

## Chapter 6: PROVISIONAL VOTING

Directive 2019-29

### Section 1.01 The Basics - What, Who, When, Where, and How

#### WHAT IS A PROVISIONAL BALLOT?

Provisional voting is a failsafe that allows a voter whose identity and/or eligibility is in question to cast a ballot that is counted after the voter's eligibility is verified. Provisional voting ensures that no eligible elector is denied the opportunity to cast a ballot in an election.

Though Ohio had a form of provisional voting prior to the enactment of the Help America Vote Act of 2002 (HAVA), HAVA requires every state to offer provisional voting in each federal election.<sup>1</sup>

#### WHO IS ELIGIBLE TO CAST A PROVISIONAL BALLOT?<sup>2</sup>

The reasons that a voter must cast a provisional ballot are:

1. The voter's name is not in the poll book or on the supplemental voter list.  
**Note:** Before a precinct election official issues a provisional ballot for this reason, they must make sure that the voter is in the correct precinct and is not eligible to cast a regular ballot in a different precinct or polling location. If the voter is in the wrong precinct, the precinct election official must direct the voter to the correct precinct.<sup>3</sup>
2. The voter does not provide or is unable to provide proper or valid identification.
3. The voter has changed their name and moved to a different precinct without updating their address by the voter registration deadline (30 days prior to the election).

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<sup>1</sup> Section 303(b) of HAVA, 52 U.S.C.A. § 21082.

<sup>2</sup> [R.C. 3505.181\(A\)\(1\)-\(7\)](#).

<sup>3</sup> [R.C. 3505.181\(C\)\(1\)](#).



4. The voter has moved to a different precinct without updating their address by the voter registration deadline (30 days prior to the election).
5. The voter has changed their name and does not have proof of the legal name change.

**Note:** A voter who changes their name and fails to update their registration may be eligible to cast a regular ballot if that voter presents one of the following to the precinct election officials on Election Day and completes and signs [Form 10-L](#):

- ☐ Court order;
  - ☐ Marriage license; or
  - ☐ Proof of legal name change that includes both the voter's former and current names.<sup>4</sup>
6. The voter's signature does not match the signature on file with the board of elections (i.e., the signature in the poll book or displayed by the electronic poll book).
  7. The voter has been challenged, and the challenge has been resolved against the voter.<sup>5</sup>
  8. The notice of registration or acknowledgment notice has been returned to the board as undeliverable.
  9. The voter requested an absentee ballot for the election.
  10. The voter already has cast a provisional ballot.

For reasons 8, 9, and 10, the voter should be marked or flagged in the poll book as needing to cast a provisional ballot.

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<sup>4</sup> [R.C. 3503.16\(B\)\(1\)\(b\)](#).

<sup>5</sup> See [Advisory 2019-03](#) and [R.C. 3503.24](#). Effective March 20, 2019.



## WHEN AND WHERE CAN A PROVISIONAL BALLOT BE CAST?

When and where an elector is able to cast a provisional ballot depends upon the reason why they must cast a provisional ballot.

The following voters can cast a provisional ballot at the board of elections office or at another site designated for early in-person absentee voting beginning the 28th day prior to a general, non-presidential primary, or special election and the 25th day prior to a presidential primary election and ending at the end of in-person absentee voting on the Monday prior to the election:

1. A voter who has moved from one precinct to another within a county and failed to update their address by the voter registration deadline.<sup>6</sup>
2. A voter who has moved from one precinct to another within the county and changed their name but failed to update their voter registration.<sup>7</sup>
3. A voter who has moved outside of their county (but still within Ohio) and failed to update their address by the voter registration deadline.<sup>8</sup>

Additionally, a voter who is unable to appear at the board of elections office on account of personal illness, physical disability, or infirmity can request and cast a provisional/absentee ballot beginning the 27th day prior to an election and ending at noon on the Saturday prior to Election Day.<sup>9</sup> For details on a provisional/absentee voter, [please refer to Chapter 5 Absentee Voting in this manual](#).

If a voter must cast a provisional ballot for any reason other than those listed in this subsection, they must cast it in their precinct on Election Day.

## HOW DOES A VOTER CAST A PROVISIONAL BALLOT?

### 1. What Each Precinct Needs

A board of elections must supply each precinct with enough of the following for provisional voters:

- ☐ The Provisional Ballot Affirmation Statement or provisional ballot envelope containing the affirmation statement ([Form 12-B](#) with the most-recent issue date);
- ☐ The provisional ballot notice ([Form 12-H](#) with the most-recent issue date);

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<sup>6</sup> [R.C. 3503.16\(B\)\(2\)](#).

<sup>7</sup> [R.C. 3503.16\(B\)\(2\)](#).

<sup>8</sup> [R.C. 3503.16\(C\)](#).

<sup>9</sup> [R.C. 3503.16\(G\)](#).



- ☐ [Form 12-D](#), Provisional Voter Precinct Verification Form;
- ☐ [Form 10-L](#) for Change of Name Voters; and
- ☐ An optical scan ballot for each ballot configuration within the polling location.

