

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, *ex rel.*,

THOMAS E. NIEHAUS,
President of the Ohio Senate and a member
of that body in 2006 and 2010,
Statehouse
Room #201, 2nd Floor
Columbus, Ohio 43215,

and

LOUIS W. BLESSING, JR.,
Speaker Pro Tempore of the Ohio House of
Representatives and a member of that body
in 2006 and 2010,
77 South High Street, 13th Floor
Columbus, Ohio 43215,

Relators,

vs.

JON HUSTED,
SECRETARY OF STATE OF OHIO,
180 East Broad Street
Columbus, Ohio 43215,

Respondent.

12-0639

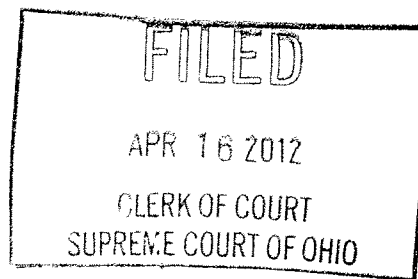
CASE NO. _____

ORIGINAL ACTION IN
MANDAMUS

COMPLAINT FOR WRIT OF MANDAMUS

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Representative Louis W. Blessing, Jr.



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CASE NO. _____

ORIGINAL ACTION IN
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This original action in mandamus is brought to compel the Secretary of State to rescind directives issued pursuant to a consent decree that changed Ohio election laws because the Ohio Secretary of State does not have authority under the Ohio Constitution to change or amend Ohio laws or to nullify the votes that Ohio legislators have made in passing those Ohio laws.

JURISDICTION

1. This Court has jurisdiction of this original action in mandamus against the Ohio Secretary of State Jon Husted pursuant to Article IV, Section 2 of the Constitution of the State of Ohio and Chapter 2731 of the Ohio Revised Code.

PARTIES

2. Article II, Section 1 of the Ohio Constitution vests the legislative power of the State of Ohio in the Ohio General Assembly. Under Section 1 of Article II, the Ohio General Assembly consists of a House of Representatives and a Senate.

3. Relator Senator Thomas E. Niehaus is President of the Ohio Senate. In 2006 and 2010, Relator Niehaus was a Senator from Ohio's 14th Senate District. Relator Niehaus voted in favor of Substitute House Bill No. 3 in the Ohio Senate in 2006. Relator Niehaus is suing in his official capacity as President of the Ohio Senate and as the Ohio Senator from the 14th Senate District.

4. Relator Representative Louis W. Blessing, Jr., is Speaker Pro Tempore of the Ohio House of Representatives and the Representative from Ohio's 29th House District. In 2006 and 2010, he was the Representative from Ohio's 29th House District. Relator Blessing voted in favor of Substitute House Bill No. 3 in the Ohio House of Representatives in 2006. Relator Blessing is suing in his official capacity as Speaker Pro Tempore of the Ohio House of Representatives, and as the Ohio Representative from the 29th House District.

5. Respondent Jon Husted is the Secretary of the State of Ohio for a four-year term of office that commenced on January 8, 2011. Ohio Rev. Code §111.01. Respondent Husted is being sued in his official capacity.

BACKGROUND

6. The Ohio Constitution outlines and controls the governing structure of the State of Ohio. The Ohio Constitution establishes a legislative branch of government (Article II), an executive department (Article III), and a judicial branch of government (Article IV). The legislative branch is the Ohio General Assembly and includes two bodies – the Ohio Senate and the Ohio House of Representatives. Each body includes representatives, like Relators, elected by the people of Ohio to represent them in fulfilling their legislative duties.

7. The executive department includes six constitutional officers elected by the people of Ohio to 4-year terms – the Governor, the Lieutenant Governor, the Secretary of State, the Auditor, the Treasurer, and the Attorney General. Each enters upon her or his office after taking an oath to support, *inter alia*, the Constitution of the state of Ohio

8. Consistent with American principles of government, there is laid out in the Ohio Constitution a separation of powers in which the authority of one branch of the government is limited and is not to infringe upon the authority given to another branch of government. This Court has consistently recognized the critical importance of that separation. *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364, 2006-Ohio-1825, 848 N.E.2d 472 ¶ 55 (“The principle of separation of powers into three coequal branches – executive, legislative, and judicial – and the checks and balances that principle ensures are now deemed fundamental to our democratic form of government”); *S. Euclid v. Jemison*, 28 Ohio St.3d 157, 158-159, 503 N.E.2d 136 (1986) (“While Ohio, unlike other jurisdictions, does not have a constitutional provision specifying the concept of separation of powers, this doctrine is implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government”).

9. Under the Ohio Constitution, the enactment of laws in Ohio is the responsibility of the Ohio General Assembly. Ohio Constitution, Art. II, §1 (“The legislative power of the state shall be vested in a General Assembly consisting of a Senate and House of Representatives but the people reserve to themselves the power to propose to the General Assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided”). A statute must pass both houses of the General Assembly and be signed by the Governor in order to have the force of law. Ohio Constitution, Article II, §§15, 16. In the event that the Governor vetoes a measure, it can be

enacted into law by being repassed with the support of 60% of each of the Senate and the House. *Id.* at §16.

10. When a statute is enacted by the Ohio General Assembly and signed by the Governor, it can be amended under the Ohio Constitution by a subsequent piece of legislation that passes both houses of the General Assembly and is signed into law by the Governor. The Constitution also sets out an alternative method by which laws passed by the Legislature can be altered. The electors of the State may, by petition, place a measure on the ballot that either proposes by initiative a new law or challenges by referendum a law that has been passed by the General Assembly. Article II, §§1b, 1c. Nowhere in the Constitution is there a provision for amendment or modification of state laws that have been passed by the General Assembly by action of the Ohio Secretary of State or any other of the Constitutional office holders in Ohio's executive department.

FACTS

11. Following the 2000 presidential election, the United States Congress passed the Help America Vote Act ("HAVA") in 2002. 42 U.S.C. §15301 *et. seq.* HAVA dealt with, among other issues, "a significant problem voters experience [which] is to arrive at a polling place believing they are eligible to vote, and then to be turned away because the election workers cannot find their names on the listed of qualified voters." H.R.Rep. 107-329 at 38 (2002). HAVA addressed this problem by requiring states to permit voters to cast a provisional ballot.

12. Provisional ballots are ballots cast by voters whose eligibility to vote is in question at the time the ballot is cast. They are designed to give to a person who presents herself or himself at a polling place on election day the opportunity to vote even if they are not eligible to vote in that election. Provisional ballots are not counted on election night.

Instead, boards of elections must determine that the voter is eligible to vote before those ballots are counted.

13. In Ohio, elections are conducted pursuant to a series of laws that have been passed over the last 200 years by the Ohio General Assembly. Those laws are codified in Title 35 of the Ohio Revised Code. They cover the full gambit of election practices including reaching the ballot, campaign practices and finances, conducting an election, counting the votes, and certifying the winner.

14. In 2006, the Ohio General Assembly enacted into law Substitute House Bill 3, which made various changes in Ohio election laws, including creating a provisional ballot system which sets forth the procedure for casting and counting provisional ballots as required by HAVA. Substitute House Bill 3 also requires voters to present certain forms of identification in order to cast a regular ballot. In the event that the voter does not have the proper form of identification, the voter is permitted to cast a provisional ballot. The bill passed each house in January of 2006, was supported by affirmative votes cast by Relators Niehaus and Blessing, was submitted to the Governor, was signed, and became law May 2, 2006.

15. The provisional ballot rules contained in Substitute House Bill 3 are codified in Ohio Rev. Code §§3505.181, 3505.182, and 3505.183.

16. Pursuant to Ohio Rev. Code §3505.181, provisional ballots cast by individuals not properly registered to vote in that precinct, not eligible to vote in that election in that precinct or whose eligibility to vote in that precinct, cannot be established based on examination of records on file with the board of elections are not eligible to be counted. Ohio Rev. Code. §§3505.181(C)(2)(a)-(c), 3505.181(E)(1). Complementary provisions requiring voting in the precinct in which the voter resides appear in §§3505.182 and 3505.183. Those

provisions are all consistent with the requirement for precinct voting found in Ohio Rev. Code §§3503.01(A) and 3599.12(A)(1).

17. There is no exception in Ohio Rev. Code §3505.181, 3505.181, or 3505.183 or elsewhere in Ohio law that permits provisional ballots cast in the wrong precinct due to poll worker error to be counted. *State ex rel. Painter v. Brunner*, 128 Ohio St.3d 17, 2011-Ohio-35, 941 N.E.2d 782, ¶¶ 34-36.

18. Ohio Rev. Code §3505.182 requires a provisional voter to complete a provisional ballot affirmation when casting a provisional ballot.

19. Ohio Rev. Code §3505.183 sets out the procedure to be used by boards of elections to process provisional ballots.

20. Ohio Rev. Code §3505.183(B)(1)(a) requires the voter's name and signature to be included in the written affirmation in order for the provisional ballot to be eligible to be counted.

21. If the individual named on the affirmation is not qualified or is not properly registered to vote, or if the individual named on the affirmation is not eligible to cast a ballot in the precinct or for the election in which the individual cast the provisional ballot, or if the individual did not provide all the information required under §3505.183(B)(1) in the affirmation that the individual executed at the time the individual cast the provisional ballot, the provisional ballot is not eligible to be counted. Ohio Rev. Code §3505.183(B)(4)(a)(i)-(iii).

22. Nothing in Ohio Rev. Code §3505.183 or elsewhere in Ohio law permits provisional ballots to be counted if the affirmation is missing the voter's printed name or signature due to poll worker error.

THE CONSENT DECREE

23. On October 24, 2006, the Northeast Ohio Coalition for the Homeless filed a lawsuit in federal court in Columbus against former Ohio Secretary of State Kenneth Blackwell challenging certain portions of Substitute House Bill 3. *Northeast Ohio Coalition for the Homeless v. Blackwell*, Case No. 2:06-cv-00896 in the U. S. District Court for the Southern District of Ohio.

24. On October 27, 2006, former Ohio Attorney General, Jim Petro, moved to intervene in the case on behalf of the State of Ohio. The District Court denied the State of Ohio's motion, the State then appealed to the Court of Appeals for the Sixth Circuit, which reversed the District Court, and the State of Ohio was granted leave to intervene on December 14, 2006.

25. The case proceeded through discovery and motion practice, and on January 11 2007, newly-elected Ohio Secretary of State Jennifer Brunner was substituted as the named Defendant in the case.

26. On April 19, 2010, plaintiffs and the Secretary of State entered into a Consent Decree (the "Consent Decree"). A copy of the Consent Decree is attached as Exhibit 1.

27. The Consent Decree prohibits boards of elections from rejecting provisional ballots submitted by a voter who uses only the last four digits of his or her social security number as identification if "the voter cast his or her provisional ballot in the wrong precinct, but in the correct polling place, for reasons attributable to poll worker error" or if "the voter did not complete or properly complete and/or sign the provisional ballot application for reasons attributable to poll worker error." *Id.*

28. The treatment to be accorded to those provisional ballots pursuant to the Consent Decree differs from the treatment required under Substitute House Bill 3 and Ohio Rev. Code §§3505.181, 3505.182, and 3505.183.

29. The Court that entered the Consent Decree did not find that any Ohio election statutes violated federal law in any way. To the contrary, the court disclaimed any such conclusion by acknowledging that: “This Decree, being entered with the consent of the parties, shall in no way constitute an adjudication or finding on the merits of Case No. 2:06-CV-896, nor be construed as an admission by the Defendants of any wrongdoing or violation of any applicable federal or state law or regulation.”

30. The Ohio General Assembly did not vote or otherwise authorize the changes to Ohio law set forth in the Consent Decree. Neither Relator Niehaus nor Relator Blessing debated or voted on the changes to Ohio law set forth in the Consent Decree.

IMPLEMENTATION OF THE CONSENT DECREE

31. Respondent Jon Husted, as Secretary of the State of Ohio, is the Chief Elections Officer of the State of Ohio. Ohio Rev. Code §3501.04. Elections are conducted by individual county boards of election, with members appointed by the Secretary of State, in each of Ohio’s 88 counties. Ohio Rev. Code §3501.06.

32. Secretary Husted has the duty to advise boards of election as to the proper methods of conducting elections, to issue instructions by directives, and to advise members of the boards as to the proper method of conducting elections. Ohio Rev. Code §3501.05(B),(C),(M). The directives that the Secretary of State issues have the force of law.

33. The power of the Secretary of State to issue directives is not unlimited as the directives must be lawful orders supported by the Revised Code. *State ex rel. Sagebiel v. Montgomery Cty. Bd. of Elections*, 144 Ohio St. 162, 166, 57 N.E.2d 661 (1944).

34. County boards of elections have the duty to perform all obligations prescribed in the rules and directives issued by the Secretary of State. Ohio Rev. Code §3501.11(P). If a member of a board of elections fails to follow a directive issued by the Secretary of State,

the Secretary of State has the power to remove that member from the board. 1930 Ohio Atty.Gen.Ops. No. 1423.

35. The Consent Decree operates by purporting to require the Secretary of State to issue directives to the boards of elections, before each primary and general election, instructing the boards to follow the terms of the Consent Decree. Exhibit 1.

36. Consistent with the terms of the Consent Decree, the Secretary of State has issued a directive before every primary and general election that has occurred since April 19, 2010. *See* Directive 2010-48 (attached as Exhibit 2); Directive 2010-73 (attached as Exhibit 3); Directive 2011-16 (Attached as Exhibit 4); Directive 2011-34 (attached as Exhibit 5). On January 20, 2012, Secretary Husted issued Directive 2012-06, which reminds boards of elections that they must comply with the Consent Decree during elections conducted in 2012. A copy of Directive 2012-06 is attached as Exhibit 6.

37. Directive 2012-06 will control any election held in the State of Ohio between now and November. It is anticipated that Secretary of State Husted will continue to comply with the Consent Decree by issuing another Directive before the general election on November 6, 2012, once more instructing boards of elections to comply with the Consent Decree.

