



DIRECTIVE 2018-39

November 20, 2018

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

Re: Cancellation Procedures for Voters Who Failed to Act on a Confirmation Notice Issued in 2013 or 2014 Pursuant to the Supplemental Process of the General Voter Records Maintenance Program

BACKGROUND

Since 2016, boards of elections were instructed not to cancel any voter's registration as a result of the Supplemental Process portion of the General Voter Records Maintenance Program because litigation challenging the process was pending before the United States Supreme Court, *Husted, Ohio Secretary of State v. A. Philip Randolph Institute, et al.*¹ After the Supreme Court upheld the use of the Supplemental Process, boards were instructed to continue to not cancel any voter's registration as a result of the Supplemental Process until future notice was given to proceed with the cancellation.

This Directive instructs boards to proceed with the cancellation of the registration of any voter who received a confirmation notice in 2013 or 2014² pursuant to the Supplemental Process of General Voter Records Maintenance Program *and*, for a period of four years after the confirmation notice was mailed, failed to respond to the confirmation notice, update his or her voter registration, vote, or engage in voter activity.

INSTRUCTIONS

After uploading voter history from the November 6, 2018 General Election³, each board of elections must review the record of each elector in active-confirmation or confirmation status due to a confirmation notice sent as part of the 2013 or 2014 Supplemental Process. The elector's voter registration shall be cancelled if the elector did not:

¹ See Secretary of State Directives 2016-20, 2017-03, and 2018-20. In *Husted v. A. Philip Randolph Institute, et al.*, the United States Supreme Court decided the case in favor of the Secretary of State and upheld the State of Ohio's use of the Supplemental Process to identify electors whose lack of voter activity indicates that they might have moved and need to update their voter registration address. https://www.supremecourt.gov/opinions/17pdf/16-980_f2q3.pdf.

² No General Voter Records Maintenance Program took place in 2012. The Program was biennial in odd-numbered years until 2013. R.C. 3503.21(D); *Judicial Watch, Inc. & True the Vote v. Husted*, Case 2:12-cv-00792, Settlement Agreement.

³ Each board must complete its voter history upload no later than Friday, December 7, 2018. See Directive 2018-38.

- Within the four-year period after the date the confirmation notice was mailed:
 - Respond to the confirmation notice (either via mail or using the online change of address system); or
 - Update his or her voter registration; or
 - Vote or engage in voter activity; or
- Appear on the county's Automatic Confirmation of Address Safeguard and Safeguard Lookback lists.⁴

Pursuant to [Directive 2018-22](#), the board of elections must send by forwardable mail [Secretary of State Form 255-A-3](#) (the “last chance notice”) to each elector who must be cancelled. Each board must mail the cancellation notices **no later than Wednesday, December 12, 2018**. Form 255-A-3 must be populated to inform the elector that his or her voter registration will be cancelled on January 11, 2019 and to explain the reason for the upcoming cancellation (i.e., failure to respond to a confirmation card and the date on which the confirmation card was mailed). If the elector replies to the notice updating or confirming the elector's address before the date of cancellation, the elector's registration shall not be cancelled.

Each board must cancel the voter registration of any elector who does not reply to the cancellation notice **no later than Friday, January 11, 2019**.

Counties are eligible for reimbursement of actual costs for printing and mailing last chance notices sent to voters cancelled pursuant to this Directive. Information on that reimbursement procedure will be sent under separate cover.

MAINTAINING RECORDS OF CANCELLATION

Litigation over the content of some confirmation cards formerly used by this and the previous administration is ongoing. In light of that, each board must work with its voter registration vendor to ensure that its county voter registration system maintains and is able to produce a list of electors who are cancelled under this directive. This information may be necessary in the event that a court instructs the boards to place any cancelled voters back into active-active status. The board must record in its county voter registration system: the date that it mailed a cancellation notice (SOS Form 255-A-3) to an elector; if the elector responds to the notice, the date on which the voter responded; and if the elector does not respond to the notice, the date the elector's voter registration was cancelled.

The board of elections must maintain and make available for public inspection and copying at a reasonable cost all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of voter registration lists, including the names and addresses of all registered electors sent confirmation notices and whether or not the elector responded to the confirmation notice.⁵

⁴ See Directives 2018-21 and 2018-21-02.

⁵ 52 U.S.C.A. §20507(i); R.C. 3503.26(B); CBE-45A & CBE-46, Secretary of State Retention Schedule.

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

Sincerely,


Jon Husted