[Form 12-D](#) is used only when a voter insists on casting a provisional ballot in the wrong precinct within the polling location after being directed to the correct precinct within the polling location.<sup>10</sup>

## 2. What Each Provisional Voter Needs

After it has been determined that a voter must cast a provisional ballot, the voter must be given the following three items:

- ☐ A Provisional Ballot Affirmation Statement or provisional ballot envelope containing the affirmation statement ([Form 12-B](#) with the most-recent issue date).
- ☐ The provisional ballot notice ([Form 12-H](#) with the most-recent issue date).
- ☐ The appropriate optical scan ballot.

The provisional ballot notice ([Form 12-H](#)) is required both by state and federal law.<sup>11</sup> It provides information on provisional voting and applicable deadlines, as well as a toll-free number that the voter may call to learn the status of their provisional ballot.

## 3. What Each Provisional Voter Must Do

The voter is responsible for completing and signing the Provisional Ballot Affirmation Statement ([Form 12-B](#)).<sup>12</sup>

The voter must provide five items on the provisional ballot affirmation in order for the ballot to be eligible to be counted. The required five items are:

- ☐ The voter's printed name;
- ☐ The voter's valid signature;
- ☐ The voter's date of birth;

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<sup>10</sup> [R.C.3505.181\(C\)](#).

<sup>11</sup> 52 U.S.C.A. § 21082; [R.C. 3505.181\(B\)](#).

<sup>12</sup> [R.C. 3505.182](#).



- ☐ The voter's current address; and
- ☐ An acceptable form of identification.

A provisional voter must print and sign their name. If a voter fails either to print or sign their name on the affirmation statement, the provisional ballot cannot be counted.<sup>13</sup> Ohio law does not permit a voter to appear at the board of elections office after the election to print and/or sign their name on the affirmation statement.

A provisional voter must provide their date of birth and current address on the affirmation statement.<sup>14</sup> Ohio law does not permit a voter to appear at the board of elections office after the election to provide their date of birth or current address on the affirmation statement.

The month and day of the voter's date of birth on the affirmation statement must match the month and day of the voter's date of birth in the voter registration database unless one of the following two exceptions applies:

- ☐ The voter's date of birth in the database is 1/1/1800, or
- ☐ The board of elections finds by a vote of at least three members that the voter has met all of the other requirements of division (B)(3) of [R.C. 3505.183](#).<sup>15</sup>

**Note:** The requirements of division (B)(3) of [R.C. 3505.183](#) are:

- The provisional voter is registered to vote;<sup>16</sup>
- The provisional voter is eligible to cast a ballot in the precinct and for the election in which the individual cast the ballot;<sup>17</sup>
- The provisional voter provided all of the information required (i.e., printed name, signature, date of birth, and current address and provided identification on Election Day or during the seven days following the election)<sup>18</sup>;
- If the provisional voter provided their Social Security number, driver license, or state identification number, that number is not different than the number contained in the Statewide Voter Registration Database<sup>19</sup>;

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<sup>13</sup> [R.C. 3505.183\(B\)\(1\)\(a\)](#).

<sup>14</sup> [R.C. 3505.183\(B\)\(3\)](#).

<sup>15</sup> [R.C. 3505.183\(B\)\(3\)\(e\)](#).

<sup>16</sup> [R.C. 3505.183\(B\)\(3\)\(a\)](#).

<sup>17</sup> [R.C. 3505.183\(B\)\(3\)\(b\)](#).

<sup>18</sup> [R.C. 3505.183\(B\)\(3\)\(c\)](#).

<sup>19</sup> [R.C. 3505.183\(B\)\(3\)\(d\)](#).



- The provisional voter provided their current address<sup>20</sup>; and
- If the provisional voter has been challenged, they provided information necessary to resolve the challenge during the seven days following the election or the board resolved the challenge in favor of the voter at a hearing.<sup>21</sup>

A provisional voter must provide an acceptable form of identification either on Election Day or during the seven days following the election.<sup>22</sup> Acceptable identification to cast a provisional ballot includes the following:<sup>23</sup>

- ☐ The last four digits of the voter's Social Security number;
- ☐ The voter's driver license or state identification card number;
- ☐ A current and valid photo identification;
- ☐ A military identification; or
- ☐ A copy of a current<sup>24</sup> utility bill (including cell phone bill), bank statement, government check, paycheck, or other government document that shows the voter's name and current address.

For additional information and definitions on acceptable identification for voting purposes, [please see Chapter 7 of this manual](#) and [Directive 2008-80](#) in the resources section.

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<sup>20</sup> [R.C. 3505.183\(B\)\(3\)\(f\)](#).

<sup>21</sup> [R.C. 3505.183\(B\)\(3\)\(g\) & \(h\)](#).

<sup>22</sup> [R.C. 3505.183\(B\)\(6\) & \(7\)](#).

<sup>23</sup> [R.C. 3505.181\(B\)\(6\)](#).

<sup>24</sup> "Current" means that the document contains a date within the last 12 months or an expiration date that has not passed.



