

**In the
Supreme Court of Ohio**

State ex rel. Terpschore Maras,	:	
	:	
<i>Relator,</i>	:	Case No. 2022-1270
	:	
v.	:	Original Action in Mandamus
	:	Expedited Election Matter Under
	:	S.C.Prac.R. 12.08
Frank LaRose,	:	
	:	
<i>Respondent.</i>	:	

**MERIT BRIEF OF RESPONDENT
OHIO SECRETARY OF STATE FRANK LAROSE**

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TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Introduction..... 1

Statement of Facts..... 2

Law and Argument 3

I. This Court lacks subject matter jurisdiction over Maras’s claim for declaratory and injunctive relief. 3

II. Maras cannot demonstrate, by clear and convincing evidence, entitlement to a writ of mandamus. 5

A. Because R.C. 3505.21 is constitutional as applied to Maras, she does not have a clear legal right to relief. 5

1. Strict scrutiny does not apply because R.C. 3505.21 does not interfere with a fundamental right or disadvantage a suspect class..... 6

2. R.C. 3505.21 is only subject to rational-basis review and easily survives this deferential standard. 8

3. Even if the Court does not apply rational-basis review, R.C. 3505.21 easily survives *Anderson-Burdick* review..... 11

B. Maras’ claim that appointed observers must have access to source codes, software, or hardware has no basis in the law. 12

1. Maras’ argument that she has a clear legal right to physically access automatic tabulating equipment rests on multiple factual errors. 12

2. Maras’ argument that her observers have a clear legal right to physically access automatic tabulating equipment ignores and misapplies the relevant statutes..... 15

3. Secretary LaRose does not have a clear legal duty to provide physical access to the source codes, software, or hardware for automatic tabulating equipment..... 20

C. Maras has no clear legal right to demand the hand-counting of ballots and Secretary LaRose has no clear legal duty to compel a hand-count of ballots..... 21

D. Maras has an adequate remedy at law for her equal protection claim. 22

Cconclusion..... 23

Certificate of Service 24

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Arbino v. Johnson & Johnson</i> , 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420	6, 8
<i>State ex rel. Brown v. Ashtabula County</i> , 142 Ohio St.3d 370, 2014-Ohio-4022, 31 N.E.3d 596 (plurality opinion).....	7, 12
<i>Buchman v. Wayne Trace Local School Dist. Bd. of Edn.</i> , 73 Ohio St.3d 260, 652 N.E.2d 952 (1995)	8
<i>Burdick v. Takushi</i> , 504 U.S. 428 (1992).....	11
<i>State ex rel. Carlson v. State Bd. of Pharm.</i> , Mahoning App. 7th Dist. No. 18 MA 006, 2018-Ohio-3102	20
<i>State ex rel. Colvin v. Brunner</i> , 120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979	17
<i>Committee to Impose Term Limits on the Ohio Supreme Court & to Preclude Special Legal Status for Member & Employees of the Ohio General Assembly v. Ohio Ballot Board</i> , 885 F.3d 443 (6th Cir.2018)	7
<i>State ex rel. Crabtree v. Franklin Cty. Bd. of Health</i> , 77 Ohio St.3d 247, 673 N.E.2d 1281 (1997)	20
<i>State ex rel. DeMora v. LaRose</i> , ___ Ohio St.3d ___, 2022-Ohio-2173.....	22
<i>State ex rel. Gadell-Newton v. Husted</i> , 153 Ohio St.3d 225, 2018-Ohio-1854, 103 N.E.3d 809	4
<i>State ex rel. Husted v. Brunner</i> , 123 Ohio St.3d 119, 2009-Ohio-4805, 914 N.E.2d 397	20
<i>Keefe v. Eyrich</i> , 22 Ohio St.3d 164, 489 N.E.2d 259 (1986)	6, 7
<i>State ex rel. Kirtz v. Corrigan</i> , 61 Ohio St.3d 435, 575 N.E.2d 186 (1991)	5
<i>State ex rel. Linnabary v. Husted</i> , 138 Ohio St.3d 535, 2014-Ohio-1417, 8 N.E.3d 940	5