38. Because the rules for reviewing provisional ballots that are included in the Consent Decree differ from and are inconsistent with those in Ohio Rev. Code §3505.183, Directives 2010-48, 2010-73, 2011-16, 2011-34 and 2012-06 issued by the Secretary of State requiring Boards to follow the rules in the Consent Decree are instructions to do something other than what the law of Ohio requires. In that respect, the Consent Decree operates as an amendment to the Ohio statutes.

39. Because such an amendment did not follow the constitutionally prescribed avenues for the enactment of laws in the State of Ohio, it is not valid under the Ohio Constitution.

40. The Secretary of State's agreement to enter into a Consent Decree that amends Ohio law is contrary to the authority delegated to the Secretary of State under the Ohio Constitution and violates the fundamental principles of separation of power by allowing the Secretary to intrude into the legislative function.

CAUSE OF ACTION

41. Relators incorporate by reference paragraphs 1-40 as if fully rewritten in this paragraph.

42. Relators have a clear legal right to require that the Secretary of State comply with Ohio law. *State ex rel. Skaggs v. Brunner*, 120 Ohio St.3d 506, 2008-Ohio-6333, 900 N.E.2d 982, ¶ 29 (“if the secretary of state ‘has, under the law, misdirected the members of the boards of elections as to their duties, the matter may be corrected through the remedy of mandamus.’” Quoting *State ex rel. Colvin v. Brunner*, 120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979, ¶ 20, and *State ex rel. Melvin v. Sweeney*, 154 Ohio St. 223, 226, 94 N.E.2d 785 (1950)).

43. Respondent has a clear legal duty to act consistent with Ohio's election laws, as passed by the General Assembly, in administering the election on November 6, 2012.

44. The Secretary of State's erroneous instructions contained in Directives 2010-48, 2010-73, 2011-16, 2011-34 and 2012-06, which were issued pursuant to the Consent Decree, are against the express requirements of Ohio law.

45. Inasmuch as the Secretary of State continues to impose his erroneous interpretations of these statutorily mandated requirements and inasmuch as the Board of

Elections will follow the erroneous interpretations of the Secretary of State, Relators lack an adequate remedy in the ordinary course of the law to protect their rights as legislators.

46. The Ohio General Assembly is the body in whom the legislative power of the state is vested under the Ohio Constitution. Relators Niehaus and Blessing, members of the General Assembly in 2006 and 2010, were injured when the Secretary of State entered the Consent Decree and issued directives contrary to Ohio's election laws, and, in so doing, usurped the legislative power assigned to Relators by Ohio's Constitution and statutes.

47. Relators Niehaus and Blessing, members of the General Assembly in 2006 and 2010, were also injured when the Secretary of State entered the Consent Decree and issued directives contrary to Ohio's election laws, and, in so doing, nullified the votes Relators cast in favor of Substitute House Bill 3, which enacted Ohio Revised Code §§3505.181, 3505.182, and 3505.183 in their current form.

PRAYER

Relators therefore pray that the Court:

- A. Issue a writ of mandamus compelling Respondent Secretary of State to rescind Directives 2010-48, 2010-73, 2011-16, 2011-34 and 2012-06 as an erroneous interpretation of Ohio law because the Ohio Secretary of State does not have authority under the Ohio Constitution to amend Ohio's election laws through a directive or by consenting to the entry of a consent decree, without the authorization of the general assembly, in litigation to which the Secretary is a party
- B. Issue a writ of mandamus compelling Respondent Secretary of State to issue a directive to Ohio's county boards of elections that instructs them to conduct elections in accordance with Ohio's election laws, as passed and enacted into

law by the General Assembly, rather than in accordance with prior commitments made by the Ohio Secretary of State.

C. Issue such further and other relief as the Court deems appropriate.

Respectfully submitted,

MICHAEL DeWINE
ATTORNEY GENERAL OF OHIO

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Outside Counsel for Relators

Thomas E. Niehaus

Louis W. Blessing, Jr.

AFFIDAVIT

STATE OF OHIO :
 : SS
COUNTY OF FRANKLIN :

Relator Niehaus, being duly cautioned and sworn, deposes and says that he has read the foregoing Complaint for a Writ in Mandamus and the statements contained in the Complaint, which are specifically incorporated as if completely rewritten in this Affidavit, are true based on my personal knowledge.

Thomas E. Niehaus

Sworn to and subscribed in my presence this 16th day of April, 2012.

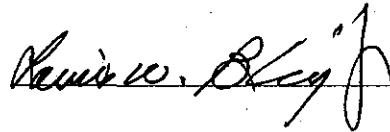
William Stuart Dornette

WILLIAM STUART DORNETTE, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date
Section 147.03 R. C.

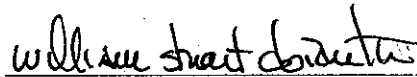
AFFIDAVIT

STATE OF OHIO :
: SS
COUNTY OF FRANKLIN :

Relator Blessing, being duly cautioned and sworn, deposes and says that he has read the foregoing Complaint for a Writ in Mandamus and the statements contained in the Complaint, which are specifically incorporated as if completely rewritten in this Affidavit, are true based on my personal knowledge.



Sworn to and subscribed in my presence this 13th day of April, 2012.



WILLIAM STUART DORNETTE, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date
Section 147.03 R. C.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

<p>THE NORTHEAST OHIO COALITION FOR THE HOMELESS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>JENNIFER BRUNNER, in her official capacity as Secretary of State of Ohio,</p> <p style="text-align: center;">Defendant.</p> <p>STATE OF OHIO</p> <p style="text-align: center;">Intervenor-Defendant</p>	<p>Case No. C2-06-896</p> <p>Judge Algenon Marbley</p>
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CONSENT DECREE

Plaintiffs Northeast Ohio Coalition for the Homeless (“NEOCH”), the Columbus Coalition for the Homeless (“CCH”), (the “Coalitions”), Kyle Wangler (“the Individual Plaintiff”) and the Service Employees International Union, Local 1199 (“SEIU”) have brought this action against Defendant Secretary of State and Intervenor-Defendant State of Ohio (collectively “Defendants”). In addition, Plaintiff-Intervenor Ohio Democratic Party has filed a Complaint in this action against the Defendants with respect to provisional ballot issues.

Plaintiffs have alleged that the Individual Plaintiff and some of the Coalitions’ members lack the identification required by the Ohio Voter ID laws to cast a regular ballot on Election Day and, further, that the Ohio Provisional Ballot Laws have been and will be applied differently and unequally by Ohio’s 88 Boards of Elections. Plaintiffs allege that they are therefore deprived of the equal protection of the laws and due process. Plaintiffs have further alleged that the Ohio Voter ID Laws impose an unlawful poll tax because the State of Ohio does not provide free State of Ohio identification cards and because homeless voters are unable to provide other acceptable forms of identification since such identification must contain proof of a current address.

The Court granted in part and denied in part the Defendants’ motion to dismiss the claims in Plaintiffs’ initial Complaint. The remaining claims in that Complaint, as well as the new claims in the Supplemental Complaint, are brought solely under federal law, namely, under the Equal Protection and Due Process Clauses of the Fourteenth Amendment and the Twenty-Fourth Amendment to the United States Constitution.

The parties, desiring that this action be settled by an appropriate Consent Decree (“Decree”) and without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. Subject to this Court’s approval of this Decree, and subject to the continuing validity of this Decree if it or its terms are challenged in any other court, the parties waive a hearing and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding among and between themselves as to the issues raised in the Plaintiffs’ Complaint and Supplemental Complaint, and the matters resolved in this Decree.

This Decree, being entered with the consent of the parties, shall in no way constitute an adjudication or finding on the merits of Case No. 2:06-CV-896, nor be construed as an admission by the Defendants of any wrongdoing or violation of any applicable federal or state law or regulation.

In resolution of this action, the parties hereby AGREE to, and the Court expressly APPROVES, ENTERS and ORDERS, the following:

I. PURPOSES OF THIS DECREE

1. The purposes of this Decree are to ensure that:
 - a. The fundamental right to vote is fully protected for registered and qualified voters who lack the identification required by the Ohio Voter ID Laws, including indigent and homeless voters—such as the Individual Plaintiffs and certain members of the Coalitions—who do not have a current address and cannot readily purchase a State of Ohio ID Card;
 - b. These voters are not required to purchase identification as a condition to exercising their fundamental right to vote and have their vote be counted;
 - c. The legal votes cast by these voters will be counted even if they are cast by provisional ballot on Election Day;
 - d. These voters will not be deprived of their fundamental right to vote because of differing interpretations and applications of the Provisional Ballot Laws by Ohio’s 88 Boards of Elections;
 - e. These voters will not be deprived of their fundamental right to vote because of failures by poll workers to follow Ohio law. For purposes of this Decree poll worker error will not be presumed, but must be demonstrated through evidence; and
 - f. All legal votes that are cast by indigent and homeless voters on Election Day will be counted.

II. PARTIES BOUND BY DECREE.

2. This Order shall be binding upon the Defendants and their employees, agents and representatives. The Secretary of State will issue Directives to the Boards of Elections to follow this Decree, and will use her best efforts to enforce the Decree and all related Directives if put on notice of any alleged violations.
3. The parties recognize that Article VI, Clause 2 of the United States Constitution provides that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

III. GENERAL INJUNCTIVE RELIEF.

4. The Court ADOPTS and annexes hereafter Directive 2008-80 as an Order of this Court.
5. Defendant Secretary of State, her agents, employees and representatives will instruct Ohio’s county Boards of Elections to adhere to the following rules regarding the casting and counting of provisional ballots for persons without identification other than a social security number:
 - a. Boards of Elections must count the provisional ballot cast by a voter using only the last four digits of his or her social security number as identification if all of the following conditions are met:
 - i. The individual who cast the provisional ballot is registered to vote;
 - ii. The individual is eligible to cast a ballot in the precinct and for the election in which the individual cast the provisional ballot;
 - iii. The provisional ballot affirmation includes a statement that the individual is registered to vote in the precinct in which the provisional ballot was cast and a statement that the individual is eligible to vote in the election in which the provisional ballot was cast;
 - iv. The individual’s name and signature appear in the correct place on the provisional ballot affirmation form, unless the voter declined to execute the affirmation and the poll workers complied with their statutory duties under R.C. 3505.182 and R.C. 3505.181(B)(6) when a voter declines to execute the affirmation;
 - v. The signature of the voter substantially conforms to the signature contained in the Board of Election’s records for that voter;

- vi. The provisional ballot affirmation includes the last four digits of that voter's social security number, which is not found to be invalid;
 - vii. The individual's right to vote was not successfully challenged;
 - viii. The individual did not already cast a ballot for the election in which the individual cast the provisional ballot; and
 - ix. Pursuant to R.C. 3505.183(B)(2), the Board of Elections determines that, in addition to the information included on the affirmation, there is no additional information for determining ballot validity provided by the provisional voter or to the Board of Elections during the ten days after the day of the election that casts doubt on the validity of the ballot or the individual's eligibility to vote.
- b. Boards of Elections may not reject a provisional ballot cast by a voter, who uses only the last four digits of his or her social security number as identification, for any of the following reasons:
- i. The voter provided the last four digits of a Social Security Number but did not provide a current driver's license, state issued identification, or other document which serves as identification under Ohio law;
 - ii. The voter did not provide a date of birth;
 - iii. The voter did not provide an address that is tied to a house, apartment or other dwelling provided that the voter indicated that he or she resides at a non-building location, including but not limited to a street corner, alley or highway overpass located in the precinct in which the voter seeks to cast a ballot and that the non-building location qualifies as the individual's voting residence under R.C. 3503.02;
 - iv. The voter indicated that he or she is homeless;
 - v. The voter cast his or her provisional ballot in the wrong precinct, but in the correct polling place, for reasons attributable to poll worker error;
 - vi. The voter did not complete or properly complete and/or sign the provisional ballot application for reasons attributable to poll worker error; or
 - vii. The poll worker did not complete or properly complete and/or sign the provisional ballot application witness line and/or the

provisional ballot affirmation form, except for reasons permitted by the governing statutes.

- c. Boards of Elections must observe the following rules regarding the delegation of processing provisional ballots, and determining their validity, to board staff:
 - i. Ultimately, the members of Boards of Elections must determine the validity of all votes cast in an election and must certify the results of all elections. However, nothing in Ohio law requires that the members of a Board of Elections must personally complete all tasks associated with preparing for that certification.
 - ii. Thus, Boards of Elections may, under a policy adopted by the Board, delegate the processing and some aspects of counting provisional ballots to board staff. Such processing must be done in bipartisan teams.
 - iii. If a Board of Elections delegates the processing of provisional ballots, it must first adopt a policy setting forth procedures for the processing of provisional ballots. Under that policy, board staff responsible for processing provisional ballots must make a recommendation to the Board as to the eligibility of each provisional ballot cast in the county, either on an individual basis, or as to groups or categories of similarly situated provisional ballots.
 - iv. Ultimately, the members of Board of Elections must determine the eligibility or ineligibility of all provisional ballots cast within the county in accordance with Ohio law. Boards may not delegate this task.
 - v. Each Board of Elections must then cause the ballots to be counted by board staff, and must include the tabulation of that count in its official canvass of the election results and, to the extent required, its certification of the election results to the Secretary of State.

IV. IMPLEMENTATION.

6. Defendant Secretary of State shall issue a Directive to all Boards of Elections that sets forth the text of the injunctive relief described above.
7. Before every primary and general election, Defendant Secretary of State shall remind Boards of Elections that they must comply with the injunctive relief described above and shall distribute the text of the injunctive relief to all Board Members, Directors and Deputy Directors.

8. In every location where provisional ballots are processed after an election, Boards of Elections shall post a notice in a conspicuous place that contains the text of the injunctive relief described above in large, capitalized and bolded type.

