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DIRECTIVE 2014-20

July 2, 2014

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

Re: Determining the Validity of Provisional Ballots

SUMMARY

The Ohio General Assembly has made several changes to the laws governing the casting and counting of provisional ballots. This Directive provides instructions specific to provisional ballots consistent with [Advisory 2014-04](#) and replaces Directive 2012-54.

The Directive is issued to provide uniformity across Ohio's 88 county boards of elections in reviewing provisional ballot affirmations on provisional ballot envelopes to determine the eligibility of the ballots to be counted by providing county boards of elections with a mandatory seven-step procedure.

State law permits boards of elections to provide for in-person voting at either "the office of the board or at another site designated by the Board."¹ As such, whenever this Directive refers to the "board of elections office," the instructions extend to the optional alternative site designated by the Board for in-person voting.

PROVISIONAL BALLOT FORMS

Boards are required by law to use the updated [SOS Form 12-B](#) that was provided on June 3, 2014.

Additionally, Boards must supply the following forms to precinct election officials:

- [SOS Form 12-D](#) – for the precinct election official to complete when a 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 (updated June 2014); and
- SOS Form 12-H – for the precinct election official to give to each provisional voter, so the voter may obtain information on his/her provisional ballot (updated prior to each election).

¹ R.C. 3501.11(Z).

GENERAL REMINDERS ON PROCESSING PROVISIONAL BALLOTS

- Boards of elections may begin examining provisional ballot envelopes the day after the election.²
- The board of elections must adopt a provisional ballot policy, under which it may designate bipartisan teams to examine and categorize provisional ballot envelopes; however, **only the board members themselves** can determine the validity of each provisional ballot.
- The board members themselves determine the validity of each provisional ballot by majority vote at a properly noticed public meeting.
- A board of elections must not start counting **ANY** provisional ballot until **AFTER** the board members themselves have determined the validity or invalidity of **ALL** provisional ballots cast in that county.³
- A provisional voter who failed to provide identification on Election Day may appear at the board of elections and provide identification during the seven (7) days following the election.⁴
- Boards must complete the examination and counting of provisional ballots no later than the twenty-first day after the election.⁵

DETERMINING THE VALIDITY OF PROVISIONAL BALLOTS

Step 1: Determine whether the affirmation statement on the provisional ballot envelope contains each of the following five items: 1) voter's printed name, 2) voter's valid signature, 3) voter's date of birth, 4) voter's current address, and 5) voter's identification.

- If the affirmation statement contains all five of the required items, **proceed to Step 2.**
- If the affirmation statement **does not contain both** the voter's printed name and valid signature, then the Board must **reject the provisional ballot.**⁶
- If the affirmation statement does not contain the voter's date of birth or it does not fall into the exception below, then the Board must **reject the provisional ballot.**⁷

² R.C. 3505.183(G)(1).

³ R.C. 3505.183(F).

⁴ R.C. 3505.181(B)(7).

⁵ R.C. 3505.32(A).

⁶ R.C. 3505.183(B)(4)(a)(iii).

⁷ R.C. 3505.183(B)(4)(a)(ix).

- **Exception:** If the affirmation statement contains the voter's date of birth but the month and day are different from the month and day in the statewide voter registration database, the Board must reject the provisional ballot unless 1) the voter's date of birth in the database is 1/1/1800; or 2) the board of elections finds by a vote of at least three (3) of its members that the voter has met all of the other requirements of division (B)(3) of R.C. 3505.183.⁸ If the ballot falls into this exception, **proceed to Step 2.**

Step 2: Determine whether the provisional voter indicated on the affirmation statement that he/she showed an acceptable form of identification to the precinct election official or whether the provisional voter provided at least one of the following on the affirmation statement: the last four digits of the voter's social security number, the voter's driver's license, or state identification card number.

- If the voter indicated on the affirmation statement that he/she showed the precinct election official one of the acceptable forms of identification, **proceed to Step 3.**⁹
- If the voter provided identification on the affirmation statement, and the number (or, if a driver's license or state identification card number, the combination of letters and numbers) provided is not different from the number that is contained in the statewide voter registration database, **proceed to Step 3.**¹⁰
- If the voter provided identification on the affirmation statement but that identification is different from what is contained in the statewide voter registration database (i.e., the number or, if a driver's license or state identification card number, the combination of letters and numbers, provided is different), the Board must **reject the provisional ballot.**¹¹
- If the voter did not provide identification on the affirmation statement or did not indicate that he/she showed an acceptable form of identification to the precinct election official but returned to board of elections within seven (7) days after the election and provided one of the acceptable forms of voter identification, **proceed to Step 3.**¹²
- If the voter did not provide identification on the provisional ballot affirmation, did not indicate on the affirmation statement that he/she showed the precinct election official an acceptable form of identification, and did not return to the Board within the seven (7) days after the election to remedy the missing item, the Board must **reject the provisional ballot.**¹³

⁸ R.C. 3505.183(B)(4)(a)(ix).

⁹ R.C. 3505.181(B)(6).

¹⁰ R.C. 3505.183(B)(3)(d).

¹¹ R.C. 3505.183(B)(4)(a)(viii).

¹² R.C. 3505.183(B)(3)(g).

¹³ R.C. 3505.183(B)(4)(a)(vii).

Step 3: Determine whether the Board can verify the identity of the voter based on the information provided on the provisional ballot affirmation or provided by the voter within the seven (7) day period.