<i>State ex rel. Maras v. LaRose</i> , S. Ct. No. 2022-1083, 2022-Ohio-3295.....	2
<i>Massachusetts Bd. of Retirement v. Murgia</i> , 427 U.S. 307 (1976).....	6
<i>Mays v. LaRose</i> , 951 F.3d 775 (6th Cir. 2020)	7, 11
<i>McCrone v. Bank One Corp.</i> , 107 Ohio St.3d 272, 2005-Ohio-6505, 839 N.E.2d 1	8
<i>Menefee v. Queen City Metro</i> , 49 Ohio St.3d 27, 550 N.E.2d 181 (1990)	6
<i>Ohio Apt. Ass’n v. Levin</i> , 127 Ohio St.3d 76, 2010-Ohio-4414, 936 N.E.2d 919	10
<i>State ex rel. Ohio Civil Serv. Employees Assn, Local 11 v. State Empl. Rels. Bd.</i> , 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.3d 688	3
<i>Ohio Democratic Party v. LaRose</i> , 10th Dist. Franklin Nos. 20AP-421, 20AP-428, 2020-Ohio-4664	18
<i>State ex rel. Peregrine Health Servs. of Columbus v. Sears</i> , 10th Dist. Franklin No. 18AP-16, 2020-Ohio-3426	16
<i>State ex rel. Preston v. Ferguson</i> , 170 Ohio St. 450, 166 N.E.2d 365 (1960)	21
<i>Purcell v. Gonzalez</i> , 549 U.S. 1, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006).....	22
<i>State ex rel. Purdy v. Clermont Cty. Bd. of Elections</i> , 77 Ohio St.3d 338, 1997-Ohio-278, 673 N.E.2d 1351	5
<i>State ex rel. Rashada v. Pianka</i> , 112 Ohio St.3d 44, 2006-Ohio-6366, 857 N.E.2d 1220	5
<i>State ex rel. Skaggs v. Brunner</i> , 120 Ohio St.3d 506, 2008-Ohio-6333, 85 N.E.3d 789	16
<i>State v. Williams</i> , 88 Ohio St.3d 513, 728 N.E.2d 342 (2000)	8
<i>State ex rel. Stokes v. Brunner</i> , 120 Ohio St.3d 250, 2008-Ohio-5392, 898 N.E.2d 23	7, 8

<i>Taxpayers United for Assessment Cuts v. Austin</i> , 994 F.2d 291 (6th Cir.1993)	7
<i>State ex rel. Vana v. Maple Heights City Council</i> , 54 Ohio St.3d 91, 561 N.E.2d 909 (1990)	6, 7
<i>State ex rel. Watson v. Hamilton Cty. Bd. of Elections</i> , 88 Ohio St.3d 239, 2000-Ohio-318, 725 N.E.2d 255 (2000)	11
<i>Yick Wo v. Hopkins</i> , 118 U.S. 356 (1886).....	6
Statutes	
R.C. 2721.02(A).....	4
R.C. 3501.01(H).....	9
R.C. 3501.05(M).....	21
R.C. 3505.21	7
R.C. 3505.21(B).....	2, 8, 9, 10
R.C. 3505.21(C).....	2
R.C. 3505.27	21
R.C. 3505.32(A).....	21
R.C. 3505.331	14
R.C. 3505.331(C).....	22
R.C. 3505.331(F)(1).....	15
R.C. 3505.331(F)(2).....	15
R.C. 3506.01(C).....	13
R.C. 3506.01(H).....	15
R.C. 3506.02	21
R.C. 3506.05(B)(1)	13
R.C. 3506.05(B)(2)	13
R.C. 3506.05(B)(3).....	13

