

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

**OHIO DEMOCRATIC PARTY**

340 E. Fulton Street  
Columbus, Ohio 43215

**JAY MICHAEL HOULAHAN**

6774 Lakeside Cir. W.  
Worthington, Ohio 43085

**Plaintiffs,**

-v-

**FRANK LAROSE, in his official capacity as Ohio  
Secretary of State.**

22 North Fourth Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215

**Defendant.**

**CASE NO. 20 CV 4997**

**JUDGE STEPHEN L MCINTOSH**

**FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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For their First Amended Complaint, Plaintiffs Ohio Democratic Party and Jay Michael Houlahan state and allege as follows:

### INTRODUCTION

1. Plaintiffs bring this action to ensure that Ohioans can request an absentee ballot at the November 3, 2020 general election by emailing an image of their signed absentee ballot application to their county board of elections and by other viable electronic forms of transmission, such as facsimile machine.

2. R.C. 3509.03, which governs absentee ballot requests, does not prohibit qualified electors from requesting an absentee ballot by emailing an image of their signed absentee ballot application to their county board of elections or by other viable electronic forms of transmission, such as facsimile machine.

3. R.C. 3501.05(B)-(C) provide that the Ohio Secretary of State shall “[i]ssue instructions by directives and advisories...to members of the [county boards of elections] as to the proper methods of conducting elections,” and “[p]repare rules and instructions for the conduct of elections.”

4. Despite the lack of a statutory prohibition, Defendant Ohio Secretary of State Frank LaRose has concluded that he lacks statutory authority to instruct county boards of elections that qualified electors may submit an application for an absentee ballot via email or other viable electronic forms of transmission and/or has interpreted R.C. 3509.03 as precluding voters from requesting absentee ballots in this manner. *See* Exh. A, Ohio Secretary of State Directive 2020-13 (directing that absentee ballot applications shall be submitted to county boards of elections “in person or by mail, with the voter affixing a first-class stamp.”).

5. Plaintiffs seek declaratory judgment that (1) R.C. 3509.03 does not prohibit qualified electors from making application for an absentee ballot by emailing an image of their application to their respective county board of elections or by other viable electronic forms of transmission, such as facsimile machine; (2) qualified electors have a right under R.C. 3509.03 to make application for an absentee ballot by emailing an image of their application to their respective county board of elections, or by other viable electronic forms of transmission, such as facsimile machine, and to have their application processed in the same manner as a hard-copy application; (3) refusal to accept qualified electors’ applications for absentee ballots that are timely emailed to the appropriate county board of elections, or timely transmitted by other viable electronic forms of transmission, and contain all the required information set forth in R.C. 3509.03 constitutes a denial of the electors’ rights to equal protection of the laws guaranteed by Article I, Section 2 of the Ohio Constitution; and (4) refusal to accept qualified electors’ applications for absentee ballots that are timely emailed to the appropriate county board of elections, or timely transmitted by other viable electronic forms of transmission, and contain all the required information set forth in R.C. 3509.03 constitutes a denial of the electors’ due process rights guaranteed by Article I, Section 16 of the Ohio Constitution. Plaintiffs also seek preliminary and permanent injunctive relief to ensure that qualified electors can request an absentee ballot at the November 3, 2020 general election by emailing an image of their signed absentee ballot application to their county board of elections or by other viable electronic forms of transmission, such as facsimile machine.

**PARTIES**

6. Plaintiff Ohio Democratic Party (“Plaintiff ODP”) is one of Ohio’s two legally recognized major political parties whose candidates for local, state, and federal offices will stand for election at the November 3, 2020 general election. Plaintiff ODP has hundreds of thousands of

members from across the state, including many eligible voters, who regularly support and vote for candidates affiliated with Plaintiff ODP; more than 800,000 ODP members participated in Ohio's 2020 primary election. Many of Plaintiff ODP's members are likely to request an absentee ballot for the November 3, 2020 general election. Moreover, Plaintiff ODP plans to devote significant financial resources to its "get out the vote" (GOTV) efforts for the 2020 general election, including a concentrated effort to encourage Ohio voters to vote by absentee ballot.

7. Plaintiff Jay Michael "Mike" Houlahan ("Plaintiff Houlahan") is a qualified elector of Franklin County, Ohio who is eligible to request and cast an absentee ballot at Ohio's 2020 general election. Plaintiff Houlahan desires to submit an application for an absentee ballot to his county board of elections via email and to have his application processed in the same manner as a hard-copy application.

8. Defendant Frank LaRose ("Defendant LaRose") is the Secretary of State for the State of Ohio, the State's chief election officer (R.C. 3501.04), and is named in his official capacity only. The Ohio Secretary of State is charged with supervising the administration of the election laws statewide and "[i]ssu[ing] instructions by directives and advisories...to members of the boards as to the proper methods of conducting elections" and "[p]repar[ing] rules and instructions for the conduct of elections." R.C. 3501.05(B)-(C).

### **JURISDICTION AND VENUE**

9. Defendant LaRose, as the Ohio Secretary of State, has his principal place of business in Franklin County, Ohio.

10. Jurisdiction and venue are proper in this Court because many of Plaintiff ODP's members' and Plaintiff Houlahan's rights to request an absentee ballot electronically will be denied in this county, absent relief, and also because Defendant works in this county.

11. This Court has jurisdiction to issue declaratory judgment (R.C. 2721.01-.15), and preliminary and permanent injunctive relief (R.C. 2727.03).

12. Plaintiffs seek an award of reasonable attorneys' fees and costs pursuant to R.C. 2335.39.

### FACTUAL ALLEGATIONS

13. Ohio's 2020 general election is scheduled to take place on November 3, 2020. The county boards of elections are required to distribute Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") voters' absentee ballots beginning on September 18, 2020 and non-UOCAVA voters' absentee ballots beginning on October 6, 2020. *See* R.C. 3511.04 (UOCAVA voters); R.C. 3509.01 (non-UOCAVA voters).

14. The Ohio Elections Code authorizes a system of no-fault absentee voting in which any qualified elector may vote by absentee ballot at an election. R.C. 3509.02(A); *see also* Exh. B, Ohio Secretary of State Directive 2019-28, Section 1.01-.02. (Ch. 5, Ohio Elections Official Manual) (hereinafter referred to as "Directive 2019-28").

15. A qualified elector who wishes to cast an absentee ballot "shall make written application for those ballots to the director of elections of the county in which the elector's voting residence is located." R.C. 3509.03(A).

16. The Ohio Elections Code provides that the written application for an absentee ballot "need not be in any particular form" but that it must contain the following: (1) the elector's name, (2) the elector's signature; (3) the address at which the elector is registered to vote; (4) the elector's date of birth; (5) the elector's driver's license number, the last four digits of the elector's social security number, or a copy of the elector's current and valid photo identification, a copy of a military identification, or a copy of a current utility bill, bank statement, government check,

paycheck, or other government document, other than a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, that shows the name and address of the elector; (6) a statement identifying the election for which the absentee ballot is requested; (7) a statement that the person requesting the ballots is a qualified elector; (8) if the request is a primary election ballot, the elector's party affiliation, and (9) if the elector desires ballots to be mailed to the elector, the address to which those ballot shall be mailed. R.C. 3509.03(B).

17. The Ohio Secretary of State has prescribed a standard application that voters may use to request an absentee ballot, Form No. 11-A, though voters are not required to use this form to request such a ballot.

18. An elector's "signature," as used in Title XXV of the Revised Code, generally means that person's "written, cursive-style legal mark written in that person's own hand." R.C. 3501.011(A); *see also* Exh. B, Directive 2019-28, Section 1.03 at \*5-2 n.5. For persons who do not use a cursive-style legal mark during the course of their regular business and legal affairs, "signature" means that person's "other legal mark that the person uses during the course of that person's regular business and legal affairs that is written in the person's own hand." R.C. 3501.011(B). For purposes of requesting an absentee ballot, the legal mark of a registered elector "shall be considered to be the mark of that elector as it appears on the elector's voter registration record." R.C. 3501.011(C).

19. The Ohio Election Code requires each application for an absentee ballot to be "delivered to the director [of the board of elections]," beginning January 1<sup>st</sup> of the election year or 90 days before the election, whichever is earlier, and no later than 12:00 p.m. on the Saturday before Election Day. R.C. 3509.03(D); *see also* Exh. B, Directive 2019-28, Section 1.04 at \*5-5.

But the General Assembly did not specify in R.C. 3509.03 or elsewhere in the Ohio Election Code how absentee ballot applications can or cannot be “made” to the director of the board of elections.

20. Upon receipt of an application for an absentee ballot containing the required information as provided by R.C. 3509.03, the Ohio Election Code requires the director of a county board of elections to verify that the applicant is a qualified elector, and, if so, to “deliver to the applicant in person or mail directly to the applicant by special delivery mail, air mail, or regular mail, postage prepaid, proper absent voter's ballots.” R.C. 3509.04(B).

21. Nothing in R.C. 3509.03 or elsewhere in the Ohio Election Code prohibits voters from requesting an absentee ballot by emailing an image of their signed absentee ballot request to their county board of election or by other viable electronic forms of transmission, such as facsimile machine.

22. In contrast, the General Assembly, in other election provisions, has specified when election-related documents must be filed with or delivered to the board of elections in a particular manner.

23. For instance, with respect to the manner in which an elector may return their voted absentee ballot to the board of elections, the General Assembly specified that an elector “shall” either (1) “mail the [absentee ballot] identification envelope to the director from whom it was received” or (2) “deliver it to the director,” either “personally” by the voter or by a close relative of the voter. R.C. 3509.05(A), third paragraph (emphasis added). The General Assembly further clarified that an absentee ballot “shall be transmitted to the director in no other manner, except as provided in section 3509.08 of the Revised Code.” *Id.* (emphasis added).

24. As another example, the General Assembly specified that if a voter is directed to provide information that was missing from their absentee ballot identification envelope, the voter

must provide this information on a form that is delivered to the board “in person or by mail.” R.C. 3509.06(D)(3)(b) and R.C. 3509.06(E)(2) (emphasis added).

25. Additionally, with respect to the manner in which a person may register to vote or change their registration, the General Assembly specified that a person can do so: “[1] in person at any state or local office of a designated agency, at the office of the registrar or any deputy registrar of motor vehicles, at a public high school or vocational school, at a public library, at the office of a county treasurer, or at a branch office established by the board of elections, or [2] in person, through another person, or [3] by mail at the office of the secretary of state or at the office of a board of elections. [4] A registered elector may also change the elector's registration on election day at any polling place where the elector is eligible to vote, in the manner provided under section 3503.16 of the Revised Code.” R.C. 3503.19(A). Elsewhere in the Revised Code, the General Assembly specified that a voter can register to vote or change their registration [5] using an online voter registration system established by the Secretary of State. R.C. 3503.20.

26. The General Assembly also did not specify in R.C. 3509.03 or elsewhere that an elector requesting an absentee ballot must provide the board of elections with their “original,” “wet,” or “ink” signature.

27. In contrast, the General Assembly, in other election provisions, has specified when an original, ink signature is required to be on an election-related document. For instance, the Ohio Elections Code provides that “[e]ach signature of a voter who signs an initiative or referendum petition shall be an original signature of that voter in ink,” and that “[o]nly initiative and referendum petitions containing those original signatures in ink shall be filed with the office of the secretary of state or a board of elections.” R.C. 3519.051.



28. The legislative intent of R.C. 3509.03 is to require absentee ballot requests to be made in writing, however the written request is made, instead of allowing oral requests for absentee ballots, which can only be made in-person at a county board of elections' designated early voting location during the early voting period. By not specifying how a written application for an absentee ballot is to be "made," the General Assembly indicated that so long as the required information is on the written application, which can be in any form, then the request is valid.

29. Despite the absence of language in the Ohio Election Code prohibiting voters from requesting an absentee ballot by emailing an image of their signed absentee ballot request to their county board of election, Defendant LaRose has concluded that he lacks statutory authority to instruct county boards of elections that qualified electors may submit an application for an absentee ballot via email or by other viable electronic forms of transmission, such as facsimile machine, and/or Defendant LaRose has interpreted R.C. 3509.03 as precluding voters from requesting absentee ballots in this manner.

30. Indeed, on July 17, 2020, Defendant LaRose issued Directive 2020-13 to the county boards of elections in which he announced that his office would mail an absentee ballot application to every registered Ohio voter in "active" or "confirmation" status, and that the United States Postal Service ("USPS") is expected to deliver these applications during the first two weeks of September 2020. Exh. A, Directive 2020-13 at \*1.

31. Included in Directive 2020-13 was Defendant LaRose's instruction for voters to submit their absentee ballot applications to their respective county boards of elections "in person or by mail, with the voter affixing a first-class stamp." *Id.*; *see also* Ohio Secretary of State, *Application for Absentee Ballot to Vote by Mail*, <https://www.ohiosos.gov/elections/voters/absentee-ballot/> (last accessed July 29, 2020) ("Print the

downloaded document, sign, put the completed form in an envelope with the correct postage and mail it to your county board of elections.”); Ohio Secretary of State, *Absentee Voting*, <https://www.ohiosos.gov/elections/voters/absentee-voting/> (last accessed July 29, 2020) (“Mail the request form back to your own county board of elections.”); Exh. B, Directive 2019-28, Section 1.03, \*5-3 n.8 (explaining that voters can fill out an absentee application, in-person at the board of elections, and take their absentee ballot home with them if during the early voting period).

32. Upon information and belief, Defendant LaRose’s office’s statewide mailing of absentee ballot applications to every registered Ohio voter will include similar instructions for voters to submit their absentee ballot applications to their county board of elections either in person or by mail.

33. Defendant LaRose’s instruction in Directive 2020-13 to mail absentee ballot requests requires voters to spend money on an envelope and postage, and to deliver the envelope containing the request to the USPS in order to make their request.

34. Defendant LaRose’s instruction to mail absentee ballot requests may also result in a voter’s absentee ballot request not arriving to the respective county board of elections in time through no fault of the voter.