V. CONTINUING VALIDITY.

9. This Decree shall remain in effect until June 30, 2013.
10. If the State of Ohio repeals or amends any portion of the Ohio Voter ID Laws or Provisional Ballot Laws that are identified in the Complaint, Defendant Secretary of State shall file a notice with the Court within 30 days of passage of the law regarding such changes. Those changes in Ohio law will supersede this consent decree and this decree will be automatically amended by operation of law to include those statutory changes.
11. Any of the parties may file a motion with the Court to modify, extend or terminate this Decree for good cause shown.

VI. MISCELLANEOUS PROVISIONS.

12. Within sixty (60) days after entry of this Decree, Defendant Secretary of State shall pay to counsel for Plaintiffs the attorneys' fees that were previously awarded by this Court, as follows: \$321,942.15.51 to Porter Wright Morris & Arthur LLP, \$99,722.58 to Carlile Patchen & Murphy LLP, and \$82,749.38 to The Chandra Law Firm, LLC.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

180 EAST BROAD STREET, 16TH FLOOR
COLUMBUS, OHIO 43215 USA
TEL: 1-877-767-6446 FAX: 1-614-644-0649
WWW.SOS.STATE.OH.US

DIRECTIVE 2010-48 **Issued Pursuant to Court Order**
April 27, 2010

To: All County Boards of Elections
RE: Directive Issued Pursuant to Court Order

In October 2006, the Northeast Ohio Coalition for the Homeless and other plaintiffs filed a lawsuit in federal court challenging Ohio's identification and provisional ballot laws enacted as part of H.B. 3 in 2006. In 2008, additional litigation occurred in the case regarding provisional ballots and the right of Ohioans who lack permanent addresses to vote. The parties reached a settlement in the case, and on April 19, 2010, the U.S. District Court for the Southern District of Ohio issued a consent decree that is effective until June 30, 2013. A copy of the consent decree is attached to this directive.

The consent decree reiterates several provisions of existing Ohio election law:

- An Ohio elector who lacks identification may vote a provisional ballot using the last four digits of his/her social security number. R.C. 3505.181(A)(2) specifically permits an individual who lacks identification to vote a provisional ballot using the last four digits of his/her social security number only. Such an individual does not have to show the poll worker his/her social security card. Moreover, under R.C. 3505.181(B)(8), an individual who votes a provisional ballot and provides the last four digits of his/her social security number **is not required** to take any additional steps or to provide additional information to the board of elections in the ten days after the election in order for the provisional ballot to be counted.
- Ohioans who do not have a traditional address based upon a building (such as an address with a street name and number) still may register and vote.

The consent decree incorporates Directive 2008-80 (Voter Identification Requirements) as an order of the court.

The consent decree states that an individual voting a provisional ballot using the last four digits of his/her social security number may not be deprived of the fundamental right to vote because of a failure of a poll worker to follow Ohio law. However, poll worker error will not be presumed and must be demonstrated through evidence.

The consent decree also requires boards of elections that delegate the processing of provisional ballots to board staff to adopt a policy setting forth the procedures for processing provisional

ballots. An example of a policy for processing provisional ballots that a board of elections might adopt is the process provided in Directive 2008-101.

The Secretary of State shall issue a directive providing the text of the injunctive relief granted, shall remind boards of elections before every primary and general election that they must comply with the injunctive relief, and shall distribute the text of the injunctive relief to all board of election members, directors, and deputy directors.

Finally, each board of elections must post a notice in a conspicuous place in every location in which provisional ballots are processed after an election that contains the text of the injunctive relief granted. The Secretary of State's office has produced a notice poster that complies with the court order and will deliver a copy of the notice poster to every board of elections following the issuance of this directive.

The injunctive relief adopted by the court in the consent decree is as follows:

III. GENERAL INJUNCTIVE RELIEF.


1. The Court ADOPTS and annexes hereafter Directive 2008-80 as an Order of this Court.
2. Defendant Secretary of State, her agents, employees and representatives will instruct Ohio's county Boards of Elections to adhere to the following rules regarding the casting and counting of provisional ballots for persons without identification other than a social security number:
 - a. Boards of Elections must count the provisional ballot cast by a voter using only the last four digits of his or her social security number as identification if all of the following conditions are met:
 - i. The individual who cast the provisional ballot is registered to vote;
 - ii. The individual is eligible to cast a ballot in the precinct and for the election in which the individual cast the provisional ballot;
 - iii. The provisional ballot affirmation includes a statement that the individual is registered to vote in the precinct in which the provisional ballot was cast and a statement that the individual is eligible to vote in the election in which the provisional ballot was cast;
 - iv. The individual's name and signature appear in the correct place on the provisional ballot affirmation form, unless the voter declined to execute the affirmation and the poll workers complied with their statutory duties under R.C. 3505.182 and R.C. 3505.181(B)(6) when a voter declines to execute the affirmation;
 - v. The signature of the voter substantially conforms to the signature contained in the Board of Election's records for that voter;

- vi. The provisional ballot affirmation includes the last four digits of that voter's social security number, which is not found to be invalid;
 - vii. The individual's right to vote was not successfully challenged;
 - viii. The individual did not already cast a ballot for the election in which the individual cast the provisional ballot; and
 - ix. Pursuant to R.C. 3505.183(B)(2), the Board of Elections determines that, in addition to the information included on the affirmation, there is no additional information for determining ballot validity provided by the provisional voter or to the Board of Elections during the ten days after the day of the election that casts doubt on the validity of the ballot or the individual's eligibility to vote.
- b. Boards of Elections may not reject a provisional ballot cast by a voter, who uses only the last four digits of his or her social security number as identification, for any of the following reasons:
- i. The voter provided the last four digits of a Social Security Number but did not provide a current driver's license, state issued identification, or other document which serves as identification under Ohio law;
 - ii. The voter did not provide a date of birth;
 - iii. The voter did not provide an address that is tied to a house, apartment or other dwelling provided that the voter indicated that he or she resides at a non-building location, including but not limited to a street corner, alley or highway overpass located in the precinct in which the voter seeks to cast a ballot and that the non-building location qualifies as the individual's voting residence under R.C. 3503.02;
 - iv. The voter indicated that he or she is homeless;
 - v. The voter cast his or her provisional ballot in the wrong precinct, but in the correct polling place, for reasons attributable to poll worker error;
 - vi. The voter did not complete or properly complete and/or sign the provisional ballot application for reasons attributable to poll worker error; or
 - vii. The poll worker did not complete or properly complete and/or sign the provisional ballot application witness line and/or the provisional ballot affirmation form, except for reasons permitted by the governing statutes.

- c. Boards of Elections must observe the following rules regarding the delegation of processing provisional ballots, and determining their validity, to board staff:
- i. Ultimately, the members of Boards of Elections must determine the validity of all votes cast in an election and must certify the results of all elections. However, nothing in Ohio law requires that the members of a Board of Elections must personally complete all tasks associated with preparing for that certification.
 - ii. Thus, Boards of Elections may, under a policy adopted by the Board, delegate the processing and some aspects of counting provisional ballots to board staff. Such processing must be done in bipartisan teams.
 - iii. If a Board of Elections delegates the processing of provisional ballots, it must first adopt a policy setting forth procedures for the processing of provisional ballots. Under that policy, board staff responsible for processing provisional ballots must make a recommendation to the Board as to the eligibility of each provisional ballot cast in the county, either on an individual basis, or as to groups or categories of similarly situated provisional ballots.
 - iv. Ultimately, the members of Board of Elections must determine the eligibility or ineligibility of all provisional ballots cast within the county in accordance with Ohio law. Boards may not delegate this task.
 - v. Each Board of Elections must then cause the ballots to be counted by board staff, and must include the tabulation of that count in its official canvass of the election results and, to the extent required, its certification of the election results to the Secretary of State.

If you have questions about this directive or the consent decree, please contact the elections attorney assigned to your county at 614-466-2585.

Sincerely,



Michael Rankin
Assistant Secretary of State

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

<p>THE NORTHEAST OHIO COALITION FOR THE HOMELESS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>JENNIFER BRUNNER, in her official capacity as Secretary of State of Ohio,</p> <p style="text-align: center;">Defendant.</p> <p>STATE OF OHIO</p> <p style="text-align: center;">Intervenor-Defendant</p>	<p>Case No. C2-06-896</p> <p>Judge Algenon Marbley</p>
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CONSENT DECREE

Plaintiffs Northeast Ohio Coalition for the Homeless (“NEOCH”), the Columbus Coalition for the Homeless (“CCH”), (the “Coalitions”), Kyle Wangler (“the Individual Plaintiff”) and the Service Employees International Union, Local 1199 (“SEIU”) have brought this action against Defendant Secretary of State and Intervenor-Defendant State of Ohio (collectively “Defendants”). In addition, Plaintiff-Intervenor Ohio Democratic Party has filed a Complaint in this action against the Defendants with respect to provisional ballot issues.

Plaintiffs have alleged that the Individual Plaintiff and some of the Coalitions’ members lack the identification required by the Ohio Voter ID laws to cast a regular ballot on Election Day and, further, that the Ohio Provisional Ballot Laws have been and will be applied differently and unequally by Ohio’s 88 Boards of Elections. Plaintiffs allege that they are therefore deprived of the equal protection of the laws and due process. Plaintiffs have further alleged that the Ohio Voter ID Laws impose an unlawful poll tax because the State of Ohio does not provide free State of Ohio identification cards and because homeless voters are unable to provide other acceptable forms of identification since such identification must contain proof of a current address.

The Court granted in part and denied in part the Defendants’ motion to dismiss the claims in Plaintiffs’ initial Complaint. The remaining claims in that Complaint, as well as the new claims in the Supplemental Complaint, are brought solely under federal law, namely, under the Equal Protection and Due Process Clauses of the Fourteenth Amendment and the Twenty-Fourth Amendment to the United States Constitution.

The parties, desiring that this action be settled by an appropriate Consent Decree (“Decree”) and without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. Subject to this Court’s approval of this Decree, and subject to the continuing validity of this Decree if it or its terms are challenged in any other court, the parties waive a hearing and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding among and between themselves as to the issues raised in the Plaintiffs’ Complaint and Supplemental Complaint, and the matters resolved in this Decree.

This Decree, being entered with the consent of the parties, shall in no way constitute an adjudication or finding on the merits of Case No. 2:06-CV-896, nor be construed as an admission by the Defendants of any wrongdoing or violation of any applicable federal or state law or regulation.

In resolution of this action, the parties hereby AGREE to, and the Court expressly APPROVES, ENTERS and ORDERS, the following:

I. PURPOSES OF THIS DECREE

1. The purposes of this Decree are to ensure that:
 - a. The fundamental right to vote is fully protected for registered and qualified voters who lack the identification required by the Ohio Voter ID Laws, including indigent and homeless voters—such as the Individual Plaintiffs and certain members of the Coalitions—who do not have a current address and cannot readily purchase a State of Ohio ID Card;
 - b. These voters are not required to purchase identification as a condition to exercising their fundamental right to vote and have their vote be counted;
 - c. The legal votes cast by these voters will be counted even if they are cast by provisional ballot on Election Day;
 - d. These voters will not be deprived of their fundamental right to vote because of differing interpretations and applications of the Provisional Ballot Laws by Ohio’s 88 Boards of Elections;
 - e. These voters will not be deprived of their fundamental right to vote because of failures by poll workers to follow Ohio law. For purposes of this Decree poll worker error will not be presumed, but must be demonstrated through evidence; and
 - f. All legal votes that are cast by indigent and homeless voters on Election Day will be counted.

II. PARTIES BOUND BY DECREE.

2. This Order shall be binding upon the Defendants and their employees, agents and representatives. The Secretary of State will issue Directives to the Boards of Elections to follow this Decree, and will use her best efforts to enforce the Decree and all related Directives if put on notice of any alleged violations.
3. The parties recognize that Article VI, Clause 2 of the United States Constitution provides that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

III. GENERAL INJUNCTIVE RELIEF.

4. The Court ADOPTS and annexes hereafter Directive 2008-80 as an Order of this Court.
5. Defendant Secretary of State, her agents, employees and representatives will instruct Ohio’s county Boards of Elections to adhere to the following rules regarding the casting and counting of provisional ballots for persons without identification other than a social security number:
 - a. Boards of Elections must count the provisional ballot cast by a voter using only the last four digits of his or her social security number as identification if all of the following conditions are met:
 - i. The individual who cast the provisional ballot is registered to vote;
 - ii. The individual is eligible to cast a ballot in the precinct and for the election in which the individual cast the provisional ballot;
 - iii. The provisional ballot affirmation includes a statement that the individual is registered to vote in the precinct in which the provisional ballot was cast and a statement that the individual is eligible to vote in the election in which the provisional ballot was cast;
 - iv. The individual’s name and signature appear in the correct place on the provisional ballot affirmation form, unless the voter declined to execute the affirmation and the poll workers complied with their statutory duties under R.C. 3505.182 and R.C. 3505.181(B)(6) when a voter declines to execute the affirmation;
 - v. The signature of the voter substantially conforms to the signature contained in the Board of Election’s records for that voter;

- vi. The provisional ballot affirmation includes the last four digits of that voter's social security number, which is not found to be invalid;
 - vii. The individual's right to vote was not successfully challenged;
 - viii. The individual did not already cast a ballot for the election in which the individual cast the provisional ballot; and
 - ix. Pursuant to R.C. 3505.183(B)(2), the Board of Elections determines that, in addition to the information included on the affirmation, there is no additional information for determining ballot validity provided by the provisional voter or to the Board of Elections during the ten days after the day of the election that casts doubt on the validity of the ballot or the individual's eligibility to vote.
- b. Boards of Elections may not reject a provisional ballot cast by a voter, who uses only the last four digits of his or her social security number as identification, for any of the following reasons:
- i. The voter provided the last four digits of a Social Security Number but did not provide a current driver's license, state issued identification, or other document which serves as identification under Ohio law;
 - ii. The voter did not provide a date of birth;
 - iii. The voter did not provide an address that is tied to a house, apartment or other dwelling provided that the voter indicated that he or she resides at a non-building location, including but not limited to a street corner, alley or highway overpass located in the precinct in which the voter seeks to cast a ballot and that the non-building location qualifies as the individual's voting residence under R.C. 3503.02;
 - iv. The voter indicated that he or she is homeless;
 - v. The voter cast his or her provisional ballot in the wrong precinct, but in the correct polling place, for reasons attributable to poll worker error;
 - vi. The voter did not complete or properly complete and/or sign the provisional ballot application for reasons attributable to poll worker error; or
 - vii. The poll worker did not complete or properly complete and/or sign the provisional ballot application witness line and/or the

provisional ballot affirmation form, except for reasons permitted by the governing statutes.

