

ADVISORY 2008-33

October 31, 2008

To: All County Boards of Elections

Re: Clarification of Court Order

Directive 2008-103 provided notice to boards of election that the United States District Court for the Southern District of Ohio issued two court orders in the case *The Northeast Ohio Coalition for the Homeless v. Brunner*, Case No. C2-06-896. In compliance with the court's second order, dated October 27, 2008, I directed the boards of elections as follows:

1. **Provisional ballots may not be rejected for reasons that are attributable to poll worker error**, including a poll worker's failure to sign a provisional ballot envelope or failure to comply with any duty mandated by R.C. 3505.181.
2. **Provisional ballots may not be rejected for failing to list a building address on the provisional ballot envelope if the voter resides at a location that does not have an address.**

On October 29, 2008, the federal court issued a third order that "clarifies the previous Order issued in this case on October 27, 2008." The court made the following three points of clarification in its October 29 order:

1. The October 27, 2008 court order "did not, in any manner modify, reduce or expand the current law regarding the method of voting by the homeless." The court pointed out that the Ohio legislature enacted the current law that establishes the rule for determining the residence of a homeless person offering to register or vote. Under R.C. 3503.02(I) as to a homeless person who does not have a fixed place of habitation, but rather a shelter or other location at which the person has been a consistent or regular inhabitant and to which the person has the intention of returning, the person's residence for voting purposes is that shelter or other location.
2. The October 27, 2008 court order referenced only one aspect of voting by the homeless, that being a requirement that "provisional ballots may not be rejected for failing to list a building address on the provisional ballot envelope if the voter resides at a location that does not have an address."
3. The court noted that R.C. 3503.02(I), enacted by the Ohio legislature, "sets forth the only standards, by either the legislature or the various courts, which regulate voting by the homeless in Ohio."

A copy of the federal court's October 29, 2008 order clarifying its prior order of October 27, 2008, is attached.

If you have any questions please contact the elections attorney in this office assigned to assist your county board of elections.

Sincerely,

Jennifer Brunner

Directive/Advisory Routing/Review Acknowledgment Form

(Please initial and date)

<i>Draft</i>	Routing	Initials	Date	Comments
<i>Initial Draft</i>	Primary Attorney	ES	10/31/08	
Primary Attorney Sends to Director of Elections				
<i>Initial Draft</i>	Director of Elections Reviews/Makes Comment	DMF	11/01/08	
Director of Elections Sends Back To Primary Attorney				
<i>Initial Draft</i>	Primary Attorney Incorporates/Rejects Changes	ES	11/01/08	
Primary Attorney Sends To Copy Editor				
<i>Interim Draft</i>	Copy Editor Reviews/Makes Comments	BC	11/01/08	
Copy Editor Returns To Primary Attorney				
<i>Interim Draft</i>	Primary Attorney Incorporates/Rejects Changes			
Primary Attorney Sends Copy-edited draft to Taylor (copies Dir of Elections)				
<i>Formatted Draft</i>	Taylor Jacklin Formats Document			
Taylor Sends Chandra Formatted Draft/Chandra Forwards to Secretary				
<i>Formatted Draft</i>	Secretary Reviews/Makes Comments			
Secretary Sends Her Draft Back To Primary Attorney (copies Dir of Elections and Copy Editor)				
<i>Secretary's Draft</i>	Final Review made by Primary Attorney			

<p align="center"> - If no legal concerns, Primary Attorney sends to Taylor (copies Dir of Elections) for publishing - If there are legal concerns, Primary Attorney sends back to Secretary or discusses at L&L, then sends to Taylor (copies Dir of Elections) for publishing </p>				
<p><i>Final Draft</i></p>	<p>Taylor obtains Secretary's signature or confirms permission to autopen</p>			
<p>Once document has the Secretary's signature, Taylor issues document</p>				