



DIRECTIVE 2018-36
November 4, 2018

To: The Butler County Board of Elections

SUMMARY

This Directive instructs the Butler County Board of Elections to count absentee ballots in the narrow circumstance where the voter did not write all eight characters of the voter's driver's license number because of the Board's failure to provide a properly formatted identification envelope, and the voter does not cure the error within the statutory cure period.

BACKGROUND

Ohio law requires boards of elections to send with each absentee ballot an identification envelope or statement of voter that complies with the content prescribed by law, including the requirement that the voter provide an acceptable form of identification (driver's license, last four digits of the voter's social security number, or a copy of another acceptable form of identification)¹. For an absentee identification envelope to be opened and the absentee ballot to be counted, an absentee voter must provide sufficient information on the absentee ballot identification envelope or statement of voter to identify the voter and to determine that the voter is eligible to cast the ballot.²

On October 15, 2018, after the start of the absentee voting for the November 6, 2018 General Election, the Butler County Board of Elections informed the Secretary of State's office that it had incorrectly printed some of their absentee ballot identification envelopes. In the identification field, the Butler County Board of Elections printed character boxes and incorrectly printed only six such boxes for an individual who provides his or her driver's license number as a form of identification instead of the necessary eight character boxes to accommodate the complete, standardized eight-character driver's license number (two letters followed by six numbers).

Upon learning of this matter, the Secretary of State's office instructed the Butler County Board of Elections to remedy the error as quickly as possible by mailing to each elector who received the misprinted absentee identification envelope a corrected statement of voter, along with a letter explaining the Board's error. As a result, the Board has sent out notices to all the voters who received the misprinted absentee ballot identification envelope with only six character boxes, informing them of the Board's error and instructing that they provide the full eight characters of their driver's license number (or some other form of valid identification). Along with these notices, the Board provided forms that the voters could fill out and return in the event they had

¹ R.C. 3509.04(B). See also, [SOS Form 12-A](#).

² R.C. 3509.06(D); R.C. 3509.07(A) and (C). See also, *NEOCH v. Husted*, Case Nos. 16-3603/3691 (6th Circuit 2016).

already returned their ballot with only a portion of their driver's license number.³ Additionally, for each individual who returned a ballot with the misprinted absentee ballot identification envelope providing only six characters of his or her eight-digit driver's license number, the Board reached out to the voters via first-class mail, telephone, and e-mail, if available, to inform the voter to provide the full eight-digit driver's license number, or another acceptable form of identification on the supplemental statement of voter or the cure form (SOS Form 11-S). Despite the Board's attempts to remedy the issue, it has become apparent that a small number of voters who received the misprinted absentee ballot identification envelope and returned a voted ballot with only six character spaces completed on the misprinted identification envelope, might not have received the Board's notification or might not have sufficient time to remedy the incomplete driver's license number.

INSTRUCTIONS

This Directive applies only to the absentee ballots of qualified electors who *both* (1) received an absentee ballot with a misprinted absentee ballot identification envelope containing only six character boxes for recording an Ohio driver's license number, rather than the standardized 8-digit driver's license number (two letters followed by six numbers); (2) chose to provide only the driver's license number as the requisite form of identification; *and then* (3) returned the voted ballot enclosed in the misprinted absentee identification envelope and listed only six digits of the voter's eight-digit driver license number.⁴ Further, the Board should continue to follow all of the procedures and timeline contained in Chapter 5 of the Election Official Manual regarding issuing and reviewing absentee ballots and special circumstance or UOCAVA absentee voters, including but not limited to the timeframe and procedure for issuing SOS Form 11-S to voters described in this paragraph.

This Directive applies only to those ballots whose absentee identification envelope formatting contained only six character boxes for the driver's license number identification option. It does *not* apply to absentee identification envelopes that correctly provided eight character boxes for the driver's license number identification option or to envelopes that provided a blank line on which voters can provide their full driver's license number (i.e., no character boxes).

When following the Mandatory Step-by-Step Process for Counting Absentee Ballots in Section 1.07 of [Chapter 5 Absentee Ballots, of the Ohio Election Official Manual](#), if, after "cure period," the Butler County Board of Elections encounters a ballot sealed in a misprinted absentee identification envelope, it must complete the following steps of review at Step 2 of the Mandatory Step-by-Step Process for Counting Absentee Ballots:

- Inspect the absentee identification envelope to determine whether it is one of the misprinted identification envelopes issued by the Board. If the absentee identification envelope contains eight character boxes for the driver's license identification option, or a blank line on which voters can provide their full driver's license number (no character boxes), continue

³ Regardless of whether the voter requested assistance in casting the absentee ballot, if a voter requests assistance to supplement the voter's identification envelope the board of elections must send two employees, not of the same political party, to assist the voter. *Ray v. Franklin County Board of Elections*, Case No. 2:08-CV-1086, 2008 WL 4966759 (S.D. Ohio Nov. 17, 2008).

⁴ The Secretary of State's Office is not aware of any other county that made the same error that would result in similarly situated voters. To the extent that has occurred, this Directive shall have the same narrowly-tailored effect in those counties for those voters.

review as normal under Step 2. If the absentee identification envelope contains only six character boxes for the driver's license identification option, proceed to the next bullet point.

- Review the form of identification the voter chose to provide on the misprinted absentee ballot identification envelope.
- If the voter has provided a form of identification *other than* driver's license number, continue review as normal under Step 2. However, if the voter has chosen to provide driver's license number as the form of identification, inspect the driver's license number.
- If the voter has provided a driver's license number that includes eight digits (two letters followed by six numbers), continue review as normal under Step 2. However, if the voter has provided a driver's license number that only contains 6 digits, proceed to the next bullet point.
- Confirm that the voter has not returned a corrected absentee statement of voter or a completed Secretary of State prescribed Form 11-S.⁵ If the voter has returned either of those, continue review as normal under Step 2. However, if the voter has not returned either a corrected absentee statement of voter or "cure form" (SOS Form 11-S), proceed to the next bullet point.
- Review the name and signature provided on the absentee identification envelope under the instructions provided in Step 2 of the Mandatory Step-by-Step Process for Counting Absentee Ballots. Review the digits of the driver's license number the voter has provided in the misprinted six character boxes on the absentee identification envelope. If the Board can match the digits the voter provided in the misprinted six character boxes with the relevant, sequential portions of the voter's driver's license number on file with the Board (i.e., the voter provided the first six of eight characters or the last six of eight characters) and the Board can confirm the absentee voter's eligibility,⁶ proceed to Step 4 of the Mandatory Step-by-Step Process for Counting Absentee Ballots.
- If the voter has provided his or her name, signature, and only six digits of the driver's license number, but the Board cannot determine the voter's eligibility, proceed to Step 3 of the Mandatory Step-by-Step Process for Counting Absentee Ballots.

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

Sincerely,



Jon Husted

⁵ R.C. 3509.06(E)(2) and [SOS Form 11-S](#).

⁶ R.C. 3509.07(A) and (C).