35. Defendant LaRose, in concluding that he lacks statutory authority to instruct county boards of elections that qualified electors may submit an application for an absentee ballot via email or by other viable electronic form of transmission, and/or in interpreting R.C. 3509.03 as precluding voters from requesting absentee ballots in this manner, has inserted a prohibition where one does not exist. *See State v. Taniguchi*, 74 Ohio St. 3d 154, 156, 656 N.E.2d 1286 (1995) (“[a] court should give effect to the words actually employed in a statute, and should not delete words used, or insert words not used, in the guise of interpreting the statute”).

36. Finally, in the absence of a statutory provision specifying how a voter shall be able to “make” their absentee ballot application to the director of the board of elections, a voter must be permitted to make their application via email or by other viable electronic form of transmission, such as facsimile machine, so long as their request contains all the requirements set forth in R.C. 3509.03. *See State ex rel. Orange Twp. Bd. of Trustees v. Delaware Cty. Bd. of Elections*, 135 Ohio St.3d 162, 2013-Ohio-36, ¶ 27 (holding that “in the absence” of a rule or policy regarding the manner in which the documents may be “filed with” or “certified to” the board of elections, an email transmission of the documents “was adequate to be considered a ‘certification to’ the board.”).

37. Plaintiffs affirmatively allege that they each have standing to bring this action under common law standing as well as the Declaratory Judgment Act, R.C. 2721.02(A), and that this matter presents a justiciable controversy.

38. Due to the ongoing COVID-19 pandemic, Ohio’s elections officials, including Defendant Secretary, are projecting a marked increase in the number of Ohio electors who will choose to request an absentee ballot for the November 3, 2020 general election compared to prior elections.

39. At the same time, the COVID-19 pandemic and internal policy changes within the USPS have led to delays in mail delivery that may result in absentee ballot applications not being delivered to boards of elections on time. For instance, during Ohio’s 2020 primary election, Defendant Secretary, in a letter to Ohio’s congressional delegation, reportedly wrote that “First-class mail that normally would take one to three days for delivery now is taking as many as seven to nine days,” and that “these delays mean it is very possible that many Ohioans who have requested a ballot may not receive it in time.” *See Rick Rouan, Mail delays during coronavirus*

*outbreak hurting Ohio election, Secretary of State Frank LaRose says*, Columbus Dispatch, April 23, 2020, available at <https://www.dispatch.com/news/20200423/mail-delays-during-coronavirus-outbreak-hurting-ohio-election---secretary-of-state-frank-larose-says> (last accessed August 4, 2020). Similarly, it was reported that during Ohio’s 2020 primary election, more than 300 absentee ballots in one county alone in Ohio were delivered to the respective board of elections too late by the USPS for the votes to be counted, despite the ballots having been timely postmarked. See Jessie Balmert, *More than 300 Butler County ballots delivered late won't count in Ohio primary*, Cincinnati Enquirer, May 12, 2020, available at <https://www.cincinnati.com/story/news/2020/05/12/more-than-300-butler-county-ballots-delivered-late-wont-count-ohio-primary/3119026001/> (last accessed August 4, 2020).

40. Due to projected delays, the USPS recommends that if voters plan to submit their absentee ballot requests by mail, then the requests should be made at least 15 days before Election Day. See Michelle Ye Hee Lee and Jacob Bogage, *Postal Service backlog sparks worries that ballot delivery could be delayed in November*, Washington Post, July 30, 2020, available at [https://www.washingtonpost.com/politics/postal-service-backlog-sparks-worries-that-ballot-delivery-could-be-delayed-in-november/2020/07/30/cb19f1f4-d1d0-11ea-8d32-1ebf4e9d8e0d\\_story.html](https://www.washingtonpost.com/politics/postal-service-backlog-sparks-worries-that-ballot-delivery-could-be-delayed-in-november/2020/07/30/cb19f1f4-d1d0-11ea-8d32-1ebf4e9d8e0d_story.html) (last accessed August 4, 2020).

41. Any qualified Ohio elector who chooses to request an absentee ballot for the upcoming election will, therefore, be subject to Defendant Secretary’s conclusion that he lacks statutory authority to instruct county boards of elections that qualified electors may submit an application for an absentee ballot via email or other viable form of electronic transmission and/or his interpretation of R.C. 3509.03 as precluding voters from requesting absentee ballots in this manner. As a result, these electors’ rights to request an absentee ballot via email or through other

viable forms of electronic transmission, such as facsimile, will be impeded. This, in turn, will require these voters to choose between submitting their absentee ballot request in-person, which would require them to spend the time and resources necessary to travel to their county boards of elections and requiring them risk their health and elections officials' health in light of the ongoing COVID-19 pandemic, or by mail, which would require them to spend the resources necessary to mail their request and to risk disenfranchisement due to delays in mail delivery.

42. Plaintiff ODP devotes substantial resources to voting activities, and this is especially so in a presidential election year, like 2020, when voter turnout is at its highest. Each election cycle, Plaintiff ODP's staff and volunteers make calls and send mailings to inform registered Democrat and unaffiliated voters about the voting process, including providing voters with information about requesting absentee ballots. Additionally, Plaintiff ODP runs a voter protection program each election cycle to help voters with issues related to their efforts to vote, including issues related to voters' attempts to request absentee ballots. Throughout the early voting period and on election day, paid and volunteer attorneys staff a hotline that voters can call to ask questions or report problems. Plaintiff ODP intends to spend its resources to continue these voter education and voter protection efforts in 2020.

43. Plaintiff ODP has an interest in knowing whether, under R.C. 3509.03, qualified electors have a right to submit their completed absentee ballot applications via email or by other viable forms of electronic transmission, such as facsimile, so that Plaintiff ODP can properly inform voters of their rights. If it is later determined that voters do, indeed, have a right to submit their completed absentee ballot applications via email or other viable form of electronic transmission, then Plaintiff ODP will spend resources to inform voters about their right to request an absentee ballot in this manner.

44. Moreover, Plaintiff ODP has members who have suffered and will suffer injury as a result of Defendant Secretary's interpretation of R.C. 3509.03. Plaintiff ODP has more than 800,000 members who voted in the 2020 presidential primary election and who intend to vote in the November 3, 2020 general election. Many of Plaintiff ODP's members choose to vote by absentee ballot and will choose to vote in this manner for the November 3, 2020 general elections. These members will thus be subject to Defendant Secretary's interpretation of R.C. 3509.03, and as a result, these members' right to request an absentee ballot via email or through other viable forms of electronic transmission, such as facsimile, will be impeded. Further, Defendant Secretary's interpretation of R.C. 3509.03 will require Plaintiff ODP's members to choose between submitting their absentee ballot request in-person, which would require them to spend the time and resources necessary to travel to their county boards of elections and requiring them risk their health and elections officials' health in light of the ongoing COVID-19 pandemic, or submitting their requests by mail, which would require them to spend the resources necessary to mail their request and to risk disenfranchisement due to delays in mail delivery.

45. Plaintiff ODP's members who are qualified Ohio electors would have standing to sue in their own right.

46. The interests Plaintiff ODP seeks to protect in this lawsuit are germane to Plaintiff ODP's interests in that voting activities are inherently the reason political parties, like Plaintiff ODP, exist, and that Plaintiff ODP has an interest in knowing what rights voters have under the law with respect to how to request an absentee ballot.

47. Additionally, Plaintiff ODP has a close relationship with individuals who choose to vote by absentee ballot, regardless of their political affiliation, through its voter protection services.

48. Plaintiff Houlahan, who is 81 years old and is a qualified Ohio elector, intends to vote by absentee ballot in the November 3, 2020 general election, and he desires to submit his completed application for an absentee ballot to his county board of elections via email. But Plaintiff Houlahan is subject to Defendant Secretary's interpretation of R.C. 3509.03 as precluding voters from requesting absentee ballots in this manner, and as a result, his right to request an absentee ballot via email or through other viable forms of electronic transmission, such as facsimile, will be impeded. This, in turn, will require Plaintiff Houlahan to choose between submitting his absentee ballot request in-person, which would require him to spend the time and resources necessary to travel to his county board of elections and requiring him risk his health and elections officials' health in light of the ongoing COVID-19 pandemic, or submitting the request by mail, which would require him to spend the resources necessary to mail his request and to risk disenfranchisement due to delays in mail delivery.

49. The injuries suffered by Plaintiff ODP, Plaintiff ODP's members, the third parties with whom Plaintiff ODP has a close relationship, and Plaintiff Houlahan would be redressed by the declaratory and injunctive relief sought herein, and such relief would allow these parties to fully exercise their rights to submit an absentee ballot application via email or other viable forms of electronic transmission, such as facsimile.

50. Plaintiffs have a likelihood of success on the merits of their claims.

51. Absent the relief requested herein, the enforcement of Defendant LaRose's conclusion that he lacks statutory authority to instruct county boards of elections that qualified electors may submit an application for an absentee ballot via email or other viable form of electronic transmission and/or his interpretation of R.C. 3509.03 as precluding voters from

requesting absentee ballots in this manner will continue, thereby causing irreparable harm to Plaintiff ODP's members and Plaintiff Houlahan.

52. There will be no injury to others caused by the granting the relief requested herein.

53. The public interest will be served by granting the relief requested herein.

54. Plaintiffs affirmatively allege that they have acted with the utmost diligence in bringing the instant action, that there has been no unreasonably delay or lapse of time in asserting their rights sought herein, and, further, there is no prejudice to Defendants.

#### **COUNT ONE**

**(R.C. 3509.03 does not prohibit qualified electors from making application for an absentee ballot by emailing an image of their application to their county board of elections or by other viable electronic form of transmission, such as facsimile machine)**

55. The preceding and subsequent allegations are incorporated into Count One, as though fully set forth herein.

56. Plaintiffs are entitled to a declaration that R.C. 3509.03 does not prohibit qualified electors from making their application for an absentee ballot by emailing an image of their signed and completed application to their county board of elections or by other viable electronic form of transmission, such as facsimile machine.

#### **COUNT TWO**

**(Qualified electors have a right under R.C. 3509.03 to make application for an absentee ballot by emailing an image of their application to their county board of elections or by other viable electronic form of transmission, such as facsimile machine, and to have their application processed in the same manner as a hard-copy application)**

57. The preceding and subsequent allegations are incorporated into Count Two, as though fully set forth herein.

58. All 88 county boards of elections have an email address, according to Defendant LaRose's "County Boards of Elections Directory." *See* Ohio Secretary of State, *County Boards of*



*Elections Directory*, available at <https://www.ohiosos.gov/elections/elections-officials/county-boards-of-elections-directory/> (last accessed July 30, 2020).

59. All 88 county boards of elections have a facsimile number. According to Defendant LaRose’s “County Boards of Elections Directory,” 87 of the 88 county boards of elections have a facsimile number (*id.*), and the one county board of elections listed as not having a facsimile number, the Hardin County Board of Elections, lists a facsimile number on its website at <https://www.boe.ohio.gov/hardin/> (last accessed July 30, 2020).

60. Plaintiffs are entitled to a declaration that qualified electors have a right under R.C. 3509.03 to make application for an absentee ballot by emailing an image of their application to their county board of elections or by other viable electronic form of transmission, such as facsimile machine, and to have their application processed in the same manner as a hard-copy application.

**COUNT THREE**  
**(Violation of Ohio’s Equal Protection Clause)**

61. The preceding and subsequent allegations are incorporated into Count Three, as though fully set forth herein.

62. Qualified electors who would electronically transmit an image of their completed application for an absentee ballot to their county board of elections, such as by email or facsimile, are similarly situated to qualified electors who submit their completed application for an absentee ballot to their county board of elections in person or by mail.

63. Qualified electors who would electronically transmit an image of their completed application for an absentee ballot to their county board of elections, such as by email or facsimile, are also similarly situated to qualified UOCAVA voters who, pursuant to federal law, are permitted to electronically request an absentee ballot. *See* 52 U.S.C. § 20302(a)(6)(A); *see also* R.C. 3511.02(A)(1).

64. There is no compelling, important, or rational interest or reason for treating qualified electors who electronically transmit an image of their completed application for an absentee ballot to their county board of elections differently than qualified electors who submit their completed application for an absentee ballot to their county board of elections in person or by mail, or differently than qualified UOCAVA voters who are permitted to email their completed applications for absentee ballots.

65. Regardless of the manner in which the absentee ballot application is “made” to the county board of elections, the board of elections is required to conduct the same review of the application: the board must verify that the application contains all the information set forth in R.C. 3509.03 and that the voter’s signature provided on the application matches the voter’s signature records on file with the board of elections. *See* R.C. 3509.04; R.C. 3511.04 (concerning uniformed and overseas voters). Once the board of elections confirms that all the required information was provided and that the voter is a qualified elector, then the board must send the voter an absentee ballot. *Id.*

66. Plaintiffs are entitled to a declaration that refusal to accept qualified electors’ applications for absentee ballots that are timely emailed or transmitted by other viable electronic form of transmission, such as facsimile machine, to the appropriate county board of elections and contain all the required information set forth in R.C. 3509.03 constitutes a denial of the electors’ rights to equal protection of the laws guaranteed by Article I, Section 2 of the Ohio Constitution.

**COUNT FOUR**  
**(Violation of Ohio’s Due Process Rights)**

67. The preceding and subsequent allegations are incorporated into Count Four, as though fully set forth herein.

68. There is no legitimate governmental interest in prohibiting qualified electors from making their application for an absentee ballot by emailing or transmitting by other viable electronic form of transmission, such as facsimile machine, an image of their signed and completed application to their county board of elections so long as the application contains all the required information set forth in R.C. 3509.03, including the elector's signature.

69. Boards of elections need only be able to verify that the application contains the information required by R.C. 3509.03 and that the elector's signature matches the board's records in order to determine that the elector is qualified to receive an absentee ballot. An emailed absentee ballot application still allows boards of elections to adequately conduct this verification.

70. Allowing qualified electors to electronically transmit their completed absentee ballot applications to their county board of elections, such as by email or facsimile, would not cost the state or counties any more funds, and it would be more efficient and cost effective for the boards compared to processing the same application sent through the mail.

71. Allowing qualified electors to electronically transmit their completed absentee ballot applications to their county board of elections, such as by email or facsimile, would be more efficient for the county boards of elections than process.

72. Requiring electors to mail or hand deliver their completed application for an absentee ballot to their county board of elections is unreasonable, arbitrary, and/or capricious.