R.C. 3506.05(C).....	14
R.C. 3506.05(H)(1).....	18, 20
R.C. 3506.05(H)(4)(a).....	13
R.C. 3506.07	21
R.C. 3506.13	16, 17
R.C. 3506.14	14
R.C. 3506.14(B).....	14
R.C. 3506.23	19
R.C. 3599.27	18, 20

Other Authorities

Directive 2022-44, available at https://www.ohiosos.gov/globalassets/elections/directives/2022/dir2022-44.pdf ;	2
OAC 111:3-9-02	13
OAC 111:3-9-04	18, 20
OAC 111:3-9-07, 08	14

INTRODUCTION

Relator Terpsehore Maras filed this action seeking the extraordinary relief of a writ of mandamus against Respondent Ohio Secretary of State Frank LaRose. Specifically, Maras seeks an order deeming R.C. 3505.21 unconstitutional as violative of equal protection and an order directing that election observers for the November General Election be provided with copies of all software, source code, and hardware installed on any automatic tabulating machine in use at an observer's polling location. Alternatively, if observers are not permitted to inspect the source code, Maras requests an order directing poll workers throughout the state to tally each vote by hand.

Because Maras seeks first and foremost a declaratory judgment on the constitutionality of R.C. 3505.21, the Court should dismiss this claim for lack of subject-matter jurisdiction. The Court lacks original jurisdiction to entertain requests for a declaratory judgment.

As to her request for mandamus relief, Maras cannot meet her heavy burden to establish, by clear and convincing evidence, the three requirements demonstrating her entitlement to a writ. First, even if this Court determines that Maras properly brought her equal protection challenge in mandamus, she has no clear right to appoint observers on her own behalf. Maras also has no clear legal right to a writ of mandamus ordering the Secretary to provide election observers with physical access to automatic tabulating equipment. She ignores and misstates Ohio law regarding automatic tabulating equipment and makes sweeping, unsupported allegations about the equipment that are demonstrably false. Second, Secretary LaRose does not have a clear legal duty to provide physical access to the source codes, software, or hardware for automatic tabulating equipment. Again, Maras's argument has no basis in law or fact. And, finally, Maras has an adequate remedy at law for her constitutional claim in the form of a declaratory judgment. Therefore, Maras's requested writ should be denied.

STATEMENT OF FACTS

Under Ohio law, “any group of five or more candidates may appoint to the board of elections or to any of the precincts in the county or city one person, a qualified elector, who shall serve as observer for such party or such candidates during the casting of the ballots and during the counting of the ballots.” R.C. 3505.21(B). Observers can be appointed for early in-person voting, voting at precincts on Election Day, the board of elections on Election Day, the official canvass, recounts, and post-election audits. *See id.* The Secretary of State’s Office provides fillable forms for the appointment of observers on its website, *see* Forms 214-A through 220, which can be downloaded here: <https://www.ohiosos.gov/elections/elections-officials/forms-petitions/>. Appointments can be made by “any political party supporting candidates to be voted upon” at the election or by “any group of five or more candidates.” R.C. 3505.21(B). For observers who will serve on Election Day, R.C. 3505.21 permits appointment until the eleventh day prior to Election Day. R.C. 3505.21(C). This year, that deadline is October 28, 2022.

Once a certificate of appointment is filed with the director of the board of elections, “the person named as observer in the certificate shall be permitted to be in and about the applicable polling place during the casting of the ballots and shall be permitted to watch every proceeding of the precinct election officials from the time of the opening until the closing of the polls.” R.C. 3505.21(C). An observer “also may inspect the counting of all ballots in the polling place or board of elections from the time of the closing of the polls until the counting is completed and the final returns are certified and signed.” *Id.*

Relator Terpshore Maras is an independent candidate for Secretary of State in the November 8, 2022 General Election. *See* Directive 2022-44, available at <https://www.ohiosos.gov/globalassets/elections/directives/2022/dir2022-44.pdf>; *see also State ex rel. Maras v. LaRose*, S. Ct. No. 2022-1083, 2022-Ohio-3295. Maras alleges that she contacted

eight party-affiliated candidates and was unsuccessful in persuading them to join with her to appoint observers. Relator's Br. at 4. Rather than contact any of the more than 800 other candidates who will appear on Ohio ballots in the General Election, Maras instead brought this expedited elections action.

