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Ohio Secretary of State

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DIRECTIVE 2012-04

January 12, 2012

To: All County Boards of Elections
Re: Backup optical scan ballots for voters in counties using DRE voting machines as their Election Day voting system for the March 6, 2012 primary election

SUMMARY

This Directive requires county boards of elections using DRE voting machines as their Election Day voting system to print and supply all precincts with backup paper ballots for the March 6, 2012 primary election.

BACKGROUND

In 2009, the Secretary of State's office entered into to a settlement agreement with the League of Women Voters. Under the terms of the Agreement, the Secretary of State's office must require all county boards of elections using DRE voting machines as their Election Day voting system to distribute backup optical scan ballots "in the event of long lines"¹ and "must offer paper ballots to voters in the event of machine problems or breakdowns"² Though the Agreement does not require the Secretary of State or county boards of elections to give voters the "paper or plastic" choice between casting a ballot on the DRE or by centrally counted, optical scan, paper ballots it is acceptable for a county board of elections to make the local decision to do so. If a county board of elections permits a voter to cast a centrally counted, optical scan, paper ballot instead of voting on a DRE, it should do so for all elections so as to not create voter confusion from one election to the next.

INSTRUCTION

I. Establishing a Wait Time Policy

County boards of elections are best suited to make the determination of what constitutes "long lines" based upon turnout in previous, similar elections, equipment allocation, availability and training of precinct election officials, and ballot length, in addition to other factors a board may choose to consider. To provide all voters and

¹ LWV Settlement Agreement, Exhibit B, Section I, Division A, Paragraph 1

² LWV Settlement Agreement, Exhibit B, Section VII, Paragraph 2

poll workers with consistent minimum standards, all county boards of elections must establish a wait time policy. When wait times reach the threshold established by the county's wait time policy in any given precinct, precinct election officials must verbally announce the availability of centrally counted, optical scan, paper ballots to voters every half hour until the wait time is less than the board-established maximum wait time. Boards must ensure that this required policy is communicated to presiding judges and precinct election officials before Election Day.

II. Determining Minimum Number of Paper Ballots

Boards must determine the minimum number of optical scan ballots to provide for each precinct by multiplying the number of ballots cast in each precinct (public count) from the 2008 primary election by 10%. This will provide the minimum number of optical scan ballots that must be provided for each precinct. Boards of elections may print ballots totaling more than the calculated minimum number so long as the increase is uniform across the county. Though the ballots are labeled and look the same, this 10% percent is in addition to the quantity the county board of elections determines is necessary to accommodate all provisional ballot voters at each precinct.

III. Funding for Ballot Printing Costs Incurred

Reimbursement funding is available for the cost of ballots printed to comply with minimum requirements of this directive (10% for the March 6, 2012 primary election). County boards of elections must document and itemize the printing costs incurred as a result of complying with this Directive. A reporting form will be sent before the primary elections to allow you to report this expense.

IV. Voter Privacy

Boards must provide a private area for voters to mark their central count, optical scan, paper ballots. Privacy booths used by persons voting provisional ballots may be utilized for this purpose.

V. Voter Instructions

To satisfy the requirements of the Help America Vote Act,³ each voter receiving a centrally counted, optical scan, paper ballot must receive the instructions attached to this Directive.

³ Title 3, Section 301(B)

VI. Backup Paper Ballots are not Provisional Ballots

A central count, optical scan, paper ballot voted under the terms of the settlement agreement with the League of Women Voters is NOT a provisional ballot and must NOT be placed into a provisional ballot envelope. A provisional ballot is ONLY to be cast under the circumstances set forth in R.C. 3503.16 and 3505.181.

VII. Secure Ballot Containers

Boards must provide a secure ballot container into which the voter may place his or her centrally counted, optical scan, paper ballot after marking the ballot. Ballots cast under the terms of the settlement agreement with the League of Women Voters need not be sealed inside an envelope when placed into the ballot box. However, if such ballots are to be placed into the same container as provisional ballot envelopes, the container may not be labeled "Provisional Ballots" and provisional ballots must be placed into the appropriate provisional ballot envelope.

VIII. Tabulation

Because a centrally counted, optical scan, paper ballot cast under the terms of the settlement agreement with the League of Women Voters is a "regular ballot" under state law, it must be tabulated and reported as a part of the board's unofficial canvass.

If you have questions concerning this directive, please contact the Secretary of State's elections attorney assigned to your county.

Sincerely,

A handwritten signature in black ink that reads "Jon Husted". The signature is written in a cursive, flowing style.

Jon Husted

Attachment

IMPORTANT INSTRUCTIONS

- Before marking your ballot, carefully read the instructions at the beginning of the ballot.
- To vote, you must completely darken the oval to the left of the candidate or answer of your choice. Example = ●
- Do not mark the ballot for more choices than allowed. If you mark your ballot for more choices than allowed, your vote for that contest or question will not be counted.

If you make a mistake:

- Return your ballot to a precinct election official and ask for a replacement ballot.
 - You may request a replacement ballot only two times.
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