## Section 1.02 Provisional Ballots Cast in the Wrong Precinct

### THE IMPORTANCE OF THE CORRECT PRECINCT

When an individual registers to vote in Ohio, they are placed within a precinct based upon their residential address and is eligible to vote in all elections held in that precinct.<sup>25</sup> A voter must be a resident of the precinct in which they offer to vote.<sup>26</sup>

### PROVISIONAL BALLOT CAST IN THE WRONG PRECINCT OF A SINGLE-PRECINCT POLLING LOCATION

Because Ohio law requires a voter to be a resident of the precinct in which they offer to vote, a provisional ballot cast in the wrong precinct cannot be counted unless it falls under the exception outlined in subsection (c), below.

### PROVISIONAL BALLOT CAST IN WRONG PRECINCT OF MULTI-PRECINCT POLLING LOCATION

Under Ohio law, a provisional ballot cast in the wrong precinct of a multi-precinct polling location may be eligible to be counted if the precinct election official did not notify the voter that they were in the wrong precinct. A precinct election official must notify and direct a voter to the correct precinct.<sup>27</sup>

If a voter refuses to cast a ballot in the correct precinct, they must be permitted to cast a provisional ballot and advised that a ballot cast in the wrong precinct cannot be counted.<sup>28</sup> To document the fact that the voter was directed to the correct precinct but opted to cast a provisional ballot in the wrong precinct, a precinct election official must complete [Form 12-D](#) and attach it to the provisional voter's provisional ballot envelope.<sup>29</sup>

If a precinct election official does not complete and attach [Form 12-D](#) to the provisional envelope, the board must remake and count the provisional ballot for any contest in which the voter would be eligible to vote if the voter were to cast a ballot in the correct precinct.

[Details on processing a provisional ballot cast in the wrong precinct but correct polling location are contained in Section 1.04, Step-by-Step Process For Determining Eligibility.](#)

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<sup>25</sup> [R.C. 3503.01\(A\).](#)

<sup>26</sup> [R.C. 3503.01\(A\).](#)

<sup>27</sup> [R.C. 3505.181\(C\)\(1\).](#)

<sup>28</sup> [R.C. 3505.181\(C\)\(1\).](#)

<sup>29</sup> [R.C. 3505.181\(C\)\(2\).](#)



## Section 1.03 Processing Provisional Ballots

### EXAMINATION OF PROVISIONAL AFFIRMATIONS PRIOR TO OFFICIAL CANVASS

Board staff, working in bipartisan teams, may begin examining provisional ballot envelopes the day after the election,<sup>30</sup> as long as the board has adopted a provisional ballot policy allowing its staff to do so. The bipartisan teams may categorize provisional ballots into groups of like ballots (e.g., ballots that have been verified and eligible to be counted, provisional affirmations that are missing the voter's signature, etc.) for the board to consider.

### SUPPLEMENTAL INFORMATION DURING SEVEN-DAY PERIOD

A provisional voter who failed to provide identification on Election Day may appear at the board of elections and provide identification during the seven days following the election.<sup>31</sup>

A provisional voter who has been challenged and needs to provide information to resolve the challenge also may appear at the board of elections and provide information during the seven days following the election.<sup>32</sup>

### BOARD MEMBERS VOTE ON ELIGIBILITY

It is important to remember that only the board members themselves can determine the validity of each provisional ballot. The board must, by a majority vote, determine whether to accept and count – or whether to reject and not count – each and every provisional ballot in a properly-noticed, public meeting.

### OPENED AND COUNTED IN OFFICIAL CANVASS

No provisional ballot envelope may be opened and no provisional ballot may be counted until the board has voted on the eligibility of each and every provisional ballot cast in the election.<sup>33</sup>

The opening of provisional ballot envelopes and the counting of provisional ballots cannot begin until the start of the official canvass, which may begin no earlier than the 11th day following the election.<sup>34</sup>

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<sup>30</sup> [R.C. 3505.183\(G\)\(1\).](#)

<sup>31</sup> [R.C. 3505.181\(B\)\(7\).](#)

<sup>32</sup> [R.C. 3505.181\(B\)\(7\).](#)

<sup>33</sup> [R.C. 3505.183\(F\).](#)

<sup>34</sup> [R.C. 3505.32\(A\).](#)



A board must complete the counting of provisional ballots and the official canvass no later than the 21st day after the election.<sup>35</sup>

## MANDATORY STEP-BY-STEP PROCESS FOR DETERMINING ELIGIBILITY

Each board is required to follow the step-by-step instructions outlined below to determine the eligibility of a provisional ballot to be counted.

### Section 1.04 Step-by-Step Process for Determining Eligibility

#### 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.<sup>36</sup>
  - ☐ 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.<sup>37</sup>

**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 of its members that the voter has

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<sup>35</sup> [R.C. 3505.32\(A\)](#).

<sup>36</sup> [R.C. 3505.183\(B\)\(4\)\(a\)\(iii\)](#).

<sup>37</sup> [R.C. 3505.183\(B\)\(4\)\(a\)\(ix\)](#).



met all of the other requirements of division (B)(3) of [R.C. 3505.183](#).<sup>38</sup> If the ballot falls into this exception, proceed to Step 2.