Under the guise of a writ of mandamus, Maras seeks a declaratory judgment that R.C. 3505.21 violates the Equal Protection Clauses of the United States and Ohio Constitutions and an order enjoining Secretary LaRose from enforcing the statute. Additionally, Maras seeks an order that her appointed observers "be provided with copies of all software, code, and hardware installed on any automatic tabulating [equipment] in use in the precinct in which an observer is appointed so that the software may be meaningfully inspected." Compl. at Prayer for Relief.

LAW AND ARGUMENT

I. This Court lacks subject matter jurisdiction over Maras's claim for declaratory and injunctive relief.

This Court lacks subject matter jurisdiction over Maras's claim that R.C. 3505.21 violates the Equal Protection Clauses of the United States and Ohio Constitutions because Maras seeks a declaratory judgment with a prohibitory injunction. Although styled in mandamus, Maras seeks a declaration that R.C. 3505.21(B) is unconstitutional and effectively asks for an order enjoining its application to her candidacy. As this Court does not possess original jurisdiction over declaratory judgment actions, this Court should dismiss Maras's equal protection claim.

This Court has established "that 'if the allegations of a complaint for a writ of mandamus indicate that the real objects sought are a declaratory judgment and a prohibitory injunction, the complaint does not state a cause of action in mandamus.'" *State ex rel. Ohio Civil Serv. Employees Assn, Local 11 v. State Empl. Rels. Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.3d 688, ¶ 11, quoting *State ex rel. Grendell v. Davidson*, 86 Ohio St.3d 629, 634, 716 N.E.2d 704 (1999).

“However, ‘where declaratory judgment would not be a complete remedy unless coupled with extraordinary relief in the nature of a mandatory injunction, the availability of declaratory judgment does not preclude a writ of mandamus.’” *State ex rel. Gadell-Newton v. Husted*, 153 Ohio St.3d 225, 2018-Ohio-1854, 103 N.E.3d 809, ¶ 9, quoting *State ex rel. Arnett v. Winemiller*, 80 Ohio St.3d 255, 259, 685 N.E.2d 1219 (1997). “The difference between the two forms of relief is simple: ‘a prohibitory injunction is used to prevent a future injury, but a mandatory injunction is used to remedy past injuries.’” *Id.* at ¶ 10, quoting *State ex rel. GMC v. Indus. Comm’n*, 117 Ohio St.3d 480, 2008-Ohio-1593, 884 N.E.2d 1075, ¶ 12.

In this case, Secretary LaRose did not take any affirmative action that would require a mandatory injunction to undo any alleged harm suffered by Maras. Rather, Maras anticipates harm through the application of R.C. 3505.21(B) to her as an independent candidate for the November General Election. Maras’s objective then is to obtain declaratory and injunctive relief. Specifically, Maras asks this Court to “[d]eem R.C. 3505.21 unconstitutional for violation of the equal protection clauses of the United States and Ohio constitutions,” Compl. at 8, and asks for an order “compelling Secretary LaRose to allow Relator Maras to appoint election observers * * * without joining in the appointment of such observers with four additional candidates,” *id.* at ¶ 2. In a declaratory judgment action, courts “declare rights, status, and other legal relations * * *.” R.C. 2721.02(A). Declaring that R.C. 3505.21(B) is unconstitutional fits squarely within that definition. Thus, it is manifest that the true objects of Maras’s claim are a declaratory judgment that a provision of R.C. 3505.21 is unconstitutional and a prohibitory injunction preventing a state official from applying that provision. Mandamus is not the proper vehicle for this claim, and this Court lacks jurisdiction to consider it.

