

DIRECTIVE 2008-38

March 21, 2008

To: ALL COUNTY BOARDS OF ELECTIONS

Re: **Official Canvass and Report Forms for March 4 Primary Election**

Timeline for Official Certification

In accordance with federal and state law, the official canvass of the March 4, 2008 Primary Election may begin no earlier than 21 days after the election (Tuesday, March 25, 2008) and must begin no later than 25 days after the election (Saturday, March 29, 2008). All boards of elections must complete the canvass of votes cast no later than 31 days after the election (Friday, April 4, 2008).

Prior to March 25, 2008, boards may examine pollbooks, poll lists or signature pollbooks and tally sheets and compare them to the summary statements. Any errors, defects or omissions shall be noted and reconciled. Boards may verify the eligibility of persons casting provisional ballots and the validity of the required provisional voter statements. (*See Dir. 2007-06*)

Instructions for Official Certification

All Voting Systems: In order for a board to declare and certify official results, all valid ballots cast in the March 4, 2008 election, including eligible ballots cast at the polls, provisional ballots and all absentee ballots, must be included in the official canvass.

Tabulation Instructions for Ballots not included in the Unofficial Canvass:

In accordance with R.C. 3505.32(C), each board first must tally all eligible ballots that were not included in the unofficial canvass.

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 or tabulate the ballots as follows:

- **Optical Scan**

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. When an overvote exists, 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 2007-31 and the guidelines provided in this Directive for ballots with write-in candidates (page 3), and contests where overvotes have been determined to exist should be reflected on remade ballots. Remade ballots shall be marked with an identifying mark or code to identify the remade ballot with the original ballot as provided in Directive 2007-31 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 "Official County Vote for Statewide Candidates Certification 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 2007-31 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 "Official County Vote for Statewide Candidates Certification 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)**

The board shall run the cartridges, PCMCIA cards and other removable memory devices on which the uncounted ballots are stored.

Tabulation of Results for the Official Certification

After the tabulation of all ballots that were not included in the unofficial canvass has been completed, each board must now complete the official canvass certification process as follows:

- **Optical Scan - Central Count**

The board must rerun the ballots that were centrally tabulated during the unofficial canvass and verify the count matches the unofficial count. The results of the rerun centrally counted ballots from the unofficial canvass shall be combined with the results of those ballots just tabulated that had not been included in the unofficial canvass. This procedure will produce the totals to be certified as the official results for the March 4, Primary Election.

- **Optical Scan - Precinct Count**

The board must rerun the precinct/polling place memory card and verify the count matches the unofficial count. If it does not, the board must run all ballots through the tabulator and set it to reject blank ballots and overvoted ballots. The board must follow the procedure noted above under "Tabulation Instructions for Ballots not Included in the Unofficial Canvass."

The results of the rerun memory card tabulation of the unofficial canvass shall be combined with the results of those ballots just tabulated that had not been included in the unofficial canvass. This procedure will produce the totals to be certified as the official results for the March 4, 2008 Primary Election.

- **Direct Recording Electronic Machines (DRE)**

The board must rerun the precinct cartridges, PCMCIA cards and other removable memory devices and verify that the count matches the unofficial count. If the count does not match the unofficial results, the board must compare the internal program memory on the voting machine to the cartridge results and determine the cause of the difference.

Note: The seal on the canister or the tape on the verified voter paper audit trail (VVPAT) is not to be broken to determine official results. If the seal must be broken for any auditing reason other than for recount purposes, the board must notify this office immediately.

The rerun results of the unofficial canvass shall be combined with the results of those ballots just tabulated that had not been included in the unofficial canvass. This procedure will produce the totals to be certified as the official results for the March 4, 2008 Primary Election.

Forms for Official Certification

In addition to the certification forms for reporting candidate and issues results, additional reporting forms accompany this Directive. As R.C. 3501.05(Y) requires the Secretary of State to publish a report on the number of absentee and provisional ballots cast and counted, the *Official Certification for Absentee and Provisional Ballots* form is provided for all Boards to report those totals.

Important Note for Counties Subject to Directive 2008-01 Regarding Provisional Ballot Numbers Reported: The numbers provided for provisional ballots cast and counted should be verified to ensure that only persons required to vote provisionally are included in the number reported and not persons who were erroneously required to vote provisionally when they requested a paper ballot instead of voting on a DRE voting machine. Also, the numbers of paper optical scan ballots voted pursuant to Directive 2008-01 that are reported by counties using DREs as their primary voting system should be verified to ensure only voters who requested a paper ballot are included in the total reported. This number should not include optical scan ballots given to voters due to power outages or machine failure. Provisional ballots voted after 7:30 p.m. in counties (Sandusky and Cuyahoga) where polls were ordered to stay open past 7:30 p.m. should be separately totaled.