73. Plaintiffs are entitled to a declaration that refusal to accept qualified electors' applications for absentee ballots that are timely emailed or transmitted by other viable electronic form of transmission, such as by facsimile machine, to the appropriate county board of elections and contain all the required information set forth in R.C. 3509.03 constitutes a denial of the electors' due process rights guaranteed by Article I, Section 16 of the Ohio Constitution.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that the Court:

- (1) Declare that R.C. 3509.03 does not prohibit qualified electors from making application for an absentee ballot by emailing an image of their application to their respective county board of elections or by other viable electronic forms of transmission, such as facsimile machine;
- (2) Declare that qualified electors have a right under R.C. 3509.03 to make application for an absentee ballot by emailing an image of their application to their county board of elections or by other viable electronic forms of transmission, such as facsimile machine, and to have their application processed in the same manner as a hard-copy application;
- (3) Declare that refusal to accept qualified electors' applications for absentee ballots that are timely emailed to the appropriate county board of elections, or timely transmitted by other viable electronic forms of transmission, and contain all the required information set forth in R.C. 3509.03 constitutes a denial of the electors' rights to equal protection of the laws guaranteed by Article I, Section 2 of the Ohio Constitution;
- (4) Declare that refusal to accept qualified electors' applications for absentee ballots that are timely emailed to the appropriate county board of elections, or timely transmitted by other viable electronic forms of transmission, and contain all the required information set forth in R.C. 3509.03 constitutes a denial of the electors' due process rights guaranteed by Article I, Section 16 of the Ohio Constitution;
- (5) Issue a preliminary injunction and permanent injunction enjoining the enforcement by Ohio Secretary of State Frank LaRose, his officers, agents, employees, attorneys, and

- those persons in active concert or participation with him, of the Secretary's interpretation of R.C. 3509.03 as prohibiting voters from making their application for an absentee ballot by emailing an image of their request to the director of the county board of elections, or by other viable electronic forms of transmission, in contravention of the plain terms of R.C. 3509.03;
- (6) Order Ohio Secretary of State Frank LaRose to convey and/or communicate notice of this Court's judgment and order, along with a copy of the Court's judgment and order, to all of Ohio's county boards of elections;
- (7) Order Ohio Secretary of State Frank LaRose to include instructions in his office's statewide mailing of absentee ballot applications to registered Ohio voters that they can submit their completed application by emailing an image of their request to the director of the county board of elections or by other viable electronic forms of transmission, such as facsimile machine;
- (8) Order Ohio Secretary of State Frank LaRose to direct the county boards of elections to accept and process absentee ballot requests that are sent by email or other viable electronic forms of transmission, such as facsimile machine, so long as the requests are timely and contain the required information set forth in R.C. 3503.09;
- (9) Award Plaintiffs their reasonable attorneys' fees and costs pursuant to R.C. 2335.39;  
and
- (10) Award all such other relief that this Court deems just and proper.

Respectfully submitted,

/s/ J. Corey Colombo  
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*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was electronically filed using the Court's e-Filing system, which will send a copy of the foregoing to all counsel of record, and that I requested service through the e-Filing Service in accordance with the Ohio Rules of Civil Procedure. Additionally, a true and accurate copy of the foregoing was served on August 4, 2020 upon the following via electronic mail:

Renata Y. Staff, Renata.Staff@OhioAttorneyGeneral.gov  
Heather L. Buchanan, Heather.Buchana@OhioAttorneyGeneral.gov

*Counsel for Defendant*

/s/ J. Corey Colombo  
J. Corey Colombo

**Exhibit A**  
**Directive 2020-13**

**DIRECTIVE 2020-13**

July 17, 2020

To: All County Boards of Elections  
Board Members, Directors, and Deputy Directors

Re: Preparation for the Statewide Mailings of Absentee Ballot Applications for the  
November 3, 2020 General Election

**SUMMARY**

Since 2012, the General Assembly has authorized the Secretary of State to send absentee ballot applications to all Ohio voters in gubernatorial and presidential general elections. This year, the Ohio Controlling Board has authorized the Secretary of State's Office to use federal funds to conduct a statewide mailing of absentee ballot applications for the upcoming November 3, 2020 General Election.<sup>1</sup> This Directive requires each board of elections to update its voter registration database and resolve duplicate records in preparation for the Secretary of State's statewide mailing.

**BACKGROUND AND OVERVIEW**

To ensure fairness and uniformity across counties, to reduce lines at polling places on November 3, 2020, and to make participation in the 2020 General Election as safe, accessible and convenient as possible, the Secretary of State's Office will mail an absentee ballot application by non-forwardable mail to every registered Ohio voter in "active" or "confirmation" status.

The absentee ballot application will be pre-filled with the voter's name, current address, and local voter identification number (represented numerically and as a barcode) and mailed to the voter's address as it appears in the Statewide Voter Registration Database ("SWVRD"). The voter must complete the absentee ballot application by providing the voter's date of birth, identification, and signature before sealing the application in the reply envelope and submitting it to the voter's county board of elections in person or by mail, with the voter affixing a first-class stamp.<sup>2</sup> The United States Postal Service ("USPS") is expected to deliver the initial applications during the first two weeks of September 2020.

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<sup>1</sup> R.C. 3501.05.

<sup>2</sup> R.C. 3509.03.



## INSTRUCTIONS

### I. PREPARATION FOR INITIAL MAILING

To facilitate the initial mailing of absentee ballot applications, each county board of elections must do all of the following:

- Enter into the county voter registration database all new voter registrations and changes of address or name, including information from returned confirmation notices received through July 24, 2020, and ensure that those new registrations and changes have been transmitted to the SWVRD. **Do not wait until July 29, 2020, to enter new voter registrations, changes of address or name, or information from returned confirmation notices. The board must enter this information into its county voter registration database at least once a week throughout July.**
- No later than July 29, 2020, resolve all in-county and cross-county duplicate records that exist as of July 24, 2020. Remember, it is *never* an acceptable practice for any county board of elections to simply “keep” a voter registration record to avoid resolving duplicate records.
- No later than July 24, 2020, review all alternate mailing addresses in the SWVRD (e.g., P.O. Boxes) for the county and make sure that all alternate mailing addresses associated with a voter’s record in the SWVRD are current and relevant to the elector’s voter registration rather than some other election administration purpose (i.e., if the board has populated the elector’s alternate mailing address with the address for a previous election’s absent voter ballot and that alternate mailing address was sent to the SWVRD as the elector’s alternate mailing address, that address should be removed since it is associated with absentee balloting rather than voter registration).

### II. PREPARATION FOR SUPPLEMENTAL MAILINGS

In early October, the Secretary of State’s Office will supplement the first mailing by sending an absentee ballot application to any individual who has registered to vote or changed their name or address between July 29, 2020 and October 2, 2020. To facilitate this mailing, each board of elections must do all of the following:

- Enter into the county voter registration database all new voter registrations and changes of address or name, including information from returned confirmation notices received through September 30, 2020, and ensure that those new registrations and changes have been transmitted to the SWVRD. **Do not wait until October 2, 2020 to enter new voter registrations, changes of address or name, or information from returned confirmation notices. The board must enter this information into its county voter registration database at least once a week throughout September.**
- No later than 5:00 p.m. on October 2, 2020, resolve all in-county and cross-county duplicate records that exist as of September 30, 2020.

The Secretary of State’s Office will conduct a second supplemental mailing for any individual who registered to vote or changed their name or address between October 3 and October 9, 2020. To facilitate this mailing, each board of elections must do all of the following:

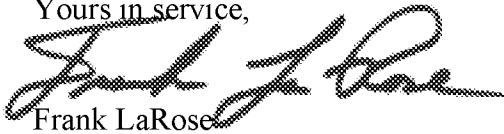
- Enter into the county voter registration database all new voter registrations and changes of address or name, including information from returned confirmation notices received through October 9, 2020, and ensure that those new registrations and changes have been transmitted to the SWVRD. **Do not wait until October 9, 2020 to enter new voter registrations, changes of address or name, or information from returned confirmation notices.**
- No later than 5:00 p.m. on October 9, 2020, resolve all in-county and cross-county duplicate records that exist as of October 8, 2020.

**III. MANDATORY POSTING AT VOTING LOCATIONS ON ELECTION DAY**

All county boards of elections must post a copy of the statewide absentee ballot application mailing at each polling location on Election Day as a reference for voters who are marked in the pollbook as having to cast a provisional ballot on account of having requested an absentee ballot. The prescribed posting will be provided to county boards of elections under separate cover at a later date.

If the board has any questions about this Directive, please contact the Secretary of State’s elections counsel at (614) 728-8789.

Yours in service,



Frank LaRose  
Ohio Secretary of State

**Exhibit B**  
**Directive 2019-28**



## Chapter 5: ABSENTEE VOTING

### Directive 2019-28

#### Section 1.01 Definition

An absentee voter is any qualified voter who votes by mail or in person prior to Election Day.<sup>1</sup>

#### Section 1.02 Eligibility

Any qualified voter whose registration information is current may request and vote an absentee ballot at any election without stating a reason.<sup>2</sup>

#### Section 1.03 Application

A qualified voter who wishes to cast an absentee ballot must either

1. Submit an application in writing to the board of elections of the county in which the voter resides; or,
2. Appear in-person at the board of elections office or other site designated in-person absentee voting and request to vote absentee.

A qualified elector who wants to receive and cast an absentee ballot in person at the board of elections office or other location designated for in-person absentee voting must

1. Announce their full name and current address to the election officials and must provide one of the valid forms of identification that are acceptable for voting purposes on Election Day or
2. Submit a completed written application containing their driver license number or the last four digits of their Social Security number; or

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<sup>1</sup> R.C. 3509.02.  
<sup>2</sup> R.C. 3509.02.

3. A copy of the elector's current and valid photo identification, a copy of a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, that shows the name and address of the elector.

While there is no required form for an application for an absentee ballot, the Secretary of State's office makes available prescribed forms specific to each type of absentee vote

## ABSENTEE BALLOT APPLICATIONS

County boards of elections are prohibited from mailing unsolicited absentee ballot applications to any voter.<sup>3</sup>

Boards of elections are not prohibited from placing absentee ballot applications on the board's website or in various public places (e.g., libraries, etc.). A request in writing in any form, a verbal request in person or by phone, or the completion of some manner of automated form of application (telephonic or web-based) initiated by an individual voter constitutes a proper request for an absentee ballot application and is not prohibited.

## REQUIRED FIELDS

Generally, an absentee ballot application in any form is sufficient if it contains ALL of the following pieces of information:<sup>4</sup>

1. The voter's name;
2. The voter's signature;<sup>5</sup>
3. The address at which the voter is registered to vote;
4. The voter's date of birth;
5. One of the following:
  - The voter's driver license number;
  - The last four digits of the voter's Social Security number; or
  - A copy of a current and valid photo identification, a military identification, or a current (within the last 12 months) utility bill, bank statement, government check, paycheck, or other government document (other than a notice of

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<sup>3</sup> R.C. 3501.05

<sup>4</sup> R.C. 3509.03

<sup>5</sup> Generally, signing or affixing a signature to an election-related document requires a person's written, cursive-style legal mark written in that person's own hand. However, a voter with a disability may personally affix their signature through the use of a reasonable accommodation, including the use of assistive technology or an augmentative device such as a signature stamp. See R.C. 3501.011, 3501.382(F) and related OAG 2015-012.

voter registration mailed by a board of elections) that shows the voter's name and address.

6. A statement identifying the election for which the absentee ballot is requested;
7. A statement that the person requesting the ballot is a qualified elector;<sup>6</sup>
8. If the request is for a primary election ballot, the voter's party affiliation; and
9. If the voter desires a ballot to be mailed to the elector, the address to which that ballot shall be mailed.

Certain types of absentee voters must provide additional information in order to receive an absentee ballot, as discussed below. All absentee ballot applications, except the Federal Post Card Application (FPCA) used by absentee voters who are uniformed services or overseas citizens (UOCAVA), are valid for a single election only.<sup>7</sup> All other voters must reapply for an absentee ballot prior to each election in which the voter wishes to vote by absentee ballot.

### APPLICATION IN-PERSON (NO WRITTEN APPLICATION)

For in-person absentee voters that prefer to vote in-person (without filling out an absentee ballot application)<sup>8</sup>, the following are forms of identification which are acceptable for voting purposes on Election Day and now are acceptable forms of identification for in-person absentee voting:

- An unexpired Ohio driver license or state identification card with present or former address so long as the voter's present residential address is printed in the official list of registered voters for that precinct;

**Note:** An Ohio driver license or state identification card with an old or former address IS ACCEPTABLE as a valid form of identification necessary to cast a regular ballot when the voter's current address is printed in the Signature Poll Book.

- A military identification;

**Note:** Military identification cards or copies of such cards must be accepted whether or not they contain the voter's name or address. However, it still must allow a precinct election official to determine that it is the military ID card of the person who is presenting it for the purpose of voting.

<sup>6</sup> Under R.C. 3509.01, a voter's qualifications to vote are determined as of the date of the election.

<sup>7</sup> R.C. 3509.02; R.C. 3509.03.

<sup>8</sup> Please note that this is still an option for those who prefer to fill out an application and/or take the ballot home with them.

- A photo identification issued by the United States government or the State of Ohio, that contains the voter's name and current address and that has an expiration date that has not passed;
- An original or copy of a current utility bill with the voter's name and present address;

**Note:** A utility bill is a statement of fees owed and/or paid for services. It may be a printout of an electronically transmitted statement for services owed, paid, or a regular paper copy. A utility bill includes, but is not limited to, water, sewer, electric, heating, cable, Internet, telephone and cellular telephone services.

- An original or copy of a current bank statement with the voter's name and present address;
- An original or copy of a current government check with the voter's name and present address;
- An original or copy of a current paycheck with the voter's name and present address; or
- An original or copy of a current other government document (other than a notice of voter registration mailed by a board of elections) that shows the voter's name and present address.

For utility bills, bank statements, government checks, paychecks, and other government documents, "current" is defined as within the last 12 months. "Other government document" includes license renewal and other notices, fishing and marine equipment operator's license, court papers, or grade reports or transcripts. "Government office" includes any local (including county, city, township, school district and village), state or federal (United States) government office, branch, agency, commission, public college or university or public community college, whether or not in Ohio.<sup>9</sup>

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<sup>9</sup> R.C. 3505.18; Chapter 7 of the Ohio Election Official Manual; Directive 2008-80.

