



Issued Pursuant to Court Order

DIRECTIVE 2018-35

November 1, 2018

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

Re: Provisional Ballots Cast by Voters Cancelled Since 2011 Under Ohio's Supplemental Process – *effective only for the November 6, 2018 General Election*

BACKGROUND

Shortly after consenting to the termination of the “APRI Exception,” Plaintiffs in *Ohio A. Philip Randolph Institute et al. v. Husted*, Case No. 2:16-cv-303, sought reinstatement of the practice. While the District Court rejected Plaintiffs’ request to reinstate the “APRI Exception,” Plaintiffs filed an emergency motion for injunctive relief with the United States Court of Appeals for the Sixth Circuit. Yesterday, the Sixth Circuit granted Plaintiffs’ motion and reinstated the “APRI Exception” for the November 6, 2018 General Election.

You will note that this Directive is materially similar to the court-ordered Directives that were in effect since the 2016 General Election, which were rescinded in July with the consent of all parties to this litigation.¹

If you have any questions regarding this Directive, please contact the Secretary of State’s elections counsel assigned to your county.

Sincerely,


Jon Husted

PURPOSE

For purpose of the November 6, 2018 General Election only, a provisional ballot cast during the in-person absentee voting period or on Election day by a voter who is not registered to vote in the State of Ohio may be counted if all of the following apply (the “APRI Exception”):

¹ Secretary of State Directive 2018-19.

1. The individual's voter registration was cancelled in 2011, 2013, or 2015 (confirmation card mailed in 2007, 2009, or 2011) pursuant to the Supplemental Process;
2. The voter's provisional ballot affirmation reflects an address within that precinct and the voter was previously registered to vote within that same county prior to cancellation;
3. The board of elections does not have information that the voter was deceased, incarcerated on a felony conviction, or adjudicated as incompetent under Ohio law by a county probate court after the individual's registration record was cancelled; and,
4. The voter's provisional ballot affirmation form and the ballot otherwise comply with all applicable laws and directives.

INSTRUCTIONS

Boards must apply the *APRI* Exception to the provisional ballot eligibility determination of any provisional voter who is not registered to vote in the State of Ohio at least 30 days before the election. If the board determines, as evidenced by the voter having a "cancelled" status in the Statewide Voter Registration Database (SWVRD), that the voter previously was registered to vote in the State of Ohio, it must count the provisional ballot using the following steps in conjunction with the mandatory process for determining eligibility of provisional ballots in Chapter 6, Provisional Voting, of the Ohio Election Official Manual:

- a. Identify the most recent address of registration in the Statewide Voter File for the voter (because merged records can result in multiple records for a single voter, it is necessary to identify the most recent address of registration on file prior to cancellation). Proceed to "step b" below.
- b. If the most recent address of registration in the Statewide Voter File for the voter is in a different county than the address provided by the voter on the provisional affirmation, the board must reject the provisional ballot. If the most recent address of registration in the Statewide Voter File for the voter is the same as the address provided by the voter on the provisional affirmation or is in the same county, proceed to "step c" below.
- c. Identify the "reason" code in the SWVRD. If the reason code is "Cancelled – Deceased," "Cancelled – Incompetent," or "Cancelled – Incarcerated" the board must reject the provisional ballot. (A "merged" record is not a "cancelled" record.) If the reason code is something other than death, adjudication of incompetency by a probate judge, or incarceration on a felony conviction, proceed to "step d" below.

- d. Identify the date of cancellation in the SWVRD. If the date of cancellation is prior to 2011, the board must reject the provisional ballot. If the date of cancellation in the SWVRD is after January 1, 2011, proceed to “step e” below.
- e. Determine if the voter was cancelled under the “Supplemental Process” of the state’s general voter records maintenance program.

If the board’s records do not differentiate between a cancellation under the “NCOA Process” and a cancellation under the “Supplemental Process,” the board must contact the Secretary of State’s elections counsel assigned to its county. The Secretary of State’s elections counsel will compare the information from the voter’s provisional ballot affirmation to the NCOA list from the year in which the voter was sent a confirmation notice (four years prior to the year of cancellation).

The Secretary’s Office shall possess the NCOA lists from 2007, 2009, and 2011. A county seeking to determine whether an individual is on the NCOA list in accordance with subsection (b) above shall contact the Secretary’s Office, which shall provide the county with a prompt response.

The provisional ballot of a voter whose registration was cancelled under the “NCOA Process” cannot be counted under the *APRI* Exception. If the voter’s registration was cancelled under the “NCOA Process,” the board must reject the provisional ballot.

The provisional ballot of a voter whose registration was cancelled under the “Supplemental Process” must be counted under the *APRI* Exception if the provisional ballot affirmation and the provisional ballot otherwise comply with all applicable laws, as directed in the mandatory process for determining eligibility of provisional ballots in Chapter 6, Provisional Voting, of the Ohio Election Official Manual.

