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DIRECTIVE 2012-44
September 11, 2012

To: All County Boards Of Elections
Directors, Deputy Directors, and Board Members

Re: Counting Provisional Ballots Cast in the Wrong Precinct of the Correct Multiple-Precinct Polling Place and Provisional Ballots with “Technical Deficiencies”; *SEIU v Husted* (Case No. 2:12-CV-562)

BACKGROUND

On August 27, 2012, a federal district court found certain provisions of Ohio’s law related to counting provisional ballots unconstitutional. The court ordered me, by September 11, 2012, to direct the boards of elections to count certain provisional ballots that were not previously eligible to be counted.

“Right Church/Wrong Pew”

The federal district court found that Ohio’s law requiring voters to vote in the correct precinct violates the United States Constitution as to the “discrete class of prospective voters’ – those who arrive at the correct polling place but are misdirected due to poll-worker error...” (Opinion and Order p. 34).

Based on the trial court’s order, all wrong-precinct ballots cast in the correct polling place¹ but wrong precinct of a multiple-precinct polling place must be counted (1) for contests and issues for which the voter would have been eligible to vote had the voter cast the ballot in the correct precinct *unless* (2) the poll worker completes [Secretary of State Form 12-D](#) to demonstrate that the poll worker directed the voter to the correct precinct and the voter refused to go there to vote.

“Technical Deficiencies”

Additionally, the federal district court found that provisional ballots cast containing technical deficiencies “necessarily involves poll-worker error because it is the poll worker’s duty to ensure the provisional ballots are cast with a validly completed ballot envelope and affirmation” (Opinion and Order p. 43).

Based on the trial court’s order, a board of elections cannot reject any provisional ballots cast by lawfully-registered voters because a provisional ballot envelope does not contain a voter signature and the board of elections has otherwise been able to determine that the voter is a registered voter; and/or the provisional ballot envelope does not contain the voter’s full printed

¹ As used in this Directive, “polling place” has the same meaning as “voting location” and “polling location;” specifically, as that place (i.e., the physical structure in which the voter’s precinct is located, such as a church building, a school, a firehouse, etc.) where the voter has been assigned by the board of elections to vote on Election Day.

name and the board of elections has otherwise been able to determine that the voter is a registered voter; and/or the voter did not sign and/or print the voter's name in the correct place(s) on the ballot envelope and the board of elections has otherwise been able to determine that the voter is a registered voter.

INSTRUCTIONS

A. Ballots Cast in the Wrong Precinct of a Multiple-Precinct Polling Place, but Right Polling Place

Based on the federal district court's Opinion and Order relative to "right-church, wrong-pew" provisional ballots cast, I instruct all boards of elections to not reject a provisional ballot cast in the wrong precinct of a multiple-precinct polling place if the Board can determine that the voter is a registered voter, but the voter was at the correct polling place, unless a precinct election official completed [SOS Form 12-D](#) (Provisional Voter Precinct Verification Form).

Such ballots must be remade for only those contests and issues for which the voter would have been eligible had the voter cast the correct precinct's ballot. Boards of elections must follow [Directive 2012-22](#) as it relates to this remake process, specifically section B.

Boards of elections must determine the eligibility of a provisional voter following the process established by [Directive 2012-01](#), except that, under Step 5 for "Determining the eligibility of provisional ballots" is replaced to read as follows: (changes in *italics*)

- If the voter moved and provided a new address within the precinct on the provisional ballot envelope, then the voter is considered a resident of the new county and precinct;
- If the voter is a resident of the county and precinct in which the provisional ballot was cast, then the Board must accept and count the provisional ballot;
- *If the voter cast the provisional ballot in (1) the wrong precinct, and (2) the wrong polling place, then the Board must reject the provisional ballot.*
- *If the voter cast the provisional ballot in the wrong precinct, but in the correct polling place, and a precinct election official did not complete and attach [SOS Form 12-D](#) to the provisional ballot envelope then the Board must remake and count the provisional ballot for only those contests for which the voter was otherwise eligible.*
- *If the voter cast the provisional ballot in the wrong precinct, but in the correct polling place and a precinct election official did complete and attach [SOS Form 12-D](#), but the Board verified that the precinct to which the poll worker directed the voter was the incorrect precinct, then the Board must remake and count the provisional ballot for only those contests for which the voter was otherwise eligible.*
- *If the voter cast the provisional ballot in the wrong precinct, but in the correct polling place and (1) the poll worker completed [SOS Form 12-D](#) and (2) the Board verified that the precinct to which the poll worker directed the voter was the correct precinct, the Board must reject the provisional ballot.*
- If the voter is not a resident of the county and precinct in which the provisional ballot was cast, and the voter provided only the last four digits of the voter's Social Security

Number as identification, then the Board must apply the NEOCH exception described in [Directive 2012-01](#); or

- If the voter is not a resident of the county and precinct in which the provisional ballot was cast (*unless as described above*) and the voter did not provide the last four digits of the voter's Social Security Number as identification, then the Board must reject the provisional ballot.

B. Printed Name and Signature Requirement

Based on the federal district court's Opinion and Order, I also instruct the Boards of elections as follows:

If the Board can determine that the voter is a registered voter at the correct polling place, the Board cannot reject:

- A provisional ballot where the voter failed to sign his or her name;
- A provisional ballot where the voter failed to print his or her full name; or
- A provisional ballot where the voter failed to sign or print in the correct place on the provisional ballot envelope.

Boards must determine whether the provisional voter is a registered voter, and eligible to cast a provisional ballot at that polling place, consistent with [Directive 2012-01](#), except as follows:

- If the voter printed the voter's name anywhere on the provisional ballot envelope, look up that name in the voter registration database; or
- If the voter signed the voter's name anywhere on the provisional ballot envelope, and the voter's signature is legible, look up the name in the voter registration database.

C. Training Requirements for Precinct Election Officials

It is important to note that [Directive 2011-33](#) remains in effect: boards of elections must train precinct elections officials on the proper methods for determining a provisional voter's correct precinct and/or polling place and the precinct election official must direct the voter to the correct precinct and/or polling place so that the provisional voter's entire ballot can be counted.

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

Sincerely,



Jon Husted

PROVISIONAL VOTER PRECINCT VERIFICATION FORM

Complete this form whenever a voter's name does not appear in the signature poll book or poll list, the voter is in the wrong precinct of the correct multiple-precinct polling place and the voter insists on casting a provisional ballot in the wrong precinct.

STEP 1 Find the voter's address in the Voting Location Guide.

STEP 2 Write the name or number of the voter's correct precinct below:

STEP 3 Write the name and address of the voter's correct polling place below, if different from where you are now:

STEP 4 Instruct the voter to go to his or her correct precinct to cast a provisional ballot.

STEP 5 Instruct the voter that casting the wrong-precinct provisional ballot in this precinct would result in all votes on the ballot being rejected.

I affirm under penalty of election falsification that I followed Steps 1 through 5 above but the voter refused to travel to the correct precinct and insists on voting a wrong-precinct provisional ballot in this precinct. I issued the provisional ballot contained in the envelope to which this verification is attached.

Signature of Precinct Election Official

Precinct Name/Number

Polling Place Name

Attach this form to the voter's provisional ballot envelope.

Failure by the Precinct Election Official to properly complete or attach this form will not result in the rejection of the voter's entire provisional ballot.

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