



JENNIFER BRUNNER
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DIRECTIVE 2007-15

September 14, 2007

TO: Counties of the 5th Congressional District:
Ashland, Crawford, Defiance, Fulton, Henry, Huron, Lucas, Mercer, Paulding, Putnam,
Sandusky, Seneca, Van Wert, Williams, Wood (most populous) and Wyandot

RE: Special Congressional Election to fill vacancy in Ohio's 5th Congressional District due to
death of U.S. Representative Paul Gillmor

- **Special Congressional Primary Election – Tuesday, November 6, 2007**
- **Special Congressional Election – Tuesday, December 11, 2007**

In accordance with R.C. 3521.03, Governor Strickland issued a Writ of Election (attached) on September 14, 2007, ordering a special congressional election be held on Tuesday, December 11, 2007, preceded by a primary election to held Tuesday, November 6, 2007, if a primary is necessary, to fill the vacancy created in Ohio's 5th Congressional District due to the death of U.S. Representative Paul Gillmor.

Therefore, the boards of elections for the 16 counties located in whole or in part in the 5th Congressional District shall conduct and hold the special election as required by the Governor's Writ of Election and this Directive.

Calendar

Accompanying, and incorporated as part of, this Directive is the 2007 Expedited Special Congressional Election Calendar. This calendar should be carefully studied, as it contains deadlines necessary to lawfully conduct the special election ordered by the Governor. The 16 boards of elections conducting these elections shall adhere to the deadlines set forth on this calendar.

Petitions

Persons seeking the nomination of the Democratic or Republican Party for representative to Congress for Ohio's 5th Congressional District shall file either:

- Form 2-E (Declaration of Candidacy - Party Primary District Office - Representative to Congress), or
- Form 13-C (Declaration of Intent to be a Write-in Candidate for Office of U.S. Senator or U.S. Representative).

Persons seeking to become independent candidates for representative to Congress for Ohio's 5th Congressional District shall file either:

- Form 3-F (Nominating Petition - District Office - Representative to Congress), or
- Form 13-C (Declaration of Intent to be a Write-in Candidate for Office of U.S. Senator or U.S. Representative).

Note: In accordance with the holding of *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006), any person seeking to be an independent candidate must be unaffiliated with either the Democratic or Republican Party. Boards of elections are advised to review Advisory 2007-05 for further clarification on this issue.

November 6, 2007 Special Congressional Primary

If any candidate files a valid and sufficient Declaration of Candidacy or Declaration of Intent to be a Write-in Candidate for nomination by the Democratic or Republican Party, then a special Congressional primary election must be held on November 6, 2007.

Ballots

The format of the November 6 special Congressional primary election ballot is as follows:

Official (name of political party) Special Congressional Primary Ballot
Special Primary Election – November 6, 2007
For Representative to Congress (5th District)
(Vote for not more than One)

The format of the December 18 special congressional election ballot is as follows:

Official Office Type Ballot
Special Congressional Election – December 11, 2007
For Representative to Congress (5th District)
(Vote for not more than One)

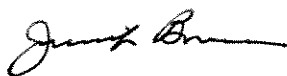
A board of elections may use paper ballots, in lieu of its normal optical scan or DRE ballots, for these elections only if the board provides at each polling location at least one voting system that is accessible for persons with disabilities. However, a board that uses paper ballots must provide detailed instructions to the voters on reviewing their ballots before casting them to ensure that they are properly marked.

Reporting Election Results

The Secretary of State's office will provide additional information regarding reporting unofficial and official results of these elections.

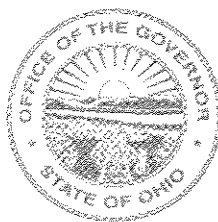
A board of elections should direct its questions concerning these special Congressional elections to Director of Elections David Farrell at (614) 466-2585.

Sincerely,



Jennifer Brunner

Attachments: Writ of Election; 2007 Expedited Special Congressional Election Calendar



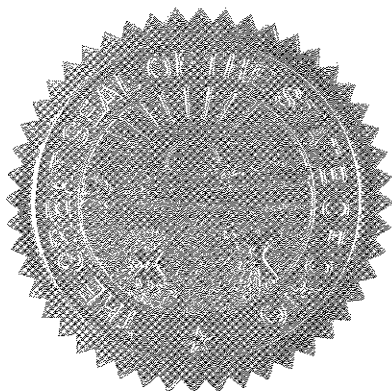
TED STRICKLAND
GOVERNOR
STATE OF OHIO

WRIT OF ELECTION

On Wednesday, September 5, 2007, I received notice of the death of Congressman Paul Gillmor, Representative for Ohio's Fifth Congressional District.

Ohio Revised Code Section 3521.03 provides that upon receipt of satisfactory information that a vacancy has occurred in the office of Representative to Congress, the Governor shall issue a writ of election directing that a special election be held to fill the vacancy. Additionally, Ohio Revised Code Section 3513.32 further provides that a primary election preceding a special election shall be held if necessary.