DELIVERY IN CERTAIN CIRCUMSTANCES OF A PROVISIONAL BALLOT TO AN INDIVIDUAL WITH A PERSONAL ILLNESS, PHYSICAL DISABILITY OR INFIRMITY

Boards of elections are required to have two board staff members—one Democrat, one Republican—deliver a provisional ballot to an individual who meets all of the following conditions:

- The individual attests to the board that he or she has a personal illness, physical disability, or infirmity²;
- The individual attests to the board that he or she is unable to cast a ballot in-person during absentee voting or on Election Day;
- The individual completes [Form 11-I-2](#);
- The individual's voter registration was cancelled in 2011, 2013, or 2015 under the "Supplemental Process";
- The individual's most recent address of registration in the Statewide Voter File is in the same county as the individual's current address of registration as listed in the attestation;
- The individual is requesting the delivery of the provisional ballot to an address in the same county as both the individual's recent address of registration in the Statewide Voter File and the individual's current address of registration as listed in the attestation; and
- The individual is submitting the request to the board no later than noon on the Saturday prior to Election Day.

Boards are required to provide [Form 11-I-2](#) to each individual contacting the board stating that he or she satisfies the conditions above.

If the individual completes [Form 11-I-2](#), submits it to the board, and satisfies all of the conditions above, the board shall send two staff members—one Democrat, one Republican—to deliver a provisional ballot to the individual.

ISSUANCE OF ABSENTEE BALLOTS TO UOCAVA VOTERS WHO WERE CANCELLED UNDER THE SUPPLEMENTAL PROCESS IN 2015, 2013, OR 2011

If a Federal Postcard Application or a Federal Write-In Absentee Ballot is received pursuant to state law, and the board of elections determines that the applicant's voter registration was cancelled in 2015, 2013, or 2011 under Ohio's supplemental list maintenance program, the applicant shall be considered to have submitted the application by the deadline established in 52 U.S.C. § 20302(a)(2), so long as the other requirements of this Directive, issued pursuant to court order, are met.

The board shall make a reasonable effort to locate any Federal Postcard Applications or a Federal Write-In Absentee Ballots that were received prior to the date of this Directive, and this Directive shall apply to any such Applications or Absentee Ballots as are located.

² See, Ohio Rev. Code § 3503.16(G).

ADDITIONAL INSTRUCTIONS

- The board must provide ballots and envelopes in the quantity of at least 15 percent more than the number of provisional ballots cast in that precinct at the 2008 or 2012 Presidential General Election, whichever is higher.³ Additionally, each board must provide to each precinct and/or polling location a stock of provisional ballot affirmation envelopes (containing Secretary of State [Form 12-B](#)) that is greater than the number of provisional ballots being provided for this election. Be mindful of the proper allocation of ballot and envelope quantities across precinct splits. Additionally, any multi-precinct polling location must have a sufficient supply of Secretary of State [Form 12-D](#).
- Boards of elections will be required to provide the total count of provisional ballots counted using the *APRI* Exception separate from all other counted provisional ballots when the board submits its supplemental report at the conclusion of the official canvass following Election Day.
- Boards of elections are required to add the following language to any web tool used to aid voters in searching for their registration information:
 - If you are unable to locate your voter registration information but think you are registered to vote and you have not moved outside of your county of prior registration, you may be eligible to cast a provisional ballot during in-person absentee voting period at an appropriate early voting location or the county board of elections, or on Election Day at the correct polling place for your current address that may be counted. We encourage you to check your registration status by contacting your local county board of elections. To find your polling place, please [click here](#) or call your county board of elections. [Click here](#) for a full listing of Boards of Elections.⁴

³ This is a minimum requirement for preparedness, not a prediction for the number of provisional ballots expected to be cast this election or as a result of the *APRI* Exception.

⁴ Pursuant to the Court's order: the phrase 'please click here' will be a hyperlink to the online 'Voter Toolkit' which contains an option for 'Find My Polling Location' at <https://www.sos.state.oh.us/elections/voters/>, and the phrase 'Click here for a full listing of Boards of Elections' will be a hyperlink to a list of the contact information of all of Ohio's 88 county boards of elections at <https://www.sos.state.oh.us/elections/elections-officials/county-boards-of-elections-directory/>.

- With respect to absentee ballot request forms, submitted in person or by mail, that have not already been processed and/or rejected by the Secretary of State and the respective boards of elections, the following language shall be included in the notification of denial of the request for absentee voter to any nonregistered voter:
 - You may still cast a provisional ballot during in-person absentee voting period at an appropriate early voting location or the county board of elections, or on Election Day at the correct polling place for your current address.

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If you have any questions about this Directive, please contact the Secretary of State's elections counsel assigned to your county at (614) 466-2585.

Sincerely,


Jon Husted