The *Official County Vote for Statewide Candidates* form provides a box to report the following:

- Registered Electors
- Electors Voting
- Democrat Electors Voting
- Republican Electors Voting

In addition, the *Official Supplemental Report* form requires the reporting of the following:

- Ballots remade (includes ballots remade for unofficial *and* official canvasses)
- Races or issues containing overvotes
- The number of voters changing party affiliation from Democratic to Republican
- The number of voters changing party affiliation from Republican to Democratic
- Directive 2008-01 ballots cast (DRE counties only)
- The number of voters who were incorrectly required to vote a ballot provisionally when requesting an optical scan ballot (DRE counties only)
- The cost of ballots and printing of optical scan ballots in compliance with Directive 2008-01. (DRE counties only)
- The number of provisional ballots voted after 7:30 p.m. because of polls ordered by court order to remain open (Sandusky and Cuyahoga Counties only)

As indicated below, a copy of some candidate and issue certification forms must be returned to other officials in addition to the Secretary of State. The following candidate and issue reporting forms are included with this Directive:

1. *Certification of Results for Statewide Candidates.*
2. *Certification of Results for District Offices.*
3. *Certification of Results for County Offices.*
4. *Certification of Results for Local Questions and Issues* (Form No. 5) - see additional instructions, below.
5. *Certification of Results by Most Populous County for Local Questions and Issues* (Form 5-U).
6. *Certificate of Results for Local Liquor Option Questions* (Form 126-B) (to be sent to the Division of Liquor Control and Secretary of State).

- **Form 5 and 5-U** (see nos. 6 and 7 above)

In reporting local questions and issues on Form 5, please indicate by an asterisk (*) any subdivisions that overlap into another county. If your county contains **the most populous portion of a multi-county district**, please report the total vote for the question or issue on Form 5-U (described in no. 7 above), indicating the vote for each county.

- **Form 126-B** (see no. 8 above)

This form is sent to the Secretary of State's office *and* to the Division of Liquor Control at the following address:

Division of Liquor Control,
PO Box 4005
Reynoldsburg, OH 43068-9005

This office must receive each board's properly completed certification forms **no later than the close of business on Wednesday, April 16, 2008**. Completed forms may be submitted as follows:

- Electronically to Kathy Malott at kmalott@sos.state.oh.us.
- In person at the Elections Division, 180 East Broad Street, 15th Floor, Columbus.
- Via U.S. Mail to: Secretary of State's Office, Elections Division, PO Box 2828, Columbus, OH 43216. If you choose to mail your completed forms, please remember that **our office must receive them by April 16, 2008.**

Abstracts

All counties must provide an electronic abstract of the final official precinct vote totals for **all** candidates (including write-ins) for statewide offices, Representative to Congress, State Senator and State Representative. All abstracts must also include the total number of persons who voted from each precinct as Democratic, Republican, total registered voters, **and** total electors voting. The abstracts must be received by the Secretary of State's office by April 25, 2008.

The abstract must show the subtotal for wards, cities, and townships, and the grand total of all precincts. Please proofread all figures and double check addition for subtotals and totals to assure accuracy. The grand total of the votes on the abstract must agree with totals entered on the certification forms.

Recounts

If, after canvassing all votes, more than the number of candidates to be elected to an office received the largest and equal number of votes, the board must break that tie as provided in R.C. 3505.33 and declare the winner before the board can certify the results of the election for that office. (By contrast, a board does not break a tie in the case of a ballot issue that received an equal number of votes for and against the issue; that issue failed by operation of law, because it did not receive a majority of affirmative votes. In short, a tie in an issue election results in the failure of the issue.)

Please do not delay submitting the abstracts and official certification forms because of the need for a recount for any race or issue. Any recount required should be according to procedures provided for in R.C. 3515.01 through 3515.071. If a recount should result in vote totals changing, the board must submit an amended certification and abstract.

If a recount is to be conducted, please send notice of the recount to the attention of Robin Fields via fax at 614-752-4360 or email rfields@sos.state.oh.us. Also, please see the most recent Directive on proper recount procedures.

If you have any questions regarding this directive, please call the Elections Attorney assigned to your county at (614) 466-2585.

Sincerely,

Jennifer Brunner