

**DIRECTIVE 2010-45      Issued Pursuant to Court Order**  
April 1, 2010

To: All County Boards of Elections

Re: Robert Owens Certified to the 2010 Official Constitution Party Primary Ballot

On March 5, 2010, the office of the Secretary of State certified the forms of the official ballot for use at the May 4, 2010 primary election. See Directive 2010-42. On March 15, 2010, Robert Owens filed an original action in the Ohio Supreme Court against the Secretary of State and the Franklin County Board of Elections asserting that the Franklin County Board of Elections failed to check his petition signatures according to the instructions issued by the Secretary of State and seeking an order placing him on the Constitution Party ballot for the primary election. On March 31, 2010, the Ohio Supreme Court granted a writ of mandamus ordering the Secretary of State to “certify Owens’s name as a candidate for the Constitution Party nomination for the office of Ohio Attorney General and to instruct the boards of election to place Owens’s name on the May 4, 2010 primary-election ballot.” *State ex rel. Owens v. Brunner*, Slip Opinion No. 2010-Ohio-1374, at ¶38 (attached to this Directive). Mr. Owens is running unopposed in this race.

R.C. 3505.07(B) gives the Secretary of State the authority to provide for a separate ballot when a court orders that a candidate be placed on the ballot and it is impracticable for the boards of elections to place the candidate on the ballot because the ballots for the election have already been printed.<sup>1</sup> R.C. 3509.01 requires that absent voter’s ballots be “printed and ready for use” on the thirty-fifth day before the day of the primary election (which was March 30, 2010). Boards of elections have already conducted programming, testing, and printing for Constitution Party ballots. Additionally, boards of elections may have already issued absent voter’s ballots for the Constitution Party to electors who requested them. Thus, it is impracticable to add Mr. Owens’s name to the existing Constitution Party ballots.

Consequently, the boards of elections are hereby directed as follows:

1. Every board of elections shall prepare separate optical scan ballots for the Constitution Party bearing only the office of Attorney General and Robert Owens’s name in a manner conforming to the attached ballot form.
2. For every Ohio elector who requests to vote a Constitution Party ballot by absent voter’s ballot, the boards of elections shall issue the elector both the Constitution Party ballot prepared under the instructions issued with Directive 2010-42 and the separate Constitution Party ballot prepared according to this Directive.

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<sup>1</sup> R.C. 3505.07(B) provides:

If the secretary of state, in the secretary of state’s sole discretion, determines that it is impracticable to place the names of candidates for any office \* \* \* to be voted upon on the ballot when the [candidate] \* \* \* was ordered onto the ballot by a court of competent jurisdiction and the ballots have been printed prior to the court order, the board of elections, at the direction of the secretary of state, shall provide separate ballots for the [candidate].

3. For every Ohio elector who has already been issued a Constitution Party absent voter's ballot, the boards of elections shall issue that elector a separate absent voter's ballot prepared according to this Directive.
4. For counties using optical scan voting equipment as their primary voting system, any elector who requests a Constitution Party ballot at his/her precinct at the May 4, 2010 primary election shall be issued an optical scan ballot under the instructions issued with Directive 2010-42 and the separate Constitution Party optical scan ballot prepared according to this Directive.
5. For counties using direct recording electronic ("DRE") voting equipment as their primary voting system, any elector who requests a Constitution Party ballot at his/her precinct at the May 4, 2010 primary election shall vote the Constitution Party ballot programmed on the DRE under the instructions issued with Directive 2010-42 and shall be issued the separate optical scan Constitution Party ballot prepared according to this Directive.
6. For counties using DREs as their ADA compliant voting equipment, electors who request a Constitution Party ballot and are unable to mark an optical scan ballot may be aided by a person of the elector's choice (other than the elector's employer, an agent of the elector's employer, or an officer or agent of the elector's union) OR by two election officials of different political parties pursuant to R.C. 3505.24.<sup>2</sup>

The office of the Secretary of State will issue additional technical guidance to the boards of elections regarding this race.

If you have any questions concerning this Directive, please contact your assigned elections attorney at 614-466-2585 or via e-mail.

Sincerely,

Jennifer Brunner

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<sup>2</sup> Because the boards of elections have already programmed DREs for the primary election, the cost of reprogramming DREs at this time would be substantial. Moreover, conducting additional logic and accuracy testing of DREs would be unduly burdensome. The office of Attorney General is not a federal office. Moreover, Mr. Owens' candidacy is uncontested at the primary election.