II. Maras cannot demonstrate, by clear and convincing evidence, entitlement to a writ of mandamus.

It is well established that relief in the form of mandamus is extraordinary relief. *See, e.g., State ex rel. Rashada v. Pianka*, 112 Ohio St.3d 44, 2006-Ohio-6366, 857 N.E.2d 1220, ¶ 2. To be entitled to the requested writ of mandamus, a relator must establish by clear and convincing evidence three elements: (1) the relator has a clear legal right to the requested relief; (2) the respondent is under a clear legal duty to perform the requested act; and (3) the relator has no plain and adequate remedy at law. *State ex rel. Linnabary v. Husted*, 138 Ohio St.3d 535, 2014-Ohio-1417, 8 N.E.3d 940, ¶ 13. “[A]ll three of these requirements must be met in order for mandamus to lie.” *State ex rel. Kirtz v. Corrigan*, 61 Ohio St.3d 435, 438, 575 N.E.2d 186 (1991).

Moreover, because Maras’s claims are based on a constitutional challenge to Ohio’s election laws, she must overcome the presumption of constitutionality that attaches to these statutes. *See, e.g., State ex rel. Purdy v. Clermont Cty. Bd. of Elections*, 77 Ohio St.3d 338, 346, 1997-Ohio-278, 673 N.E.2d 1351 (“Statutes are presumed to be constitutional unless shown beyond a reasonable doubt to violate a constitutional provision.”) (Internal quotations omitted.).

A. Because R.C. 3505.21 is constitutional as applied to Maras, she does not have a clear legal right to relief.

Even if this Court determines that Maras properly brought her equal protection challenge in mandamus, she has no clear right to the relief sought. Maras contends that she is entitled to extraordinary relief in mandamus because R.C. 3505.21 imposes an onerous and disparate requirement for non-party candidates, who must join with four other candidates to appoint election observers, when compared to the requirement for political parties, who need not join with other political parties or candidates to appoint election observers.

Maras argues that this Court should apply strict scrutiny in evaluating the constitutionality of R.C. 3505.21 because the statute “[precludes] the ability of non-party affiliated candidates to

appoint election observers [which] has a real and appreciable impact on and impermissibly interferes with the right to vote.” *See* Relator’s Br. at 8. And Maras contends that under strict scrutiny, the statute does not pass muster; she argues that R.C. 3505.21 “does not promote a compelling government interest” and “is not narrowly tailored.” *See id.* at 8-9. Maras is wrong on all accounts.

1. Strict scrutiny does not apply because R.C. 3505.21 does not interfere with a fundamental right or disadvantage a suspect class.

The first step in an equal-protection analysis is determining the proper standard of review. “When legislation infringes upon a fundamental constitutional right or the rights of a suspect class, strict scrutiny applies.” *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 64, citing *State v. Williams*, 88 Ohio St.3d 513, 530, 728 N.E.2d 342 (2000). If neither a fundamental right nor a suspect class is involved, a rational-basis test is used. *See Menefee v. Queen City Metro*, 49 Ohio St.3d 27, 29, 550 N.E.2d 181 (1990).

The right to vote is undoubtedly a fundamental right that is “preservative of all rights,” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886), but it does not follow that every statute that affects elections “impermissibly interferes with the exercise” of the fundamental right to vote such that strict scrutiny should apply, *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). The Ohio Supreme Court, for example, applied rational-basis review to a constitutional provision prohibiting anyone over age seventy from running for judicial office. *State ex rel. Keefe v. Eyrich*, 22 Ohio St.3d 164, 165, 489 N.E.2d 259 (1986). Although the constitutional provision indisputably regulated elections, the Court did not find that it interfered with the fundamental right to vote; rather, it concluded that the statute affected the “right to be a candidate for public office,” which is not a fundamental right. *Id.* at 166; *see also State ex rel. Vana v. Maple Heights City Council*, 54 Ohio St.3d 91, 92, 561 N.E.2d 909 (1990) (applying rational-basis review to a charter provision

preventing elected officers from simultaneously holding other public office); *State ex rel. Brown v. Ashtabula County*, 142 Ohio St.3d 370, 374-75, 2014-Ohio-4022, 31 N.E.3d 596 (plurality opinion) (declining to apply heightened review to Ohio’s sore-loser law).¹