## Section 1.04 Absentee Voting

### ABSENTEE VOTING BY MAIL

To cast an absentee ballot by mail, voters apply using Ohio Secretary of State Form 11-A or any written application containing all the required information mentioned previously. Voters may submit applications to receive an absentee ballot by mail beginning January 1st of the election year or 90 days before the election, whichever is earlier, and ending 12:00 p.m. noon the Saturday before Election Day.<sup>10</sup>

Boards may begin mailing absentee ballots to those who have requested them on the first day after the close of voter registration before Election Day and may continue mailing absentee ballots as they receive valid applications up until 12:00 p.m. noon the Saturday before Election Day.<sup>11</sup>

A voter who receives an absentee ballot by mail may return it to the office of the board of elections through the mail or by personal delivery:

#### 1. Return by Mail

- a. The absentee ballot must be postmarked no later than the day before Election Day and received at the board of elections office no later than the 10th day after Election Day.<sup>12</sup>
- b. If the absentee ballot does not have a postmark, it must be received at the board of elections office no later than 7:30 p.m. on Election Day.
- c. A postmark does not include mail sent using a postage evidencing system, including a postage meter or postage from private companies that dispense postage through the internet (e.g., Stamps.com), known as the PC Postage program.<sup>13</sup>

#### 2. Return by Personal Delivery

A voter may deliver the absentee ballot personally or may have a family member<sup>14</sup> deliver the absentee ballot by the close of polls on Election Day at the office of the board of elections only. No one may return a voted absentee ballot to a precinct polling location.

<sup>10</sup> R.C. 3509.03.

<sup>11</sup> R.C. 3509.01; R.C. 3509.03.

<sup>12</sup> R.C. 3509.05(B)(1).

<sup>13</sup> R.C. 3509.05(B)(2). See also, 39 CFR 501.01.

<sup>14</sup> R.C. 3509.05(A): "Family member" includes spouse, domestic partner, mother, father, step-mother, step-father, mother-in-law, father-in-law, brother, sister, step-brother, step-sister, half brother, half sister, brother-in-law, sister-in-law, grandmother, grandfather, aunt, uncle, child, step-child, son-in-law, daughter-in-law, or other family member living in the same household.



## USE OF REMOTE BALLOT MARKING SYSTEM.

A voter with a qualifying disability under the Americans with Disabilities Act (ADA) may timely submit a completed application to receive an absentee ballot by mail and request to mark their absentee ballot using a county's remote ballot marking system. A qualifying voter must provide all of the information required for an absentee ballot application and the following:

1. A statement that the person has a qualifying disability under the Americans with Disabilities Act (ADA);<sup>15</sup>
2. A statement that the person needs to use the remote ballot marking system to mark independently their ballot; and
3. The email address to which the board can deliver the person's ballot; and
4. The address to which the voter wants the Identification Envelope – Statement of Voter (Secretary of State Form 12-A) mailed to the voter, if that address is different from the voter's registration address.

The voter may use Secretary of State Form 11-G for this purpose. The form is located on the Secretary of State's website, and each board of elections must make it available upon request. If a voter submits a written absentee ballot application to a board of elections on a form other than the Secretary of State Form 11-G but indicates on the application that they have a disability and wants to use the remote ballot marking system, the board must make reasonable efforts to obtain any additional information necessary to process the application and make the remote ballot marking system available to the voter.

Once the board receives a timely and complete application from a voter, the board must transmit the following promptly to the voter via email to the email address provided by the voter:

1. A link through which the voter may access and mark their ballot using the remote ballot marking system;
2. Secretary of State Form 12-A (Identification Envelope – Statement of Voter)<sup>16</sup>;

<sup>15</sup> A board of elections must accept as true the voter's statement that they have a qualifying disability under the ADA. Under no circumstances may a board of elections require a voter to provide documentation of their disability or any information beyond what is requested on Secretary of State Form 11-G.

<sup>16</sup> Each board must use the version of Secretary of State Form 12-A that appears on the Secretary of State's website, because that version of the form is compliant with Web Content Accessibility Guidelines (WCAG) 2.0 and is a fillable PDF.

3. Secretary of State Form 12-N (Instructions to Voters Using a Remote Ballot Marking System); and
4. Any additional instructions prepared by the board of elections or the vendor that the voter might need to utilize the remote ballot marking system.

If a board of elections receives a notice of delivery failure for the email, the board must verify that it attempted to send the email to the email address provided, and, if so, the board must contact the voter immediately to obtain a valid email address. The voter must provide any alternate email address to the board in writing using a separate written application for an absent voter's ballot. If the board is unable to obtain a valid email address for a voter by 12:00 p.m. noon on the Saturday before Election Day, the board must transmit the ballot to the voter by regular, U.S. Mail.

The board also must send the voter an absentee ballot identification envelope and statement of voter (Secretary of State Form 12-A) and an absentee ballot return envelope (Secretary of State Form 12-F) via regular U.S. Mail on the same day that the board emails the link and instructions to the voter. The identification envelope and absentee ballot return envelope must be sent either to the voter's registration address or to the address requested by the voter on the voter's written application, if the voter has requested that the envelopes be sent to an alternate address.

As with all absentee ballot identification envelopes, boards of elections are required to pre-print the voter's name and address (at which the voter is registered to vote) on the voter's identification envelope prior to mailing it to the voter. In addition to pre-printing the voter's name and address (at which the voter is registered to vote) on the envelope, the board also must indicate the location that the voter needs to sign the statement of absentee voter by punching two small holes with a hole puncher – one on the "X" following "Signature" and one at the end of the signature line. This will allow the voter to detect – by touch – where they need to place their signature.

A voter can mark their ballot by accessing the remote ballot marking system through the link provided to the voter. Each board of elections must work closely with its remote ballot marking system vendor to assist a voter with troubleshooting and resolving any issues. Each board of elections also must work closely with its vendor to provide detailed step-by-step instructions for a voter to follow to access and use the system.

After marking the ballot, the voter must print it and enclose it in an envelope using one of the following methods:

1. The voter may complete electronically, print, and sign the Identification Envelope – Statement of Voter (Secretary of State Form 12-A) that the board emailed to the voter and enclose it with the voter's ballot in any envelope provided by the voter.

2. The voter may complete and sign the Identification Envelope – Statement of Voter (Secretary of State [Form 12-A](#)) that the board mailed to the voter and enclose their ballot in the Identification Envelope.

The voter may return their voted ballot to the board of elections by mail or by personal delivery:

- 1. Return by Mail**

- The absentee ballot must be postmarked no later than the day before Election Day and received at the board of elections office no later than the 10th day after Election Day.<sup>17</sup>
- If the absentee ballot does not have a postmark, it must be received at the board of elections office no later than 7:30 p.m. on Election Day.
- A postmark does not include mail sent using a postage evidencing system, including a postage meter or postage from private companies that dispense postage through the internet (e.g., Stamps.com), known as the PC Postage program.<sup>18</sup>

- 2. Return by Personal Delivery**

A voter may deliver the absentee ballot personally or may have a family member<sup>19</sup> deliver the absentee ballot by the close of polls on Election Day at the office of the board of elections only. No one may return a voted absentee ballot to a precinct polling location.

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<sup>17</sup> [R.C. 3509.05\(B\)\(1\)](#).

<sup>18</sup> [R.C. 3509.05\(B\)\(2\)](#). See also, 39 CFR 501.01.

<sup>19</sup> [R.C. 3509.05\(A\)](#); "family member" includes spouse, domestic partner, mother, father, step-mother, step-father, mother-in-law, father-in-law, brother, sister, step-brother, step-sister, half brother, half sister, brother-in-law, sister-in-law, grandmother, grandfather, aunt, uncle, child, step-child, son-in-law, daughter-in-law, or other family member living in the same household.

## ABSENTEE VOTING IN PERSON

### UNIFORM HOURS STATEWIDE FOR IN-PERSON ABSENTEE VOTING

In-person absentee voting begins on the first day after the close of voter registration before Election Day for all types of absentee voters.<sup>20</sup>

All boards of elections must adopt the following as their business hours for in-person absentee voting.<sup>21</sup>

#### **1. Elections Conducted in Even Years (excluding special elections)**

##### **a. Presidential General Election**

Weeks One and Two of Voting Voting begins the day after the close of registration for the election. Boards must be open for in-person absentee voting on any holiday established by state or federal law.

- 8:00 a.m. to 5:00 p.m. on each weekday  
(Monday through Friday)

Week Three of Voting Boards must be open for in-person absentee voting during the hours listed below, including on any holiday established by state or federal law.

- 8:00 a.m. to 6:00 p.m. on each weekday  
(Monday through Friday)
- 8:00 a.m. to 4:00 p.m. on Saturday
- 1:00 p.m. to 5:00 p.m. on Sunday

Week Four of Voting Boards must be open for in-person absentee voting during the hours listed below, including on any holiday established by state or federal law.

- 8:00 a.m. to 7:00 p.m. on each weekday  
(Monday through Friday)
- 8:00 a.m. to 4:00 p.m. on the Saturday before Election Day
- 1:00 p.m. to 5:00 p.m. on the Sunday before Election Day

Week of Election Day

- 8:00 a.m. to 2:00 p.m. on the Monday before Election Day

<sup>20</sup> R.C. 3509.03; R.C. 3511.10.

<sup>21</sup> Settlement agreement, *NAACP v. Husted*, (Case No. 2:14-CV-404). See also *Ohio Democratic Party, et. al v. Jon Husted, et. al* (U.S. Supreme Court Case No. 16A223).

**b. Presidential Primary and Gubernatorial Elections**

Weeks One and Two of Voting Voting begins the day after the close of registration for the election. Boards must be open for in-person absentee voting on any holiday established by state or federal law.

- 8:00 a.m. to 5:00 p.m. on each weekday  
(Monday through Friday)

Week Three of Voting Boards must be open for in-person absentee voting during the hours listed below, including on any holiday established by state or federal law.

- 8:00 a.m. to 5:00 p.m. on each weekday  
(Monday through Friday)
- 8:00 a.m. to 4:00 p.m. on Saturday

Week Four of Voting Boards must be open for in-person absentee voting during the hours listed below, including on any holiday established by state or federal law.

- 8:00 a.m. to 7:00 p.m. on each weekday  
(Monday through Friday)
- 8:00 a.m. to 4:00 p.m. on the Saturday before Election Day
- 1:00 p.m. to 5:00 p.m. on the Sunday before Election Day

Week of Election Day

- 8:00 a.m. to 2:00 p.m. on the Monday before Election Day

**2. Elections Conducted in Odd Years, Special Elections, and Primary Elections (excluding presidential primary elections)**

Weeks One, Two and Three of Voting Voting begins the day after the close of registration for the election. Boards must **not** be open for in-person absentee voting on any holiday established by state or federal law.

- 8:00 a.m. to 5:00 p.m. on each weekday  
(Monday through Friday)

Week Four of Voting Boards must be open for in-person absentee voting during the hours listed below. Boards must not be open for in-person absentee voting on any holiday established by state or federal law.

- 8:00 a.m. to 7:00 p.m. on each weekday  
(Monday through Friday)
- 8:00 a.m. to 4:00 p.m. on the Saturday before Election Day

- 1:00 p.m. to 5:00 p.m. on the Sunday before Election Day

Week of Election Day

- 8:00 a.m. to 2:00 p.m. on the Monday before Election Day

If there are any in-person absentee voters waiting in line when voting ends on a particular day during the in-person absentee voting period, the in-person voting location shall be kept open until those voters who were in line when the location closed for the day have cast a ballot.<sup>22</sup>

Boards must place signage at their office (and at their in-person absentee voting location if that location is different from their office) alerting voters to this schedule.

**IN-PERSON ABSENTEE VOTING LOCATION**

Boards of elections may accommodate in-person absentee voting at the board office, or may designate another location for that purpose.<sup>23</sup> If the board chooses to designate an alternate location for in-person absentee voting, in-person absentee voting may occur only at that location, and that designated location must comply with all applicable requirements and prohibitions for polling locations.<sup>24</sup> Boards of elections having designated another location for in-person absentee voting may not issue absentee ballots to voters, other than by mail, from the board office.

Boards of elections operating an alternate site for in-person absentee voting before the election may accept the return of absentee ballots to such alternate site in addition to the board of elections office, but may only allow in-person absentee voting at one location.

**IN-PERSON ABSENTEE VOTING BALLOT ISSUING AND RETURN PROCEDURES**

The board must provide a signature book to be signed by the in-person absentee voter<sup>25</sup> after the board has verified the eligibility of the voter. The board then must verify the voter’s signature, identify the correct ballot style for the voter, and issue an absentee ballot to the voter. A voter who applies for and receives an absentee ballot in person may vote the ballot immediately or may take that ballot home to complete at a later date. An in-person absentee voter who is issued an optical scan ballot must mark the ballot at the board of elections office or other site designated for in-person absentee voting and insert the voted ballot into the scanner to cast it. An in-person absentee voter casting their ballot on a DRE or touchscreen interface must mark and

<sup>22</sup> R.C. 3509.01(B)(3).

<sup>23</sup> R.C. 3501.10(C).

<sup>24</sup> R.C. 3501.11(Z).

<sup>25</sup> R.C. 3509.051(C).

cast the ballot using the voting machine. The board is not required to issue, and an in-person absentee voter is not required to complete, an Identification Envelope – Statement of Voter (Secretary of State [Form 12-A](#)), if the voter is casting their ballot at the board of elections office or other site designated for in-person absentee voting.<sup>26</sup>

If an absentee voter chooses to take the ballot home, the board **must** provide the absentee voter a return mailing envelope and Identification Envelope – Statement of Voter (Secretary of State [Form 12-A](#)).<sup>27</sup> A voter who receives an absentee ballot in person and takes the ballot home to vote may return it to the office of the board of elections through the mail or by personal delivery:

### Return by Mail

- The absentee ballot must be postmarked no later than the day before Election Day and received at the board of elections office no later than the 10th day after Election Day.
- If the absentee ballot does not have a postmark, it must be received at the board of elections office no later than 7:30 p.m. on Election Day.
- A postmark does not include mail sent using a postage evidencing system, including a postage meter or postage from private companies that dispense postage through the internet (e.g., Stamps.com), known as the PC Postage program.<sup>28</sup>

### Return by Personal Delivery

A voter may deliver the absentee ballot personally or may have a family member<sup>29</sup> deliver the absentee ballot by the close of polls on Election Day at the office of the board of elections only. No one may return a voted absentee ballot to a precinct polling location.<sup>30</sup>

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<sup>26</sup> [R.C. 3509.051\(B\)](#).

