

**DIRECTIVE 2008-108**

November 2, 2008

TO: ALL COUNTY BOARDS OF ELECTIONS  
MEMBERS, DIRECTORS, AND DEPUTY DIRECTORS

RE: Absentee Ballots to be Included in Unofficial Canvass

It has come to our attention that some counties have not planned to include all valid absentee ballots received by the close of polls on Election Day in the unofficial canvass. This directive serves as a reminder that **all absentee ballots determined to be valid and voted by eligible voters that have been received by the close of polls on Election Day, including those that were voted in person during the “overlap” period from September 30, 2008 through October 6, 2008, must be included in the unofficial canvass.**

Directive 2008-82 provides that “[a]ll absentee ballots returned by the close of polls on Election Day, whether returned in person or by mail, shall be included in the unofficial results if the ballots meet all other requirements of law.” This requirement is evident in a thorough reading of Revised Code Chapters 3509 and 3505.

The Secretary of State’s office understands that many boards of elections have already prepared their signature books for Election Day. We also understands that some boards of elections have adopted policies to segregate absent voter’s ballots requested and cast after the signature books were printed, reserving those ballots for verification and counting during the official canvass but not the unofficial canvass, and have done so with apparently good intentions. However, this does not meet requirements of law, and treats some voters disparately, potentially denying them equal protection under the law.

There are at least two ways that boards of elections may count all absentee ballots received by the close of polls on Election Day during the unofficial canvass while still ensuring that none of those persons who requested and cast an absentee ballot have also cast another ballot that has been or will be counted.

**First Option:**

The first, and preferred, option is to provide an “update list” of voters who have requested absent voter’s ballots to each presiding judge or to each precinct after absentee voting has closed on Monday, November 3, 2008. That update list should include the name and address of any voter in the precinct who requested an absent voter’s ballot after the signature book(s) for the precinct was printed. The poll workers for the precinct would then manually mark, on any poll list and in any signature poll book, the names of the voters identified in the update list as having

requested an absent voter's ballot with whatever symbol, mark or character the board of elections uses to identify voters who have requested absent voter's ballots. Any voters marked on a poll list or in a signature poll book in this way would then have to vote a provisional ballot if they appear at the precinct to vote on Election Day, as required by R.C. 3509.09 and 3505.181.

**Second Option:**

The second option involves segregating the absent voter's ballots requested and cast by persons after the signature books for the county have been printed. Those ballots must be segregated for additional scrutiny during the unofficial canvass to ensure that those voters did not also cast a regular ballot on Election Day.<sup>1</sup> To do this, board staff must cross reference the names of voters who requested and cast an absent voter's ballot after the poll lists and signature poll books were printed with the poll lists and/or signature poll book(s) from the precincts of these absent voters to verify that such voters did not vote twice. Once board staff determine that these voters did not vote twice, board staff may prepare the verified absent voter's ballots for counting as part of the unofficial canvass, assuming any such ballots meet all other requirements of Ohio law.

If you have any questions about the implementation of this directive, please contact the elections attorney in this office assigned to assist your county.

Thank you for your cooperation in this matter.

Sincerely,

Jennifer Brunner

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<sup>1</sup> The names of those people would not have been marked in the signature books as having requested an absent voter's ballot and so, those voters could still appear to vote on Election Day and be given a regular ballot.