- c. Boards of Elections must observe the following rules regarding the delegation of processing provisional ballots, and determining their validity, to board staff:
 - i. Ultimately, the members of Boards of Elections must determine the validity of all votes cast in an election and must certify the results of all elections. However, nothing in Ohio law requires that the members of a Board of Elections must personally complete all tasks associated with preparing for that certification.
 - ii. Thus, Boards of Elections may, under a policy adopted by the Board, delegate the processing and some aspects of counting provisional ballots to board staff. Such processing must be done in bipartisan teams.
 - iii. If a Board of Elections delegates the processing of provisional ballots, it must first adopt a policy setting forth procedures for the processing of provisional ballots. Under that policy, board staff responsible for processing provisional ballots must make a recommendation to the Board as to the eligibility of each provisional ballot cast in the county, either on an individual basis, or as to groups or categories of similarly situated provisional ballots.
 - iv. Ultimately, the members of Board of Elections must determine the eligibility or ineligibility of all provisional ballots cast within the county in accordance with Ohio law. Boards may not delegate this task.
 - v. Each Board of Elections must then cause the ballots to be counted by board staff, and must include the tabulation of that count in its official canvass of the election results and, to the extent required, its certification of the election results to the Secretary of State.

IV. IMPLEMENTATION.

6. Defendant Secretary of State shall issue a Directive to all Boards of Elections that sets forth the text of the injunctive relief described above.
7. Before every primary and general election, Defendant Secretary of State shall remind Boards of Elections that they must comply with the injunctive relief described above and shall distribute the text of the injunctive relief to all Board Members, Directors and Deputy Directors.

8. In every location where provisional ballots are processed after an election, Boards of Elections shall post a notice in a conspicuous place that contains the text of the injunctive relief described above in large, capitalized and bolded type.

V. CONTINUING VALIDITY.

9. This Decree shall remain in effect until June 30, 2013.
10. If the State of Ohio repeals or amends any portion of the Ohio Voter ID Laws or Provisional Ballot Laws that are identified in the Complaint, Defendant Secretary of State shall file a notice with the Court within 30 days of passage of the law regarding such changes. Those changes in Ohio law will supersede this consent decree and this decree will be automatically amended by operation of law to include those statutory changes.
11. Any of the parties may file a motion with the Court to modify, extend or terminate this Decree for good cause shown.

VI. MISCELLANEOUS PROVISIONS.

12. Within sixty (60) days after entry of this Decree, Defendant Secretary of State shall pay to counsel for Plaintiffs the attorneys' fees that were previously awarded by this Court, as follows: \$321,942.15.51 to Porter Wright Morris & Arthur LLP, \$99,722.58 to Carlile Patchen & Murphy LLP, and \$82,749.38 to The Chandra Law Firm, LLC.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

NOTICE ISSUED PURSUANT TO DIRECTIVE 2010-48 AND COURT ORDER

III. GENERAL INJUNCTIVE RELIEF.

1. THE COURT ADOPTS AND ANNEXES HEREAFTER DIRECTIVE 2008-80 AS AN ORDER OF THIS COURT.
2. DEFENDANT SECRETARY OF STATE, HER AGENTS, EMPLOYEES AND REPRESENTATIVES WILL INSTRUCT OHIO'S COUNTY BOARDS OF ELECTIONS TO ADHERE TO THE FOLLOWING RULES REGARDING THE CASTING AND COUNTING OF PROVISIONAL BALLOTS FOR PERSONS WITHOUT IDENTIFICATION OTHER THAN A SOCIAL SECURITY NUMBER:
 - a. BOARDS OF ELECTIONS MUST COUNT THE PROVISIONAL BALLOT CAST BY A VOTER USING ONLY THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER AS IDENTIFICATION IF ALL OF THE FOLLOWING CONDITIONS ARE MET:
 - i. THE INDIVIDUAL WHO CAST THE PROVISIONAL BALLOT IS REGISTERED TO VOTE;
 - ii. THE INDIVIDUAL IS ELIGIBLE TO CAST A BALLOT IN THE PRECINCT AND FOR THE ELECTION IN WHICH THE INDIVIDUAL CAST THE PROVISIONAL BALLOT;
 - iii. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES A STATEMENT THAT THE INDIVIDUAL IS REGISTERED TO VOTE IN THE PRECINCT IN WHICH THE PROVISIONAL BALLOT WAS CAST AND A STATEMENT THAT THE INDIVIDUAL IS ELIGIBLE TO VOTE IN THE ELECTION IN WHICH THE PROVISIONAL BALLOT WAS CAST;
 - iv. THE INDIVIDUAL'S NAME AND SIGNATURE APPEAR IN THE CORRECT PLACE ON THE PROVISIONAL BALLOT AFFIRMATION FORM, UNLESS THE VOTER DECLINED TO EXECUTE THE AFFIRMATION AND THE POLL WORKERS COMPLIED WITH THEIR STATUTORY DUTIES UNDER R.C. 3505.182 AND R.C. 3505.181(B)(6) WHEN A VOTER DECLINES TO EXECUTE THE AFFIRMATION;
 - v. THE SIGNATURE OF THE VOTER SUBSTANTIALLY CONFORMS TO THE SIGNATURE CONTAINED IN THE BOARD OF ELECTION'S RECORDS FOR THAT VOTER;
 - vi. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES THE LAST FOUR DIGITS OF THAT VOTER'S SOCIAL SECURITY NUMBER, WHICH IS NOT FOUND TO BE INVALID;
 - vii. THE INDIVIDUAL'S RIGHT TO VOTE WAS NOT SUCCESSFULLY CHALLENGED;
 - viii. THE INDIVIDUAL DID NOT ALREADY CAST A BALLOT FOR THE ELECTION IN WHICH THE INDIVIDUAL CAST THE PROVISIONAL BALLOT; AND
 - ix. PURSUANT TO R.C. 3505.183(B)(2), THE BOARD OF ELECTIONS DETERMINES THAT, IN ADDITION TO THE INFORMATION INCLUDED ON THE AFFIRMATION, THERE IS NO ADDITIONAL INFORMATION FOR DETERMINING BALLOT VALIDITY PROVIDED BY THE PROVISIONAL VOTER OR TO THE BOARD OF ELECTIONS DURING THE TEN DAYS AFTER THE DAY OF THE ELECTION THAT CASTS DOUBT ON THE VALIDITY OF THE BALLOT OR THE INDIVIDUAL'S ELIGIBILITY TO VOTE.
 - b. BOARDS OF ELECTIONS MAY NOT REJECT A PROVISIONAL BALLOT CAST BY A VOTER, WHO USES ONLY THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER AS IDENTIFICATION, FOR ANY OF THE FOLLOWING REASONS:
 - i. THE VOTER PROVIDED THE LAST FOUR DIGITS OF A SOCIAL SECURITY NUMBER BUT DID NOT PROVIDE A CURRENT DRIVER'S LICENSE, STATE ISSUED IDENTIFICATION, OR OTHER DOCUMENT WHICH SERVES AS IDENTIFICATION UNDER OHIO LAW;
 - ii. THE VOTER DID NOT PROVIDE A DATE OF BIRTH;
 - iii. THE VOTER DID NOT PROVIDE AN ADDRESS THAT IS TIED TO A HOUSE, APARTMENT OR OTHER DWELLING PROVIDED THAT THE VOTER INDICATED THAT HE OR SHE RESIDES AT A NON-BUILDING LOCATION, INCLUDING BUT NOT LIMITED TO A STREET CORNER, ALLEY OR HIGHWAY OVERPASS LOCATED IN THE PRECINCT IN WHICH THE VOTER SEEKS TO CAST A BALLOT AND THAT THE NON-BUILDING LOCATION QUALIFIES AS THE INDIVIDUAL'S VOTING RESIDENCE UNDER R.C. 3503.02;
 - iv. THE VOTER INDICATED THAT HE OR SHE IS HOMELESS;
 - v. THE VOTER CAST HIS OR HER PROVISIONAL BALLOT IN THE WRONG PRECINCT, BUT IN THE CORRECT POLLING PLACE, FOR REASONS ATTRIBUTABLE TO POLL WORKER ERROR;
 - vi. THE VOTER DID NOT COMPLETE OR PROPERLY COMPLETE AND/OR SIGN THE PROVISIONAL BALLOT APPLICATION FOR REASONS ATTRIBUTABLE TO POLL WORKER ERROR; OR
 - vii. THE POLL WORKER DID NOT COMPLETE OR PROPERLY COMPLETE AND/OR SIGN THE PROVISIONAL BALLOT APPLICATION WITNESS LINE AND/OR THE PROVISIONAL BALLOT AFFIRMATION FORM, EXCEPT FOR REASONS PERMITTED BY THE GOVERNING STATUTES.
 - c. BOARDS OF ELECTIONS MUST OBSERVE THE FOLLOWING RULES REGARDING THE DELEGATION OF PROCESSING PROVISIONAL BALLOTS, AND DETERMINING THEIR VALIDITY, TO BOARD STAFF:
 - i. ULTIMATELY, THE MEMBERS OF BOARDS OF ELECTIONS MUST DETERMINE THE VALIDITY OF ALL VOTES CAST IN AN ELECTION AND MUST CERTIFY THE RESULTS OF ALL ELECTIONS. HOWEVER, NOTHING IN OHIO LAW REQUIRES THAT THE MEMBERS OF A BOARD OF ELECTIONS MUST PERSONALLY COMPLETE ALL TASKS ASSOCIATED WITH PREPARING FOR THAT CERTIFICATION.
 - ii. THUS, BOARDS OF ELECTIONS MAY, UNDER A POLICY ADOPTED BY THE BOARD, DELEGATE THE PROCESSING AND SOME ASPECTS OF COUNTING PROVISIONAL BALLOTS TO BOARD STAFF. SUCH PROCESSING MUST BE DONE IN BIPARTISAN TEAMS.
 - iii. IF A BOARD OF ELECTIONS DELEGATES THE PROCESSING OF PROVISIONAL BALLOTS, IT MUST FIRST ADOPT A POLICY SETTING FORTH PROCEDURES FOR THE PROCESSING OF PROVISIONAL BALLOTS. UNDER THAT POLICY, BOARD STAFF RESPONSIBLE FOR PROCESSING PROVISIONAL BALLOTS MUST MAKE A RECOMMENDATION TO THE BOARD AS TO THE ELIGIBILITY OF EACH PROVISIONAL BALLOT CAST IN THE COUNTY, EITHER ON AN INDIVIDUAL BASIS, OR AS TO GROUPS OR CATEGORIES OF SIMILARLY SITUATED PROVISIONAL BALLOTS.
 - iv. ULTIMATELY, THE MEMBERS OF BOARD OF ELECTIONS MUST DETERMINE THE ELIGIBILITY OR INELIGIBILITY OF ALL PROVISIONAL BALLOTS CAST WITHIN THE COUNTY IN ACCORDANCE WITH OHIO LAW. BOARDS MAY NOT DELEGATE THIS TASK.
 - v. EACH BOARD OF ELECTIONS MUST THEN CAUSE THE BALLOTS TO BE COUNTED BY BOARD STAFF, AND MUST INCLUDE THE TABULATION OF THAT COUNT IN ITS OFFICIAL CANVASS OF THE ELECTION RESULTS AND, TO THE EXTENT REQUIRED, ITS CERTIFICATION OF THE ELECTION RESULTS TO THE SECRETARY OF STATE.



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

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COLUMBUS, OHIO 43215 USA
TEL: 1-877-767-6446 FAX: 1-614-644-0649
WWW.SOS.STATE.OH.US

DIRECTIVE 2010-73 (Issued Pursuant to Court Order)

November 1, 2010

To: All County Boards of Elections
Re: Directive Issued Pursuant to Court Order

Directive 2010-48 informed boards of elections of the settlement reached in a federal lawsuit filed by the Northeast Ohio Coalition for the Homeless and other plaintiffs challenging Ohio's identification and provisional ballot laws and the right of Ohioans who lack permanent addresses to vote. The parties reached a settlement in the case, and on April 19, 2010, the U.S. District Court for the Southern District of Ohio issued a consent decree that is effective until June 30, 2013.

The consent decree requires the Secretary of State to issue a directive before every primary and general election instructing boards of election to comply with the injunctive relief and requires the Secretary of State to distribute the text of the injunctive relief to all board of election members, directors and deputy directors.

The consent decree reiterates several provisions of existing Ohio election law:

- An Ohio elector who lacks identification may vote a provisional ballot using the last four digits of his/her social security number. R.C. 3505.181(A)(2) specifically permits an individual who lacks identification to vote a provisional ballot using the last four digits of his/her social security number only. Such an individual does not have to show the poll worker his/her social security card. Moreover, under R.C. 3505.181(B)(8), an individual who votes a provisional ballot and provides the last four digits of his/her social security number **is not required** to take any additional steps or to provide additional information to the board of elections in the ten days after the election in order for the provisional ballot to be counted.
- Ohioans who do not have a traditional address based upon a building (such as an address with a street name and number) still may register and vote.

The consent decree incorporates Directive 2008-80 (Voter Identification Requirements) as an order of the court.

The consent decree provides that an individual voting a provisional ballot using the last four digits of his/her social security number may not be deprived of the fundamental right to vote because of a failure of a poll worker to follow Ohio law. However, poll worker error will not be presumed and must be demonstrated through evidence.

The consent decree also requires boards of elections that delegate the processing of provisional ballots to board staff to adopt a policy setting forth the procedures for processing provisional ballots. An example of a policy for processing provisional ballots that a board of elections may consider adopting is the process provided in Directive 2010-74.

