



JON HUSTED
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Directive 2011-05

January 12, 2011

To: The Hamilton County Board of Elections

Re: Directive 2011-04 and the Mandatory Recount for Hamilton County Juvenile Court Judge

On Monday, January 10, 2011, this office issued Directive 2011-04, which superseded Directive 2011-03 to ensure that the Hamilton County Board of Elections complied with the Supreme Court's decision in *State ex rel. Painter et al v Brunner*.

This Directive expands on Directive 2011-04 and orders the board to complete as quickly as possible, its canvass of the votes cast for Hamilton County Juvenile Court Judge on November 2, 2010. The board should do so by amending its certification, as described below, in advance of the January 22, 2011 deadline for concluding the canvass. The Directive is further written to direct the board to review, during its recount, the provisional ballots that were the subject of the 2011-04 directive in a manner that is consistent with both the Ohio Supreme Court's Order in *Painter* and the board's obligations under Judge Dlott's order of November 22, 2010, as well as Directive 2010-78.

On November 23, 2010, the Hamilton County Board of Elections certified the election results for the race for Juvenile Court Judge. That race will be subject to a mandatory recount because the margin of victory is less than one half of one percent of the total vote. O.R.C. § 3515.011

As part of the mandatory recount, the board should examine the provisional ballots that are the subject of Judge Dlott's order and are not subject to the consent decree in *Northeast Ohio Coalition for the Homeless*, consistent with the Ohio Supreme Court's January 7, 2011 in *Painter* by examining only the poll books, help-line records, and provisional-ballot envelopes.

In addition, during the recount, the board should examine those provisional ballots that are subject to the consent decree in *Northeast Ohio Coalition for the Homeless*, in accordance with the requirements of Directives 2010-74 and 2010-79, which, as the Ohio Supreme Court correctly pointed out in *Painter*, are limited to the situation in which provisional ballots are cast by voters who used only the last four digits of his or her Social Security number as identification.

Finally, the Ohio Supreme Court instructed the Secretary of State to rescind Directives 2010-80 and 2010-87 (an order implemented by Secretary of State Jennifer Brunner via Directive 2011-02) and ordered the board to rescind its decisions arrived at in reliance on these directives. Because the board, due to non-poll worker error, erroneously grouped 9 "correct precinct"

provisional ballots with the 850 "wrong precinct" ballots (and, therefore, invalidated those 9 ballots at the board's November 16, 2010 meeting), those ballots should be counted. The board's unanimous vote at the December 28, 2010, meeting to count those provisional ballots did not rely on those directives, thus, the board should not rescind that decision. Instead, the Board should amend its certification to include those 9 votes.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jon Husted", is written over the printed name.

Jon Husted