

DIRECTIVE 2008-105

October 31, 2008

To: ALL COUNTY BOARDS OF ELECTIONS

Re: Unofficial Canvass – for the November 4, 2008 General Election

Under R.C. 3505.27, the unofficial canvass of the results of the November 4, 2008 General Election must be conducted in full view of the members of the board of elections and of any observers appointed under R.C. 3505.21.

The "unofficial canvass" must be conducted on election night in accordance with Revised Code sections 3505.27 (*counting regular ballots cast at polling locations*), 3505.28 (*ballots not counted*), 3509.06 (*counting absentee ballots*), 3509.07 (*absentee ballots not counted*) and 3511.11 through .13 (*armed service absentee ballot*).

- The unofficial canvass must include all ballots that are determined by the board of elections under the Revised Code as eligible to be counted on election night (i.e., regular ballots cast at polling locations on the primary voting system, including backup paper ballots required by Directive 2008-59 for counties with DRE voting systems and absentee ballots that are determined to be valid). Optical scan ballots provided to and cast by voters pursuant to Directive 2008-59 shall also be included in the unofficial canvass.

Note: In order to provide easy accountability and reconciliation, the Secretary of State's office recommends ballots cast by voters pursuant to Directive 2008-59 be tabulated as a separate counter group the same way that absentee ballots are often tabulated as a separate counter group. Please be advised the Secretary of State's office will require boards of election to provide the total number ballots cast by voters pursuant to Directive 2008-59 on the "Supplemental Report Form" attached to this directive.

- The unofficial canvass shall not include ballots that are determined by the board as not eligible to be counted on election night (i.e., provisional ballots, absentee ballots postmarked on or before November 3, 2008 but received after November 4, 2008 but no later than November 14, 2008, and in-country, armed service, or overseas citizens absentee ballots that have not yet been received as of the closing of the polls).

SOS Election Night Reporting Requirements

All boards of elections are required to report results electronically to the Secretary of State's office on election night. Instructions for reporting election results electronically have previously been transmitted to all boards of elections. All boards have received instructions on alternative reporting methods if technical difficulties prevent a board from reporting electronically.

Tabulation Instructions

The board of elections must designate teams having an equal number of individuals from each major political party to inspect and/or tabulate the ballots. Depending on the type of voting system used in the county, the teams either inspect and/or tabulate the ballots as follows:

- Optical Scan - Precinct Count (regular ballots)

Verify that memory cards and a corresponding report of results from each precinct are received.

Tabulate votes cast that are stored on the memory cards.

- Optical Scan - Central Count (Absentee & Directive 2008-59 ballots)

Set the tabulator to reject any blank ballot or ballot containing one or more overvotes. Tabulator may be set to also reject undervotes, if desired.

Tabulate optical scan ballots.

Inspect any ballot rejected by the tabulator to determine the cause(s) of rejection. The ballot must be examined to determine if the basis for rejection was in whole or in part due to one or more overvotes. R.C. 3506.21 requires the board to attempt to determine voter intent (an activity to be *confirmed* by the board by majority vote in public session). Determining voter intent may include determining whether a voter attempted to remove a mark from the ballot (such as erasure or other indication of voter intent) to invalidate a choice and, in effect, eliminate an overvote.

If, upon examination of the ballot, the board determines that the basis for tabulator rejection is that a voter marked the ballot more than the permissible number of times for a particular race or issue and that there is no indication of intent otherwise, an overvote exists. If it is determined an overvote is the result of voter writing in the name of a candidate the voter has already voted for (known as a “double bubble” vote), that ballot should be set aside and the instructions in the “Tabulation Instructions for Ballots With Write-In Candidate Votes” Section of this Directive should be followed.

When an overvote exists that does not involve a write-in candidate, it is impossible to determine voter intent for that race or issue. However, the ballot must be examined for any other reasons for tabulator rejection in order to make effective voter intent in any other contest. Ballots may be remade using the guidelines provided in Directive 2008-69 and the guidelines provided in this Directive for ballots with write-in candidates (page 3). Contests where overvotes have been determined to exist should be reflected on remade ballots. Remade ballots must be marked with an identifying mark or code to identify the remade ballot with the original ballot as provided in Directive 2008-69 to allow a remade ballot to be compared at a later time to the original ballot that was rejected by the tabulator, to ensure integrity and accuracy.

Ballots for which it is determined that the *sole* reason for tabulator rejection is one or more overvotes shall *not* be remade, but they shall be included in the ballots that are tabulated after remakes of ballots. (See tabulation instructions

below.) After completing the inspection of all ballots rejected by the tabulator (including those involving a write-in candidate), please determine the total number of overvotes by contest and note this number for reporting purposes for the “Supplemental Report Form” attached to this Directive.

Remake any ballot where the intent of the voter has been determined so that it may be processed by a tabulator. Please see Directive 2008-69 and the instructions in the previous paragraph for more information on the proper procedures to remake an optical scan ballot. During the remake process, please tally the total number of ballots that have been remade and note this number for reporting purposes for the “Supplemental Report Form” attached to this Directive.