- If the Board **can verify** the identity of the voter based upon the information provided on the provisional ballot affirmation and/or provided by the voter within seven (7) days of the election, **proceed to Step 4.**
- If the Board **cannot verify** the identity of the voter based upon the information provided on the provisional ballot affirmation and/or the information provided by the voter within seven (7) days of the election, the Board must **reject the provisional ballot.**¹⁴

Note: To verify identity, the Board must (1) conduct at least one “wildcard” search of the county’s local voter registration database, if available, (2) conduct a voter query of the statewide voter registration database using ‘Search by Driver License Number’ and (3) conduct at least one voter query of the statewide voter registration database by entering as much or as little information as is available using ‘Search by Name.’ Once a Board has successfully identified a voter with one search, it is not necessary to conduct the additional queries.

Step 4: Determine whether the voter is a registered voter anywhere in the State of Ohio at least 30 days before the election.

- If the voter was registered to vote anywhere in the State of Ohio at least 30 days before the election, **proceed to Step 5.**
- If the voter was not registered to vote anywhere in the State of Ohio at least 30 days before the election, then the Board must **reject the provisional ballot.**¹⁵

Step 5: Determine whether the voter is a resident of the county and precinct in which the voter offers to vote.¹⁶

- If the voter is a resident of the county and precinct in which the provisional ballot was cast, **proceed to step 6.**
- If the voter moved and provided a new address *within the precinct* on the affirmation statement, then the voter is considered a resident of the new precinct and the Board must **proceed to step 6.**
- If the voter cast the provisional ballot in the wrong precinct, but in the correct polling place, including the board of elections office, and a precinct election official *did not* complete and attach [SOS Form 12-D](#) to the provisional ballot envelope, the Board

¹⁴ R.C. 3505.183(B)(4)(b)(i); *State ex rel. Skaggs v. Brunner* (2008), 120 Ohio St. 3d 506.

¹⁵ Ohio Constitution Article V, Section 1; R.C. 3505.183(B)(4)(a)(i).

¹⁶ R.C. 3503.01(A).

must remake and count the provisional ballot for only those contests for which the voter was otherwise eligible to vote.¹⁷

- If the voter cast the provisional ballot in the wrong precinct, but in the correct polling place, including the board of elections office, and a precinct election official *did* complete and attach [SOS Form 12-D](#), but the Board verified that the precinct to which the precinct election official directed the voter was the incorrect precinct, the Board **must remake and count the provisional ballot for only those contests for which the voter was otherwise eligible to vote.**
- If the voter cast the provisional ballot in the wrong precinct, but correct polling place, including the board of elections office, and (1) a precinct election official completed [SOS Form 12-D](#) and (2) the Board verified that the precinct to which the precinct election official directed the voter was the correct precinct, the Board must **reject the provisional ballot.**¹⁸
- If the voter cast the provisional ballot in the wrong precinct and wrong polling place the Board must **reject the provisional ballot.**¹⁹

Step 6: Determine whether the voter already requested and cast a ballot in the election.

- If the voter has not cast another ballot, **proceed to step 7.**
- If the voter has requested and cast an absentee ballot but *either* of the following exceptions apply, **proceed to step 7.**
 - **Exception 1:** The board of elections shall count the provisional ballot, instead of the absentee ballot, if the Board determines that the absentee ballot is invalid because the elector's signature on the absent voter's identification envelope does not match the signature on file with the board of elections, **and** the elector cast the provisional in the voter's precinct on Election Day.²⁰ If the ballot meets this exception, **proceed to step 7.**
 - **Exception 2:** The board of elections does not receive the voter's absentee ballot by the 10th day following the election, and the elector cast the provisional in the voter's precinct on Election Day.²¹ If the ballot meets this exception, **proceed to Step 7.**
- If the voter has cast another ballot, or requested and cast an absentee ballot and the exceptions above do not apply, the Board must **reject the provisional ballot.**

¹⁷ R.C. 3505.183(D)(1).

¹⁸ R.C. 3505.183(D)(1).

¹⁹ R.C. 3505.183(D)(3).

²⁰ R.C. 3509.09(C)(2).

²¹ R.C. 3509.09(C)(3).

Step 7: If you have completed Steps 1 through 6 and determined that the provisional ballot should be rejected, consider the following:

- Under the consent decree issued by the federal court in *Northeast Ohio Coalition for the Homeless v. Brunner*, S.D. Ohio No. 2:06-cv-896, ("NEOCH"), boards of elections may not reject provisional ballots cast by voters who use only the last four digits of their Social Security number as identification for the following reason:

The poll worker did not complete or properly complete and/or sign the provisional ballot application witness line and/or the provisional ballot affirmation form, except for reasons permitted by the governing statutes.

The voter is responsible for completing all parts of the provisional ballot affirmation statement.²²

CONSENT DECREE AS MODIFIED

- Boards of elections are instructed to comply with the injunctive relief cited below as provided in the April 19, 2010 Consent Decree and modified by the Court on October 26, 2012 and November 2, 2012.
- Additionally, each board of elections must post a notice that contains the text of the injunctive relief granted in a conspicuous place in every location in which provisional ballots are processed after an election.

If you have any questions concerning the this Directive or the examination and evaluation of provisional ballots, please contact the Secretary of State's elections counsel assigned to your county at (614) 466-2585.

Sincerely,



Jon Husted

²² R.C. 3505.181(B)(2), (6), (7) and R.C. 3505.182.