<sup>27</sup> See Chapter 5, Section 1.04, of the Ohio Election Official Manual.

<sup>28</sup> [R.C. 3509.05\(B\)\(2\)](#). See also, 39 CFR 501.01.

<sup>29</sup> [R.C. 3509.05\(A\)](#): "Family member" includes spouse, domestic partner, mother, father, step-mother, step-father, mother-in-law, father-in-law, brother, sister, step-brother, step-sister, half brother, half sister, brother-in-law, sister-in-law, grandmother, grandfather, aunt, uncle, child, step-child, son-in-law, daughter-in-law, or other family member living in the same household.

<sup>30</sup> [R.C. 3509.05\(A\)](#).

## ABSENTEE VOTING UNDER SPECIAL CIRCUMSTANCES

Ohio law provides some guidelines for other types of absentee voting under special circumstances.

### DISABILITY OR CONFINEMENT

A voter who has a disability or is confined and cannot vote at a polling location on Election Day or in person at the board office due to personal illness, physical disability, infirmity, or confinement may vote by absentee ballot.<sup>31</sup> This includes voters who are confined to a nursing home, jail, or workhouse. An absentee voter who has a disability or is confined applies using Secretary of State Form 11-F or any written application containing all the required information plus the nature of the voter's illness, physical disability, infirmity, or confinement.

Voters with a disability or who are confined may submit applications to receive an absentee ballot beginning January 1st of the year or 90 days before the election, whichever is earlier, and ending 12:00 p.m. noon on the Saturday before Election Day.

A voter who has a disability or is confined may receive and return an absentee ballot by mail or in person through two boards of elections employees:

#### **Return by Mail**

- The absentee ballot must be postmarked no later than the day before Election Day and received at the board of elections office no later than the 10th day after Election Day.
- If the absentee ballot does not have a postmark, it must be received at the board of elections office no later than 7:30 p.m. on Election Day.
- A postmark does not include mail sent using a postage evidencing system, including a postage meter or postage from private companies that dispense postage through the internet (e.g., Stamps.com), known as the PC Postage program.<sup>32</sup>

#### **Receipt and Return by Two Board of Elections Employees**

- The two boards of elections employees, each belonging to different major political parties, may deliver an absentee ballot to a voter who has a disability or is confined, and return the ballot to the board office.

<sup>31</sup> R.C. 3509.08(A).

<sup>32</sup> R.C. 3509.05(B)(2). See also, 39 CFR 501.01.



- The two board employees must be present during delivery, voting, and return of the ballot and must subscribe to that fact on the absentee ballot identification envelope (Form 12-C).<sup>33</sup>

An absentee voter who has a disability or is confined and who also is required to vote a provisional ballot due to a change of address or change of name may vote a provisional absentee ballot<sup>34</sup> (Form 11-I). No other type of absentee voter may vote provisionally by absentee ballot.

### **UNFORESEEABLE HOSPITALIZATION**

An absentee voter who is confined to a hospital or whose minor child is confined to a hospital due to an accident or unforeseeable medical emergency occurring after the absentee voting by mail application deadline of 12:00 p.m. noon on the Saturday before Election Day may vote by absentee ballot.<sup>35</sup> Any such voter applies using Secretary of State Form 11-B or any written application containing all the required information plus the hospital at which the applicant or the applicant’s minor child has been admitted, the date of the applicant’s or the applicant’s child’s admission to the hospital, and the offices for which the applicant is qualified to vote.<sup>36</sup>

Voters with an unforeseeable hospitalization may submit applications beginning after 12:00 p.m. noon on the Saturday before Election Day and ending at 3:00 p.m. on Election Day.

An absentee voter with an unforeseeable hospitalization within the county may receive and return the absentee ballot through a family member, or through two boards of elections employees.<sup>37</sup>

If the hospitalization is out of county, the absentee voter may receive and return the absentee ballot through a family member or by mail.<sup>38</sup>

#### **Receipt and Return by a Family Member**

- A family member<sup>39</sup> of the voter may deliver the absentee ballot to the voter, and return the voted absentee ballot to the board of elections office by the close of polls on Election Day.<sup>40</sup> A voter’s family member may not return a voted absentee ballot to a precinct polling location.

<sup>33</sup> R.C. 3509.08(A).

<sup>34</sup> R.C. 3509.16(G).

<sup>35</sup> R.C. 3509.08(B)(1).

<sup>36</sup> R.C. 3509.08(B)(2).

<sup>37</sup> R.C. 3509.08(B)(2).

<sup>38</sup> R.C. 3509.08(B)(2).

<sup>39</sup> R.C. 3509.05(A): “Family member” includes spouse, domestic partner, mother, father, step-mother, step-father, mother-in-law, father-in-law, brother, sister, step-brother, step-sister, half brother, half sister, brother-in-law, sister-in-law, grandmother, grandfather, aunt, uncle, child, step-child, son-in-law, daughter-in-law, or other family member living in the same household.

<sup>40</sup> R.C. 3509.08(B)(2).



## Receipt and Return by Two Boards of Elections Employees

- Two boards of elections employees, each belonging to different major political parties, may deliver a ballot to an absentee voter who is hospitalized or whose minor child is hospitalized within the county.<sup>41</sup> The two board employees must be present during delivery, voting, and return of the ballot, and must subscribe to that fact on the Absentee Ballot Identification Envelope (Form 12-C).

## Receipt and Return by Mail

- If the hospital is located outside the county in which the voter is registered to vote, the board may mail the absentee ballot.<sup>42</sup>
- The absentee ballot must be postmarked no later than the day before Election Day and received at the board of elections office no later than the 10th day after Election Day.
- If the absentee ballot does not have a postmark, it must be received at the board of elections office no later than 7:30 p.m. on Election Day.
- A postmark does not include mail sent using a postage evidencing system, including a postage meter or postage from private companies that dispense postage through the internet (e.g., Stamps.com), known as the PC Postage program.<sup>43</sup>

## UOCAVA VOTERS

Both federal and state laws govern absentee voting by uniformed services and overseas United States citizens. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)<sup>44</sup> and the Military and Overseas Voter Empowerment (MOVE) Act<sup>45</sup> are federal laws enacted to protect the rights of United States citizens to vote in federal elections while they are serving in the uniformed services or residing overseas. The Ohio General Assembly has incorporated those federal protections into the Ohio Revised Code and has extended them to state and local elections.<sup>46</sup>

<sup>41</sup> R.C. 3509.08(B)(2).

<sup>42</sup> R.C. 3509.08(B)(2).

<sup>43</sup> R.C. 3509.05(B)(2). See also, 39 CFR 501.01.

<sup>44</sup> 52 U.S.C.A. § 20301.

<sup>45</sup> Subtitle H ("Military Voting") of Title V of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111-84 (2010).

<sup>46</sup> Amended Substitute House Bill 48 (2010) and Amended Substitute House Bill 224 (2011).

The following voters are UOCAVA Voters:<sup>47</sup>

**A uniformed services voter is:**

- A member of the active or reserve components of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard;
- A member of the National Guard and the organized militia who is on activated status;<sup>48</sup>
- A member of the merchant marine, the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration; or
- A spouse or dependent of any of the above.

**An overseas voter is:**

- A person who is considered by Ohio law to be a resident of the state, but currently is living outside the U.S. Before leaving the U.S., the voter was last eligible to vote in Ohio or would have been eligible to vote in Ohio had the voter been 18 years of age or older; or
- A person who was born outside the U.S., but who has a parent or guardian who last resided and was last eligible to vote in Ohio before leaving the U.S.

UOCAVA voters apply for absentee ballots using the Federal Post Card Application (FPCA) or by filing a written request with the board of elections containing all the following required information:

- The voter’s name;
- Signature;
- Address at which registered to vote in Ohio;
- Date of birth;
- Acceptable form of identification;
- The election(s) for which the voter is requesting ballots;
- Statements that the voter is a qualified elector, an absent UOCAVA voter, and that the voter or the voter’s parent or guardian, if applicable, resided in Ohio for at least 30 days prior to commencing service or leaving the U.S.;
- The voter’s party affiliation (primary elections only);

<sup>47</sup> R.C. 3511.01.

<sup>48</sup> The Ohio organized militia consists of Ohio citizens who are members of the Ohio National Guard, the Ohio Naval Militia, and the Ohio Military Reserve. R.C. 5923.01.

- The method by which the voter wishes to receive a ballot (mail, email, or fax); and
- The mailing address, email address, or fax number at which the voter wishes to receive the ballot.<sup>49</sup>

Only UOCAVA voters may submit absentee ballot applications by mail, email, fax, or in person.<sup>50</sup> Applications by mail, email, or fax must be received by the board by 12:00 p.m. noon on the Saturday before the election.<sup>51</sup> An application delivered in person to the office of the board of elections must be received by the close of polls on Election Day.<sup>52</sup>

In addition, relatives of UOCAVA voters may apply for absentee ballots on the UOCAVA voter's behalf if the UOCAVA voter is already registered to vote by using Secretary of State Form 11-E or the FPCA.<sup>53</sup> A relative must submit the form on behalf of the registered UOCAVA voter in person or by mail to the county board of elections office.

The FPCA serves both as a voter registration form if the voter is not already registered or needs to update their registration and a request for absentee ballots. An FPCA used to register or update the registration of a qualified UOCAVA voter must reach election officials no later than 30 days before the election in order to be valid.<sup>54</sup> If a voter applies for an absentee ballot using an FPCA, that request is a request for absentee ballots for every election in that year, unless the voter specifically notes that they are requesting a ballot only for a single election in the year.<sup>55</sup> If the board receives an absentee ballot application that is not an FPCA, and it is clear that the applicant is a UOCAVA voter under Ohio law, the board must provide the voter the same accommodations as if the voter had applied using an FPCA.<sup>56</sup>

If the UOCAVA voter is using the FPCA to register to vote or to update their registration, an emailed or faxed copy of a signed form is acceptable under the law to register an eligible voter.

<sup>49</sup> R.C. 3511.02(A).

<sup>50</sup> R.C. 3509.19(B); R.C. 3511.021(A)(2).

<sup>51</sup> R.C. 3511.04(B).

<sup>52</sup> R.C. 3511.10. In instances where UOCAVA applications are received on or close to Election Day pursuant to this section, the board of elections must make best efforts to transmit the ballot to the voter in order for the voter to complete and return it such that it may be counted.

<sup>53</sup> R.C. 3511.02(C). Relatives include "spouse, father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother or sister of the whole blood or half blood, son, daughter, adopting parent, adopted child, stepparent, stepchild, daughter-in-law, son-in-law, uncle, aunt, nephew, or niece."

<sup>54</sup> 52 U.S.C.A. § 20302.

<sup>55</sup> R.C. 3511.02.

<sup>56</sup> R.C. 3509.10.

In regard to UOCAVA voters, each county must complete the following tasks:

**1. Prepare Two Notices of Elections for Voters Using the Federal Write-In Absentee Ballot**

Each board of elections must prepare two election notices for each precinct for use with the Federal Write-In Absentee Ballot.<sup>57</sup> A uniformed services or overseas voter may request a copy of this notice to be sent via mail, fax, or email.<sup>58</sup> If the board of elections maintains an internet website, the board must post the initial notice and the updated notice on its website.<sup>59</sup>

Please refer to Secretary of State [Form 120](#) for an election notice template.

a. Initial Notice

The board must make available an initial notice at least 100 days before each regularly scheduled election and as soon as possible before an election that is not regularly scheduled. This initial notice must contain the following:

- A list of all federal, state, and local offices the board expects to be on the ballot;
- A list of all questions and issues the board expects to be on the ballot; and
- Specific instructions on how a uniformed services or overseas voter must indicate their choice on the Federal Write-In Absentee Ballot.

b. Updated Notice

After the date on which the ballot form is certified, and no later than 46 days before each election, the board of elections must make available an updated notice with the following information:

- A list of certified candidates for each office on the ballot;
- A list of all certified questions and issues on the ballot; and
- Specific instructions on how a uniformed services or overseas voter must indicate their choice on the Federal Write-In Absentee Ballot.

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<sup>57</sup> R.C. 3511.16.

<sup>58</sup> R.C. 3511.16(B).

<sup>59</sup> R.C. 3511.16(C).

## 2. Transmit UOCAVA Ballots on the 46th Day Before Each Election

On the 46th day before each election—even if the 46th day falls on a day the board is not regularly open for business—each board must transmit an absentee ballot to every UOCAVA voter who has filed a valid application with the board as of January 1st of that year or 90 days before the election, whichever is earlier, to receive an absentee ballot by mail, email, or fax. UOCAVA ballots must be transmitted on the 46th day. **This is a mandatory deadline.** Boards must have the necessary personnel on site to accept UOCAVA applications, review them for validity, and issue ballots on the 46th day prior to the election.

UOCAVA voters may receive absentee ballots by mail, email, or fax. Each UOCAVA voter should designate on the application form the manner in which the voter prefers to receive the ballot. If the UOCAVA voter does not express a preference on the application, the board of elections must deliver the absentee ballot via standard mail.<sup>60</sup>

**All uniformed services and overseas voters may vote a complete ballot—all federal, state, and local candidate and issue contests—of the Ohio precinct in which the voter resided immediately before leaving Ohio for military service or to reside overseas.** A person who moves from Ohio to a location outside the United States without becoming a resident of another state does not lose Ohio residency, and is therefore eligible to vote on all candidate and issue contests.<sup>61</sup>

When the board transmits a ballot to a UOCAVA voter, it must provide the following items:

- Ballot;
- Secretary of State [Form 12-A](#) (Identification Envelope with Statement of Voter);
- Secretary of State [Form 12-K](#) (Instructions to Uniformed Services or Overseas Voters); and
- Secretary of State [Form 12-J](#) (Ballot Tracking for Military and Overseas Voters-Notification of PIN).

