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DIRECTIVE 2012-30

August 2, 2012

To: ALL BOARDS OF ELECTIONS
Directors, Deputy Directors and Board Members

Re: Pre-Election Voter Challenges

SUMMARY

The purpose of this Directive is to provide boards of elections with guidance for properly administering the challenge statutes relative to the voter registration rolls.¹ This Directive replaces Directives 2010-98, 2010-95, 2010-94, and 2008-79, which are rescinded.

BACKGROUND

Ohio law prescribes three methods for a qualified elector to challenge the right to vote of another registered elector prior to Election Day:

- A qualified elector of the county may file to challenge the right to vote of any registered elector pursuant to R.C. 3503.24;
- A qualified elector of the county may file an application for the correction of any precinct registration list R.C. 3503.24;
- A qualified elector may file to challenge the right to vote of any registered elector pursuant to R.C. 3505.19;

INSTRUCTIONS

I. Challenges Filed Pursuant to R.C. 3503.24

A qualified elector *of the county* may file an application for correction or challenge at the office of the board of elections.² A challenger must (1) use Secretary of State Form 257, (2) file the application or challenge no later than 20 days before an election, (3) state the reasons for the application or challenge, and (4) sign under the penalty of election falsification.³

¹This Directive does not address the topic of challenges by election officials pursuant to R.C. 3505.20 and R.C. 3513.19.

² R.C. 3503.24(A)

³ R.C. 3503.24(A)

A. Determine Whether a Hearing is Warranted

The Director and Deputy Director⁴ must complete an initial review to determine that a facially sufficient application or challenge has been filed by initially addressing the following questions:

- 1. Was the application or challenge filed under penalty of election falsification using Secretary of State Form 257?** If the person did not file the challenge under penalty of election falsification using Form 257, the challenge is invalid and cannot proceed.
- 2. Is the person who filed the application for challenge a qualified elector of the county?** The Director and Deputy Director must review the board's records to determine whether the person who has filed is a qualified elector of the county. If the Director and Deputy Director determine that the person submitting the application or challenge is not a qualified elector of the county, the challenge is invalid and cannot proceed. Any disagreement between the Director and Deputy Director must be resolved by a vote of the Board.
- 3. Does the challenge state sufficient reasons for the application for challenge?** The Director and Deputy Director must complete an initial review of the reasons for the application or challenge as filed on Form 257 by considering whether the party filing the challenge has alleged sufficient information to sustain a successful challenge. As a part of this administrative process, the Director and Deputy Director will review the face of the document as filed. If the Director and Deputy Director determine that, even if proven to be true, the reasons alleged would not be sufficient to grant the challenge, the challenge is insufficient and cannot proceed. Any disagreement between the Director and Deputy Director must be resolved by a vote of the Board.

Note: The determination that a challenge is facially valid and sufficient does not have any bearing on the ultimate merits of the challenge hearing.

B. Schedule a Hearing

If a filing has not been found insufficient as described in Part A, then the Director must promptly set a time and date for a hearing before the board. The hearing must be held not later than 10 days after the board receives the application or challenge.⁵ However when an application or challenge is filed after the 30th day before the day of an election, the board

⁴ Where a board only has a Director, the Director and the Chairperson will follow these steps.

⁵ R.C. 3503.24(B)

may choose to postpone the hearing until after the day of the election but not later than 10 days after the election.⁶

Where the board does decide to schedule a hearing during the 10 days after the election, the signature pollbook must be marked to indicate that the elector's registration is subject to challenge and that elector will be permitted to cast a provisional ballot.⁷ In this situation, the elector would not be subject to an Election Day challenge pursuant to R.C. 3505.20 by the judges of elections.

C. Notice for a Hearing

The board must provide notice to the person challenged that a hearing has been scheduled. The notice must inform the person challenged of the date and time for the hearing, of the person's right to appear and testify, call witnesses and be represented by counsel.

The person filing the challenge must also be provided with notice as to the date and time of the hearing.

All notices must be sent by first class mail no later than six days prior to the scheduled hearing.

D. Challenge Process, Hearing, and Decision

In preparation for the hearing, the board must issue subpoenas to witnesses to appear and testify before the board at the hearing at the request of either party or any member of the board.⁸ All witnesses must testify under oath.⁹

The board must reach a decision on all applications and challenges immediately following the hearing.¹⁰ If the board decides that a person's name should not be on the registration list, the person's name must be removed from the list.¹¹ If the notice sent by the board is not returned undeliverable and the person challenged did not appear for the hearing, the board must provide notice to the person cancelled via mail.

If the board decides that a person's name should appear on the registration list, the person's name must be added to or remain on the list.¹²

⁶ R.C. 3503.24(D)(1)

⁷ R.C. 3505.181(A)(11)

⁸ R.C. 3503.24(B)

⁹ R.C. 3503.24(B)

¹⁰ R.C. 3503.24(B)

¹¹ R.C. 3503.24(C)

¹² R.C. 3503.24(C)

II. Challenges Filed Pursuant to R.C. 3505.19

A qualified elector *of the State of Ohio* (even one not registered in the same county) may challenge the right of a registered elector to vote either by appearing in person at the board of elections office, or by a letter addressed to the board. The challenge must be filed not later than the 20th day before an election.¹³ A person may use Secretary of State Form 259 for filing the challenge, but is not required to do so. Any such challenge must (1) be in writing, (2) must state the ground upon which the challenge is made, (3) must be signed by the challenger, and (4) must provide the challenger's address and voting precinct.

