



## **DIRECTIVE 2021-10**

February 12, 2021

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

Re: The Use of Secure Receptacles and Election Officials to Receive Absentee Ballots Outside of the Boards of Elections

### **SUMMARY**

Ohio law is “generous when it comes to absentee voting”<sup>1</sup> and offers voters at least four different ways to cast a ballot.<sup>2</sup> Even though Ohio law does not explicitly provide for the use of secure receptacles, commonly known as “drop boxes,” for an absentee voter to return their ballot to the director, this Directive, once again, provides for the continued use of secure receptacles outside of the boards of elections. The 133<sup>rd</sup> General Assembly authorized the use of secure receptacles outside the boards of elections in House Bill 197 for the 2020 Primary Election, and boards of elections received instructions for implementation in [Directives 2020-16](#) and [2020-22](#) for the 2020 General Election. The continued use of secure receptacles located only outside the boards of elections promotes uniformity among the 88 counties, which in turn “promotes the fair administration of elections”<sup>3</sup> and also “the security of the election.”<sup>4</sup> This Directive provides instructions for the ongoing use of secure receptacles outside the boards of elections as an alternative means to return absentee ballots.

### **INSTRUCTIONS**

#### **I. SECURE RECEPTACLES**

##### **A. OVERVIEW**

For the May 4, 2021 Primary/Special Election,<sup>5</sup> boards of elections must maintain the secure receptacles outside the county board of elections that were utilized throughout the November 3, 2020 General Election. By a majority vote, boards of elections may install additional secure receptacles outside the board of elections. Boards of elections are prohibited from installing and implementing a secure receptacle at a location other than the board of elections.

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<sup>1</sup> *A. Philip Randolph Inst. of Ohio v. LaRose*, 6th Cir. No. 20-4063, 2020 U.S. App. LEXIS 32173 (Oct. 9, 2020), at 5 (citing *Mays v. LaRose*, 951 F.3d 775, 779, 792 (6th Cir. 2020)).

<sup>2</sup> *Id.* at 6.

<sup>3</sup> *Id.* at 7.

<sup>4</sup> *Id.*

<sup>5</sup> This Directive also applies to any writ for a Special Primary Election that the Governor issues in 2021.

**B. AVAILABILITY AND MONITORING OF SECURE RECEPTACLE(S)**

Beginning March 1, 2021, if a board of elections is conducting a Primary/Special Election on May 4, 2021, the boards of elections must provide voters with 24/7 access to the secure receptacle. The secure receptacle must be monitored 24/7. At least once daily, one Republican and one Democratic member of the board or board staff must together check, retrieve the contents, and re-lock the receptacle. Moreover, boards of elections are required to retrieve the contents at all applicable deadlines:

- (1) Voter registration deadline: April 5, 2021 at 9:00 p.m.;
- (2) Absentee ballot application deadline: May 1, 2021 at 12:00 noon; and
- (3) Personal delivery absentee ballot deadline: May 4, 2021 at 7:30 p.m.

Boards of elections must check the secure receptacle(s) as many times a day as necessary to ensure that it does not become full and unusable. Boards must plan to empty the receptacle more often during higher turnout or as Election Day approaches, to prevent any of their receptacles from becoming full.

A voter who is in line at 7:30 p.m. must be permitted to drop off their ballot in the secure receptacle. The board must place a precinct election official or other staff member after the last person in line at 7:30 p.m. to prevent additional people from joining the line after the deadline.

If a majority of the board members vote to install additional secure receptacles outside the office of the board of elections, the same requirements set forth above apply to each additional secure receptacle installed outside the board of elections. Additionally, boards of elections must check the secure receptacle(s) as many times a day as necessary to ensure that it does not become over-filled and unusable. Boards of elections also must work with the board's law enforcement point of contact to ensure that there is appropriate traffic control and appropriate signage outside the board of elections instructing voters on where to park or drive up to return absentee ballots to the secure receptacle(s).

