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DIRECTIVE 2007-31

November 16, 2007

To: All County Boards of Elections

Re: Remake of Optical Scan Ballots

To ensure that all valid ballots that have been cast are properly counted, that is, may be counted by automatic tabulating equipment to assure a uniform method of tabulating ballots in an election, this Directive provides instructions to Boards of Elections on the proper procedure to remake optical scan ballots that cannot be accurately read by automatic tabulating equipment.

There are several reasons why an optical scan ballot may not be readable by automatic tabulating equipment. For example, a voter may have marked the ballot in a different manner than provided in the instructions printed on the ballot; the timing marks on the ballot may not have been properly aligned with the voting marks; or, the ballot may have been folded, torn or mutilated.

No ballot may be remade for automatic tabulation unless and until the Board of Elections has, by majority vote in public session, confirmed or determined voter intent.

Confirming Voter Intent Where Voter Has Followed Instructions – Folded, Torn, or Mutilated Ballot/Misaligned Timing Marks on Ballot

If a voter has marked his or her ballot according to the ballot marking instructions contained on the ballot, the Board of Elections, by majority vote in public session, must *confirm* voter intent prior to remaking any ballot. The Board shall then follow the procedures for remaking the optical scan ballot contained in this directive.

Determining Voter Intent Where Voter Fails to Follow Instructions

R.C. 3506.21 authorizes a Board of Elections to determine the intent of a voter who marked his or her entire ballot contrary to the instructions contained on the ballot and remake the ballot to reflect that intent. (R.C. 3506.21(B)(1))

However, it is important to note that this statute prohibits a board from determining voter intent and remaking a ballot if the voter marked part of that ballot according to the ballot marking instructions contained on the ballot, and part of the ballot contrary to those instructions. (R.C. 3506.21(B)(2)) Under this scenario, the Board shall tabulate the ballot using the automatic tabulating equipment, which will record only the votes that the voter marked in accordance with the ballot marking instructions contained on the ballot.

Thus, in accordance with R.C. 3506.21(B)(1), if a voter did *not* mark any of the ballot according to the ballot marking instructions contained on the ballot, the Board of Elections, by majority vote in public session, must *determine* voter intent prior to remaking the optical scan ballot.

Voter intent is determined by examining the ballot for a consistently made mark contrary to voting instructions.

If a voter marks the entire ballot contrary to the instructions contained on the ballot, R. C. 3506.21(B)(1) provides the following for determining voter intent on that ballot:

(B)(1) *** any of the following marks, if a majority of those marks are made in a consistent manner throughout an optical scan ballot, shall be counted as a valid vote:

- (a) A candidate, question, or issue choice that has been circled by the voter;
- (b) An oval beside the candidate, question, or issue choice that has been circled by the voter;
- (c) An oval beside the candidate, question, or issue choice that has been marked by the voter with an "x," a check mark, or other recognizable mark;
- (d) A candidate, question, or issue choice that has been marked with a writing instrument that cannot be recognized by automatic tabulating equipment.

Once voter intent is determined by a majority of board members in public session, the Board shall then follow the procedures for remaking the optical scan ballot contained in this directive.

If Voter Intent Cannot Be Determined

If a majority of the Board members cannot agree on determining voter intent as to any choice on the ballot as provided by law, the ballot shall neither be remade nor counted.

Procedures For Remaking an Optical Scan Ballot

If the Board of Elections has determined a ballot needs to be remade because it could not be read accurately by the automatic tabulating equipment used for counting optical scan ballots, and a majority of board members has *confirmed* or *determined* voter intent in public session using the guidelines contained in this directive; the Board must abide by the following procedures:

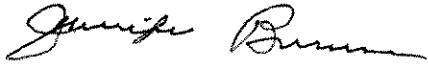
1. The Board of Elections must chose team(s) consisting of an equal number of board employees from each major political party to remake the ballots.
2. One member of the team shall read the voter's choice for a particular office or question/issue.
3. The other member shall fill in the corresponding oval or complete the appropriate arrow for the voter's choice.
4. The original ballot shall be marked with an identifying mark or code such as "OVB1" (Original Voted Ballot 1).
5. The remade ballot shall be marked with an identifying mark or code to identify this remade ballot with the original ballot such as "RB1" (Remade Ballot 1).
Note: Place the identifying mark or code in an area on the ballot that will not interfere with the tabulation process.
6. Once all the selected ballots have been properly remade, the ballots shall be tabulated.

Retention of Original and Remade Ballots

All Boards of Elections remaking any ballots under these procedures shall, after tabulation, keep both the original voted ballot and the corresponding remade ballot, attaching them together, for the duration of the applicable document retention period.

If you have questions concerning this Directive, please contact the elections attorney assigned to your county.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Brunner".

Jennifer Brunner