A. Determine Whether a Hearing is Warranted

The Director and Deputy Director¹⁴ must complete an initial review to determine that a facially sufficient application or challenge has been filed by initially address the following questions:

- 1. Was the challenge filed in writing, signed by the challenger – under penalty of election falsification – providing the challenger's address and voting precinct?** If the person did not file the challenge in writing – signed under penalty of election falsification – and provide his or her address and voting precinct, the challenge is invalid and cannot proceed.
- 2. Is the challenger a qualified elector of the State of Ohio?** The Director and Deputy Director must review the board's records and/or the Statewide Voter Registration Database to determine whether the person who has filed the challenge is a qualified elector of the State of Ohio. If the Director and Deputy Director determine that the person submitting the application for challenge is not a qualified elector of the State of Ohio, the challenge is invalid and cannot proceed. Any disagreement between the Director and Deputy Director must be resolved by a vote of the Board.
- 3. Does the challenge state sufficient grounds for the challenge?** The Director and Deputy Director must complete an initial review of the reasons for the challenge on the document as filed considering whether the party filing the challenge has alleged sufficient information to sustain a successful challenge. As a part of this administrative review, the Director and Deputy Director will review the face of the document as filed. If the Director and Deputy Director determine that, even if proven to be true, the grounds alleged would not be sufficient to grant the challenge, the

¹³ R.C. 3505.19

¹⁴ Where a board only has a Director, the Director and the Chairperson will follow these steps.

challenge is insufficient and cannot proceed. Any disagreement between the Director and Deputy Director must be resolved by a vote of the Board.

Note: The determination that a challenge is facially valid and sufficient does not have any bearing on the ultimate merits of the challenge hearing.

B. Schedule a Hearing

If a filing has not been found insufficient as described in Part A, then the Director must promptly set a time and date for a hearing before the board. The hearing must be held not later than 10 days after the board receives the application or challenge. However when an application or challenge is filed after the 30th day before the day of an election, the board may choose to postpone the hearing until after the day of the election but not later than 10 days after the election.¹⁵

Where the board does decide to schedule a hearing during the 10 days after the election, the signature pollbook must be marked to indicate that the elector's registration is subject to challenge and that elector will be permitted to cast a provisional ballot.¹⁶ In this situation, the elector would not be subject to an Election Day challenge pursuant to R.C. 3505.20 by the judges of elections.

C. Notice for a Hearing

The board must provide notice to the person challenged that a hearing has been scheduled. The notice must inform the person challenged of the date and time for the hearing, of the person's right to appear and testify, call witnesses and be represented by counsel. The person filing the challenge must also be provided with notice as to the date and time of the hearing.

All notices must be sent by first class mail no later than six days prior to the scheduled hearing.

D. Challenge Process, Hearing, and Decision

In preparation for the hearing, the board must issue subpoenas to witnesses to appear and testify before the board at the hearing at the request of either party or any member of the board. All witnesses must testify under oath. Where the board does not agree that the challenge has merit, then the challenged person shall be permitted to vote a regular ballot when he or she offers to vote.

¹⁵ R.C. 3503.24(D)(1)

¹⁶ R.C. 3505.181(A)(11)

Where the board agrees that the challenge has merit, the board shall mark the voter's record in the signature poll book and/or poll list. If the challenged elector appears to offer to vote at the election, the challenged elector must be examined pursuant to the process established by R.C. 3505.20.¹⁷ If the challenged elector establishes, to satisfaction of the judges of election, that the person's disabilities have been removed and that that person has a right to vote, the person shall be permitted to vote a regular ballot.¹⁸ If it is not established that the challenged elector has a right to vote, that person shall be permitted to cast a provisional ballot.

III. General Considerations

A. Return Mail or Change of Address

The return of mail, sent by an elections official or any other individual, as undeliverable, unable to forward, or change of address on file (NCOA) alone is insufficient to grant a challenge under 3503.24, 3505.19, or 3503.20.

B. Foreclosure

Evidence of a foreclosure action alone is insufficient to grant a challenge under 3503.24, 3505.19, or 3503.20.

C. Confirmation Status

That the voter's status is recorded in the Statewide Voter Registration Database as "active-confirmation" (also known as "inactive")¹⁹ alone is insufficient ground to grant a challenge under 3503.24, 3505.19, or 3503.20.

If you have any questions about the information contained in this Directive, please contact the Secretary of State's elections attorney assigned to your county.

Sincerely,



Jon Husted

¹⁷ R.C. 3505.19

¹⁸ R.C. 3505.19, R.C. 3505.20, ¶1

¹⁹ A registered voter has an "inactive" status if the voter was sent, but did not respond to, a confirmation card mailed to the voter by a county board of elections. A confirmation card is sent under any of four circumstances: 1) the NCOA process (see Directive 2011-15), 2) the NVRA list maintenance process (see Directive 2011-15), 3) the voter's acknowledgement notice is returned as undeliverable (see RC 3503.19(C)(3)), or 4) the voter's record does not match BMV/SSA records (see Directive 2012-16).