When sending a ballot to a UOCAVA voter via email, it is sufficient to attach the ballot to the email in .pdf form generated from the EMS system. The actual

<sup>60</sup> [R.C. 3511.02\(K\)\(2\)](#);

<sup>61</sup> [R.C. 3509.02\(G\)](#). Note: A non-UOCAVA voter who moves from Ohio to another state within the U.S and resides there for four years or more still is deemed to have lost their residence in Ohio; [R.C. 3503.02\(E\)](#). In the Classification portion of the FPCA, there are separate checkboxes. Under Ohio law, all UOCAVA voters are treated similarly and are issued a complete ballot, regardless of which box they check.

ballot issued to the UOCAVA voter will be the one used when remaking the ballot upon return. It will have a stub.

If the board receives more than one absentee ballot request from a UOCAVA voter and has already issued that voter a ballot, the board may not transmit another ballot to the same voter unless the voter's subsequent request states the voter submitted an initial request more than 30 days before the election, but has not received a ballot as of the 15th day before the election. The board must also ensure that it has not received a voted ballot from that voter.<sup>62</sup>

**Federal Write-In Absentee Ballot (FWAB)**

The Federal Write-In Absentee Ballot (FWAB) may be used by a UOCAVA voter to vote for all federal, state, and local offices, questions, and issues in every election.<sup>63</sup>

The voter will download the FWAB from the Federal Voting Assistance Program website at [www.fvap.gov](http://www.fvap.gov) and complete the ballot with the information the board provides in the election notices explained above.

If, after mailing the FWAB to the board of elections, the voter receives the requested absentee ballot, the voter may vote the ballot and return it to the board of elections. If the board receives the voter's valid absentee ballot by the 10th day after the election, it must count the absentee ballot and not the FWAB.

The declaration accompanying a FWAB may be used simultaneously to register the person to vote for the next election if it is received no later than 30 days before the election. If the UOCAVA voter who submits a FWAB to the board of elections after that point and is not already a registered Ohio voter, the ballot cannot count. However, the declaration will serve to register an otherwise eligible voter to vote in future elections.<sup>64</sup>

**3. Enter UOCAVA Voter Data into the Centralized Ballot Tracking System (CBTS)**

The Centralized Ballot Tracking System (CBTS) allows UOCAVA voters to track the status of their absentee ballots.<sup>65</sup> When the board receives a valid FPCA or Secretary of State Form 11-E, it must enter the voter into the CBTS to create a voter record. The CBTS will automatically generate a unique, personal identification number (PIN) for the voter. The board must provide the voter

<sup>62</sup> R.C. 3511.08.  
<sup>63</sup> R.C. 3511.14.  
<sup>64</sup> R.C. 3511.14(B).  
<sup>65</sup> R.C. 3511.021(B).

notification of the assigned PIN, which the voter will use to log in and view ballot status. Secretary of State [Form 12-J](#) may be used to notify a voter of their assigned PIN and to inform the voter how to access the CBTS website and track the ballot.

Once the board creates a voter record, it is required to update and maintain the accuracy of that record. Each absentee ballot record must be updated with the following information:

- Date the board received the FPCA or Secretary of State [Form 11-E](#);
- Date the board transmitted the blank absentee ballot to the voter;
- Date the board received the voted absentee ballot;
- What errors, if any, the board detected on the absentee ballot ID envelope; and
- Whether the absentee ballot was counted.

**All CBTS records must be updated completely before the official canvass is completed.**

If you do not have a copy of the CBTS manual, please contact the Secretary of State's Elections Division.

### SAFE AT HOME VOTERS

Substitute House Bill 359 from the 131<sup>st</sup> General Assembly created an address confidentiality program, known as the "Safe at Home" program, for victims of crimes, such as domestic violence, human trafficking, rape, sexual battery, and menacing by stalking. The Ohio Secretary of State's office administers this program and is responsible for creating an absentee ballot application and identification envelope for participants of the program. To protect their confidentiality, a participant in the program must vote *only* absentee by mail, using their identification number on the absentee ballot application and identification envelope instead of their address.<sup>66</sup> A participant with questions regarding how to request and receive an absentee ballot without compromising the confidentiality of their address should contact the Safe at Home Program at the Secretary of State's office at 614.995.2255.

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<sup>66</sup> [R.C. 3509.04\(B\)](#).



## Section 1.05 Processing Absentee Ballot Applications

### PRE-PRINTING ONLY NAME AND ADDRESS ON ABSENTEE BALLOT APPLICATION

In the required fields of any type of absentee ballot application, the board may pre-print only a voter's name and address before mailing to a voter who requests it.<sup>67</sup> None of the other required pieces of information on any type of absentee ballot application shall be completed by election officials on a voter's behalf, unless the voter requests assistance and is a voter with a disability or with literacy challenges.<sup>68</sup>

### PROHIBITION ON PRE-PAYING POSTAGE ON ABSENTEE BALLOT RETURN

No board is permitted to pre-pay return postage for any type of absentee ballot application.<sup>69</sup>

### SUBMISSION BY FAX OR EMAIL

Only UOCAVA voters may submit absentee ballot applications by mail, email, or fax.<sup>70</sup>

Non-UOCAVA absentee ballot applications must be mailed or delivered to the board of elections in person. A board may not accept or process a non-UOCAVA absentee ballot application received by fax or email.

### INCOMPLETE APPLICATIONS

If the board receives an application for an absentee ballot that does not contain all the required information listed above, it promptly must notify the voter of the missing information and ask the voter to resubmit a complete application containing all required information.<sup>71</sup>

In the event that an absentee ballot application from a UOCAVA voter is missing some of the required information or that the board of elections is unable to open the file in which the voter transmitted the FPCA, the board must contact the voter immediately, using the quickest and most effective available means of communication. Boards must attempt to contact the voter using all the contact information provided on the form and

<sup>67</sup> R.C. 3509.03(F).

<sup>68</sup> R.C. 3505.24; R.C. 3509.03; R.C. 3511.02(F); R.C. 3511.10.

<sup>69</sup> R.C. 3509.03; R.C. 3511.02(F). This prohibition does not affect UOCAVA voters' use of the USPS Official Absentee Balloting Materials postage-paid envelope if they choose to return their FPCAs through the USPS.

<sup>70</sup> R.C. 3509.191(B); R.C. 3511.021(A)(2).

<sup>71</sup> R.C. 3509.04(A).

must ask the voter to resubmit a complete application containing all required information.

The board may not return an incomplete application of any type to the voter, as once an application is received at the board office, it is a public record. In addition, election officials may not complete an application's missing information on behalf of the voter. The voter must personally complete any missing information on the application, unless the voter has paperwork on file with the board of elections to receive assistance from a designated attorney-in-fact.<sup>72</sup>

## ISSUING BALLOTS

**Absentee voting begins 46<sup>73</sup> days before each election for UOCAVA voters only and on the day after the close of registration before each election for all other types of absentee voters.**<sup>74</sup> Due to the earlier start date for UOCAVA voting, boards must have ballots proofed and ready to mail prior to the 46th day before each election.

Once the board receives an application that meets the requirements explained above, it must provide the voter with the correct ballot for the voter's precinct, based on the voter's residence address.

Boards of elections may not outsource the mailing of absentee ballots to vendors or any other third party unless the board has received prior written authorization from the Director of Elections, conditioned upon submission of appropriate quality assurance procedures.

## IDENTIFICATION ENVELOPE AND PRE-PRINTING ONLY NAME AND ADDRESS

Ohio law requires boards of elections to provide an identification envelope with the absentee ballot (Forms 12-A and 12-C).<sup>75</sup> State law permits boards of elections to pre-print the voter's name and address (at which the voter is registered to vote) on the identification envelope unless the voter has a confidential voter registration record.<sup>76</sup> None of the other required pieces of information on any type of absentee ballot application shall be completed by election officials on a voter's behalf, unless the voter requests assistance and is a voter with a disability or literacy challenges.<sup>77</sup>

Boards of elections are instructed to pre-print the voter's name and address (at which the voter is registered to vote) on the voter's identification envelope prior to providing it

<sup>72</sup> R.C. 3501.382; R.C. 3509.03; R.C. 3511.02.

<sup>73</sup> R.C. 3511.04.

<sup>74</sup> R.C. 3509.01(E).

<sup>75</sup> R.C. 3509.04; R.C. 3511.05.

<sup>76</sup> R.C. 111.42; R.C. 3511.02(F).

<sup>77</sup> R.C. 3505.24; R.C. 3509.04; R.C. 3511.05(E); R.C. 3511.10.

to the voter. Boards of elections may fulfill this requirement by pre-printing the voter's name and address directly onto the identification envelope, by pre-printing the voter's name and address onto a sticker or label and then affixing the sticker or label to the identification envelope, or by some other method which accomplishes this purpose.

When a voter's name is placed anywhere on the identification envelope by a board of elections (i.e., other than in the blanks identified for this purpose on Forms 12-A or 12-C), the name portion of the statutory requirement for the identification envelope to contain the voter's name<sup>78</sup> is satisfied.

The statutory prohibition against pre-printing information other than the voter's name and address does not limit a board from printing other information helpful to the board in administering its duties (e.g., voter identification number, ballot style, precinct, party-affiliation, municipality or other jurisdictions, bar codes, etc.). However, the board shall not pre-print the address of a participant in the Safe at Home program.<sup>79</sup>

### **PROHIBITION ON PAYING RETURN POSTAGE ON AN ABSENTEE BALLOT**

No board is permitted to pre-pay return postage for any absentee ballot.<sup>80</sup>

### **MAILING CONSIDERATIONS AND INSTRUCTIONS**

These instructions implement several administrative practices that are intended to increase the operational likelihood that ballots received after Election Day, if otherwise valid, can be included in the official canvass of the election. The instructions are based on close collaboration between state and local election officials in Ohio and the U.S. Postal Service.

USPS-expected level of service for point-to-point delivery of First-Class Mail is 2 to 5 days, and under ordinary circumstances, First-Class Mail in machineable letter-size envelopes is postmarked in an automated process versus flat-size envelopes, which generally receive a lower percentage of postmarks.

While no single operational or administrative action provides a complete remedy to the situation, the implementation of several administrative practices may increase the operational likelihood that ballots received after Election Day, if otherwise valid, can be included in the official canvass of the election. Therefore, boards of elections must implement the following:

- Include with every absentee ballot (except those issued and cast in person) the notice prescribed by the Secretary of State's office, Form 12-1. A board of

<sup>78</sup> *NEOCH v. Husted*, Case Nos. 16-3603/3691 (6th Circuit 2016); R.C. 3509.06(D).

<sup>79</sup> R.C. 3509.04.

<sup>80</sup> R.C. 3509.04; R.C. 3511.04. This prohibition does not affect UOCAVA voters' use of the USPS Official Absentee Balloting Materials postage-paid envelope to return their ballots through the USPS.

elections may print the SOS-prescribed notice on other instructional material that the board already inserts into its absentee ballot packets (e.g., on the back of Secretary of State [Form 12](#), "Instructions to Absentee Voters).

- USPS highly recommends that all county boards of elections use letter-size courtesy reply envelopes.<sup>81</sup> As noted above, use of this envelope size will increase the operational likelihood that the ballot receives a postmark. However, even letter-size envelopes could be treated as flats depending on the weight of the absentee ballot return envelope, which includes the ballot sheets enclosed in an identification envelope. We cannot know how many sheets will be necessary to accommodate ballot length from one election to the next. The use of letter-size envelopes (depending on ballot length) will increase the likelihood of postmarking in most counties for most elections. Boards of elections not already using letter-size courtesy reply envelopes must carefully consider whether continuation of this practice for the presidential general election is in the best interest of its county's voters given the recommendation from USPS.
- USPS recommends that boards of elections contact and leverage available Postal resources that support election mail coordination, mailpiece design, mailing preparation and entry activities and coordinating mailpiece delivery and pickup.

**For assistance with mailpiece design, contact a Mailpiece Design Analyst (MDA) by calling the MDA Support Center at (855) 593-6093 (hours of operation are Monday – Friday, 7 am - 5 pm CT) or by sending your request by email to [mda@usps.gov](mailto:mda@usps.gov). Please contact and develop a relationship with your local Election Mail Coordinator.**

- USPS recommends that all trays and sacks with mailings of ballot materials affix Tag 191, Domestic and International Ballots. This bright green tag provides a high degree of visibility on ballot mail as it enters Postal processing centers. These tags are available by contacting an USPS Election Mail Coordinator (see above).
- Boards of elections must use First-Class Mail postage rather than standard or non-profit postage rates when paying for the delivery of outbound absentee ballots. Use of USPS-approved practices to maximize postage discounts for First-Class Mail (e.g., presort First-Class Mail) are encouraged.
- Remember, USPS requires that the balloting materials for all types of absentee ballots, whether disseminated in hardcopy or electronically, must indicate in a prominent location the proper amount of First-Class Mail postage that must be paid. This information must be included in the balloting materials (i.e., on the

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<sup>81</sup> This recommendation does not contemplate the use of #10 business envelopes. In fact, USPS regulations allow a letter size envelope to be up to 6 1/8 inches in height, 11 1/2 inches wide, and 1/4 inch thick. This maximum size is substantially larger than a #10 business envelope.

ballot instructions, mailing instructions, or the envelope) with the marking "First-Class Mail postage must be applied."

- Alternatively, the marking "Apply First-Class Mail postage here" may be printed in the upper-right corner of the address side of the envelope used by the voter to return the ballot to election officials. USPS will also accept approved variations of the above markings. Additionally, balloting materials must indicate, in a prominent location, the specific amount of First-Class Mail postage required for the return of the ballot to election officials. The marking requirements will not apply to balloting materials that are qualified under the special exemptions specified by USPS.<sup>82</sup>

**Postage Evidencing – The term "postage evidencing system," as used in R.C. 3509.05(B)(2), refers to postage meters or private companies that dispense postage through the internet (e.g., Stamps.com), known as the PC Postage program.<sup>83</sup> As such, absentee ballots bearing postage affixed by a postage meter or through a PC Postage company cannot be accepted after Election Day, even if postmarked by the day before Election Day.**

- All other forms of postage are acceptable for post-election receipt by the board of elections, including postage labels obtained at a USPS customer service window or from a USPS Self-Service Kiosk.
- Furthermore, please note that postage labels (i.e., Postage Validation Imprint, or PVI) obtained at a USPS customer service window or through a Self-Service Kiosk meet the USPS definition of a "postmark," meaning no other forms of postmarking are necessary. Receiving a postmark through the retail window PVI or the Self-Service Kiosk postage label are the USPS-preferred methods for ensuring that postmarking occurs on ballots being mailed within a week of Election Day.

