ACLU Ohio LWV LEAGUE OF WOMEN VOTERS® OF OHIO

November 17, 2026

By email

Directors and Deputy Directors
All County Boards of Elections

RE: Provisional Ballot Treatment

Dear Directors of Boards of Elections:

We are aware that a number of Boards of Elections across Ohio have received a letter from the Taft Law Firm dated November 16, 2026 (the "Taft Letter"), arguing that certain Boards should invalidate a particular category of provisional ballots. Specifically, the letter requests invalidation of provisional ballots that were cast by registered Ohio voters who had not updated their voter registrations after a county-to-county move.

The Taft Letter's request should be denied. To do as the letter asks—to invalidate these provisional ballots—would violate the First and Fourteenth Amendment rights of the voters in question. Indeed, it would amount to disenfranchising thousands of registered Ohio voters en masse *for acting in accordance with the express instructions of the Ohio Secretary of State, as relayed through poll workers*.

Directive 2026-35 specifically provides: "Certain voters can cast a provisional ballot […] at their polling place on Election Day, including […] Voters who have moved outside of their county (but still in Ohio) and didn't update their address by the deadline."[1] That is consistent with longstanding practice across Ohio, and Boards of Elections are required by law to follow this directive. R.C. 3501.11(P).

The Taft Letter claims that the Secretary of State's directive is incorrect,[2] but ignores the immense constitutional implications of deciding to ignore it after voting is complete. It may—indeed, *must*—be presumed that even if these provisional ballots were cast in error, that error originated with elections officials rather than the voters. Lawful voters may not be disenfranchised for following the instructions they were given at the polls:

> As a matter of law, if a person casts a provisional ballot in the wrong precinct, it is *always* going to be due to poll-worker error unless the poll worker has instructed the individual where the correct polling location is and that individual "refuses to travel to the polling place for the correct [precinct] or to the office of the board of elections to cast a ballot." Such an act would be an irrational and futile exercise by the voter, because, as required by Ohio Rev. Code § 3505.181(C)(1), the poll

[1] Ohio Secretary of State Directive 2026-35, at 8-301–8-302, *available at* https://www.ohiosos.gov/assets/dir2026-35-eom-chapter-8.pdf.

[2] The Taft Letter's statutory construction is dubious. *See generally* R.C. 3503.181 (authorizing casting of provisional ballots, and making no distinction between voters who have made intra-county moves and those who have made inter-county moves); R.C. 3505.183 (similar, as to counting of provisional ballots).

worker must first inform him that if he insists on voting in the wrong precinct, his ballot will not be counted.

NEOCH v. Husted, 696 F.3d 580, 594 (6th Cir. 2012) (citing district court opinion and finding "no clear error" in its conclusions).

Voters, as the Sixth Circuit noted in *NEOCH*, do not possess such "omniscience" as to have "greater knowledge … than poll workers." *Id.* Invalidating the ballots of voters who followed express poll worker instructions likely violates the First and Fourteenth Amendments absent "precise interests" on the part of the state that would justify the considerable burden imposed on voters. *Id.* at 593, 596–97. *See also, e.g.*, *Reynolds v. Sims*, 377 U.S. 533, 562 (1964) ("[A]ny alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."). "To disenfranchise citizens whose only error was relying on poll-worker instructions [is] fundamentally unfair" under the Fourteenth Amendment's Due Process Clause. *Hunter v. Hamilton Cnty. Bd. of Elec.*, 635 F.3d 219, 243–44 (6th Cir. 2011).[3] That is all the more so where, as here, the mass disenfranchisement "significantly departs from previous state election practice[.]" *Warf v. Bd. of Elec. of Green Cnty., Ky.*, 619 F.3d 553, 559 (6th Cir. 2010).

The Taft Letter offers no alternative explanation for the purported "error" of these provisional ballots, other than poll worker or other elections official error. Nor does it identify any overpowering state interest that could justify the drastic measure of invalidating these ballots.

Put another way, the Taft Letter does not even attempt to claim that election integrity is at stake, or that these voters were ineligible to vote in the elections for which they cast ballots. Instead, it asks that Ohio voters' provisional ballots be invalidated wholesale based on a technical error *by elections officials*.

That request should be rejected.

Sincerely,

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[3] The Secretary of State's express directive distinguishes this matter from the Sixth Circuit's ruling in *SEIU Local 1 v. Husted*, 698 F.3d 341 (6th Cir. 2012). That case involved only "sparse" evidence of poll workers misdirecting voters. Here, the state's chief elections official specifically instructed the poll workers to accept provisional ballots under these circumstances.

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cc: Frank LaRose, Secretary of State
Larry Obhof, Chief Legal Counsel
Kim Burns, Deputy Assistant Secretary of State