## **STEP 2: DETERMINE WHETHER THE PROVISIONAL VOTER INDICATED ON THE AFFIRMATION STATEMENT 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 LICENSE NUMBER, OR STATE IDENTIFICATION CARD NUMBER.**

- ☐ If the voter indicated on the affirmation statement that they showed the precinct election official one of the acceptable forms of identification, proceed to Step 3.<sup>39</sup>
- ☐ If the voter provided identification on the affirmation statement, and the number (or, if a driver 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.<sup>40</sup>
- ☐ 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 license or state identification card number, the combination of letters and numbers, provided is different), the board must reject the provisional ballot.<sup>41</sup>
- ☐ If the voter did not provide identification on the affirmation statement or did not indicate that they showed an acceptable form of identification to the precinct election official but returned to board of elections within seven days after the election and provided one of the acceptable forms of voter identification, proceed to Step 3.<sup>42</sup>
- ☐ If the voter did not provide identification on the provisional ballot affirmation, did not indicate on the affirmation statement that they showed the precinct election official an acceptable form of identification, and did not return to the board

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<sup>38</sup> [R.C. 3505.183\(B\)\(4\)\(a\)\(ix\)](#).

<sup>39</sup> [R.C. 3505.181\(B\)\(6\)](#).

<sup>40</sup> [R.C. 3505.183\(B\)\(3\)\(d\)](#).

<sup>41</sup> [R.C. 3505.183\(B\)\(4\)\(a\)\(viii\)](#).

<sup>42</sup> [R.C. 3505.183\(B\)\(3\)\(g\)](#).



within the seven days after the election to remedy the missing item, the board must reject the provisional ballot.<sup>43</sup>

### 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-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 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 days of the election, the board must reject the provisional ballot.<sup>44</sup>

**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.<sup>45</sup>

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<sup>43</sup> [R.C. 3505.183\(B\)\(4\)\(a\)\(viii\)](#).

<sup>44</sup> [R.C. 3505.183\(B\)\(4\)\(b\)\(i\)](#); *State ex rel. Skaggs v. Brunner* (2008), 120 Ohio St. 3d 506.

<sup>45</sup> [Ohio Constitution Article V, Section 1](#); [R.C. 3505.183\(B\)\(4\)\(a\)\(i\)](#).



## STEP 5: DETERMINE WHETHER THE VOTER IS A RESIDENT OF THE COUNTY AND PRECINCT IN WHICH THE VOTER OFFERS TO VOTE.<sup>46</sup>

- ☐ 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 location, including the board of elections office, and a precinct election official did not complete and attach [Form 12-D](#) to the provisional ballot envelope, the board must remake and count the provisional ballot for only those contests for which the voter was otherwise eligible to vote.<sup>47</sup>
- ☐ If the voter cast the provisional ballot in the wrong precinct, but in the correct polling location, including the board of elections office, and a precinct election official did complete and attach [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 location, including the board of elections office, and 1) a precinct election official completed [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.<sup>48</sup>
- ☐ If the voter cast the provisional ballot in the wrong precinct and wrong polling location the board must reject the provisional ballot.<sup>49</sup>

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<sup>46</sup> [R.C. 3503.01\(A\)](#).

<sup>47</sup> [R.C. 3505.183\(D\)\(1\)](#).

<sup>48</sup> [R.C. 3505.183\(D\)\(1\)](#).

<sup>49</sup> [R.C. 3505.183\(D\)\(3\)](#).



## 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 absentee 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.<sup>50</sup> 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.<sup>51</sup> 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.

## STEP 7: IF YOU HAVE COMPLETED STEPS 1 THROUGH 6 AND DETERMINED THAT THE PROVISIONAL BALLOT SHOULD BE REJECTED, YOU MUST CONSIDER AND APPLY 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), WHICH IS COPIED IN FULL IN [SECTION 1.06](#) OF THIS CHAPTER.

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<sup>50</sup> [R.C. 3509.09\(C\)\(2\).](#)

<sup>51</sup> [R.C. 3509.09\(C\)\(3\).](#)



## Section 1.05 Registering to Vote / Updating Address from Affirmation

A board cannot count a provisional ballot cast by an individual who is not registered to vote in Ohio by the voter registration deadline for that election. However, a completed Provisional Ballot Affirmation Statement (envelope) also serves as a voter registration form, change of address, and/or change of name form. Even if the provisional ballot envelope is not opened and the ballot counted, the board must use the information on the application to enter the person as a new registered voter, or update the voter's address and/or name.

If the board needs information in addition to that provided on the Provisional Ballot Affirmation Statement in order to register the individual to vote, the board must contact the individual and request the information needed.

## Section 1.06 APRI Exception

The parties to *Ohio A. Philip Randolph Institute et al. v. LaRose*, Case No. 2:16-cv-303 consented to a joint stipulation and order that the Secretary of State will reinstate and implement the "APRI Exception" for all special, local, state, and federal elections taking place through December 31, 2022. This Directive is materially similar to the court-ordered Directives that were in effect starting with the 2016 General Election.

