



JON HUSTED
OHIO SECRETARY OF STATE

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Directive 2011-06

January 14, 2011

To: The Hamilton County Board of Elections

Re: Submission of Tie Votes related to Directives 2011-04 and 2011-05 and the courts decisions in *Painter* and *Hunter*

There are conflicting court decisions instructing the Hamilton County Board of Elections how to process certain provisional ballots so that the Board may conclude its canvass of the votes for Hamilton County Juvenile Court Judge before the January 22, 2011 deadline.

On January 14, 2011, the Plaintiffs in the *Hunter* case filed a motion for an order to show cause as to why the Hamilton County Board of Elections should not be held in contempt based on the Federal District Court's January 12, 2011 Order. The Plaintiffs requested a hearing on the matter within 24 hours. In their "show cause" motion, Plaintiffs inform the Court that, during the Board's January 14, 2011 board meeting, the Board members reached a 2 to 2 "tie vote" on the issue of whether to appeal the January 12, 2011 Order. Plaintiffs further wrote that, "Given the need for board members to submit a written summary of their position to the Secretary of State who then can decide to appeal or not, it is likely that no appeal and no stay will be sought in the Sixth Circuit until well after January 22, 2011."

Ohio Revised Code Section 3501.11(X) provides: "In all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the director or chairperson shall submit the matter in controversy, not later than fourteen days after the tie vote or the disagreement, to the secretary of state, who shall summarily decide the question, and the secretary of state's decision shall be final." Though the board is not statutorily required to send the tie vote before the fourteenth day, the urgency of this matter requires shortening this timeframe.

Ohio Revised Code Sections 3505.01 (B) and (C) authorize the secretary of state to issue directives regarding the proper method of conducting elections. Pursuant to that authority, and due to the urgency of the matter, I hereby direct the Board to submit any currently unresolved tie votes on motions made during its special meeting of Friday, January 14, 2011, along with supporting arguments or statements, to the secretary of state no later than 4:00 p.m. on Saturday, January 15, 2011.

Sincerely,

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