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DIRECTIVE 2011-04

January 10, 2011

To: The Hamilton County Board of Elections

Re: *State ex rel. Painter et al. v. Brunner*- Superseding Directive 2011-03

This Directive is issued in light of the Ohio Supreme Court's decision rendered on Friday, January 7, 2011, in *State ex rel. Painter et al. v. Brunner*. Based on that decision, Directive 2011-03 is hereby superseded.

According to the Court, "only ballots cast in the correct precinct may be counted as valid." The Court further concluded that "[t]hese statutes do not authorize an exception based on poll-worker error to the requirement that ballots be cast in the proper precinct in order to be counted."

The Court specifically rejected any review based on the investigation conducted by the Hamilton County Board as ordered by the former Secretary of State:

Insofar as two of the board members appear to presume poll-worker error in connection with the 269 provisional ballots cast in the wrong precinct but correct location in a multi-precinct polling place, this is incorrect. Neither they nor respondents could rely on the evidence obtained from the improper investigation ordered by the secretary of state and conducted by the board.

The Court has ordered the Hamilton County Board of Elections to rescind its decisions made pursuant to Directives 2010-80 and 2010-87 and instead to review the 850¹ provisional ballots that are the subject of Judge Dlott's order and are not subject to the consent decree, "with exactly the same procedures and scrutiny applied to any provisional ballots during the board's review of them leading up to its decision on November 16."

At its November 16, 2010 meeting, the board investigated the validity of the provisional ballots in question. The investigation was generally limited to an examination of election records, poll books, help-line records, and provisional ballot envelopes. The board thereafter unanimously determined that 850 of the provisional ballots were invalid because they had been cast in the wrong precinct and thus should not be counted.

Accordingly, the board must determine now, as it did on November 16, 2010, based solely on its examination of election records, poll books, help-line records, and provisional-ballot envelopes (i.e., the same evidence the board considered at its November 16, 2010, meeting) that the 850 ballots cast in the wrong precinct are, according to Ohio statutes, invalid and shall not be counted. The Hamilton County Board of Elections is further directed to certify the results of the election and take all additional steps necessary under the law to bring this matter to finality.

Sincerely,

A handwritten signature in blue ink that reads "Jon Husted".

Jon Husted

¹ Because one voter cast two provisional ballots in the wrong precinct, any prior reference by the board or elections, courts, or secretary of state to 849 disputed provisional ballots are mistaken. Accordingly, the directive will refer to the number of disputed provisional ballots as 850.