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<sup>82</sup> USPS Domestic Mail Manual 703.8.1.2.

See also, <http://about.usps.com/election-mail/election-mail-resources.htm>.

<sup>83</sup> See 39 CFR 501.01.

Often when USPS processes mail, an ID Tag, in the form of a fluorescent bar code, is printed by USPS on the back of the envelope or flat. While the data contained in the ID Tag bar code is largely informational for USPS operations, it contains a date/timestamp. The ID Tag is not considered a postmark by USPS.<sup>84</sup> However, it is common sense to use whatever date/time information is provided by USPS on the physical envelope to qualify for counting any otherwise valid absentee ballot.

- Therefore, for purposes of R.C. 3509.05(B) only, whenever an official USPS postmark is not present or is not legible, but a readable ID Tag is printed on the envelope, the board of elections must obtain a bar code reader to decode the ID Tag on the envelope. In these instances, if the date/timestamp contained in the ID Tag is no later than the day before Election Day (and the exceptions of R.C. 3509.05(B)(2) regarding postage evidencing systems are not present), the board shall proceed with determining whether or not the absentee ballot is otherwise eligible using the ID Tag as a proxy for a postmark.
- The Secretary of State's office purchased scanners to support boards of elections on a scheduled basis. Please contact your assigned regional liaison to schedule the use of a scanner before your official canvass.

## POLL LIST TO IDENTIFY ELECTORS REQUESTING ABSENT VOTER'S BALLOT.

The board must mark the name of each registered elector in the precinct who requested an absentee ballot for that election.<sup>85</sup> If a voter who is marked in the poll book as having requested an absentee ballot appears at a precinct polling location to vote on Election Day, the voter will be required to cast a provisional ballot.<sup>86</sup>

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<sup>84</sup> [https://about.usps.com/handbooks/nc408/ch1\\_003.htm](https://about.usps.com/handbooks/nc408/ch1_003.htm)

<sup>85</sup> This does not apply to Safe at Home address confidentiality program participants per R.C. 111.44.

<sup>86</sup> R.C. 3509.09.

## ABSENTEE BALLOT STATUS LOOKUP

- Through each board of elections website, absentee voters in the county must be permitted to identify the status of their absentee ballot from the date of application to the date the ballot was accepted for counting. Specifically, each board website must provide the voter with the following information:
- The date the voter’s absentee application was approved;
- The date the voter’s approved absentee application was processed by the board of elections (i.e., the date the board of elections mailed the ballot or otherwise issued it);
- The date the voter’s voted absentee ballot was received by the board of elections; and
- The date the voter’s voted absentee ballot was accepted for counting (or, if not accepted for counting, the reason it was determined to be ineligible for counting and the deadline by which the voter may correct any deficiency).

This search functionality must be available to voters beginning at least the 46th<sup>87</sup> day before an election through the 35th day after that same election. For more information on voter access to information, please refer to Chapter 15 Miscellaneous Duties, Section 1.09.

### Section 1.06 Processing Absentee Ballots

All absentee ballots must be returned by mail or in person to the office of the board of elections. No ballot may be returned by fax or email. **Ohio law prohibits the electronic return of an absentee ballot and the processing or counting of any ballot returned electronically.**<sup>88</sup>

The board must examine each returned absentee ballot envelope for eligibility before the board may remove the ballot from the envelope.

Boards of elections may begin processing, but not tabulating, absentee ballots not earlier than the day following the close of voter registration.<sup>89</sup> “Processing” includes:

- Determining whether a UOCAVA voter signed the ballot and submitted it for mailing not later than 12:01 a.m. on Election Day.<sup>90</sup> If the board receives the ballot within the timeframe discussed in the next section, it shall be deemed to have been submitted for mailing by 12:01 a.m. on Election Day;

<sup>87</sup> R.C. 3511.04  
<sup>88</sup> R.C. 3511.021(A)(4)  
<sup>89</sup> R.C. 3505.27  
<sup>90</sup> R.C. 3511.11(C).

- Confirming that the board received the ballot by the close of polls on Election Day at the office of the board of elections if delivered in person, or by the 10th day after Election Day if delivered by mail. **Please note that a postmark is not required in order for a UOCAVA ballot to be valid.** The board must count an otherwise valid UOCAVA ballot regardless of whether it contains a timely postmark, a late postmark, or no postmark;<sup>91</sup>
- Opening absent voter's ballot envelopes that have been examined and accepted as valid. If a ballot is not sealed in the identification envelope, avoid looking at the markings on the ballot, place the ballot in the identification envelope, and seal it.<sup>92</sup>
- Determining whether the stub is still attached;
- Preparing the absent voter's ballot for scanning; and
- Scanning of the absent voter's ballot using automatic tabulating equipment at a central counting station;<sup>93</sup> and identifying absent voter's ballots that cannot be "read" or are "rejected" by the ballot scanning device to determine whether the ballot needs to be remade so that it can be read by the scanner. This includes remaking of UOCAVA ballots transmitted by email or fax.

Apart from those presenting valid identification and voting in-person immediately, Ohio law requires all absentee voters to place their ballot in the ID envelope and seal the envelope. The board of elections must clearly indicate that the ballot must be sealed within the ID envelope in order to count. If the board receives an absentee ballot that is not sealed in its identification envelope, the board must seal the envelope. If the ballot is not inside the identification envelope, avoid looking at the markings on the ballot, and place the ballot in the identification envelope and seal it.

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<sup>91</sup> R.C. 3511.11(C).

<sup>92</sup> R.C. 3511.11(A).

<sup>93</sup> In no circumstance may any board initiate the human-readable reporting of election results from absentee ballots processed prior to 7:30 p.m. on Election Day. R.C. 3505.26.



At the close of in-person absentee voting each day, a bipartisan team of board of elections' employees must secure all poll books, voting equipment, voted ballots, and ballot boxes. The poll books, voting equipment, voted ballots, and ballot boxes must be stored in a manner that prevents unauthorized access. Prior to the start of in-person absentee voting each day, a bipartisan team of board of elections' employees must inspect all voting equipment and ballot boxes to ensure that all tamper-evident seals are intact. The board must program its voting equipment to utilize all available security features, such as the use of a password to open or close the equipment. As a reminder, each board must ensure that when any voting machine is powered-down after the close of in-person absentee voting each day, the machine does not tabulate any votes cast on it.

## INCOMPLETE OR NON-CONFORMING IDENTIFICATION ENVELOPE<sup>94</sup>

Whenever a board of elections receives an absentee ballot identification envelope that is missing required information or that contains information that does not conform to the voter's registration record, and the board of elections cannot determine the voter's eligibility without the missing or nonconforming information (see Section 1.07 below), the board of elections must contact the absentee voter to give the voter an opportunity to supplement the voter's identification envelope so the voter's ballot can be tabulated. The board must meet this requirement by issuing Secretary of State Form 11-S to the voter. Boards must include a courtesy reply envelope (pre-addressed return envelope) with every Secretary of State Form 11-S issued.

Secretary of State Form 11-S provides spaces for a board of elections to print the voter's name and registration address, and to identify for the voter the specific information that is missing or in error (the "nature of the defect") on the voter's absentee ballot identification envelope. The voter need only provide the information that cures the defect when returning a completed Form 11-S and does not need to sign and date Form 11-S, unless the voter's signature on the voter's absentee ballot identification envelope was omitted or did not reasonably match the voter's signature on file with the board of elections.

In the event that the board issues Form 11-S because the voter's driver license number or last four digits of the voter's Social Security number provided on the identification envelope does not match the information as recorded in the statewide voter registration

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<sup>94</sup> Please note that pursuant to a court order, if the nature of the non-matching information is such that an absentee voter provided the number above their picture and not the driver license number (two alphabet letters followed by six numbers), the Board must notify the voter of such error by telephone or in writing, within two business days of receiving the application or voted ballot. The voter so notified must be permitted to appear in person at the office of the Board to provide the correct information. In the case of a returned absent voter's ballot, the voter shall have until the 10th day after the election to provide this information to enable their ballot to be counted. See Directive 2008-80.

database, and the voter completes and returns Form 11-S with the same information provided on the identification envelope, the board must review its voter registration records – including original paper records if necessary – prior to the 10th day before the election to determine whether the mismatch is a result of data entry error.

Whenever a voter has requested the voter’s absentee ballot to be mailed by the board of elections to an address other than the address at which the voter is registered to vote, and the voter’s absentee ballot identification envelope is “defective,” the board must issue Form 11-S to both the address at which the voter is registered to vote and the address to which the voter had requested the voter’s absentee ballot be mailed by the board.<sup>95</sup>

Boards of elections must adhere to the following schedule when reviewing completed absentee ballot identification envelopes and issuing Form 11-S to absentee voters:

- Form 11-S must be issued not later than two business days after a “defective” absentee ballot identification envelope is received by the board from the start of absentee voting through the third Saturday prior to an election;
- Form 11-S must be issued not later than one calendar day after a “defective” absentee ballot identification envelope is received by the board of elections between the third Monday and last Friday prior to an election; and
- Form 11-S must be issued on the same day that a “defective” absentee ballot identification envelope is received by the board of elections between the Saturday prior to an election and through the 6th day following an election.

For purposes of this section, “issued” means that Form 11-S has been presented by the board of elections to the USPS, with accurate first-class postage affixed by the board of elections necessary for first-class delivery.

It is not necessary for a board to provide Form 11-S to an absentee voter whose ballot was received by the board of elections after 7:30 p.m. on Election Day and is postmarked later than the day prior to the election.

Once an absentee voter has completed Form 11-S, the voter may return it to the board of elections in person, by mail or other private delivery service (e.g., UPS, FedEx, etc.), or by any person authorized by state law to return the voter’s absentee ballot.<sup>96</sup>

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<sup>95</sup> Regardless of whether the voter requested assistance in casting the absentee ballot, if a voter requests assistance to supplement the voter’s identification envelope the board of elections must send two employees, not of the same political party, to the voter to provide assistance. *Ray v. Franklin County Board of Elections* Case No. 2:08-CV-1086, 2008 WL 4966759 (S.D. Ohio Nov. 17, 2008).

<sup>96</sup> R.C. 3509.05(A).

In the case of voters with disabilities or UOCAVA voters, all county boards of elections must provide reasonable accommodations, as follows:

- Voters with Disabilities – Regardless of whether the voter requested assistance in casting the absentee ballot, if a voter requests assistance to supplement the voter’s identification envelope, the board of elections must send board employees, not of the same political party, to the voter to provide assistance.<sup>97</sup>
- UOCAVA Voters – A UOCAVA voter’s board of elections must provide notice to the voter in the same manner in which the voter requested transmission of the ballot by the board to the voter (i.e., by email, facsimile, or by mail, if application was made by mail or in person).

A completed Form 11-S must be received by the board of elections by the 7th day after an election,<sup>98</sup> or be post-marked by the 7th day after the election and received by the board of elections by the 10th day after the election, in order to cure the voter’s defective absentee ballot identification envelope and have the ballot included in the official canvass, which may begin on the 11th day following the election.

**Section 1.07 Mandatory Step-by-Step Process for Counting Absentee Ballots**

**STEP 1: DETERMINE WHETHER THE BALLOT WAS TIMELY SUBMITTED:**

An absentee ballot returned in person to the board of elections office must be delivered by 7:30 p.m. on Election Day.<sup>99</sup> The ballot also may be returned to the board’s designated location for in-person absentee voting at any time during in-person absentee voting.

An absentee ballot returned via mail must be postmarked no later than the day before Election Day and received at the board of elections office no later than the 10th day after Election Day. If the absentee ballot returned via mail does not have a postmark, it must be received at the board of elections office no later than 7:30 p.m. on Election Day.

<sup>97</sup> *Ray v. Franklin County Board of Elections* Case No. 2:08-CV-1086, 2008 WL 4966759 (S.D. Ohio Nov. 17, 2008).

<sup>98</sup> R.C. 3509.06(D)(2)(b).

<sup>99</sup> R.C. 3509.05.

A postmark does not include mail sent using a postage evidencing system, including a postage meter or postage from private companies that dispense postage through the internet (e.g., Stamps.com), known as the PC Postage program.<sup>100</sup>

Note that a postmark is not required in order for a UOCAVA ballot to be valid. The board must count an otherwise valid UOCAVA ballot regardless of whether it contains a timely postmark, a late postmark, or no postmark.<sup>101</sup>

- If the absentee ballot was not timely submitted, the board must reject the absentee ballot.<sup>102</sup>
- If the absentee ballot was timely submitted, proceed to Step 2.

## STEP 2: DETERMINE WHETHER THE VOTER HAS PROVIDED THE MINIMUM REQUIRED INFORMATION:

In order for an identification envelope to be opened and the absentee ballot to be counted, the absentee voter must provide sufficient information on the absentee ballot ID envelope to identify the voter and to determine that the voter was eligible to cast the ballot.<sup>103</sup>

At a minimum, an absentee voter must provide:<sup>104</sup>

1. **Name;**<sup>105</sup>
2. **Signature;**<sup>106</sup> and
3. **Proper Identification:**<sup>107</sup>
  - The voter’s driver license number;<sup>108</sup>
  - The last four digits of the voter’s Social Security number,<sup>109</sup> or
  - A copy of a current and valid photo identification, a military identification, or a current (within the last 12 months) utility bill, bank statement, government check, paycheck, or other government document (other than a notice of voter registration mailed by a board of elections) that shows the voter’s name and address.<sup>110</sup>

<sup>100</sup> R.C. 3509.05(B)(2). See also 39 CFR 501.01.