Set the tabulator to override overvoted races and issues which will allow the tabulator to tabulate votes for races and issues which were otherwise properly marked.

Tabulate all remade optical scan ballots and ballots determined to have been rejected by the tabulator earlier solely due to an overvote.

- Direct Recording Electronic Machines (DRE)

Verify that cartridges, PCMCIA cards or other removable memory devices and a corresponding report is received from each precinct.

Tabulate votes cast that are stored on cartridges, PCMCIA cards or other removable memory devices.

Tabulation Instructions For Ballots With Write-in Candidate Votes

Assuming a candidate has filed a valid declaration of intent to be a write-in candidate, boards of elections are hereby instructed to count a ballot in which a voter has written in only the last name of the candidate, if there is only one candidate with that last name. If there are two or more write-in candidates with the same last name, however, the voter must provide sufficient information for election officials to determine the voter's intent in order for the vote to be counted. (For example, a voter who has written on the ballot the write-in candidate's first and last name, or the candidate's last name and the office sought should be considered to be a valid write-in vote.)

- Optical Scan Ballots – Precinct Count (regular ballots already scanned at a precinct)

The oval or box next to the candidate's name that has been written in by the voter must be filled in for a write-in vote to be valid, unless no other oval has been filled in by the voter for the office for which the voter voted for a write-in candidate who has filed a valid declaration of intent.

If there is a write-in candidate for a particular office in which the **voter has written in the name of a candidate for which the voter has already voted (known as a “double bubble” vote)**, such a write-in vote is **NOT** an overvote. In this case, the ballot should be segregated and preserved for remake and separate tabulation at the official canvass, and at any subsequent recount or post-election audit. .

- Optical Scan Ballots – Central Count (Absentee & Directive 2008-59 Ballots to be scanned at the BOE)

The oval or box next to the candidate's name that has been written in by the voter must be filled in for a write-in vote to be valid.

If there is a write-in candidate for a particular office, the board of elections must inspect ballots for **purported overvotes that result in a voter writing in the name of a candidate the voter has already voted for (known as a "double bubble" vote)**. Such a vote is not an overvote if the board can determine the intent of the voter was to vote for only one candidate because the name of the write-in candidate can be determined to be the same as the name of the candidate for whom the voter has already voted on the printed ballot. In this case, ballots should be remade when "double bubble" votes are discovered using the guidelines for remaking a ballot outlined in Directive 2008-69. The remade ballots should then be tabulated and the results should be included in the unofficial canvass.

Otherwise, a voter's selection of a candidate whose name is printed on the ballot and the selection of and writing in the name of a write-in candidate (whose name is not already printed on the ballot), invalidates the voter's vote in that race, as the voter has overvoted by marking more choices than permitted for a particular race.

Please remember to include the number of centrally counted ballots containing an overvote involving a write-in candidate (as opposed to "double bubble" votes involving write-in candidates) as part of the total number of ballots containing an overvote for reporting purposes for the "Supplemental Report Form" attached to this Directive (see Optical Scan – Central Count instructions on Page 2 of this Directive).

Required Reports for the November 4 General Election

In accordance with R.C. 3505.30, each board of elections shall submit certified unofficial results for the November 4 General Election by using the report forms accompanying this Directive. Subtotals for regular and absentee ballots should be reported, along with a grand total for all ballots cast and tabulated as part of the unofficial canvass. Those forms are:

- Unofficial Vote for President and Vice President, Statewide Candidates and State Issues
- Unofficial Vote for District Candidates
- Unofficial Vote for County Candidates
- Supplemental Report
 1. Number of Regular Ballots Counted
 2. Number of Absentee Ballots Counted
 - In-country (in-country armed services and regular absentee ballots)
 - Armed Services
 - Overseas Civilians
 - Total Number of Absentee Ballots Counted
 3. Grand Total of Regular Ballots and Absentee Ballots Counted
 4. Number of Outstanding Absentee Ballots
 - In-country (regular absentee ballots)
 - Out-of-country Armed Services

- Overseas Civilians
 - Total Number of Outstanding Absentee Ballots
5. Number of Provisional Ballots Cast
 6. Number of Remade Ballots
 7. Number of Ballots Containing Overvoted Races or Issues
 8. DRE counties only – Number of Directive 2008-59 Ballots Counted

The unofficial report forms must be sent via U.S. Mail no later than **noon** on Wednesday, November 5, 2008. Please send the report forms to the Secretary of State's Office, Elections Division, Attention: Kathy Mallot at:

180 E. Broad St, 15th Floor, Columbus, OH 43216, or
P.O. Box 2828, Columbus, OH 43216.

If you have any question regarding these instructions, please contact your county's assigned elections counsel at 614- 466-2564.

Sincerely,

Jennifer Brunner