



Jon Husted Ohio Secretary of State

180 East Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: (877) 767-6446 Fax: (614) 644-0649
www.OhioSecretaryofState.gov

Issued Pursuant to Court Order

DIRECTIVE 2016-39

October 19, 2016

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

On September 23, 2016, the United States Court of Appeals for the Sixth Circuit issued a decision in *Ohio A. Philip Randolph Institute, et al. v. Husted*, Case No. 2:16-cv-303, holding among other things, that Ohio's longstanding Supplemental Process used by four secretaries of state from both major political parties violates Section 8(b)(2) of the NVRA. The Court reversed and remanded the case to the United States District Court for further proceedings consistent with its opinion.

This Directive, relative to the November 8, 2016 General Election, is issued in accordance with today's Order from the United States District Court for the Southern District of Ohio, Eastern Division. The Court ordered the issuance of the Directive below.

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

Sincerely,


Jon Husted

PURPOSE

For purposes of the November 8, 2016 General Election, 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. 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.

ADDITIONAL INSTRUCTIONS

- The board must provide ballots and envelopes in the quantity of at least 20¹ percent more than the number of provisional ballots cast in that precinct at the 2008 or 2012 Presidential General Election, whichever is higher.² 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.³
- 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:

¹ Because the Court includes voters cancelled pursuant to the Supplemental Process in three cycles (2011, 2013, and 2015), the Secretary of State's Office has increased the Court's percentage from 15 percent to 20 percent, which is not substantive to the intent or effect of the Order.

² 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.

³ For all information and instructions relative to ballot quantities besides the required minimum number of provisional ballots and envelopes contained herein for the November 8, 2016 general election, see [Directive 2016-35](#).

- 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
- 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.

* * *

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.' *Voter Toolkit*, Secretary of State, <https://www.sos.state.oh.us/SOS/Upload/sites/ballotTracking/ballotTracking.aspx?page=20547> (last visited October 18, 2016). The phrase 'Click here for a full listing of Boards of Elections' will continue to be a hyperlink to a list of the contact information of all of Ohio's 88 county boards of elections." <http://www.sos.state.oh.us/sos/elections/electionofficials/boeDirectory.aspx#dir> (last visited October 19, 2016).