### TO WHOM THIS EXCEPTION APPLIES

For purposes of the aforementioned elections only, a provisional ballot cast during the in-person absentee voting period or on Election Day by a voter who is not registered to vote in the State of Ohio may be counted if all of the following apply (the "APRI Exception"):

1. The individual's voter registration was cancelled in 2011, 2013, 2015, or 2019 (confirmation card mailed in 2007, 2009, 2011, 2013, 2014, or 2015) pursuant to the Supplemental Process;
2. The voter's provisional ballot affirmation reflects an address within the precinct in which the voter currently resides, and the voter was previously registered to vote within that same county prior to cancellation;
3. The board of elections does not have information that the voter was deceased, incarcerated on a felony conviction, or adjudicated as incompetent under Ohio law by a county probate court after the individual's registration record was cancelled; and
4. The voter's provisional ballot affirmation form and the ballot otherwise comply with all applicable laws and directives.



## APPLYING THE APRI EXCEPTION

Boards must apply the APRI Exception to the provisional ballot eligibility determination of any provisional voter who is not registered to vote in the State of Ohio at least 30 days before the election. If the board determines, as evidenced by the voter having a “cancelled” status in the Statewide Voter Registration Database (“SWVRD”), that the voter previously was registered to vote in the State of Ohio, it must count the provisional ballot using the following steps in conjunction with the mandatory [process for determining eligibility of provisional ballots in Chapter 6, Provisional Voting, of the Ohio Election Official Manual](#):

1. Identify the most recent address of registration in the Statewide Voter File for the voter (because merged records can result in multiple records for a single voter, it is necessary to identify the most recent address of registration on file prior to cancellation). Proceed to “step 2” below.
2. If the most recent address of registration in the Statewide Voter File for the voter is in a different county than the address provided by the voter on the provisional affirmation, the board must reject the provisional ballot. If the most recent address of registration in the Statewide Voter File for the voter is the same as the address provided by the voter on the provisional affirmation, or if the address provided by the voter on the provisional affirmation is in the same county as the most recent address for the voter in the Statewide Voter file, proceed to “step 3” below.
3. Identify the “reason” code in the SWVRD. If the reason code is “Cancelled – Deceased,” “Cancelled – Incompetent,” or “Cancelled – Incarcerated” the board must reject the provisional ballot. (A “merged” record is not a “cancelled” record.) If the reason code is something other than death, adjudication of incompetency by a probate judge, or incarceration on a felony conviction, proceed to “step 4” below.
4. Identify the date of cancellation in the SWVRD. If the date of cancellation is prior to 2011 or after 2019, the board must reject the provisional ballot. If the date of cancellation in the SWVRD is after January 1, 2011, but not after 2019, proceed to “step 5” below.
5. Determine if the voter was cancelled under the “Supplemental Process” of the state’s general voter records maintenance program.

**If the board’s records do not differentiate between a cancellation under the “NCOA Process” and a cancellation under the “Supplemental Process,” the board must contact the Secretary of State’s elections counsel.** The Secretary of State’s elections counsel will compare the information from the



voter's provisional ballot affirmation to the NCOA list from the year in which the voter was sent a confirmation notice (four years prior to the year of cancellation).

The Secretary of State's office shall possess the NCOA lists from 2007, 2009, 2011, 2013, 2014, and 2015. A county seeking to determine whether an individual is on the NCOA list in accordance with subsection (b) above shall contact the Secretary of State's office, which shall provide the county with a prompt response.

The provisional ballot of a voter whose registration was cancelled under the "NCOA Process" cannot be counted under the APRI Exception. If the voter's registration was cancelled under the "NCOA Process," the board must reject the provisional ballot.

The provisional ballot of a voter whose registration was cancelled under the "Supplemental Process" must be counted under the APRI Exception if the provisional ballot affirmation and the provisional ballot otherwise comply with all applicable laws, as directed in the mandatory [process for determining eligibility of provisional ballots in Section 1.04 of this chapter](#).

## **DELIVERY IN CERTAIN CIRCUMSTANCES OF A PROVISIONAL BALLOT TO AN INDIVIDUAL WITH A PERSONAL ILLNESS, PHYSICAL DISABILITY, OR INFIRMITY**

Boards of elections are required to have two board staff members – one Democrat, one Republican—deliver a provisional ballot to an individual who meets all of the following conditions:

- The individual attests to the board that he or she has a personal illness, physical disability, or infirmity<sup>52</sup>;
- The individual attests to the board that he or she is unable to cast a ballot in-person during absentee voting or on Election Day;
- The individual completes [Form 11-I-2](#);
- The individual's voter registration was cancelled in 2011, 2013, 2015, or 2019 under the "Supplemental Process";

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<sup>52</sup> [R.C. 3503.16\(G\)](#).



- The individual's most recent address of registration in the Statewide Voter File is in the same county as the individual's current address of registration as listed in the attestation;
- The individual is requesting the delivery of the provisional ballot to an address in the same county as both the individual's recent address of registration in the Statewide Voter File and the individual's current address of registration as listed in the attestation; and
- The individual is submitting the request to the board no later than noon on the Saturday prior to Election Day.

Boards are required to provide [Form 11-I-2](#) to each individual contacting the board stating that he or she satisfies the conditions above.

If the individual completes [Form 11-I-2](#), submits the Form to the board, and satisfies all of the conditions above, the board shall send two staff members—one Democrat, one Republican—to deliver a provisional ballot to the individual.