Here, there is no allegation that R.C. 3505.21 disadvantages a protected class. Nor is a fundamental right implicated. R.C. 3505.21 does not impermissibly interfere with the right to vote. It does not limit access to the ballot or impose a poll tax. *Mays v. LaRose*, 951 F.3d 775, 784 (6th Cir. 2020) (characterizing poll taxes and limiting access to the ballot as severe restrictions on the right to vote that trigger strict scrutiny). It does not prevent anyone from voting, erect any hurdles to the exercise of the franchise, or even affect any activity of a *voter* at all. That the statute applies to elections does not demand the application of strict scrutiny in the absence of any burden on the right to vote. *Keefe* at 165; *Vana* at 92; *Brown* at 374-75.

Nor is there a fundamental right for a candidate to appoint observers of the candidate’s choosing—the right is wholly created by statute. *See* R.C. 3505.21. Maras cites two cases purporting to show that the appointment of observers implicates a fundamental right, but neither case avails her. Relator’s Br. at 7-8 (citing *State ex rel. Stokes v. Brunner*, 120 Ohio St.3d 250, 256, 2008-Ohio-5392, 898 N.E.2d 23, and *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976)). In *Stokes*, this Court considered whether R.C. 3505.21 permitted observers to be present at all active polling places, including early voting locations. *Id.* at ¶ 9. No constitutional question was involved, and the Court never determined that the appointment of observers was a

¹ Similarly, federal courts do not apply strict scrutiny to every law that has an incidental effect on elections. *See, e.g., Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 297 (6th Cir.1993) (applying rational-basis review to a Michigan statute requiring that initiative petitions contain a certain number of signatures from registered voters); *Committee to Impose Term Limits on the Ohio Supreme Court & to Preclude Special Legal Status for Member & Employees of the Ohio General Assembly v. Ohio Ballot Board*, 885 F.3d 443, 448 (6th Cir.2018) (applying rational-basis review to Ohio’s single-subject rule for initiative petitions).

fundamental right. The Court simply interpreted the plain language of R.C. 3505.21 and concluded that it permitted the presence of observers during early voting. *Id.* at ¶ 28. And *Massachusetts Board of Retirement*, which involved a rational-basis challenge to a mandatory-retirement statute, certainly does not stand for the proposition that R.C. 3505.21 affects any fundamental rights.

Therefore, rational-basis review applies.

2. R.C. 3505.21 is only subject to rational-basis review and easily survives this deferential standard.

The rational-basis test requires that a statute be upheld if it is rationally related to a legitimate government purpose. *See Williams*, 88 Ohio St.3d at 530, 728 N.E.2d 342. “Under such a review, a statute will not be invalidated if it is grounded on a reasonable justification, even if its classifications are not precise.” *Arbino* at ¶ 66, citing *McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005-Ohio-6505, 839 N.E.2d 1, ¶ 8. The test involves a two-step analysis. The first step is identifying a valid state interest. The second step is determining whether the method or means by which the state has chosen to advance that interest is rational. *See Buchman v. Wayne Trace Local School Dist. Bd. of Edn.*, 73 Ohio St.3d 260, 267, 652 N.E.2d 952 (1995). “A statute will not be held to violate the Equal Protection Clause, and [courts] will not invalidate a plan of classification adopted by the General Assembly, unless it is clearly arbitrary and unreasonable.” (Citations omitted.) *McCrone* at ¶ 9.