<sup>101</sup> R.C. 3511.11(C).

<sup>102</sup> R.C. 3509.07.

<sup>103</sup> R.C. 3509.07(C).

<sup>104</sup> *NEOCH v. Husted*, Case Nos. 16-3603/3691 (6th Circuit 2016); R.C. 3509.06(D); R.C. 3509.07(A).

<sup>105</sup> *NEOCH v. Husted*, Case Nos. 16-3603/3691 (6th Circuit 2016); R.C. 3509.06(D)(3)(a)(i).

<sup>106</sup> *NEOCH v. Husted*, Case Nos. 16-3603/3691 (6th Circuit 2016); R.C. 3509.06(D)(3)(a)(iv).

<sup>107</sup> *NEOCH v. Husted*, Case Nos. 16-3603/3691 (6th Circuit 2016); R.C. 3509.06(D)(3)(a)(v).

<sup>108</sup> R.C. 3509.06(D)(3)(a)(vii).

<sup>109</sup> R.C. 3509.06(D)(3)(a)(viii).

<sup>110</sup> R.C. 3509.06(D)(3)(a)(ix).

- It is important to note that the board of elections is required to pre-print the voter's name as it appears in the voter registration record onto the absentee ballot identification envelope. See, paragraph E.1. of Section 1.05, above. Occasionally, a voter may strike through and write a name on the identification envelope that is different from the name preprinted by the board using the voter's name as it appears in the voter registration record. Ohio law does not permit an absentee ballot identification envelope to be used as a voter registration update form (change of name form). If the absentee voter's name on the absentee identification envelope or Secretary of State Form 11-S does not match the name in the voter's registration record, the board must reject the absentee ballot.<sup>111</sup>
- The absentee voter's signature must correspond with the signature that appears in the voter's registration file. If the absentee voter's signature on the absentee identification envelope or Secretary of State Form 11-S does not correspond with the signature in the voter's registration record, the board must reject the absentee ballot.
- The absentee voter must provide a form of proper identification.

**Note:** The absentee voter is not required to provide the same form of identification they provided when registering to vote. If an identification data field in the county voter registration system (CVRS) or statewide voter registration database (SWVRD) is blank, the information contained on an absentee identification envelope, provided under penalty of falsification, may be entered into the CVRS to complete the voter's registration record both in the CVRS and SWVRD. In any instance of deficiency, the Board must carefully review its voter registration records to determine if an error on the part of the board of elections is the result of the deficiency before it ever rejects any ballot.

If the absentee voter has not provided a form of proper identification on the absentee identification envelope or Secretary of State Form 11-S, the board must reject the absentee ballot.<sup>112</sup>

- If the absentee voter has provided their name, signature, and a form of proper identification on the absentee identification envelope or Secretary of State Form 11-S, and the board can confirm the absentee voter's eligibility,<sup>113</sup> proceed to Step 4.

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<sup>111</sup> R.C. 3509.07(B).

<sup>112</sup> R.C. 3509.07(F).

<sup>113</sup> R.C. 3509.07(A) and (C).

- If the absentee voter has provided their name, signature, and a form of proper identification on the absentee identification envelope or Secretary of State Form 11-S, but the board cannot determine the absentee voter's eligibility, proceed to Step 3.

### STEP 3: DETERMINE WHETHER VOLUNTARY INFORMATION PROVIDED ON THE ABSENTEE IDENTIFICATION ENVELOPE CONFIRMS THE VOTER'S ELIGIBILITY.

Only if the board of elections cannot confirm that the absentee voter was eligible to cast the ballot based on the required information the absentee voter provided, may it look at the voluntary information provided on the absentee ballot identification envelope.

1. **Residence Address**<sup>114</sup> - Pursuant to *NEOCH v. Husted*, Case Nos. 16-3603/3691 (6th Circuit 2016), failure to complete the address field on an absentee identification envelope is not a reason to reject an absentee ballot.<sup>115</sup> If sufficient information is present for the board of elections to confirm that the voter is eligible to vote the ballot that was cast, the ballot must be counted. If the voter has a confidential voter registration record (i.e., they are a participant in the Safe at Home program), that voter need only provide their program participant identification number.

It is important to note that the board of elections is required to pre-print the voter's address as it appears in the voter registration record onto the absentee ballot identification envelope. See, paragraph E.1. of Section 1.05, above. Occasionally, a voter may strike-through and write an address on the identification envelope that is different from the address preprinted by the board using the voter's registration record. Ohio law does not permit an absentee ballot identification envelope to be used as a voter registration update form (change of address form). If the absentee ballot identification envelope indicates that the voter's registration information is out-of-date and that the voter is required to vote a provisional ballot (i.e., the address written by the voter is outside of the precinct in which the voter is registered), the absentee ballot cannot be counted;<sup>116</sup>

When reviewing addresses, remember that the U.S. Postal Service assigns a mailing address (e.g., Columbus) that is not the same as the political subdivision

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<sup>114</sup> *NEOCH v. Husted*, Case Nos. 16-3603/3691 (6th Circuit 2016); [R.C. 3509.05\(D\)\(2\)\(a\)\(ii\)](#).

<sup>115</sup> *NEOCH v. Husted*, Case Nos. 16-3603/3691 (6th Circuit 2016).

<sup>116</sup> [R.C. 3509.07\(C\)](#).

(i.e., City, Village, or Township) in which the voter resides (e.g., the City of Bexley). The political subdivision, ZIP Code, and/or city (as assigned by the USPS) are generally not relevant to this determination.

The voter’s address is sufficient when the number and street is in the county (e.g., 2598 Ruhl Avenue) regardless of the City and ZIP code (except when the same address exists in two different precincts within the same county).

The following examples assume the ballots were cast in a polling location in Franklin County:

Street No. & Name	City / ZIP	Political Subdiv.	In County?	Valid?
2598 Ruhl Ave.	Columbus, 43209	Bexley	Yes	Yes
2598 Ruhl Ave.	Bexley, 43209	Bexley	Yes	Yes
63 Pinebrooke	Westerville, 43082	Westerville	No	No

**Under no circumstances shall a board of elections use any database other than the county’s voter registration system (CVRS) or the statewide voter registration database (SWVRD) when determining whether or not the address on an absentee ballot identification envelope is valid.** Specifically, boards of elections may not use the property records of a County Auditor or County Treasurer or any maps of a County Engineer to determine whether or not an absentee ballot identification envelope is valid.

If a board of elections must use the voter’s address to confirm a voter’s eligibility, it must not require technical precision in a voter’s completion of the address field. Boards should consider technical mistakes (such as inverting digits)<sup>117</sup> and be aware that technical mistakes in providing one’s address may not be cited as reasons to reject an absentee ballot.

2. **Date of Birth** - Pursuant to *NEOCH v. Husted*, Case Nos. 16-3603/3691 (6th Circuit 2016), failure to complete the date of birth field on an absentee identification envelope is not a reason to reject an absentee ballot.<sup>118</sup> If sufficient information is present for the board of elections to confirm that the absentee voter is eligible to vote the ballot that was cast, the ballot must be counted. A board of elections may never reject an absentee ballot for the sole reason that the date of birth is missing, insufficient, or incomplete.

If a board of elections must use date of birth to confirm a voter’s eligibility, it must not require technical precision in a voter’s completion of the date of birth field. Technical mistakes in providing one’s date of birth (such as accidental

<sup>117</sup> *NEOCH v. Husted*, Case Nos. 16-3603/3691 (6th Circuit 2016).

<sup>118</sup> *NEOCH v. Husted*, Case Nos. 16-3603/3691 (6th Circuit 2016).

transposition of month and year numerals, mistakenly writing the current date, or inverting digits) may not be cited as reasons to reject an absentee ballot.<sup>119</sup>

- If the board could not determine the absentee voter's eligibility from the properly provided required information, and the voluntary information on the absentee identification envelope does not allow the board to confirm the absentee voter's eligibility, the board must reject the absentee ballot.<sup>120</sup>
- If the board could not determine the absentee voter's eligibility from the properly provided required information, but the voluntary information on the absentee identification envelope allows the board to confirm the absentee voter's eligibility, proceed to Step 4.

#### STEP 4: OPEN ELIGIBLE ABSENTEE BALLOTS AND CONFIRM CONTENTS.

- If the eligible absentee ballot contains more than one ballot of any kind, or any voted ballot that the voter was not entitled to vote, the board must reject the absentee ballot.<sup>121</sup>
- If Stub A is detached from the eligible absentee ballot, the board must reject the absentee ballot.<sup>122</sup>
- If the correct ballot is enclosed in the absentee identification envelope along with Stub A, the board must count the ballot.

The board must endorse the back of the identification envelope of any absentee ballot that was not eligible with the words "Not Counted," along with the reason the ballot was not counted,<sup>123</sup> and retain the rejected ballot pursuant to established retention schedules.

**All valid absentee ballots returned by the close of polls on Election Day, whether returned in person or by mail, must be included in the unofficial canvass.**

Valid absentee ballots received after the close of polls on Election Day through the 10th day after the election, including ballots whose identification envelopes were insufficient but were cured by the 7th day following the election, must be included in the official canvass.

<sup>119</sup> *NEOCH v. Husted*, Case Nos. 16-3603/3691 (6th Circuit 2016).

<sup>120</sup> *NEOCH v. Husted*, Case Nos. 16-3603/3691 (6th Circuit 2016); [R.C. 3509.07\(A\)](#).

<sup>121</sup> [R.C. 3509.07\(D\)](#).

<sup>122</sup> [R.C. 3509.07\(E\)](#).

<sup>123</sup> [R.C. 3509.07](#).



## Section 1.08 Eligibility of Former Ohio Residents to Vote by Absentee Ballot in Ohio in a Presidential Election

In order to cast a ballot for President and Vice-President from the Ohio precinct in which the voter resided prior to moving to another state, a former Ohio resident must:<sup>124</sup>

1. Be qualified to vote in Ohio, with the exception of residence and registration. The former resident must be a United States citizen who will be at least 18 years old as of the day of the Presidential Election; have resided in Ohio for at least 30 consecutive days immediately before moving from Ohio; and have been otherwise eligible to vote in Ohio before moving from Ohio. Therefore, the voter may not be currently incarcerated for a felony conviction, have been adjudicated incompetent to vote by a court, or have been twice convicted of violations of Ohio's election laws;
2. Have moved to another state from their Ohio residence not more than 90 days before the day of the Presidential Election;
3. Not be registered to vote in the new state of residence; and
4. Complete a Certificate of Intent to vote in a Presidential Election, under penalty of elections falsification.

A former Ohio resident who satisfies the requirements listed above may vote in Ohio for President and Vice-President, but not for any other offices or issues.<sup>125</sup> The voter may cast an absentee ballot by mail, an absentee ballot in person at the board office or other designated location during the in-person absentee voting period, or a ballot in person on Election Day at the Ohio precinct polling location where the voting residence was located at the time the voter moved from Ohio to another state.

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<sup>124</sup> R.C. 3504.01.

<sup>125</sup> R.C. 3504.01.



## CERTIFICATE OF INTENT TO VOTE IN A PRESIDENTIAL ELECTION

An eligible former resident must complete two copies of the Certificate of Intent to Vote in a Presidential Election (Form 107-A)<sup>126</sup> and file them in person or by mail with the board of elections of the county where the individual was last a qualifying former resident of Ohio.<sup>127</sup>

The Certificates of Intent must be filed no later than the 30th day before the general election at which the President and Vice-President are elected.<sup>128</sup>

## NOTICE TO SECRETARY OF STATE

A board of elections that receives a valid and timely-filed Certificate of Intent to Vote in a Presidential Election from any former Ohio resident must send one of the copies of that form to the Ohio Secretary of State's Elections Division no later than the 25th day before the day of the presidential election.<sup>129</sup>

## ABSENTEE BALLOT FOR FORMER OHIO RESIDENT

An eligible former Ohio resident may request and receive an absentee ballot by mail or in person if the former Ohio resident timely files the Certificates of Intent and timely submits an absentee ballot application. An application for an absentee ballot by mail must be received by the appropriate board of elections by 12:00 p.m. noon on the Saturday before the election. The voter may request the ballot to be mailed to the voter's new residence. The residential address of the voter on the application must be the voter's voting residence at the time the voter moved from Ohio to another state. All other identification requirements for both the application and the identification envelope apply.

## ELECTION DAY VOTING FOR FORMER OHIO RESIDENT

On Election Day, former Ohio residents must vote at the precinct and polling location where their voting residence was located at the time the voter moved from Ohio to another state. The signature poll book or poll list must be marked "Former Resident's Presidential Ballot" to indicate any former Ohio residents at that precinct and/or polling location who have filed a Certificate of Intent to Vote in a Presidential Election.<sup>130</sup>

<sup>126</sup> R.C. 3504.02.

<sup>127</sup> If the voter has a confidential voter registration record (i.e., is a participant in the Safe at Home program), the applicant may include the applicant's program participation identification number instead of the applicant's address or precinct in the Certificate of Intent. R.C. 3504.02.

<sup>128</sup> R.C. 3504.02.

<sup>129</sup> R.C. 3504.05.

<sup>130</sup> R.C. 3504.04.

A former Ohio resident must sign their name in the poll book.<sup>131</sup> All other Election Day voter identification requirements apply.

## TYPE OF BALLOT FOR FORMER OHIO RESIDENT

To provide "President and Vice-President Only" ballots to former Ohio residents who have timely filed a Certificate of Intent to Vote in a Presidential Election, boards of elections must issue a centrally counted, optical scan, paper ballot from the correct precinct's ballot of the voter's former Ohio voting residence.

After the former Ohio resident has marked the ballot, the ballot must be placed in an envelope (identification envelope for absentee ballots or an envelope created specifically for Election Day former Ohio resident voters) and the envelope must be clearly labeled "Former Ohio Resident's Presidential Ballot."

Prior to the official canvass, the board must remake the ballot for only the contest for President and Vice-President of the United States, as former Ohio residents are not eligible to cast a vote for any other contest. Once remade, the former Ohio resident's presidential ballot<sup>132</sup> may be tabulated.

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<sup>131</sup> R.C. 3504.01; R.C. 3504.04.

<sup>132</sup> See [Chapter 8 Canvassing the Votes](#) for more information.