Each board of elections must post a notice in a conspicuous place in every location in which provisional ballots are processed after an election that contains the text of the injunctive relief granted. The Secretary of State's office has produced and previously distributed a notice poster that complies with the court order which was provided to each county board of elections prior to the May primary election. In addition, the poster is available on the BOE Extranet for downloading and printing.

The injunctive relief adopted by the court in the consent decree is as follows:

III. GENERAL INJUNCTIVE RELIEF.

1. The Court ADOPTS and annexes hereafter Directive 2008-80 as an Order of this Court.
2. Defendant Secretary of State, her agents, employees and representatives will instruct Ohio's county Boards of Elections to adhere to the following rules regarding the casting and counting of provisional ballots for persons without identification other than a social security number:
 - a. Boards of Elections must count the provisional ballot cast by a voter using only the last four digits of his or her social security number as identification if all of the following conditions are met:
 - i. The individual who cast the provisional ballot is registered to vote;
 - ii. The individual is eligible to cast a ballot in the precinct and for the election in which the individual cast the provisional ballot;
 - iii. The provisional ballot affirmation includes a statement that the individual is registered to vote in the precinct in which the provisional ballot was cast and a statement that the individual is eligible to vote in the election in which the provisional ballot was cast;
 - iv. The individual's name and signature appear in the correct place on the provisional ballot affirmation form, unless the voter declined to execute the affirmation and the poll workers complied with their statutory duties under R.C. 3505.182 and R.C. 3505.181(B)(6) when a voter declines to execute the affirmation;
 - v. The signature of the voter substantially conforms to the signature contained in the Board of Election's records for that voter;
 - vi. The provisional ballot affirmation includes the last four digits of that voter's social security number, which is not found to be invalid;

- vii. The individual's right to vote was not successfully challenged;
 - viii. The individual did not already cast a ballot for the election in which the individual cast the provisional ballot; and
 - ix. Pursuant to R.C. 3505.183(B)(2), the Board of Elections determines that, in addition to the information included on the affirmation, there is no additional information for determining ballot validity provided by the provisional voter or to the Board of Elections during the ten days after the day of the election that casts doubt on the validity of the ballot or the individual's eligibility to vote.
- b. Boards of Elections may not reject a provisional ballot cast by a voter, who uses only the last four digits of his or her social security number as identification, for any of the following reasons:
- i. The voter provided the last four digits of a Social Security Number but did not provide a current driver's license, state issued identification, or other document which serves as identification under Ohio law;
 - ii. The voter did not provide a date of birth;
 - iii. The voter did not provide an address that is tied to a house, apartment or other dwelling provided that the voter indicated that he or she resides at a non-building location, including but not limited to a street corner, alley or highway overpass located in the precinct in which the voter seeks to cast a ballot and that the non-building location qualifies as the individual's voting residence under R.C. 3503.02;
 - iv. The voter indicated that he or she is homeless;
 - v. The voter cast his or her provisional ballot in the wrong precinct, but in the correct polling place, for reasons attributable to poll worker error;
 - vi. The voter did not complete or properly complete and/or sign the provisional ballot application for reasons attributable to poll worker error; or
 - vii. The poll worker did not complete or properly complete and/or sign the provisional ballot application witness line and/or the provisional ballot affirmation form, except for reasons permitted by the governing statutes.
- c. Boards of Elections must observe the following rules regarding the delegation of processing provisional ballots, and determining their validity, to board staff:
- i. Ultimately, the members of Boards of Elections must determine the validity of all votes cast in an election and must certify the results of all elections. However, nothing in Ohio law requires that

the members of a Board of Elections must personally complete all tasks associated with preparing for that certification.

- ii. Thus, Boards of Elections may, under a policy adopted by the Board, delegate the processing and some aspects of counting provisional ballots to board staff. Such processing must be done in bipartisan teams.
- iii. If a Board of Elections delegates the processing of provisional ballots, it must first adopt a policy setting forth procedures for the processing of provisional ballots. Under that policy, board staff responsible for processing provisional ballots must make a recommendation to the Board as to the eligibility of each provisional ballot cast in the county, either on an individual basis, or as to groups or categories of similarly situated provisional ballots.
- iv. Ultimately, the members of Board of Elections must determine the eligibility or ineligibility of all provisional ballots cast within the county in accordance with Ohio law. Boards may not delegate this task.
- v. Each Board of Elections must then cause the ballots to be counted by board staff, and must include the tabulation of that count in its official canvass of the election results and, to the extent required, its certification of the election results to the Secretary of State.

If you have questions about this directive or the consent decree, please contact the elections attorney assigned to your county at 614-466-2585.

Sincerely,



Jennifer Brunner

NOTICE ISSUED PURSUANT TO COURT ORDER

III. GENERAL INJUNCTIVE RELIEF.

1. THE COURT ADOPTS AND ANNEXES HEREAFTER DIRECTIVE 2008-80 AS AN ORDER OF THIS COURT.

2. DEFENDANT SECRETARY OF STATE, HER AGENTS, EMPLOYEES AND REPRESENTATIVES WILL INSTRUCT OHIO'S COUNTY BOARDS OF ELECTIONS TO ADHERE TO THE FOLLOWING RULES REGARDING THE CASTING AND COUNTING OF PROVISIONAL BALLOTS FOR PERSONS WITHOUT IDENTIFICATION OTHER THAN A SOCIAL SECURITY NUMBER:

- a. BOARDS OF ELECTIONS MUST COUNT THE PROVISIONAL BALLOT CAST BY A VOTER USING ONLY THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER AS IDENTIFICATION IF ALL OF THE FOLLOWING CONDITIONS ARE MET:
 - i. THE INDIVIDUAL WHO CAST THE PROVISIONAL BALLOT IS REGISTERED TO VOTE;
 - ii. THE INDIVIDUAL IS ELIGIBLE TO CAST A BALLOT IN THE PRECINCT AND FOR THE ELECTION IN WHICH THE INDIVIDUAL CAST THE PROVISIONAL BALLOT;
 - iii. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES A STATEMENT THAT THE INDIVIDUAL IS REGISTERED TO VOTE IN THE PRECINCT IN WHICH THE PROVISIONAL BALLOT WAS CAST AND A STATEMENT THAT THE INDIVIDUAL IS ELIGIBLE TO VOTE IN THE ELECTION IN WHICH THE PROVISIONAL BALLOT WAS CAST;
 - iv. THE INDIVIDUAL'S NAME AND SIGNATURE APPEAR IN THE CORRECT PLACE ON THE PROVISIONAL BALLOT AFFIRMATION FORM, UNLESS THE VOTER DECLINED TO EXECUTE THE AFFIRMATION AND THE POLL WORKERS COMPLIED WITH THEIR STATUTORY DUTIES UNDER R.C. 3505.182 AND R.C. 3505.181(B)(6) WHEN A VOTER DECLINES TO EXECUTE THE AFFIRMATION;
 - v. THE SIGNATURE OF THE VOTER SUBSTANTIALLY CONFORMS TO THE SIGNATURE CONTAINED IN THE BOARD OF ELECTION'S RECORDS FOR THAT VOTER;
 - vi. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES THE LAST FOUR DIGITS OF THAT VOTER'S SOCIAL SECURITY NUMBER, WHICH IS NOT FOUND TO BE INVALID;
 - vii. THE INDIVIDUAL'S RIGHT TO VOTE WAS NOT SUCCESSFULLY CHALLENGED;
 - viii. THE INDIVIDUAL DID NOT ALREADY CAST A BALLOT FOR THE ELECTION IN WHICH THE INDIVIDUAL CAST THE PROVISIONAL BALLOT; AND
 - ix. PURSUANT TO R.C. 3505.183(B)(2), THE BOARD OF ELECTIONS DETERMINES THAT, IN ADDITION TO THE INFORMATION INCLUDED ON THE AFFIRMATION, THERE IS NO ADDITIONAL INFORMATION FOR DETERMINING BALLOT VALIDITY PROVIDED BY THE PROVISIONAL VOTER OR TO THE BOARD OF ELECTIONS DURING THE TEN DAYS AFTER THE DAY OF THE ELECTION THAT CASTS DOUBT ON THE VALIDITY OF THE BALLOT OR THE INDIVIDUAL'S ELIGIBILITY TO VOTE.
- b. BOARDS OF ELECTIONS MAY NOT REJECT A PROVISIONAL BALLOT CAST BY A VOTER, WHO USES ONLY THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER AS IDENTIFICATION, FOR ANY OF THE FOLLOWING REASONS:
 - i. THE VOTER PROVIDED THE LAST FOUR DIGITS OF A SOCIAL SECURITY NUMBER BUT DID NOT PROVIDE A CURRENT DRIVER'S LICENSE, STATE ISSUED IDENTIFICATION, OR OTHER DOCUMENT WHICH SERVES AS IDENTIFICATION UNDER OHIO LAW;
 - ii. THE VOTER DID NOT PROVIDE A DATE OF BIRTH;
 - iii. THE VOTER DID NOT PROVIDE AN ADDRESS THAT IS TIED TO A HOUSE, APARTMENT OR OTHER DWELLING PROVIDED THAT THE VOTER INDICATED THAT HE OR SHE RESIDES AT A NON-BUILDING LOCATION, INCLUDING BUT NOT LIMITED TO A STREET CORNER, ALLEY OR HIGHWAY OVERPASS LOCATED IN THE PRECINCT IN WHICH THE VOTER SEEKS TO CAST A BALLOT AND THAT THE NON-BUILDING LOCATION QUALIFIES AS THE INDIVIDUAL'S VOTING RESIDENCE UNDER R.C. 3503.02;
 - iv. THE VOTER INDICATED THAT HE OR SHE IS HOMELESS;
 - v. THE VOTER CAST HIS OR HER PROVISIONAL BALLOT IN THE WRONG PRECINCT, BUT IN THE CORRECT POLLING PLACE, FOR REASONS ATTRIBUTABLE TO POLL WORKER ERROR;
 - vi. THE VOTER DID NOT COMPLETE OR PROPERLY COMPLETE AND/OR SIGN THE PROVISIONAL BALLOT APPLICATION FOR REASONS ATTRIBUTABLE TO POLL WORKER ERROR; OR
 - vii. THE POLL WORKER DID NOT COMPLETE OR PROPERLY COMPLETE AND/OR SIGN THE PROVISIONAL BALLOT APPLICATION WITNESS LINE AND/OR THE PROVISIONAL BALLOT AFFIRMATION FORM, EXCEPT FOR REASONS PERMITTED BY THE GOVERNING STATUTES.
- c. BOARDS OF ELECTIONS MUST OBSERVE THE FOLLOWING RULES REGARDING THE DELEGATION OF PROCESSING PROVISIONAL BALLOTS, AND DETERMINING THEIR VALIDITY, TO BOARD STAFF:
 - i. ULTIMATELY, THE MEMBERS OF BOARDS OF ELECTIONS MUST DETERMINE THE VALIDITY OF ALL VOTES CAST IN AN ELECTION AND MUST CERTIFY THE RESULTS OF ALL ELECTIONS. HOWEVER, NOTHING IN OHIO LAW REQUIRES THAT THE MEMBERS OF A BOARD OF ELECTIONS MUST PERSONALLY COMPLETE ALL TASKS ASSOCIATED WITH PREPARING FOR THAT CERTIFICATION.
 - ii. THUS, BOARDS OF ELECTIONS MAY, UNDER A POLICY ADOPTED BY THE BOARD, DELEGATE THE PROCESSING AND SOME ASPECTS OF COUNTING PROVISIONAL BALLOTS TO BOARD STAFF. SUCH PROCESSING MUST BE DONE IN BIPARTISAN TEAMS.
 - iii. IF A BOARD OF ELECTIONS DELEGATES THE PROCESSING OF PROVISIONAL BALLOTS, IT MUST FIRST ADOPT A POLICY SETTING FORTH PROCEDURES FOR THE PROCESSING OF PROVISIONAL BALLOTS. UNDER THAT POLICY, BOARD STAFF RESPONSIBLE FOR PROCESSING PROVISIONAL BALLOTS MUST MAKE A RECOMMENDATION TO THE BOARD AS TO THE ELIGIBILITY OF EACH PROVISIONAL BALLOT CAST IN THE COUNTY, EITHER ON AN INDIVIDUAL BASIS, OR AS TO GROUPS OR CATEGORIES OF SIMILARLY SITUATED PROVISIONAL BALLOTS.
 - iv. ULTIMATELY, THE MEMBERS OF BOARD OF ELECTIONS MUST DETERMINE THE ELIGIBILITY OR INELIGIBILITY OF ALL PROVISIONAL BALLOTS CAST WITHIN THE COUNTY IN ACCORDANCE WITH OHIO LAW. BOARDS MAY NOT DELEGATE THIS TASK.
 - v. EACH BOARD OF ELECTIONS MUST THEN CAUSE THE BALLOTS TO BE COUNTED BY BOARD STAFF, AND MUST INCLUDE THE TABULATION OF THAT COUNT IN ITS OFFICIAL CANVASS OF THE ELECTION RESULTS AND, TO THE EXTENT REQUIRED, ITS CERTIFICATION OF THE ELECTION RESULTS TO THE SECRETARY OF STATE.



JON HUSTED
OHIO SECRETARY OF STATE

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DIRECTIVE 2011-16
(Issued Pursuant to Court Order)
April 20, 2011

To: All County Boards of Elections
Re: Reminder to Boards of Elections to Comply with the NEOCH Consent Decree and Post the Required Notice

Summary

This directive is a reminder that boards of elections must comply with the consent decree issued in *Northeast Ohio Homeless Coalition v. Brunner*, S.D. Ohio No. 2:06-cv-896 ("NEOCH") and must post a notice that contains the text of the injunctive relief granted in a conspicuous place in every location in which provisional ballots are processed after an election. A copy of the notice is attached and is also available on the Extranet.

Instructions

Boards of elections are instructed to comply with the injunctive relief provided in the April 19, 2010 Consent Decree as quoted below.

