



# Jon Husted Ohio Secretary of State

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## **DIRECTIVE 2011-43**

December 20, 2011

To: All County Boards of Elections, Directors, and Deputy Directors

Re: Challenges Based on Party Affiliation

### **SUMMARY**

This Directive creates a uniform policy for implementing the party challenge requirements of R.C. 3513.19(A)(3): precinct election officials, board of elections members, directors, deputy directors, and clerks can only challenge the right to vote of any elector on the grounds that the voter is not affiliated with or is not a member of the political party whose ballot the person desires to vote, if that official has personal knowledge that the individual is a member of a different party. Directive 2010-44 is rescinded.

### **BACKGROUND**

Some counties have previously required either every voter, or every voter who previously voted a ballot for a different political party, to sign a "Statement of Person Challenged as to Party Affiliation" (SOS Forms 10-W, X, or Z) before permitting that person to cast a ballot, either in person or by mail. Such blanket policies impose an affirmative duty on elections officials that is not contemplated in R.C. 3513.19, which reads "[i]t is the duty of any judge of elections, *whenever any judge of elections doubts* that a person attempting to vote at a primary election is legally entitled to vote at that election, to challenge the right of that person to vote." (emphasis not in original) State law contemplates infrequent party challenges, based upon the election official's personal knowledge, similar to infrequent challenges based on whether a person is a legally qualified elector and whether a person has received or been promised some valuable reward or consideration for the person's vote. R.C. 3513.19(A). Any such challenge is serious and must not be subject to unilateral, blanket action.

### **CONSIDERATIONS FOR COUNTY BOARDS OF ELECTIONS**

When calculating the number of paper ballots to print, or direct recording electronic (DRE) machines to deploy for any partisan primary election, the board of elections should consider

the number of individuals who may switch parties from one election to the next in order to ensure a sufficient number of ballots for all parties with candidates for that election.

Party affiliation, defined in R.C. 3513.19 as the most recent ballot selected at a partisan primary held during a look-back period that is limited to the current year and two immediately preceding calendar years, is not required to be included in the poll list or signature pollbook.

R.C. 3501.30. However, party affiliation is required to be included in the registration list that is posted at 6:30 a.m., 11 a.m., and 4 p.m. on Election Day at each polling place. R.C. 3503.23.

## CONCLUSION

Ohio's primary process strikes a balance between the statutory deference to an individual voter's participatory rights and the political parties' associative rights. This Directive's prohibition against any precinct election official or board of elections member, director, deputy director, or clerk from challenging the right to vote of any elector on the grounds that the voter is not affiliated with or is not a member of the political party whose ballot the person desires to vote, unless that official has personal knowledge to the contrary, protects this balance. In these rare instances, either SOS Form 10-W, X, or Z should be used, depending on the circumstance, pursuant to R.C. 3510.06(D) and 3513.20.

If you have any questions about this Directive, please do not hesitate to contact the elections attorney assigned to your county.

Sincerely,



Jon Husted