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DIRECTIVE 2012-45

September 13, 2012

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

Re: State Issue 2 - Revised Ballot Language and Instructions

SUMMARY

On September 12, 2012, the Ohio Supreme Court issued a decision in *State ex rel. Voters First v. Ohio Ballot Board*, 2012-Ohio-4149. In the decision, the Court ordered the Ohio Ballot Board to reconvene and remedy portions of the ballot language for State Issue 2. On September 13, 2012, the Ohio Ballot Board met and adopted new language for the Secretary of State to certify and boards of elections to use.

INSTRUCTIONS

A. Certified Ballot Language

Attached is the certified version of the ballot language for State Issue 2. This is the language approved by the Ohio Ballot Board and certified by the Secretary of State, and it must be used on all ballots prepared for the November 6, 2012 general election.

Also attached is a .txt file of the ballot language. In order to eliminate typographical errors, county boards of elections are encouraged to use the .txt file to load the ballot language into their ballot building software instead of hand keying the language. Please consult with your voting system vendor regarding the use of the .txt file.

B. Ballot Layout and Proofing

Each board of elections is required to do the following:

- Replace the former ballot language provided for State Issue 2 with the ballot language adopted today by the Ballot Board and attached to this Directive;
- Thoroughly review and proof the language of State Issue 2 to ensure the language and its formatting matches **exactly** what is provided with this Directive;
- The Director and Deputy Director must personally review and proof every ballot style to ensure that the layout for the questions or issues that come after State Issue 2 still meet the ballot layout requirements of [Directive 2012-34](#);

- The Director and Deputy must personally review every ballot style to ensure that no question or issue is split between ballot pages or sides of a page; and

Note: It may not be possible to avoid breaking the State Issue 2 language from one side of a ballot page to another. If this cannot be avoided, you must provide instructions cueing voters to turn the page over for the rest of the text and the heading of the column on the second side must read “State Issue 2, continued.” You must not break State Issue 2 from one ballot sheet to another (unless you are required to provide a bi-lingual ballot).

- Re-record the audio for State Issue 2 to reflect the changes to the language of the issue.

C. Instructions for the Issuance of UOCAVA Ballots

As required by federal and state law, and as explained in [Directive 2012-20](#), absentee ballots **must be transmitted on September 22, 2012** to all UOCAVA voters who have submitted valid requests through **September 22, 2012**. This is not optional.

If a board of elections does not have printed ballots by the September 22, 2012 deadline, the board of elections must issue a copy of the appropriate ballot proof to the UOCAVA voter. Since virtually all UOCAVA ballots must be remade by the board of elections prior to tabulation, transmitting a ballot proof is acceptable. Such a transmission can be in the form of attaching a PDF of the ballot to the email or printing the proof scaled down to fit legal size paper then faxing or mailing it to the UOCAVA voter. Be sure to remove any watermarks from the PDF/ballot proof before sending it to the voter (e.g., a watermark that says “Draft” or “Proof”).

Boards of elections are not required to assign a sequential stub number to these ballot proofs. If a board of elections must enter a sequential number into their voter registration system to complete the issuance of the ballot, the board of elections may create a unique UOCAVA ballot identifier for this purpose in this election. For example, instead of recording the paper ballot stub number, the board of elections may use the CBTS pin number assigned to the voter as the ballot number (for example: EHOI61067R), or it may assign a unique UOCAVA designation to these voters (for example: FVAP0001).

D. Logic and Accuracy Testing

For boards of elections that have already begun logic and accuracy testing of their voting systems, the change to the State Issue 2 language requires that you retest **all** systems.

Boards must test all central count scanners prior to issuing absentee ballots in order to ensure that the ballots will scan properly when returned to the board of elections. If a board of elections conducts in-person absentee voting on DREs, the Board must test the DRE voting systems prior to use for in-person absentee voting.

Note: Boards of elections must test to ensure that the data capacity of any compact flash memory card, or similar media, is large enough to accommodate the data to support both the DRE screen image files and the audio ballot files. You must consult with your vendor for assistance.

All other voting systems must be tested prior to use on Election Day.

E. Public Posting of Ballot Proofs

State law requires boards of elections to post ballot proofs for a twenty-four hour period and provide notice to the chairperson of each political party having nominated candidates to the ballot prior to printing ballots for the election.¹

As a reminder, [Directive 2012-38](#) requires boards of elections to transmit a copy of the “first in face” proof (a proof of the first sequentially numbered precinct in the county) and copies of all final ballot questions and issues to the Secretary of State’s Office for review. If you have not done this, please do so immediately. If you have already done so, you do not need to send the candidate portion of the ballot again.

F. Handling and Processing of Two Page Ballots

For counties that do not regularly have multiple-page ballots, the Secretary of State’s Office recommends the following procedures:

- **Reconciling “ballots issued” and “voters signed in”**

One ballot must be designated the “counter ballot.” This will be the ballot that advances the public count on the optical scanner (whether precinct count or central count). Generally, the first ballot sheet in a presidential election is designated the “counter ballot.”

If more than one ballot page is utilized as the “counter ballot” the practice of reconciling ballots to voters becomes practically impossible as determining the number of voters will not be as simple as dividing the number of pages scanned by the number of possible pages (different styles may have different numbers of ballot pages, an absentee voter may not return all pages, etc.).

- **Spoiled Ballots**

Consideration must be given to the Board’s policy regarding the re-issuing of ballots to voters when a spoiled ballot is presented to election officials. If separate pages of the same ballot style are padded separately, a best practice is to issue only the ballot page containing the error. This is supported by the fact that a voter may have already

¹ R.C. 3505.14.

inserted one of the pages into the tabulator. If the multiple-page ballot is padded together (and perhaps separated from the next sequentially number ballot by a slip-sheet), then a best practice is to issue the appropriate page to the voter and then spoil the other pages remaining in the pad for that sequentially numbered ballot.

In either case, the Board must adopt a process and clearly communicate it to precinct election officials who must exercise due diligence to avoid error.

- **Counting Absentee Ballots**

When two ballots are folded together at the same time, a “nesting” effect can be created causing the ballots to “nest” or stick together at the point of the fold complicating the process of feeding the ballots into a central scanner. To avoid this problem, a best practice is to remove the ballot pages from their respective envelopes, once approved for counting, stack page 1 and 2 in separate piles and allowing them to “rest” for a day or more before scanning.

- **Ballot Box Capacity**

Be aware of the number of multiple-page ballots that a ballot box can hold. Two possible scenarios to avoid full ballot boxes:

- Deploy more scanners/ballot boxes thus spreading the quantity over additional units. This method will require individual memory cards for each scanner unit and may necessitate the assignment of precincts to particular scanners in multiple precinct voting locations.
- Remove ballots from the ballot box when it begins to get full and securely store them at the voting location using at least a tamper-evident seal, or return them to the Board of Elections using a bi-partisan team of elections officials.

I appreciate your continued hard work to implement this revised ballot. My staff is available to advise you as you complete the layout, proofing, and printing processes in time to meet the September 22, 2012 deadline for UOCAVA voters, the October 2, 2012 deadline for non-UOCAVA absentee voters, and Election Day, November 6, 2012 for all voters.

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,

A handwritten signature in dark ink, reading "Jon Husted". The signature is stylized with a large, looping "J" and a cursive "Husted".

Jon Husted