Additionally, each board of elections must post a notice that contains the text of the injunctive relief granted in a conspicuous place in every location in which provisional ballots are processed after an election.

Boards of elections are reminded to process and count provisional ballots consistent with Directive 2010-96 and Advisory 2011-03.

The injunctive relief adopted by the court in the consent decree is as follows:

III. GENERAL INJUNCTIVE RELIEF.

1. The Court ADOPTS and annexes hereafter Directive 2008-80 as an Order of this Court.
2. Defendant Secretary of State, her agents, employees and representatives will instruct Ohio's county Boards of Elections to adhere to the following rules regarding the casting and counting of provisional ballots for persons without identification other than a social security number:

- a. Boards of Elections must count the provisional ballot cast by a voter using only the last four digits of his or her social security number as identification if all of the following conditions are met:
 - i. The individual who cast the provisional ballot is registered to vote;
 - ii. The individual is eligible to cast a ballot in the precinct and for the election in which the individual cast the provisional ballot;
 - iii. The provisional ballot affirmation includes a statement that the individual is registered to vote in the precinct in which the provisional ballot was cast and a statement that the individual is eligible to vote in the election in which the provisional ballot was cast;
 - iv. The individual's name and signature appear in the correct place on the provisional ballot affirmation form, unless the voter declined to execute the affirmation and the poll workers complied with their statutory duties under R.C. 3505.182 and R.C. 3505.181(B)(6) when a voter declines to execute the affirmation;
 - v. The signature of the voter substantially conforms to the signature contained in the Board of Election's records for that voter;
 - vi. The provisional ballot affirmation includes the last four digits of that voter's social security number, which is not found to be invalid;
 - vii. The individual's right to vote was not successfully challenged;
 - viii. The individual did not already cast a ballot for the election in which the individual cast the provisional ballot; and
 - ix. Pursuant to R.C. 3505.183(B)(2), the Board of Elections determines that, in addition to the information included on the affirmation, there is no additional information for determining ballot validity provided by the provisional voter or to the Board of Elections during the ten days after the day of the election that casts doubt on the validity of the ballot or the individual's eligibility to vote.
- b. Boards of Elections may not reject a provisional ballot cast by a voter, who uses only the last four digits of his or her social security number as identification, for any of the following reasons:
 - i. The voter provided the last four digits of a Social Security Number but did not provide a current driver's license, state issued identification, or other document which serves as identification under Ohio law;
 - ii. The voter did not provide a date of birth;
 - iii. The voter did not provide an address that is tied to a house, apartment or other dwelling provided that the voter indicated that he or she

- resides at a non-building location, including but not limited to a street corner, alley or highway overpass located in the precinct in which the voter seeks to cast a ballot and that the non-building location qualifies as the individual's voting residence under R.C. 3503.02;
- iv. The voter indicated that he or she is homeless;
 - v. The voter cast his or her provisional ballot in the wrong precinct, but in the correct polling place, for reasons attributable to poll worker error;
 - vi. The voter did not complete or properly complete and/or sign the provisional ballot application for reasons attributable to poll worker error; or
 - vii. The poll worker did not complete or properly complete and/or sign the provisional ballot application witness line and/or the provisional ballot affirmation form, except for reasons permitted by the governing statutes.
- c. Boards of Elections must observe the following rules regarding the delegation of processing provisional ballots, and determining their validity, to board staff:
- i. Ultimately, the members of Boards of Elections must determine the validity of all votes cast in an election and must certify the results of all elections. However, nothing in Ohio law requires that the members of a Board of Elections must personally complete all tasks associated with preparing for that certification.
 - ii. Thus, Boards of Elections may, under a policy adopted by the Board, delegate the processing and some aspects of counting provisional ballots to board staff. Such processing must be done in bipartisan teams.
 - iii. If a Board of Elections delegates the processing of provisional ballots, it must first adopt a policy setting forth procedures for the processing of provisional ballots. Under that policy, board staff responsible for processing provisional ballots must make a recommendation to the Board as to the eligibility of each provisional ballot cast in the county, either on an individual basis, or as to groups or categories of similarly situated provisional ballots.
 - iv. Ultimately, the members of Board of Elections must determine the eligibility or ineligibility of all provisional ballots cast within the county in accordance with Ohio law. Boards may not delegate this task.
 - v. Each Board of Elections must then cause the ballots to be counted by board staff, and must include the tabulation of that count in its official

canvass of the election results and, to the extent required, its certification of the election results to the Secretary of State.

If you have questions about this directive or the consent decree, please contact the elections attorney assigned to your county at 614-466-2585.

Sincerely,



Jon Husted

NOTICE ISSUED PURSUANT TO COURT ORDER

III. GENERAL INJUNCTIVE RELIEF.

1. THE COURT ADOPTS AND ANNEXES HEREAFTER DIRECTIVE 2008-80 AS AN ORDER OF THIS COURT.
2. DEFENDANT SECRETARY OF STATE, HER AGENTS, EMPLOYEES AND REPRESENTATIVES WILL INSTRUCT OHIO'S COUNTY BOARDS OF ELECTIONS TO ADHERE TO THE FOLLOWING RULES REGARDING THE CASTING AND COUNTING OF PROVISIONAL BALLOTS FOR PERSONS WITHOUT IDENTIFICATION OTHER THAN A SOCIAL SECURITY NUMBER:
 - a. BOARDS OF ELECTIONS MUST COUNT THE PROVISIONAL BALLOT CAST BY A VOTER USING ONLY THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER AS IDENTIFICATION IF ALL OF THE FOLLOWING CONDITIONS ARE MET:
 - i. THE INDIVIDUAL WHO CAST THE PROVISIONAL BALLOT IS REGISTERED TO VOTE;
 - ii. THE INDIVIDUAL IS ELIGIBLE TO CAST A BALLOT IN THE PRECINCT AND FOR THE ELECTION IN WHICH THE INDIVIDUAL CAST THE PROVISIONAL BALLOT;
 - iii. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES A STATEMENT THAT THE INDIVIDUAL IS REGISTERED TO VOTE IN THE PRECINCT IN WHICH THE PROVISIONAL BALLOT WAS CAST AND A STATEMENT THAT THE INDIVIDUAL IS ELIGIBLE TO VOTE IN THE ELECTION IN WHICH THE PROVISIONAL BALLOT WAS CAST;
 - iv. THE INDIVIDUAL'S NAME AND SIGNATURE APPEAR IN THE CORRECT PLACE ON THE PROVISIONAL BALLOT AFFIRMATION FORM, UNLESS THE VOTER DECLINED TO EXECUTE THE AFFIRMATION AND THE POLL WORKERS COMPLIED WITH THEIR STATUTORY DUTIES UNDER R.C. 3505.182 AND R.C. 3505.181(B)(6) WHEN A VOTER DECLINES TO EXECUTE THE AFFIRMATION;
 - v. THE SIGNATURE OF THE VOTER SUBSTANTIALLY CONFORMS TO THE SIGNATURE CONTAINED IN THE BOARD OF ELECTION'S RECORDS FOR THAT VOTER;
 - vi. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES THE LAST FOUR DIGITS OF THAT VOTER'S SOCIAL SECURITY NUMBER, WHICH IS NOT FOUND TO BE INVALID;
 - vii. THE INDIVIDUAL'S RIGHT TO VOTE WAS NOT SUCCESSFULLY CHALLENGED;
 - viii. THE INDIVIDUAL DID NOT ALREADY CAST A BALLOT FOR THE ELECTION IN WHICH THE INDIVIDUAL CAST THE PROVISIONAL BALLOT; AND
 - ix. PURSUANT TO R.C. 3505.183(B)(2), THE BOARD OF ELECTIONS DETERMINES THAT, IN ADDITION TO THE INFORMATION INCLUDED ON THE AFFIRMATION, THERE IS NO ADDITIONAL INFORMATION FOR DETERMINING BALLOT VALIDITY PROVIDED BY THE PROVISIONAL VOTER OR TO THE BOARD OF ELECTIONS DURING THE TEN DAYS AFTER THE DAY OF THE ELECTION THAT CASTS DOUBT ON THE VALIDITY OF THE BALLOT OR THE INDIVIDUAL'S ELIGIBILITY TO VOTE.
 - b. BOARDS OF ELECTIONS MAY NOT REJECT A PROVISIONAL BALLOT CAST BY A VOTER, WHO USES ONLY THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER AS IDENTIFICATION, FOR ANY OF THE FOLLOWING REASONS:
 - i. THE VOTER PROVIDED THE LAST FOUR DIGITS OF A SOCIAL SECURITY NUMBER BUT DID NOT PROVIDE A CURRENT DRIVER'S LICENSE, STATE ISSUED IDENTIFICATION, OR OTHER DOCUMENT WHICH SERVES AS IDENTIFICATION UNDER OHIO LAW;
 - ii. THE VOTER DID NOT PROVIDE A DATE OF BIRTH;
 - iii. THE VOTER DID NOT PROVIDE AN ADDRESS THAT IS TIED TO A HOUSE, APARTMENT OR OTHER DWELLING PROVIDED THAT THE VOTER INDICATED THAT HE OR SHE RESIDES AT A NON-BUILDING LOCATION, INCLUDING BUT NOT LIMITED TO A STREET CORNER, ALLEY OR HIGHWAY OVERPASS LOCATED IN THE PRECINCT IN WHICH THE VOTER SEEKS TO CAST A BALLOT AND THAT THE NON-BUILDING LOCATION QUALIFIES AS THE INDIVIDUAL'S VOTING RESIDENCE UNDER R.C. 3503.02;
 - iv. THE VOTER INDICATED THAT HE OR SHE IS HOMELESS;
 - v. THE VOTER CAST HIS OR HER PROVISIONAL BALLOT IN THE WRONG PRECINCT, BUT IN THE CORRECT POLLING PLACE, FOR REASONS ATTRIBUTABLE TO POLL WORKER ERROR;
 - vi. THE VOTER DID NOT COMPLETE OR PROPERLY COMPLETE AND/OR SIGN THE PROVISIONAL BALLOT APPLICATION FOR REASONS ATTRIBUTABLE TO POLL WORKER ERROR; OR
 - vii. THE POLL WORKER DID NOT COMPLETE OR PROPERLY COMPLETE AND/OR SIGN THE PROVISIONAL BALLOT APPLICATION WITNESS LINE AND/OR THE PROVISIONAL BALLOT AFFIRMATION FORM, EXCEPT FOR REASONS PERMITTED BY THE GOVERNING STATUTES.
 - c. BOARDS OF ELECTIONS MUST OBSERVE THE FOLLOWING RULES REGARDING THE DELEGATION OF PROCESSING PROVISIONAL BALLOTS, AND DETERMINING THEIR VALIDITY, TO BOARD STAFF:
 - i. ULTIMATELY, THE MEMBERS OF BOARDS OF ELECTIONS MUST DETERMINE THE VALIDITY OF ALL VOTES CAST IN AN ELECTION AND MUST CERTIFY THE RESULTS OF ALL ELECTIONS. HOWEVER, NOTHING IN OHIO LAW REQUIRES THAT THE MEMBERS OF A BOARD OF ELECTIONS MUST PERSONALLY COMPLETE ALL TASKS ASSOCIATED WITH PREPARING FOR THAT CERTIFICATION.
 - ii. THUS, BOARDS OF ELECTIONS MAY, UNDER A POLICY ADOPTED BY THE BOARD, DELEGATE THE PROCESSING AND SOME ASPECTS OF COUNTING PROVISIONAL BALLOTS TO BOARD STAFF. SUCH PROCESSING MUST BE DONE IN BIPARTISAN TEAMS.
 - iii. IF A BOARD OF ELECTIONS DELEGATES THE PROCESSING OF PROVISIONAL BALLOTS, IT MUST FIRST ADOPT A POLICY SETTING FORTH PROCEDURES FOR THE PROCESSING OF PROVISIONAL BALLOTS. UNDER THAT POLICY, BOARD STAFF RESPONSIBLE FOR PROCESSING PROVISIONAL BALLOTS MUST MAKE A RECOMMENDATION TO THE BOARD AS TO THE ELIGIBILITY OF EACH PROVISIONAL BALLOT CAST IN THE COUNTY, EITHER ON AN INDIVIDUAL BASIS, OR AS TO GROUPS OR CATEGORIES OF SIMILARLY SITUATED PROVISIONAL BALLOTS.
 - iv. ULTIMATELY, THE MEMBERS OF BOARD OF ELECTIONS MUST DETERMINE THE ELIGIBILITY OR INELIGIBILITY OF ALL PROVISIONAL BALLOTS CAST WITHIN THE COUNTY IN ACCORDANCE WITH OHIO LAW. BOARDS MAY NOT DELEGATE THIS TASK.
 - v. EACH BOARD OF ELECTIONS MUST THEN CAUSE THE BALLOTS TO BE COUNTED BY BOARD STAFF, AND MUST INCLUDE THE TABULATION OF THAT COUNT IN ITS OFFICIAL CANVASS OF THE ELECTION RESULTS AND, TO THE EXTENT REQUIRED, ITS CERTIFICATION OF THE ELECTION RESULTS TO THE SECRETARY OF STATE.



JON HUSTED
OHIO SECRETARY OF STATE

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DIRECTIVE 2011-34

(Issued Pursuant to Court Order)

October 17, 2011

**TO: ALL COUNTY BOARDS OF ELECTIONS
MEMBERS, DIRECTORS, AND DEPUTY DIRECTORS**

**RE: Reminder to Boards of Elections to Comply with the NEOCH Consent Decree and
Post the Required Notice**

SUMMARY:

This directive is a reminder that boards of elections must comply with the consent decree issued in *Northeast Ohio Homeless Coalition v. Brunner*, S.D. Ohio No. 2:06-cv-896 (“NEOCH”) and must post a notice that contains the text of the injunctive relief granted in a conspicuous place in every location in which provisional ballots are processed after an election. A copy of the notice is attached and is also available on the Extranet.