**C. PROHIBITING INTERFERENCE WITH SECURE RECEPTACLE(S)**

Ohio law prohibits any person from “loiter[ing], congregat[ing], or engag[ing] in any kind of election campaigning within the area between the polling place and the small flags of the United States placed on the thoroughfares and walkways leading to the polling place, and if the line of electors waiting to vote extends beyond those small flags, within ten feet of any elector in that line.”<sup>6</sup>

Additionally, Ohio law prohibits any person from “hinder[ing] or delay[ing] an elector [from] reaching or leaving the place fixed for casting the elector’s ballot.”<sup>7</sup> These prohibitions apply to interference with access to any secure receptacle installed outside the board of elections.

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<sup>6</sup> [R.C. 3501.35\(A\)\(1\)](#).

<sup>7</sup> [R.C. 3501.35\(A\)\(2\)](#).

## **II. ELECTION OFFICIALS RECEIVING ABSENTEE BALLOTS OUTSIDE THE BOARD OF ELECTIONS**

Boards of elections may have permanent<sup>8</sup> or temporary board employees who have undergone a criminal background check (hereinafter, collectively referred to as “board employees”) collect absentee ballots outside the office of the board of elections from electors personally delivering<sup>9</sup> their absentee ballots to the board. Boards of elections, by a vote of a majority of the board’s members, may have board employees collect absentee ballots directly outside of the office of the board of elections in addition to the secure receptacle(s) that are available 24 hours a day.

If a majority of the board members vote to have board employees receive absentee ballots outside the office of the board of elections from electors who opt to personally deliver their ballots to the board, then the board’s plan must meet the following requirements:

- (1) At least one Republican and one Democrat board employee must be paired together and trained to receive absentee ballots outside the board of elections from electors who opt to personally deliver their ballots to the board;
- (2) The board of elections must follow the [Ohio Secretary of State’s Health Guidance for Boards of Elections](#)<sup>10</sup> and equip the bipartisan board employees with personal protective equipment;
- (3) The board must have enough additional staff to also continue the successful operation of all other duties at the board of elections;
- (4) The board must provide the bipartisan team with a secure container for the bipartisan team to receive the delivered absentee ballots and to maintain the secure and bipartisan chain of custody of such delivered absentee ballots from outside the board of elections to inside of the board of elections;
- (5) The board must secure the ballots in a dual-locked room once inside the board of elections;<sup>11</sup>
- (6) The board, by a majority vote of its members, must vote to set the schedule during which bipartisan teams of board employees will receive absentee ballots outside the office of the board of elections and publicize it throughout the county. That staffed collection schedule may begin when early, in-person voting begins on April 6 and may be whatever

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<sup>8</sup> All permanent board of elections employees are required to have a criminal background check conducted. See [Election Official Manual Chapter 2](#), page 11.

<sup>9</sup> An absentee voter may also have certain designated relatives deliver the voter’s ballot “to the director.” See [R.C. 3509.05\(A\)](#) (“spouse of the elector, the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of the elector.”).

<sup>10</sup> The Secretary of State’s Office will inform boards of elections when this document is updated as our Office receives guidance from the Ohio Department of Health and Centers for Disease Control and Prevention.

<sup>11</sup> Access to ballots and election data media must be restricted to authorized personnel only. These items should be segregated and stored in a separate, locked room or storage unit (e.g. cabinet) designated for that purpose. As with voting equipment, ballots and election data media must be locked under a dual-control lock system. See [Election Official Manual Chapter 2](#), page 73.

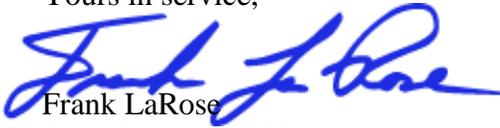
the board determines to be necessary in the county through 7:30 p.m. on Election Day, May 4, 2021;

(7) The board must work with the board's law enforcement point of contact to ensure that there is appropriate traffic control and appropriate signage outside the board of elections instructing voters on where to park or drive up to return absentee ballots; and

(8) The bipartisan team of board employees must remind any elector returning more than one ballot that only the elector themselves or a near relative<sup>12</sup> of the elector may personally deliver an absentee ballot to the board of elections.

Thank you again for all of your hard work to prepare for the May 4, 2021 Primary/Special Election. If you have any questions concerning this Directive, please contact the Secretary of State's elections counsel at (614) 728-8789.

Yours in service,



Frank LaRose  
Ohio Secretary of State

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<sup>12</sup> [R.C. 3509.05\(A\)](#) (“the spouse of the elector, the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of the elector.”)