## **ISSUING ABSENTEE BALLOTS TO UOCAVA VOTER WHO WERE CANCELLED UNDER THE SUPPLEMENTAL PROCESS IN 2019, 2015, 2013, OR 2011.**

If a Federal Postcard Application or a Federal Write-In Absentee Ballot is received pursuant to state law, and the board of elections determines that the applicant's voter registration was cancelled in 2019, 2015, 2013, or 2011 under Ohio's supplemental list maintenance program, the applicant shall be considered to have submitted the application by the deadline established in 52 U.S.C. § 20302(a)(2), so long as the other requirements of this Directive, issued pursuant to court order, are met.

The board shall make a reasonable effort to locate any Federal Postcard Applications or a Federal Write-In Absentee Ballots that were received prior to October 7, 2019, and this Directive shall apply to any such Applications or Absentee Ballots as are located.



## ADDITIONAL INSTRUCTIONS

- For the 2020 Presidential Primary Election, the board must provide provisional ballots in the quantity of at least fifteen percent (15%) more than the number of provisional ballots cast in that precinct at the 2012 or 2016 Presidential Primary Elections, whichever was higher. For the 2020 Presidential General Election, the board must provide provisional ballots in the quantity of at least 15 percent (15%) more than the number of provisional ballots cast in that precinct at the 2012 or 2016 Presidential General Elections, whichever was higher. For all other elections between January 1, 2020 and December 31, 2022, the board must provide provisional ballots in a quantity of at least fifteen percent (15%) more than the number of provisional ballots cast at that precinct in the like election or its closest equivalent that occurred four years earlier. Additionally, each board must provide to each precinct and/or polling location a stock of provisional ballot affirmation envelopes (containing Secretary of State [Form 12-B](#)) that is greater than the number of provisional ballots being provided for this election. Be mindful of the proper allocation of ballot and envelope quantities across precinct splits. Additionally, any multi-precinct polling location must have a sufficient supply of Secretary of State [Form 12-D](#).
- Boards of elections will be required to provide the total count of provisional ballots counted using the APRI Exception separate from all other counted provisional ballots when the board submits its supplemental report at the conclusion of the official canvass following Election Day.
- Boards of elections are required to add the following language to any web tool used to aid voters in searching for their registration information:

“If you are unable to locate your voter registration information but think you are registered to vote and you have not moved outside of your county of prior registration, you may be eligible to cast a provisional ballot during in-person absentee voting period at an appropriate early voting location or the county board of elections, or on Election Day at the correct polling place for your current address that may be counted. We encourage you to check your registration status by contacting your local county board of elections. To find your polling place, please click [here](#) or call your county board of elections. [Follow this link for a full listing of Boards of Elections.](#)”
- With respect to absentee ballot request forms, submitted in person or by mail, that have not already been processed and/or rejected by the respective boards of elections, the following language shall be included in any notification of a denial of the request for an absentee voter ballot to any nonregistered voter:



"You may still cast a provisional ballot during in-person absentee voting period at an appropriate early voting location or the county board of elections, or on Election Day at the correct polling place for your current address. If you are unable to cast a ballot in-person during absentee voting or on Election Day because of personal illness, physical disability, or infirmity, you may be eligible to have a provisional ballot delivered to you. Please contact your local county board of elections for more information."

## **Section 1.06 NEOCH**

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 the notice, which was updated in 2014 following amendments to the statutes governing the casting and counting of provisional ballots, 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.

### **Notice Issued Pursuant Court Order**

#### **III. GENERAL INJUNCTIVE RELIEF.**

4. THE COURT ADOPTS AND ANNEXES HEREAFTER DIRECTIVE 2008-80 AS AN ORDER OF THIS COURT.

5. DEFENDANT SECRETARY OF STATE, HER AGENTS, EMPLOYEES AND REPRESENTATIVES WILL INSTRUCT OHIO'S COUNTY BOARDS OF ELECTIONS TO ADHERE TO THE FOLLOWING RULES REGARDING THE CASTING AND COUNTING OF PROVISIONAL BALLOTS FOR PERSONS WITHOUT IDENTIFICATION OTHER THAN A SOCIAL SECURITY NUMBER:

a. BOARDS OF ELECTIONS MUST COUNT THE PROVISIONAL BALLOT CAST BY A VOTER USING ONLY THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER AS IDENTIFICATION IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

- i. THE INDIVIDUAL WHO CAST THE PROVISIONAL BALLOT IS REGISTERED TO VOTE;
- ii. THE INDIVIDUAL IS ELIGIBLE TO CAST A BALLOT IN THE PRECINCT AND FOR THE ELECTION IN WHICH THE INDIVIDUAL CAST THE PROVISIONAL BALLOT;
- iii. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES A STATEMENT THAT THE INDIVIDUAL IS REGISTERED TO VOTE IN THE PRECINCT IN WHICH THE PROVISIONAL BALLOT WAS CAST AND A STATEMENT THAT THE INDIVIDUAL