INSTRUCTIONS:

Boards of elections are instructed to comply with the injunctive relief provided in the April 19, 2010 Consent Decree as quoted below.

Additionally, each board of elections must post a notice that contains the text of the injunctive relief granted in a conspicuous place in every location in which provisional ballots are processed after an election.

Boards of elections are reminded to process and count provisional ballots consistent with Directive 2010-96 and Advisory 2011-03.

The injunctive relief adopted by the court in the consent decree is as follows:

III. GENERAL INJUNCTIVE RELIEF:

1. The Court ADOPTS and annexes hereafter Directive 2008-80 as an Order of this Court.
2. Defendant Secretary of State, her agents, employees and representatives will instruct Ohio’s county Boards of Elections to adhere to the following rules regarding the

casting and counting of provisional ballots for persons without identification other than a social security number:

- a. Boards of Elections must count the provisional ballot cast by a voter using only the last four digits of his or her social security number as identification if all of the following conditions are met:
 - i. The individual who cast the provisional ballot is registered to vote;
 - ii. The individual is eligible to cast a ballot in the precinct and for the election in which the individual cast the provisional ballot;
 - iii. The provisional ballot affirmation includes a statement that the individual is registered to vote in the precinct in which the provisional ballot was cast and a statement that the individual is eligible to vote in the election in which the provisional ballot was cast;
 - iv. The individual's name and signature appear in the correct place on the provisional ballot affirmation form, unless the voter declined to execute the affirmation and the poll workers complied with their statutory duties under R.C. 3505.182 and R.C. 3505.181(B)(6) when a voter declines to execute the affirmation;
 - v. The signature of the voter substantially conforms to the signature contained in the Board of Election's records for that voter;
 - vi. The provisional ballot affirmation includes the last four digits of that voter's social security number, which is not found to be invalid;
 - vii. The individual's right to vote was not successfully challenged;
 - viii. The individual did not already cast a ballot for the election in which the individual cast the provisional ballot; and
 - ix. Pursuant to R.C. 3505.183(B)(2), the Board of Elections determines that, in addition to the information included on the affirmation, there is no additional information for determining ballot validity provided by the provisional voter or to the Board of Elections during the ten days after the day of the election that casts doubt on the validity of the ballot or the individual's eligibility to vote.
- b. Boards of Elections may not reject a provisional ballot cast by a voter, who uses only the last four digits of his or her social security number as identification, for any of the following reasons:
 - i. The voter provided the last four digits of a Social Security Number but did not provide a current driver's license, state issued identification, or other document which serves as identification under Ohio law;
 - ii. The voter did not provide a date of birth;

- iii. The voter did not provide an address that is tied to a house, apartment or other dwelling provided that the voter indicated that he or she resides at a non-building location, including but not limited to a street corner, alley or highway overpass located in the precinct in which the voter seeks to cast a ballot and that the non-building location qualifies as the individual's voting residence under R.C. 3503.02;
 - iv. The voter indicated that he or she is homeless;
 - v. The voter cast his or her provisional ballot in the wrong precinct, but in the correct polling place, for reasons attributable to poll worker error;
 - vi. The voter did not complete or properly complete and/or sign the provisional ballot application for reasons attributable to poll worker error; or
 - vii. The poll worker did not complete or properly complete and/or sign the provisional ballot application witness line and/or the provisional ballot affirmation form, except for reasons permitted by the governing statutes.
- c. Boards of Elections must observe the following rules regarding the delegation of processing provisional ballots, and determining their validity, to board staff:
- i. Ultimately, the members of Boards of Elections must determine the validity of all votes cast in an election and must certify the results of all elections. However, nothing in Ohio law requires that the members of a Board of Elections must personally complete all tasks associated with preparing for that certification.
 - ii. Thus, Boards of Elections may, under a policy adopted by the Board, delegate the processing and some aspects of counting provisional ballots to board staff. Such processing must be done in bipartisan teams.
 - iii. If a Board of Elections delegates the processing of provisional ballots, it must first adopt a policy setting forth procedures for the processing of provisional ballots. Under that policy, board staff responsible for processing provisional ballots must make a recommendation to the Board as to the eligibility of each provisional ballot cast in the county, either on an individual basis, or as to groups or categories of similarly situated provisional ballots.
 - iv. Ultimately, the members of Board of Elections must determine the eligibility or ineligibility of all provisional ballots cast within the county in accordance with Ohio law. Boards may not delegate this task.

- v. Each Board of Elections must then cause the ballots to be counted by board staff, and must include the tabulation of that count in its official canvass of the election results and, to the extent required, its certification of the election results to the Secretary of State.

If you have questions about this directive or the consent decree, please contact the elections attorney assigned to your county at (614) 466-2585.

Sincerely,



Jon Husted

NOTICE ISSUED PURSUANT TO COURT ORDER

III. GENERAL INJUNCTIVE RELIEF.

1. THE COURT ADOPTS AND ANNEXES HEREAFTER DIRECTIVE 2008-80 AS AN ORDER OF THIS COURT.

2. DEFENDANT SECRETARY OF STATE, HER AGENTS, EMPLOYEES AND REPRESENTATIVES WILL INSTRUCT OHIO'S COUNTY BOARDS OF ELECTIONS TO ADHERE TO THE FOLLOWING RULES REGARDING THE CASTING AND COUNTING OF PROVISIONAL BALLOTS FOR PERSONS WITHOUT IDENTIFICATION OTHER THAN A SOCIAL SECURITY NUMBER:

- a. BOARDS OF ELECTIONS MUST COUNT THE PROVISIONAL BALLOT CAST BY A VOTER USING ONLY THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER AS IDENTIFICATION IF ALL OF THE FOLLOWING CONDITIONS ARE MET:
 - i. THE INDIVIDUAL WHO CAST THE PROVISIONAL BALLOT IS REGISTERED TO VOTE;
 - ii. THE INDIVIDUAL IS ELIGIBLE TO CAST A BALLOT IN THE PRECINCT AND FOR THE ELECTION IN WHICH THE INDIVIDUAL CAST THE PROVISIONAL BALLOT;
 - iii. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES A STATEMENT THAT THE INDIVIDUAL IS REGISTERED TO VOTE IN THE PRECINCT IN WHICH THE PROVISIONAL BALLOT WAS CAST AND A STATEMENT THAT THE INDIVIDUAL IS ELIGIBLE TO VOTE IN THE ELECTION IN WHICH THE PROVISIONAL BALLOT WAS CAST;
 - iv. THE INDIVIDUAL'S NAME AND SIGNATURE APPEAR IN THE CORRECT PLACE ON THE PROVISIONAL BALLOT AFFIRMATION FORM, UNLESS THE VOTER DECLINED TO EXECUTE THE AFFIRMATION AND THE POLL WORKERS COMPLIED WITH THEIR STATUTORY DUTIES UNDER R.C. 3505.182 AND R.C. 3505.181(B)(6) WHEN A VOTER DECLINES TO EXECUTE THE AFFIRMATION;
 - v. THE SIGNATURE OF THE VOTER SUBSTANTIALLY CONFORMS TO THE SIGNATURE CONTAINED IN THE BOARD OF ELECTION'S RECORDS FOR THAT VOTER;
 - vi. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES THE LAST FOUR DIGITS OF THAT VOTER'S SOCIAL SECURITY NUMBER, WHICH IS NOT FOUND TO BE INVALID;
 - vii. THE INDIVIDUAL'S RIGHT TO VOTE WAS NOT SUCCESSFULLY CHALLENGED;
 - viii. THE INDIVIDUAL DID NOT ALREADY CAST A BALLOT FOR THE ELECTION IN WHICH THE INDIVIDUAL CAST THE PROVISIONAL BALLOT; AND
 - ix. PURSUANT TO R.C. 3505.183(B)(2), THE BOARD OF ELECTIONS DETERMINES THAT, IN ADDITION TO THE INFORMATION INCLUDED ON THE AFFIRMATION, THERE IS NO ADDITIONAL INFORMATION FOR DETERMINING BALLOT VALIDITY PROVIDED BY THE PROVISIONAL VOTER OR TO THE BOARD OF ELECTIONS DURING THE TEN DAYS AFTER THE DAY OF THE ELECTION THAT CASTS DOUBT ON THE VALIDITY OF THE BALLOT OR THE INDIVIDUAL'S ELIGIBILITY TO VOTE.
- b. BOARDS OF ELECTIONS MAY NOT REJECT A PROVISIONAL BALLOT CAST BY A VOTER, WHO USES ONLY THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER AS IDENTIFICATION, FOR ANY OF THE FOLLOWING REASONS:
 - i. THE VOTER PROVIDED THE LAST FOUR DIGITS OF A SOCIAL SECURITY NUMBER BUT DID NOT PROVIDE A CURRENT DRIVER'S LICENSE, STATE ISSUED IDENTIFICATION, OR OTHER DOCUMENT WHICH SERVES AS IDENTIFICATION UNDER OHIO LAW;
 - ii. THE VOTER DID NOT PROVIDE A DATE OF BIRTH;
 - iii. THE VOTER DID NOT PROVIDE AN ADDRESS THAT IS TIED TO A HOUSE, APARTMENT OR OTHER DWELLING PROVIDED THAT THE VOTER INDICATED THAT HE OR SHE RESIDES AT A NON-BUILDING LOCATION, INCLUDING BUT NOT LIMITED TO A STREET CORNER, ALLEY OR HIGHWAY OVERPASS LOCATED IN THE PRECINCT IN WHICH THE VOTER SEEKS TO CAST A BALLOT AND THAT THE NON-BUILDING LOCATION QUALIFIES AS THE INDIVIDUAL'S VOTING RESIDENCE UNDER R.C. 3503.02;
 - iv. THE VOTER INDICATED THAT HE OR SHE IS HOMELESS;
 - v. THE VOTER CAST HIS OR HER PROVISIONAL BALLOT IN THE WRONG PRECINCT, BUT IN THE CORRECT POLLING PLACE, FOR REASONS ATTRIBUTABLE TO POLL WORKER ERROR;
 - vi. THE VOTER DID NOT COMPLETE OR PROPERLY COMPLETE AND/OR SIGN THE PROVISIONAL BALLOT APPLICATION FOR REASONS ATTRIBUTABLE TO POLL WORKER ERROR; OR
 - vii. THE POLL WORKER DID NOT COMPLETE OR PROPERLY COMPLETE AND/OR SIGN THE PROVISIONAL BALLOT APPLICATION WITNESS LINE AND/OR THE PROVISIONAL BALLOT AFFIRMATION FORM, EXCEPT FOR REASONS PERMITTED BY THE GOVERNING STATUTES.
- c. BOARDS OF ELECTIONS MUST OBSERVE THE FOLLOWING RULES REGARDING THE DELEGATION OF PROCESSING PROVISIONAL BALLOTS, AND DETERMINING THEIR VALIDITY, TO BOARD STAFF:
 - i. ULTIMATELY, THE MEMBERS OF BOARDS OF ELECTIONS MUST DETERMINE THE VALIDITY OF ALL VOTES CAST IN AN ELECTION AND MUST CERTIFY THE RESULTS OF ALL ELECTIONS. HOWEVER, NOTHING IN OHIO LAW REQUIRES THAT THE MEMBERS OF A BOARD OF ELECTIONS MUST PERSONALLY COMPLETE ALL TASKS ASSOCIATED WITH PREPARING FOR THAT CERTIFICATION.
 - ii. THUS, BOARDS OF ELECTIONS MAY, UNDER A POLICY ADOPTED BY THE BOARD, DELEGATE THE PROCESSING AND SOME ASPECTS OF COUNTING PROVISIONAL BALLOTS TO BOARD STAFF. SUCH PROCESSING MUST BE DONE IN BIPARTISAN TEAMS.
 - iii. IF A BOARD OF ELECTIONS DELEGATES THE PROCESSING OF PROVISIONAL BALLOTS, IT MUST FIRST ADOPT A POLICY SETTING FORTH PROCEDURES FOR THE PROCESSING OF PROVISIONAL BALLOTS. UNDER THAT POLICY, BOARD STAFF RESPONSIBLE FOR PROCESSING PROVISIONAL BALLOTS MUST MAKE A RECOMMENDATION TO THE BOARD AS TO THE ELIGIBILITY OF EACH PROVISIONAL BALLOT CAST IN THE COUNTY, EITHER ON AN INDIVIDUAL BASIS, OR AS TO GROUPS OR CATEGORIES OF SIMILARLY SITUATED PROVISIONAL BALLOTS.
 - iv. ULTIMATELY, THE MEMBERS OF BOARD OF ELECTIONS MUST DETERMINE THE ELIGIBILITY OR INELIGIBILITY OF ALL PROVISIONAL BALLOTS CAST WITHIN THE COUNTY IN ACCORDANCE WITH OHIO LAW. BOARDS MAY NOT DELEGATE THIS TASK.
 - v. EACH BOARD OF ELECTIONS MUST THEN CAUSE THE BALLOTS TO BE COUNTED BY BOARD STAFF, AND MUST INCLUDE THE TABULATION OF THAT COUNT IN ITS OFFICIAL CANVASS OF THE ELECTION RESULTS AND, TO THE EXTENT REQUIRED, ITS CERTIFICATION OF THE ELECTION RESULTS TO THE SECRETARY OF STATE.



Jon Husted
Ohio Secretary of State

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DIRECTIVE 2012-06

January 20, 2012

To: All County Boards of Elections
Re: Reminder to Boards of Elections to Comply with the NEOCH Consent Decree and Post Required Notices

Summary

This directive is a reminder that boards of elections must comply with the consent decree issued in *Northeast Ohio Homeless Coalition v. Brunner*, S.D. Ohio No. 2:06-cv-896 ("NEOCH") and must post a notice that contains the text of the injunctive relief granted in a conspicuous place in every location in which provisional ballots are processed after an election. A copy of the notice is attached and is also available at

<http://www.sos.state.oh.us/SOS/elections/electionofficials/electOffPubs/boePosters.aspx>. This directive is also a reminder of the required Judge Carr notice posting. A copy of that notice is also attached and is available at

<http://www.sos.state.oh.us/SOS/elections/electionofficials/electOffPubs/pollingLoc.aspx>

Directives 2008-101, 2010-74, and 2010-96 and Advisory 2011-03 are rescinded.