Accordingly, I hereby direct the Boards of Election in the Fifth Congressional District of Ohio to hold a special election on Tuesday, December 11, 2007, to fill such vacancy. Further, if necessary, the Boards shall hold a primary election preceding the special election on November 6, 2007. The Boards of Election shall provide proper notice of these elections as directed by Ohio Revised Code Section 3513.32.



Signed and issued this 14th day of September,
2007.

Ted Strickland

Ted Strickland, Governor

2007 Expedited Special Congressional Election Calendar

*To Fill a Vacancy That Occurred September 5, 2007 in the
Office of Representative to Congress – Ohio 5th Congressional District*

Issued by Ohio Secretary of State Jennifer Brunner

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| Sept. 14 | Writ issued by Governor ordering special Congressional election to be held on December 11, 2007, and a primary, if necessary, on November 6, 2007, to fill a vacancy that occurred September 5, 2007 in the office of Representative to Congress in the Ohio 5th Congressional District. |
| Sept. 28 | Declarations of Candidacy or Declarations of Intent (write-in candidates) and filing fees for partisan candidates must be filed with the Wood County Board of Elections no later than 4 p.m. (39 days before special Congressional primary). |
| Oct. 2 | Wood County Board of Elections must certify the validity and sufficiency of partisan candidates' petitions (35 days before special Congressional primary). |
| Oct. 3 | Protests against partisan candidacies, including write-in candidacies must be filed with the Wood County Board of Elections by 4 p.m. (34 days before special Congressional primary). |
| Oct. 4 | Wood County Board of Elections must certify names of candidates to the 15 other boards of elections within the 5th Congressional District (33 days before special Congressional primary). |
| Oct. 6 | Wood County Board of Elections must complete hearings on any protest of a partisan candidacy (31 days before special Congressional primary). |
| *Oct. 9 | Voter registration deadline for November 6 special primary election (30 days before Congressional primary). |
| Oct. 16 | Special Congressional Primary absentee ballots must be available for voting (21 days before special Congressional primary). |
| Oct. 23 | Boards of elections within the 5 th Congressional District must post precinct voter registration lists (14 days before special Congressional primary). |
| Oct. 26 | Deadline for political parties, or groups of five or more primary candidates, to file notice of observer appointments with the boards of elections (11 days before special Congressional primary). |
| Oct. 27 | Boards of elections must give public notice of election (10 days before special Congressional primary). |
| Nov. 5 | Nominating petitions of independent candidates or Declarations of Intent (write-in candidates) must be filed with the Wood County Board of Elections by 4 p.m. (1 day before special Congressional primary). |
| Nov. 6 | Special Congressional Primary Election (35 days before special Congressional election). |

- Nov. 8 Wood County Board of Elections must certify independent candidates' petitions (33 days before Congressional election).
- Nov. 9 Protests against independent candidates' petitions or write-in candidates must be filed with Wood County Board of Elections by 4 p.m. (32 days before special Congressional election).
- Wood County Board of Elections must certify names of all candidates for the special Congressional election to the 15 other boards of elections within the 5th Congressional District (32 days before special Congressional election).
- *Nov. 13 Voter registration deadline for special Congressional election (30 days before special Congressional election).
- Nov. 13 Deadline to complete hearings on protests filed against independent or write-in candidates (28 days before special Congressional election).
- Nov. 17 Boards of elections shall complete official canvass of special Congressional primary and certify the results to Wood County Board of Elections (11 days after special Congressional primary).
- Wood County Board of Elections announces results of official canvass (11 days after special Congressional primary election).
- Deadline to request recount of special Congressional primary election must be filed (after official canvass results announced).
- Nov. 19 Recount of special Congressional primary, if necessary (2 days after requested recount).
- Nov. 26 Absentee ballots for the special Congressional election must be available for voting (15 days before special Congressional election).
- Nov. 30 Deadline for political parties, or groups of five or more candidates, to file notice of observer appointments with the boards of elections (11 days before special Congressional election).
- Dec. 1 Boards of elections must give public notice of election (10 days before special Congressional election).
- Dec. 4 Boards of elections within the 5th Congressional District must post precinct voter registration lists (7 days before special Congressional election).
- Dec. 11 Special Congressional Election**
- Dec. 22 Boards may begin official canvass (11 days after special Congressional election).
- Dec. 31 Boards of elections shall complete official canvass of special Congressional election and certify the results to Wood County Board of Elections (20 days after special Congressional election).
- Wood County Board of Elections announces results of official canvass (20 days after special Congressional election).

*As the statutory deadline falls on a date the office of the Secretary of State and county boards of elections are closed, the deadline is extended to the next day the offices of the Secretary of State and boards of elections are open, pursuant to R. C. 1.14.

Special Congressional Election 2007

Questions and Answers

May a board of elections use DRE voting machines for the general election and also use paper ballots for the special Congressional election primary being held on the same day?

Yes. A board may use paper ballots for individuals to vote in just the primary but these ballots must meet the specifications outlined in R.C. 3505.08 and 3506.08. In addition, the quantity of ballots to be provided is governed by R.C. 3505.11. Please note, however, that under R.C. 3506.19 the board must provide at least one ADA compliant voting machine or marking device at each polling location if the board is using paper ballots.