To begin, Maras is incorrect about the types of classifications R.C. 3505.21 draws. Under R.C. 3505.21(B), “any group of five or more candidates may appoint to the board of elections or to any of the precincts in the county or city one person, a qualified elector, who shall serve as observer for such party or such candidates during the casting of the ballots and during the counting of the ballots.” Significantly, R.C. 3505.21 does not limit the types of candidates (e.g., statewide, local, etc.) with whom Maras may join—the statute simply says “candidates.” “Candidate” means

“any qualified person certified in accordance with the provisions of the Revised Code for placement on the official ballot of a primary, general, or special election * * *, or any qualified person who claims to be a write-in candidate, or who knowingly assents to being represented as a write-in candidate by another at either a primary, general, or special election.” R.C. 3501.01(H). In other words, nothing in R.C. 3505.21 limits Maras to join only candidates for statewide office or only independent candidates in appointing observers, as she suggests in her Merit Brief. *See Relator’s Br.* at 5-6. In fact, in any county, Maras could join with four *local* candidates in that county to appoint observers in that county. And for the November General Election, Maras could join 810 *other* candidates, 245 of whom are running unaffiliated with a political party. Fedak Aff. at ¶ 25.

Additionally, R.C. 3505.21 treats all candidates alike. No candidate, even a candidate affiliated with a political party, has the authority to appoint her own observers solely to represent her. *All* candidates must form a group of five or more to appoint their own observers. R.C. 3505.21(B).

The classification drawn by R.C. 3505.21 does not distinguish between affiliated and unaffiliated candidates; rather, it distinguishes *candidates* from *political parties*. While candidates need to join with four others to appoint their own election observers, political parties may appoint observers for the political party without joining with other candidates or political parties. Treating political parties differently from candidates makes sense because the two entities are not similarly situated. Political parties represent broad coalitions of voters throughout the state, typically support multiple candidates every election cycle, and have demonstrated the ability to garner widespread electoral support from Ohioans. Non-party candidates, on the other hand, may represent only themselves. The Equal Protection Clause “does not require things which are different in fact * * *

to be treated in law as though they were the same.” *Ohio Apt. Ass’n v. Levin*, 127 Ohio St.3d 76, 2010-Ohio-4414, 936 N.E.2d 919, ¶ 38, quoting *GTE North, Inc v. Zaino*, 96 Ohio St.3d 9, 2002-Ohio-2984, 770 N.E.2d 65, ¶ 22. Accordingly, Maras’s equal protection claim never gets off the ground.

In any event, R.C. 3505.21’s differential treatment of political parties and candidates is rationally related to several legitimate state interests. First, R.C. 3505.21 ensures that appointed election observers represent the interests of multiple candidates and points of view and are not myopically focused on furthering a particular candidacy. Election observers appointed by political parties represent *all* candidates of that political party at their observation location, unless that candidate has opted to join a group of five or more candidates.² The five-candidate rule similarly ensures that election observers for groups of candidates also represent multiple candidates at each observation location. Second, the requirements of R.C. 3505.21 minimize the number of people present at any particular location, which reduces the burdens on the boards of the election to administer an election. If all candidates could appoint their own observers, boards of elections might have dozens of people milling about the polling location. This would increase burdens on boards, who would be required to monitor election observers to ensure that they do not engage in any prohibited activity. Likewise, minimizing the number of election observers decreases the likelihood that an observer will disrupt the smooth functioning of the election.

Ultimately, the distinctions the legislature draws in R.C. 3505.21 are rational and based on the conclusion that elections function better if they are operated equitably and efficiently. That reasoning withstands scrutiny under the rational-basis test. Therefore, R.C. 3505.21 does not

² R.C. 3505.21 prohibits candidates from being represented by more than one observer. R.C. 3505.21(B). So, a candidate may either be represented by the candidate’s political-party observer or group-of-five observer, not both.

violate the right to equal protection under Section 2, Article I of the Ohio Constitution or the Fourteenth Amendment to the United States Constitution. Accordingly, to the extent this Court decides it has jurisdiction to decide Maras’s declaratory-judgment claim against R.C. 3505.21, which it does not, that claim would nonetheless fail on its merits.

