



**Jon Husted**  
Ohio Secretary of State

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**ADVISORY 2012-01**

October 9, 2012

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

Re: Days and Hours for In-Person Absentee Voting

On July 17, 2012, a lawsuit was filed against the Secretary of State's Office seeking to have R.C. 3509.03 declared unconstitutional to the extent this state law ended in-person absentee voting for non-UOCAVA voters the Friday before each election at 6:00 p.m. *Obama for America v. Husted* (2:12-cv-636). The federal district court found this law to be unconstitutional. On October 5, 2012, the U.S. Court of Appeals for the Sixth Circuit affirmed the district court's preliminary injunction.

At stake is more than simply the days and hours for in-person absentee voting for this year's general election: whether there is a fundamental right to vote by in-person absentee ballot, whether the State's legislature can change its methods of elections administration once a particular method has been used at even one election, whether military voters can be given additional opportunities to vote under the law, and most strikingly, whether the administration of elections is primarily a task for states or federal judges. For these reasons, my office is appealing the matter to the U.S. Supreme Court.

The Sixth Circuit noted, "the State is not affirmatively required to order the Boards to be open for early voting."<sup>1</sup> However, allowing boards of elections to establish different days and hours for in-person absentee voting the weekend before Election Day would result in the same untenable and confusing patchwork that existed prior to [Directive 2012-35](#).

Allowing non-UOCAVA in-person absentee voting over this three-day period is inconsistent with the Ohio legislature's judgment that those days are needed to prepare for Election Day and is inconsistent with the boards of elections' experience in previous elections. However, if the decision stands, it is my desire to issue a uniform directive that recognizes the workload and responsibilities local boards of elections face in preparing for the Tuesday election.

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<sup>1</sup> See Opinion, Page 20

As such, my office is accepting recommendations from county boards of elections as to the hours and days best for their voters and their local administration of the election before establishing uniform days and hours for in-person absentee voting for all voters during the three days immediately before Election Day. I would prefer your recommendations come with bipartisan support when possible.

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

Sincerely,

A handwritten signature in black ink that reads "Jon Husted". The signature is written in a cursive, flowing style with a large initial "J".

Jon Husted