May anyone vote on the available ADA compliant machine?

Yes. There is nothing in HAVA or the Revised Code that would prevent any voter from using an ADA compliant machine. R.C. 3506.19 simply requires that the machine be available to individuals with disabilities. The board has discretion to decide who, other than an individual with a disability, may vote on any available ADA compliant machine.

Must boards hold a primary election/create a primary ballot even if there is no candidate with opposition in the special election (i.e. only one candidate from each major political party)?

Yes. R.C. 3513.02 provides an exemption from a primary only for those offices that are designated to be voted on in an odd-numbered year. A special election for candidates for Congress does not fall within this provision because a candidate for this office is normally elected in an even-numbered year.

Are boards allowed to have “vote centers” (i.e. regional voting centers)?

It depends. R.C. 3501.18 provides for the division of a political subdivision into precincts. In theory, the Revised Code provides that if an emergency exists, a board “may provide more than one polling place in a precinct” and thus regional voting centers could be established. However, the board must comply with other statutory requirements, such as consideration of “use of the nearest public school or public building shall be used if the board determines it to be available and suitable for use as a polling place.”

Ultimately, the board must determine what is feasible under the circumstances and processes it establishes to conduct an election.

A board should also comply with the notification timeline that exists when a change of precinct or polling place occurs. (See R.C. 3501.21).

May the board send voters to vote in a neighboring county?

No. The Ohio Revised Code does not authorize that action.

May the board send all electors absentee ballots and allow them to vote by mail only?

No. The statute requires boards to send absentee ballots to individuals who apply for them. However, a board could send every elector an application for an absentee ballot. (R.C. 3509.03.) The board must, however, always provide polling places for potential provisional voters.

May the board put the special Congressional primary ballot on one DRE and use a separate DRE for the regular general ballot in the same polling location?

This situation is not covered by statute so it is within the discretion of the board to decide this matter and determine the appropriate procedures that would be necessary to implement this.

We have a limited number of voting machines. What should we do?

Under R.C. 3501.11(I), the board has discretion to allocate voting machines to polling places. If your board has lost some or all of its voting machines due to the recent flooding, please consult with the Elections Division to explore other options.

May an elector who votes an absentee ballot for the regular general election and the special Congressional primary return both of these ballots in the same envelope?

No. Each absentee ballot is election specific. R.C. 3509.04 governs the delivery of absent voter's ballots to the board and provides that each identification envelope must designate the type of ballot contained within the envelope. Thus the board of elections must provide separate absentee ballots and identification envelopes for each election, i.e., the general election and special primary; and the elector must return them to the board in their respective ID envelopes.

What happens if separate absentee ballots for the regular general election and the special Congressional primary election are returned in the same envelope?

Ultimately, both ballots would be rejected. R.C. 3509.07 provides for the rejection and challenge of absent voter ballots:

If election officials find that the statement accompanying an absent voter's ballot or absent voter's presidential ballot is insufficient, that the signatures

do not correspond with the person's registration signature, that the applicant is not a qualified elector in the precinct, ***that the ballot envelope contains more than one ballot of any one kind***, or any voted ballot that the elector is not entitled to vote, that Stub A is detached from the absent voter's ballot or absent voter's presidential ballot, or that the elector has not included with the elector's ballot any identification required under section 3509.05 or 3511.09 of the Revised Code, ***the vote shall not be accepted or counted***. The vote of any absent voter may be challenged for cause in the same manner as other votes are challenged, and the election officials shall determine the legality of that ballot. Every ballot not counted shall be endorsed on its back "Not Counted" with the reasons the ballot was not counted, and shall be enclosed and returned to or retained by the board of elections along with the contested ballots. (Emphasis added)

If an elector votes a provisional ballot for the special Congressional primary election and the regular general election, may both ballots go into the same provisional ballot envelope?

Yes. R.C. 3505.181 provides for the procedure and eligibility to cast provisional ballots. The statute is silent as to whether two provisional envelopes must be used for the same voter's provisional ballots when two different elections are being held in tandem. Ultimately, the board has discretion on this issue.

R.C. 3505.183(a) does state "when the ballot boxes are delivered to the board of elections from the precincts, the board shall separate the provisional ballot envelopes from the rest of the ballots." Thus, if two provisional ballots are in the same provisional envelope, then the board must establish a procedure to separate each of the valid provisional ballots to ensure that each ballot is tabulated in the appropriate election.

Will additional poll worker training be required beyond that planned for the general election because of the special Congressional primary and special Congressional general elections?

This situation is not covered by statute and the board has discretion to determine if additional training is necessary.

Will boards receive reimbursement for additional poll worker training it may provide because of the special Congressional primary and special Congressional general election?

No. There is no provision in statute to provide for this type of reimbursement.

Also, the board has discretion whether or not additional poll worker training needs to be provided.

What is SOS office advice concerning chargebacks related to the special Congressional general election?

Unfortunately, there is no provision in the Revised Code for chargebacks for this type of election.