

DIRECTIVE 2008-107

October 31, 2008

TO: All County Boards of Elections Using Direct Recording Electronic Voting Machines as Their Primary Voting System

RE: Offering Optical Scan Ballots in the Event of Long Lines

On November 4, 2008, with expected record turnout for Ohio's general election it is incumbent on all of us as election officials to deliver a fair, orderly and efficient election to the citizens of Ohio. This responsibility requires us to protect against any and all forms of voter disenfranchisement, including effectively turning voters away as a result of long lines.

Due to the unprecedented increase in voter registration in recent months, the indications of high turnout as is being witnessed by the high rate of absentee voting, the anticipated 80% voter turnout rate, and the exceptional number and length of ballot issues and questions, I hereby direct all counties using direct recording electronic voting machines (DRE) as their primary voting system to verbally announce the availability of optical scan ballots to all voters in the event that lines become unreasonably long. As you are aware, these ballots are provided in accordance with Directive 2008-59.

It is my belief that the answer to what constitutes an "unreasonably long line" is best determined by county boards of elections, presiding judges and poll workers. Just as the reasonableness of a line may vary depending upon the county or precinct, so too might it vary depend upon the time of day. Those voters who arrive at the polling location around noon might reasonably be assumed to be on a lunch break. Thus, should the line become longer than thirty minutes, there is a risk of effectively turning away some voters.

To provide all voters and poll workers with consistent minimum standards, county boards of elections must develop a *maximum wait time* policy, at which poll workers must begin verbally announcing the availability of optical scan ballots to voters, and boards must ensure that the policy is communicated to presiding judges and poll workers. This does not mean that each voter needs to be asked his or her preference, only that it be highlighted that an alternative form of voting is available. However, boards must allow poll workers the liberty to act more quickly than the policy requires in the event that they sense the line has become unreasonably long under the circumstances. Consistent with Directive 2008-59, any ballot cast by backup paper ballot must be counted on election night, and along with any verbal announcement, this information should be provided that such ballots will be counted election night.

During the March 2008 presidential primary election, voters and elections officials faced not only high voter turnout, but also ice storms, floods, blackouts, and bomb threats. Throughout all of these difficulties, back-up optical scan ballots allowed voting to continue uninterrupted. Providing optical scan ballots ensured that Ohioans could exercise their right to vote without unnecessary delays. Highlighting the availability of optical scan ballots will help to ensure that right again on November 4th.

If you have any questions concerning this directive, please contact the elections attorney assigned to your county. Thank you for your cooperation.

Sincerely,

Jennifer Brunner