



**JON HUSTED**  
**OHIO SECRETARY OF STATE**

180 EAST BROAD STREET, 16TH FLOOR  
COLUMBUS, OHIO 43215 USA  
TEL: (877) 767-6446 FAX: (614) 644-0649  
[WWW.SOS.STATE.OH.US](http://WWW.SOS.STATE.OH.US)

**DIRECTIVE 2011-26**

August 22, 2011

To: COUNTY BOARDS OF ELECTIONS  
MEMBERS, DIRECTORS, AND DEPUTY DIRECTORS

Re: Prohibition against mailing unsolicited absentee applications

**SUMMARY**

This Directive provides clear and concise guidance that promotes statewide uniformity and reduces voter confusion on whether or not a county board of elections may independently send unsolicited absentee ballot applications to voters in advance of an election. Effective immediately, county boards of elections are prohibited from mailing unsolicited absentee ballot applications to any voter other than a precinct election official who is appointed to serve at that election for which the application is intended.

**BACKGROUND**

Since the enactment of Substitute House Bill 234 (126<sup>th</sup> General Assembly), Ohio voters have been able to participate with any election by using an absent voter's ballot without providing an "excuse" for obtaining the ballot. Previously, Ohioans had to justify their use of an absent voter's ballot under one of approximately a dozen reasons such as the voter would be out of the voter's county on Election Day or that the voter was over the age of 65.

Over the last several elections, a few counties have, for any number of varied reasons, requested and obtained appropriations from their county general revenue funds to pay for the unsolicited mailing of absent voter ballot applications to most if not all of the registered voters in the county. In some cases, the county general fund bore the cost of not only the outbound mailing of the unsolicited application but also the return postage for the completed application and the return postage for the voted ballot. Of these, some have had irregular engagement in their own practice: mailing for only certain elections, paying postage on some portions of the process in one year but not in another. This patchwork approach leaves voters wondering if they should initiate a request for an application or wait and see if an unsolicited absentee ballot application to unexpectedly arrive in their mailbox or whether they should wait until Election Day to vote.

That all counties do not mail unsolicited applications for absent voter ballots creates a disparate availability of access to the franchise for voters across this state, certainly for statewide elections but sometimes within the same congressional, state house or state senate districts, school districts and municipalities. Noting this very point, Secretary of State Jennifer Brunner cited equal

protection concerns and observed in her tie-breaking vote of June 8, 2009, in which she prohibited the Franklin County Board of Elections from seeking supplemental appropriations for the mailing of unsolicited absentee ballot applications for an August Special Election, that:

Ohio law does not require such a mailing. If the Franklin County Board of Elections mails absentee ballot applications to all eligible electors but the Delaware and Fairfield County Boards of Elections do not, then the electors of Franklin County are being given an advantage not enjoyed by the electors of Delaware and Fairfield Counties in the same election on the same issue. The Ohio Supreme Court has cautioned elections officials against unequal treatment of voters in different counties in the same election. *State ex rel. Skaggs v. Brunner*, 120 Ohio St.3d 506, 2008-Ohio-6333, at ¶ 57-59. (Franklin County Tie Votes on Supplemental Requests, June 8, 2009).<sup>1</sup>

## CONCLUSION

The idea that, by a government act, voters in one county would be given a greater or lesser opportunity to vote than voters in another county is on its face unfair. With the goal of uniformity and equal access to the ballot, county boards of elections shall not mail unsolicited applications for absent voter's ballots except that the board may send an unsolicited application to a precinct election official appointed to work at the election for which the application is intended.

This Directive does not prohibit a board of elections from placing applications for absent voter's ballots on its website or at various public places (e.g., libraries, etc.).

For purposes of this Directive, receipt of a request for application in writing, which need not be in any particular form, a verbal request for application in person or by phone, or the completion of some manner of automated form of application (e.g., telephonic or web-based) initiated by the individual voter constitutes a proper request for an application for absent voter's ballot and is not prohibited.

If you have any questions, please contact the elections attorney assigned to your county at (614) 466-2585.

Sincerely,



Jon Husted

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<sup>1</sup> <http://www.sos.state.oh.us/sos/upload/elections/tievotes/2009/20090608franklin.pdf>