

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

THE SANDUSKY COUNTY	)	CASE NO.: 3:04CV7582
DEMOCRATIC PARTY, et al.	)	
	)	JUDGE: JAMES G. CARR
Plaintiffs,	)	
	)	
vs.	)	
	)	
J. KENNETH BLACKWELL,	)	<u>NOTICE OF SUBMISSION OF</u>
	)	<u>DIRECTIVES PURSUANT</u>
Defendant.	)	<u>TO COURT ORDERS</u>

Defendant J. Kenneth Blackwell herein submits the attached two Directives (hereinafter labeled “Directive 1” and “Alternative Directive 2”) in an effort to comply with this Court’s Orders. In submitting these Directives, counsel for Defendant has relied in substantial part upon guidance from the Court and its proposed directives. However, the Court will note that the affirmation on both directives has been slightly modified in part in an effort to comply both with the Court’s proposed language and Ohio law.

Respectfully submitted,

JIM PETRO  
ATTORNEY GENERAL OF OHIO

By: /s/ Richard G. Lillie  
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*Special Counsel for  
Secretary of State J. Kenneth Blackwell*

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing was filed electronically on the 20<sup>th</sup> day of October, 2004 in accordance with the Court's Electronic Filing Guidelines. Notice of this filing will be sent to all parties by operation of the Court's Electronic Filing System. Parties may access this filing through the Court's Filing System.

JIM PETRO  
ATTORNEY GENERAL OF OHIO

By: /s/ Richard G. Lillie  
RICHARD G. LILLIE (390023744)  
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*Special Counsel for  
Secretary of State J. Kenneth Blackwell*

## ***DIRECTIVE 1***

Directive 2004-\_\_\_\_\_  
October 20, 2004

### **ALL COUNTY BOARDS OF ELECTIONS**

#### **Issuing and Processing Provisional Ballots**

This Directive replaces Directive 2004-33, which has been declared in violation of federal law. Directive 2004-33 is therefore no longer in effect.

All boards of elections must instruct their poll workers on the provisional voting procedures authorized by state and federal law. In the event that any provision of Ohio law or any previous procedures or practices differ from these instructions, poll workers are instructed to follow the procedures set forth in this Directive.

All poll workers shall receive training on the contents of this Directive and be advised to contact your offices if they need additional information or have questions related to provisional voting. A copy of this Directive should be included in each poll worker handbook and be available to poll workers as a resource on Election Day..

#### **New Provisional Balloting Procedures**

The Help America Vote Act of 2002 (HAVA) set out new instructions for provisional balloting. Poll workers must follow its instructions, which follow:

If an individual's name does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, poll workers shall notify that individual that he or she has a right to cast a provisional ballot if he or she so desires.

No person will be denied the opportunity to cast a provisional ballot because he or she does not reside in the precinct in which he or she wishes to vote. Poll workers are, of course, free to instruct voters as to their proper precinct, but cannot turn voters away.

Before permitting an individual to cast a provisional ballot, the poll worker must:

- 1) Instruct the voter that, if he or she is not voting at the proper precinct, his or her ballot will count only for federal elections for which the person is eligible to vote (President, U.S. Senator, and U.S. Congressional Representative, if the district of the candidate on the ballot includes the voter's residence).
- 2) Instruct the voter that, if he or she is not voting at the proper precinct, his or her ballot will not count for any local, county, or state offices or issues.

3) Require the individual to execute a written affirmation before an election official at the polling place stating as follows:

I affirm that my name is \_\_\_\_\_, that my date of birth is \_\_\_\_\_, and at this time my voting residence is \_\_\_\_\_ in the City/Village of \_\_\_\_\_ in \_\_\_\_\_ County of the State of Ohio and that this is the only ballot that I am casting in this election. I have been informed of the potential consequences of provisional voting, including that my entire ballot may not be counted.

*Signature of Voter*

4) Instruct the individual to place the ballot into a provided secrecy envelope, to seal the envelope, and to sign the envelope.

5) Give the individual written information stating that he or she will be able to ascertain whether his or her votes were counted, and, if those votes were not counted, the reason that those votes were not counted. The written information shall include instructions for obtaining this information.

Once an individual has cast a provisional ballot, an election official shall affix the voter's completed affidavit to the provisional ballot envelope. A poll worker or election official shall then transmit sealed envelopes and affirmations to the county board of elections for prompt verification.

If the county board of elections determines that the individual is eligible under Ohio law to vote, the individual's provisional ballot shall be counted in accordance with Ohio law.

An individual's provisional ballot shall be counted only in the elections for which the individual is eligible to vote. Votes for President and US. Senator will be counted if the person has voted in his or her county of residence. Votes for U.S. Congressional Representative will be counted if the person has voted in the proper county and in his or her proper Congressional district.

## *ALTERNATIVE DIRECTIVE 2*

Directive 2004-\_\_\_\_\_  
October 20, 2004

### ALL COUNTY BOARDS OF ELECTIONS

#### Issuing and Processing Provisional Ballots

This Directive replaces Directive 2004-33, which has been declared in violation of federal law. Directive 2004~33 is therefore no longer in effect.

All boards of elections must instruct their poll workers on the provisional voting procedures authorized by state and federal law. In the event that any provision of Ohio law or any previous procedures or practices differ from these instructions, poll workers are instructed to follow the procedures set forth in this Directive.

All poll workers shall receive training on the contents of this Directive and be advised to contact your offices if they need additional information or have questions related to provisional voting. A copy of this Directive should be included in each poll worker handbook and be available to poll workers as a resource on Election Day.

#### New Provisional Balloting Procedures

The Help America Vote Act of 2002 (HAVA) set out new instructions for provisional balloting. Poll workers must follow its instructions, which follow:

If an individual's name does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, poll workers shall notify that individual that he or she has a right to cast a provisional ballot if he or she so desires.

No person will be denied the opportunity to cast a provisional ballot because he or she does not reside in the precinct in which he or she wishes to vote. Poll workers are, of course, free to instruct voters as to their proper precinct, but cannot turn voters away.

Before permitting an individual to cast a provisional ballot, the poll worker must:

- 1) Instruct the voter that, if he or she is not voting at the proper precinct, the voter's ballot will not be counted.
- 2) Require the individual to execute a written affirmation before an election official at the polling place stating as follows:

I affirm that my name is \_\_\_\_\_, that my date of birth is \_\_\_\_\_, and at this time my voting residence is \_\_\_\_\_ in the City/Village of \_\_\_\_\_ in \_\_\_\_\_ County of the State of Ohio and that this is the only ballot that I am casting in this election. I have been informed of the potential consequences of provisional voting, including that my entire ballot may not be counted.

*Signature of Voter*

3) Instruct the individual to place the ballot into a provided secrecy envelope, to seal the envelope, and to sign the envelope.

4) Give the individual written information stating that he or she will be able to ascertain whether his or her ballot was counted, and, if the ballot was not counted, the reason that the ballot was not counted. The written information shall include instructions for obtaining this information.

Once an individual has cast a provisional ballot, an election official shall affix the voter's completed affidavit to the provisional ballot envelope. A poll worker or election official shall then transmit sealed envelopes and affirmations to the county board of elections for prompt verification.

If the county board of elections determines that the individual is eligible under Ohio law to vote, the individual's provisional ballot shall be counted in accordance with Ohio law.

An individual's provisional ballot will only be counted if he or she has voted in the proper precinct.