Instructions

Boards of elections are instructed to comply with the injunctive relief provided in the April 19, 2010 Consent Decree as quoted below. Each board of elections must post a notice that contains the text of the injunctive relief granted in a conspicuous place in every location in which provisional ballots are processed after an election.

Boards of elections are also reminded to process and count provisional ballots consistent with Directive 2012-01 and to post the notice required by Judge Carr in *Sandusky County Democratic Party v Blackwell* Case No. 3:04CV7582 (see Advisory 2011-04.)

The injunctive relief adopted by the court in the consent decree is as follows:

III. GENERAL INJUNCTIVE RELIEF.

1. The Court ADOPTS and annexes hereafter Directive 2008-80 as an Order of this Court.
2. Defendant Secretary of State, her agents, employees and representatives will instruct

Ohio's county Boards of Elections to adhere to the following rules regarding the casting and counting of provisional ballots for persons without identification other than a social security number:

- a. Boards of Elections must count the provisional ballot cast by a voter using only the last four digits of his or her social security number as identification if all of the following conditions are met:
 - i. The individual who cast the provisional ballot is registered to vote;
 - ii. The individual is eligible to cast a ballot in the precinct and for the election in which the individual cast the provisional ballot;
 - iii. The provisional ballot affirmation includes a statement that the individual is registered to vote in the precinct in which the provisional ballot was cast and a statement that the individual is eligible to vote in the election in which the provisional ballot was cast;
 - iv. The individual's name and signature appear in the correct place on the provisional ballot affirmation form, unless the voter declined to execute the affirmation and the poll workers complied with their statutory duties under R.C. 3505.182 and R.C. 3505.181(B)(6) when a voter declines to execute the affirmation;
 - v. The signature of the voter substantially conforms to the signature contained in the Board of Election's records for that voter;
 - vi. The provisional ballot affirmation includes the last four digits of that voter's social security number, which is not found to be invalid;
 - vii. The individual's right to vote was not successfully challenged;
 - viii. The individual did not already cast a ballot for the election in which the individual cast the provisional ballot; and
 - ix. Pursuant to R.C. 3505.183(B)(2), the Board of Elections determines that, in addition to the information included on the affirmation, there is no additional information for determining ballot validity provided by the provisional voter or to the Board of Elections during the ten days after the day of the election that casts doubt on the validity of the ballot or the individual's eligibility to vote.
- b. Boards of Elections may not reject a provisional ballot cast by a voter, who uses only the last four digits of his or her social security number as identification, for any of the following reasons:
 - i. The voter provided the last four digits of a Social Security Number but did not provide a current driver's license, state issued identification, or other document which serves as identification under Ohio law;

- ii. The voter did not provide a date of birth;
 - iii. The voter did not provide an address that is tied to a house, apartment or other dwelling provided that the voter indicated that he or she resides at a non-building location, including but not limited to a street corner, alley or highway overpass located in the precinct in which the voter seeks to cast a ballot and that the non-building location qualifies as the individual's voting residence under R.C. 3503.02;
 - iv. The voter indicated that he or she is homeless;
 - v. The voter cast his or her provisional ballot in the wrong precinct, but in the correct polling place, for reasons attributable to poll worker error;
 - vi. The voter did not complete or properly complete and/or sign the provisional ballot application for reasons attributable to poll worker error; or
 - vii. The poll worker did not complete or properly complete and/or sign the provisional ballot application witness line and/or the provisional ballot affirmation form, except for reasons permitted by the governing statutes.
- c. Boards of Elections must observe the following rules regarding the delegation of processing provisional ballots, and determining their validity, to board staff:
- i. Ultimately, the members of Boards of Elections must determine the validity of all votes cast in an election and must certify the results of all elections. However, nothing in Ohio law requires that the members of a Board of Elections must personally complete all tasks associated with preparing for that certification.
 - ii. Thus, Boards of Elections may, under a policy adopted by the Board, delegate the processing and some aspects of counting provisional ballots to board staff. Such processing must be done in bipartisan teams.
 - iii. If a Board of Elections delegates the processing of provisional ballots, it must first adopt a policy setting forth procedures for the processing of provisional ballots. Under that policy, board staff responsible for processing provisional ballots must make a recommendation to the Board as to the eligibility of each provisional ballot cast in the county, either on an individual basis, or as to groups or categories of similarly situated provisional ballots.
 - iv. Ultimately, the members of Board of Elections must determine the eligibility or ineligibility of all provisional ballots cast within the county in accordance with Ohio law. Boards may not delegate this task.

- v. Each Board of Elections must then cause the ballots to be counted by board staff, and must include the tabulation of that count in its official canvass of the election results and, to the extent required, its certification of the election results to the Secretary of State.

If you have questions about this directive or the consent decree, please contact the Secretary of State's elections attorney assigned to your county at 614-466-2585.

Sincerely,

A handwritten signature in black ink that reads "Jon Husted". The signature is written in a cursive, flowing style with a large initial "J".

Jon Husted

NOTICE ISSUED PURSUANT TO COURT ORDER

III. GENERAL INJUNCTIVE RELIEF.

1. THE COURT ADOPTS AND ANNEXES HEREAFTER DIRECTIVE 2008-80 AS AN ORDER OF THIS COURT.
2. DEFENDANT SECRETARY OF STATE, HER AGENTS, EMPLOYEES AND REPRESENTATIVES WILL INSTRUCT OHIO'S COUNTY BOARDS OF ELECTIONS TO ADHERE TO THE FOLLOWING RULES REGARDING THE CASTING AND COUNTING OF PROVISIONAL BALLOTS FOR PERSONS WITHOUT IDENTIFICATION OTHER THAN A SOCIAL SECURITY NUMBER:
 - a. BOARDS OF ELECTIONS MUST COUNT THE PROVISIONAL BALLOT CAST BY A VOTER USING ONLY THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER AS IDENTIFICATION IF ALL OF THE FOLLOWING CONDITIONS ARE MET:
 - i. THE INDIVIDUAL WHO CAST THE PROVISIONAL BALLOT IS REGISTERED TO VOTE;
 - ii. THE INDIVIDUAL IS ELIGIBLE TO CAST A BALLOT IN THE PRECINCT AND FOR THE ELECTION IN WHICH THE INDIVIDUAL CAST THE PROVISIONAL BALLOT;
 - iii. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES A STATEMENT THAT THE INDIVIDUAL IS REGISTERED TO VOTE IN THE PRECINCT IN WHICH THE PROVISIONAL BALLOT WAS CAST AND A STATEMENT THAT THE INDIVIDUAL IS ELIGIBLE TO VOTE IN THE ELECTION IN WHICH THE PROVISIONAL BALLOT WAS CAST;
 - iv. THE INDIVIDUAL'S NAME AND SIGNATURE APPEAR IN THE CORRECT PLACE ON THE PROVISIONAL BALLOT AFFIRMATION FORM, UNLESS THE VOTER DECLINED TO EXECUTE THE AFFIRMATION AND THE POLL WORKERS COMPLIED WITH THEIR STATUTORY DUTIES UNDER R.C. 3505.182 AND R.C. 3505.181(B)(6) WHEN A VOTER DECLINES TO EXECUTE THE AFFIRMATION;
 - v. THE SIGNATURE OF THE VOTER SUBSTANTIALLY CONFORMS TO THE SIGNATURE CONTAINED IN THE BOARD OF ELECTION'S RECORDS FOR THAT VOTER;
 - vi. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES THE LAST FOUR DIGITS OF THAT VOTER'S SOCIAL SECURITY NUMBER, WHICH IS NOT FOUND TO BE INVALID;
 - vii. THE INDIVIDUAL'S RIGHT TO VOTE WAS NOT SUCCESSFULLY CHALLENGED;
 - viii. THE INDIVIDUAL DID NOT ALREADY CAST A BALLOT FOR THE ELECTION IN WHICH THE INDIVIDUAL CAST THE PROVISIONAL BALLOT; AND
 - ix. PURSUANT TO R.C. 3505.183(B)(2), THE BOARD OF ELECTIONS DETERMINES THAT, IN ADDITION TO THE INFORMATION INCLUDED ON THE AFFIRMATION, THERE IS NO ADDITIONAL INFORMATION FOR DETERMINING BALLOT VALIDITY PROVIDED BY THE PROVISIONAL VOTER OR TO THE BOARD OF ELECTIONS DURING THE TEN DAYS AFTER THE DAY OF THE ELECTION THAT CASTS DOUBT ON THE VALIDITY OF THE BALLOT OR THE INDIVIDUAL'S ELIGIBILITY TO VOTE.
 - b. BOARDS OF ELECTIONS MAY NOT REJECT A PROVISIONAL BALLOT CAST BY A VOTER, WHO USES ONLY THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER AS IDENTIFICATION, FOR ANY OF THE FOLLOWING REASONS:
 - i. THE VOTER PROVIDED THE LAST FOUR DIGITS OF A SOCIAL SECURITY NUMBER BUT DID NOT PROVIDE A CURRENT DRIVER'S LICENSE, STATE ISSUED IDENTIFICATION, OR OTHER DOCUMENT WHICH SERVES AS IDENTIFICATION UNDER OHIO LAW;
 - ii. THE VOTER DID NOT PROVIDE A DATE OF BIRTH;
 - iii. THE VOTER DID NOT PROVIDE AN ADDRESS THAT IS TIED TO A HOUSE, APARTMENT OR OTHER DWELLING PROVIDED THAT THE VOTER INDICATED THAT HE OR SHE RESIDES AT A NON-BUILDING LOCATION, INCLUDING BUT NOT LIMITED TO A STREET CORNER, ALLEY OR HIGHWAY OVERPASS LOCATED IN THE PRECINCT IN WHICH THE VOTER SEEKS TO CAST A BALLOT AND THAT THE NON-BUILDING LOCATION QUALIFIES AS THE INDIVIDUAL'S VOTING RESIDENCE UNDER R.C. 3503.02;
 - iv. THE VOTER INDICATED THAT HE OR SHE IS HOMELESS;
 - v. THE VOTER CAST HIS OR HER PROVISIONAL BALLOT IN THE WRONG PRECINCT, BUT IN THE CORRECT POLLING PLACE, FOR REASONS ATTRIBUTABLE TO POLL WORKER ERROR;
 - vi. THE VOTER DID NOT COMPLETE OR PROPERLY COMPLETE AND/OR SIGN THE PROVISIONAL BALLOT APPLICATION FOR REASONS ATTRIBUTABLE TO POLL WORKER ERROR; OR
 - vii. THE POLL WORKER DID NOT COMPLETE OR PROPERLY COMPLETE AND/OR SIGN THE PROVISIONAL BALLOT APPLICATION WITNESS LINE AND/OR THE PROVISIONAL BALLOT AFFIRMATION FORM, EXCEPT FOR REASONS PERMITTED BY THE GOVERNING STATUTES.
 - c. BOARDS OF ELECTIONS MUST OBSERVE THE FOLLOWING RULES REGARDING THE DELEGATION OF PROCESSING PROVISIONAL BALLOTS, AND DETERMINING THEIR VALIDITY, TO BOARD STAFF:
 - i. ULTIMATELY, THE MEMBERS OF BOARDS OF ELECTIONS MUST DETERMINE THE VALIDITY OF ALL VOTES CAST IN AN ELECTION AND MUST CERTIFY THE RESULTS OF ALL ELECTIONS. HOWEVER, NOTHING IN OHIO LAW REQUIRES THAT THE MEMBERS OF A BOARD OF ELECTIONS MUST PERSONALLY COMPLETE ALL TASKS ASSOCIATED WITH PREPARING FOR THAT CERTIFICATION.
 - ii. THUS, BOARDS OF ELECTIONS MAY, UNDER A POLICY ADOPTED BY THE BOARD, DELEGATE THE PROCESSING AND SOME ASPECTS OF COUNTING PROVISIONAL BALLOTS TO BOARD STAFF. SUCH PROCESSING MUST BE DONE IN BIPARTISAN TEAMS.
 - iii. IF A BOARD OF ELECTIONS DELEGATES THE PROCESSING OF PROVISIONAL BALLOTS, IT MUST FIRST ADOPT A POLICY SETTING FORTH PROCEDURES FOR THE PROCESSING OF PROVISIONAL BALLOTS. UNDER THAT POLICY, BOARD STAFF RESPONSIBLE FOR PROCESSING PROVISIONAL BALLOTS MUST MAKE A RECOMMENDATION TO THE BOARD AS TO THE ELIGIBILITY OF EACH PROVISIONAL BALLOT CAST IN THE COUNTY, EITHER ON AN INDIVIDUAL BASIS, OR AS TO GROUPS OR CATEGORIES OF SIMILARLY SITUATED PROVISIONAL BALLOTS.
 - iv. ULTIMATELY, THE MEMBERS OF BOARD OF ELECTIONS MUST DETERMINE THE ELIGIBILITY OR INELIGIBILITY OF ALL PROVISIONAL BALLOTS CAST WITHIN THE COUNTY IN ACCORDANCE WITH OHIO LAW. BOARDS MAY NOT DELEGATE THIS TASK.
 - v. EACH BOARD OF ELECTIONS MUST THEN CAUSE THE BALLOTS TO BE COUNTED BY BOARD STAFF, AND MUST INCLUDE THE TABULATION OF THAT COUNT IN ITS OFFICIAL CANVASS OF THE ELECTION RESULTS AND, TO THE EXTENT REQUIRED, ITS CERTIFICATION OF THE ELECTION RESULTS TO THE SECRETARY OF STATE.

NOTICE

Your vote, including a vote cast by provisional ballot, will count ONLY if you are voting in the precinct in which you reside.

If you do not know whether your correct precinct is located at this polling place, please ask a poll worker now for assistance.

(Issued by U.S. District Court Judge Carr on 10/23/2004)