

Because a centrally counted, optical scan ballot cast under the terms of the settlement agreement with the League of Women Voters is a "regular ballot" under state law, it must be tabulated and reported as a part of the board's unofficial canvass.

If you have questions concerning this Directive, please contact the Secretary of State's elections attorney assigned to your county at (614) 466-2582.

Sincerely,

A handwritten signature in black ink that reads "Jon Husted". The signature is stylized with a large, looping "J" and "H".

Jon Husted

Attachment

IMPORTANT INSTRUCTIONS

- Before marking your ballot, carefully read the instructions at the beginning of the ballot.
- To vote, you must completely darken the oval to the left of the candidate or answer of your choice. Example = ●
- Do not mark the ballot for more choices than allowed. If you mark your ballot for more choices than allowed, your vote for that contest or question will not be counted.

If you make a mistake:

- Return your ballot to a precinct election official and ask for a replacement ballot.
 - You may request a replacement ballot only two times.
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