

## **DIRECTIVE 2010-61**

September 10, 2010

TO: All County Boards of Elections

RE: Optical Scan Ballots for Voters in Counties Using DRE Voting Machines

This directive is issued pursuant to the settlement agreement in *League of Women Voters v. Brunner* [formerly *Blackwell*], N.D. Ohio No. 3:05-cv-7309. All counties using direct recording electronic (DRE) voting machines as their primary voting system must provide an optical scan ballot in the event of power outage, machine failure or other election disruption to any affected voter or to any voter who requests it as an alternative method to casting a ballot on a DRE voting machine for the November 2, 2010 general election. This includes voters who appear for in-person absentee voting at the board of elections or any satellite location designated by the board for in-person absentee voting. In addition, elections officials in counties using the DRE voting machines must be prepared for large voter turnout by being able to offer voters in an orderly and efficient manner an alternative means of voting in the event of long lines on Election Day.

In answer to the question of what constitutes an “unreasonably long line,” such a determination is best made by county boards of elections, presiding judges and poll workers, according to historic trends in the county, polling place or precinct. Just as the reasonableness of a line may vary depending upon the county or precinct, so too might it vary depending upon the time of day. For example, 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. Boards must ensure that this required policy is communicated to presiding judges and poll workers before Election Day. While a voter need not but may be asked his or her preference upon appearing at the polling place to vote, it is important that voters be aware that an alternative form of voting is available and that poll workers be adequately trained not to confuse the backup paper ballots with provisional ballots. Poll workers should be afforded 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. Any ballot cast by backup paper ballot must be counted on election night, and along with any verbal announcement, voters should be informed that the alternative paper ballots will be counted election night.

In addition to any verbal announcement, all counties using DREs must prominently post at least four informational posters supplied by the Secretary of State in each polling place to ensure voters are aware of the availability of these paper ballots. Posters will be directly shipped prior to the general election to each county using DREs as its primary voting system.

**Determining Minimum Number of Optical Scan Ballots**

Boards shall determine the minimum number of optical scan ballots to provide for each precinct by multiplying the number of ballots cast in each precinct at the November 2008 general election by 15%. This will provide the minimum number of optical scan ballots that must be provided for each precinct. Boards of elections may print ballots totaling more than this minimum prescribed 15% number at their option, but boards must print ballots at the same percentage for each precinct in the county.

**Funding For Ballot Printing Costs Incurred**

Reimbursement funding is available for the cost of ballots printed to comply with this directive. County boards are strongly encouraged to document and itemize the printing costs incurred as a result of complying with this directive to allow the Secretary of State's office to compile these costs and reimburse your county for the cost of printing the required ballots. A reporting form will be sent prior to the general election to allow you to report these documented and itemized costs. Reimbursement for the printing costs incurred as a result of this directive will be for the printing of at least the minimum number of ballots required (15%).

**Voter Privacy**

Boards shall provide a private area for voters who request optical scan ballots to mark their ballot. Privacy booths used by persons voting provisional ballots may be utilized for this purpose, but care should be taken to avoid providing a provisional ballot to a voter who requests the alternative paper ballot. The Secretary of State will also publicize the availability of the alternative paper ballot for voters in counties using DRE voting machines.

**Final Time for Voter to Request Paper Ballot**

If a voter expresses a desire to opt out of voting on a DRE machine after the DRE has been loaded with the appropriate ballot for that voter or the voting machine has otherwise been committed to receiving the votes of that individual, the poll workers may decline the request.

This point in time can be identified as follows:

**Premier (Diebold) Accuvote-TSX:** Poll workers need no longer provide a paper ballot to a voter requesting one at the point in time that the Voter Access Card is inserted into the AccuVote-TSX.

**ES&S iVotronic:** Poll workers need no longer provide a paper ballot to a voter requesting one at the point in time that the poll worker has inserted the supervisor PEB containing the ballot image for that voter into the iVotronic.

**Hart eSlate:** Poll workers need no longer provide a paper ballot to a voter requesting one at the point in time that the poll worker has begun entering data into the Judge's Booth Controller to generate a voter access code for that voter.

**Distinguishing Backup Ballots from Provisional Ballots**

An optical scan ballot voted under this directive is *not* a provisional ballot and *must not* be placed in a provisional envelope. However, a voter in a county using DRE voting machines may be required to cast a provisional ballot for any of the reasons set forth in R.C. 3505.181(A) and Directive 2008-81.

**Secure Ballot Containers**

Boards shall provide a secure ballot container for the voter to place his or her optical scan ballot into after marking the ballot. The paper ballot need not be contained in an envelope when it is

inserted into the ballot box. Optical scan paper ballots voted under this directive should be segregated from provisional ballots.

**Tabulation**

The optical scan ballots cast in a precinct must be centrally counted at the county board of elections on election night as part of the unofficial canvass.

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