IS ELIGIBLE TO VOTE IN THE ELECTION IN WHICH THE PROVISIONAL BALLOT WAS CAST;

iv. THE INDIVIDUAL'S NAME AND SIGNATURE APPEAR IN THE CORRECT PLACE ON THE PROVISIONAL BALLOT AFFIRMATION FORM;

v. THE SIGNATURE OF THE VOTER SUBSTANTIALLY CONFORMS TO THE SIGNATURE CONTAINED IN THE BOARD OF ELECTION'S RECORDS FOR THAT VOTER;

vi. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES THE INDIVIDUAL'S DATE OF BIRTH, AND THE MONTH AND DAY OF THE DATE OF BIRTH ARE NOT DIFFERENT FROM THE DAY AND MONTH OF THE INDIVIDUAL'S DATE OF BIRTH CONTAINED IN THE STATEWIDE VOTER REGISTRATION DATABASE; OR, THE INDIVIDUAL PROVIDED HIS OR HER DATE OF BIRTH, AND THE MONTH AND DAY OF THE DATE OF BIRTH ARE DIFFERENT FROM THE DAY AND MONTH OF THE INDIVIDUAL'S DATE OF BIRTH IN THE STATEWIDE VOTER REGISTRATION DATABASE, BUT THE INDIVIDUAL'S DATE OF BIRTH IN THE STATEWIDE VOTER REGISTRATION DATABASE IS JANUARY 1, 1800 OR THE BOARD OF ELECTIONS HAS FOUND, BY A VOTE OF AT LEAST 3 OF ITS MEMBERS, THAT THE INDIVIDUAL HAS MET ALL OTHER REQUIREMENTS OF DIVISION (B)(3) OF R.C. 3505.183;

vii. THE INDIVIDUAL PROVIDED HIS OR HER CURRENT ADDRESS;

viii. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES THE LAST FOUR DIGITS OF THAT VOTER'S SOCIAL SECURITY NUMBER, WHICH IS NOT FOUND TO BE INVALID;

ix. THE INDIVIDUAL'S RIGHT TO VOTE WAS NOT SUCCESSFULLY CHALLENGED;

x. THE INDIVIDUAL DID NOT ALREADY CAST A BALLOT FOR THE ELECTION IN WHICH THE INDIVIDUAL CAST THE PROVISIONAL BALLOT; AND

xi. PURSUANT TO R.C. 3505.183(B)2), THE BOARD OF ELECTIONS DETERMINES THAT, IN ADDITION TO THE INFORMATION INCLUDED ON THE AFFIRMATION, THERE IS NO ADDITIONAL INFORMATION FOR DETERMINING BALLOT VALIDITY PROVIDED BY THE PROVISIONAL VOTER OR TO THE BOARD OF ELECTIONS DURING THE SEVEN DAYS AFTER THE DAY OF THE ELECTION THAT CASTS DOUBT ON THE VALIDITY OF THE BALLOT OR THE INDIVIDUAL'S ELIGIBILITY TO VOTE.



b. BOARDS OF ELECTIONS MAY NOT REJECT A PROVISIONAL BALLOT CAST BY A VOTER, WHO USES ONLY THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER AS IDENTIFICATION, FOR ANY OF THE FOLLOWING REASONS:

- i. THE VOTER PROVIDED THE LAST FOUR DIGITS OF A SOCIAL SECURITY NUMBER BUT DID NOT PROVIDE A CURRENT DRIVER'S LICENSE, STATE ISSUED IDENTIFICATION, OR OTHER DOCUMENT WHICH SERVES AS IDENTIFICATION UNDER OHIO LAW;
- ii. THE MONTH AND DAY OF THE VOTER'S DATE OF BIRTH ARE DIFFERENT FROM THE DAY AND MONTH OF THE VOTER'S DATE OF BIRTH IN THE STATEWIDE VOTER REGISTRATION DATABASE, BUT THE VOTER'S DATE OF BIRTH IN THE STATEWIDE VOTER REGISTRATION DATABASE IS JANUARY 1, 1800 OR THE BOARD OF ELECTIONS HAS FOUND, BY A VOTE OF AT LEAST 3 OF ITS MEMBERS, THAT THE VOTER HAS MET ALL OTHER REQUIREMENTS OF DIVISION (B)(3) OF R.C. 3505.183;
- iii. THE VOTER DID NOT PROVIDE AN ADDRESS THAT IS TIED TO A HOUSE, APARTMENT OR OTHER DWELLING PROVIDED THAT THE VOTER INDICATED THAT HE OR SHE RESIDES AT A NON-BUILDING LOCATION, INCLUDING BUT NOT LIMITED TO A STREET CORNER, ALLEY OR HIGHWAY OVERPASS LOCATED IN THE PRECINCT IN WHICH THE VOTER SEEKS TO CAST A BALLOT AND THAT THE NON-BUILDING LOCATION QUALIFIES AS THE INDIVIDUAL'S VOTING RESIDENCE UNDER R.C. 3503.02;
- iv. THE VOTER INDICATED THAT HE OR SHE IS HOMELESS;
- v. IN LIGHT OF THE INJUNCTION ISSUED IN SEIU LOCAL 1 V. HUSTED, SECTION III (5) (b) (v) OF THE APRIL 19, 2010 CONSENT DECREE HAS BEEN REMOVED FOR THE PURPOSES OF THE NOVEMBER 6, 2012 ELECTION. COUNTY BOARDS OF ELECTION ARE ORDERED TO COMPLY WITH THE DIRECTIVES THAT GOVERN THE COUNTING OF PROVISIONAL BALLOTS CAST IN THE CORRECT POLLING LOCATION, BUT IN THE WRONG PRECINCT;
- vi. THE COURT HAS REMOVED THIS PROVISION OF THE CONSENT DECREE. SEE NEOCH V. HUSTED FIRST ORDER ISSUED OCTOBER 26, 2012; OR

c. BOARDS OF ELECTIONS MUST OBSERVE THE FOLLOWING RULES REGARDING THE DELEGATION OF PROCESSING PROVISIONAL BALLOTS, AND DETERMINING THEIR VALIDITY, TO BOARD STAFF:

- i. ULTIMATELY, THE MEMBERS OF BOARDS OF ELECTIONS MUST DETERMINE THE VALIDITY OF ALL VOTES CAST IN AN ELECTION AND MUST CERTIFY THE RESULTS OF ALL ELECTIONS. HOWEVER, NOTHING IN OHIO LAW REQUIRES



THAT THE MEMBERS OF A BOARD OF ELECTIONS MUST PERSONALLY COMPLETE ALL TASKS ASSOCIATED WITH PREPARING FOR THAT CERTIFICATION.

ii. THUS, BOARDS OF ELECTIONS MAY, UNDER A POLICY ADOPTED BY THE BOARD, DELEGATE THE PROCESSING AND SOME ASPECTS OF COUNTING PROVISIONAL BALLOTS TO BOARD STAFF. SUCH PROCESSING MUST BE DONE IN BIPARTISAN TEAMS.

iii. IF A BOARD OF ELECTIONS DELEGATES THE PROCESSING OF PROVISIONAL BALLOTS, IT MUST FIRST ADOPT A POLICY SETTING FORTH PROCEDURES FOR THE PROCESSING OF PROVISIONAL BALLOTS. UNDER THAT POLICY, BOARD STAFF RESPONSIBLE FOR PROCESSING PROVISIONAL BALLOTS MUST MAKE A RECOMMENDATION TO THE BOARD AS TO THE ELIGIBILITY OF EACH PROVISIONAL BALLOT CAST IN THE COUNTY, EITHER ON AN INDIVIDUAL BASIS, OR AS TO GROUPS OR CATEGORIES OF SIMILARLY SITUATED PROVISIONAL BALLOTS.

iv. ULTIMATELY, THE MEMBERS OF BOARD OF ELECTIONS MUST DETERMINE THE ELIGIBILITY OR INELIGIBILITY OF ALL PROVISIONAL BALLOTS CAST WITHIN THE COUNTY IN ACCORDANCE WITH OHIO LAW. BOARDS MAY NOT DELEGATE THIS TASK.

v. EACH BOARD OF ELECTIONS MUST THEN CAUSE THE BALLOTS TO BE COUNTED BY BOARD STAFF, AND MUST INCLUDE THE TABULATION OF THAT COUNT IN ITS OFFICIAL CANVASS OF THE ELECTION RESULTS AND, TO THE EXTENT REQUIRED, ITS CERTIFICATION OF THE ELECTION RESULTS TO THE SECRETARY OF STATE.

## Section 1.07 Free Access System

Both Ohio and Federal law require the state to establish a free access system, in the form of a toll-free number, which enables a provisional voter to call and learn whether their provisional ballot was counted.<sup>53</sup> If the provisional ballot was not counted, the individual can ascertain why the ballot was not counted and how to register to vote or resolve any issues with their voter registration.<sup>54</sup>

Each provisional voter must be given [Form 12-H](#), which contains the toll-free number for the free access system and the deadline by which the voter can appear at the board of elections office to provide identification.

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<sup>53</sup> [R.C. 3505.181\(B\)\(5\)](#); 52 U.S.C.A. § 21082.

<sup>54</sup> [R.C. 3505.181\(B\)\(5\)\(b\)](#).



Only the provisional voter can access information about their provisional ballot.<sup>55</sup> A board of elections is prohibited from releasing information on a provisional ballot through the free access system to anyone other than the provisional voter.<sup>56</sup>

## **Section 1.08 Public Records**

### **WHEN PROVISIONAL BALLOT AFFIRMATION STATEMENTS CAN BE DISCLOSED**

Provisional ballot affirmation statements are public records. However, they are not subject to disclosure or inspection pursuant to a request for public records until after the time period for any recount or elections contest has passed.<sup>57</sup> As with all requests for public records, the board might want to consult with its legal counsel if it receives a request for Provisional Ballot Affirmation Statements.

The Secretary of State's retention schedule sets forth the retention period for Provisional Ballot Affirmation Statements/envelopes. The retention schedule is available in the resources section of this manual.

### **PROVISIONAL BALLOT AFFIRMATION STATEMENT AS VOTER REGISTRATION FORMS**

If a Provisional Ballot Affirmation Statement is used to register an individual to vote, it must be retained permanently, because it serves as the individual's voter registration application.

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<sup>55</sup> [R.C. 3505.181\(B\)\(5\)\(b\)](#).

<sup>56</sup> [R.C. 3505.181\(B\)\(5\)\(b\)](#); [2011 OAG 012](#).

<sup>57</sup> [2011 OAG 012](#).