3. Even if the Court does not apply rational-basis review, R.C. 3505.21 easily survives *Anderson-Burdick* review.

If the Court finds both that it has jurisdiction to entertain a declaratory-judgment claim against R.C. 3505.21 *and* that rational-basis review does not apply, the Court need not then accept Maras’s contention that strict scrutiny applies. It can apply the flexible *Anderson-Burdick* test.³ If the state law in question severely restricts voting rights, then strict scrutiny applies: the law must be narrowly tailored to advance a compelling state interest. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). “[A] law severely burdens voting rights if it discriminates based on political content instead of neutral factors or if there are few alternative means of access to the ballot.” *State ex rel. Watson v. Hamilton Cty. Bd. of Elections*, 88 Ohio St.3d 239, 243, 2000-Ohio-318, 725 N.E.2d 255 (2000), citing *Citizens for Legislative Choice v. Miller*, 144 F.3d 916, 921 (6th Cir.1998). “But when a state election law provision imposes only ‘reasonable, nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights of voters, ‘the State’s important regulatory interests are generally sufficient to justify’ the restrictions.” *Burdick* at 434, quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

Here, R.C. 3505.21 does not impose a severe burden on voters’ and candidates’ constitutional rights. The law does not discriminate based on political content—it treats all

³ The Sixth Circuit has criticized application of the *Anderson-Burdick* standard to equal protection claims, but remains bound by precedent holding otherwise. See *Mays v. LaRose*, 951 F.3d 775, 783 n.4 (6th Cir.2020). The traditional tiers of scrutiny for equal protection claims provide the appropriate standard of review, as argued in part A.1. *supra*, but R.C. 3505.21 would also survive *Anderson-Burdick* review.

candidates the same, whether affiliated or unaffiliated with a political party. Nor does it restrict access to the ballot. It is a reasonable, nondiscriminatory restriction that evenhandedly applies to all candidates. Against no more than a “slight” or “very limited” burden on Maras, the State’s interests described in part A.2. *supra* easily justify any burden. *State ex rel. Brown v. Ashtabula County Board of Elections*, 142 Ohio St.3d 370, 2014-Ohio-402, ¶ 19 (noting that the state’s interests can be “correspondingly small” when the burden on voting is “slight” or “very limited”).

B. Maras’ claim that appointed observers must have access to source codes, software, or hardware has no basis in the law.

Under R.C. 3505.21, observers must “be permitted to be in and about the applicable polling place during the casting of the ballots and shall be permitted to watch every proceeding of the precinct election officials from the time of the opening until the closing of the polls.” Observers may “inspect the counting of all ballots in the polling place or board of elections from the time of the closing of the polls until the counting is completed and the final returns are certified and signed.” *Id.* Maras contends that R.C. 3505.21’s use of the term “inspect” demands that observers be afforded a wide range of physical access to automatic tabulating equipment, including access to source codes, software, and hardware. Maras establishes no clear legal right to such relief, and the Secretary has no duty to provide it.

1. Maras’ argument that she has a clear legal right to physically access automatic tabulating equipment rests on multiple factual errors.

To begin, nearly all of Maras’ factual allegations about automatic tabulating equipment are provably false. Maras alleges that observers are limited to “[w]atching the ballots go in the machine and then watching ballots come back out.” Relator’s Br. at 11; Compl. at ¶ 28. Maras analogizes this to “a counting room with a locked door.” *Id.* According to Maras, this means that observers have nothing to observe during the use of automatic tabulating equipment, rendering the right of observation illusory. Maras does not support her allegations about the need to inspect the hardware,

software, or source code of automatic tabulating equipment with any evidence that the tabulating equipment used in Ohio does not count votes accurately, and for good reason. Her allegations are flatly contradicted by the many steps in Ohio law that require the tabulating equipment to be inspected, certified for use, and tested before and after votes are tabulated.

Automatic tabulating equipment “means a machine or electronic device, or interconnected or interrelated machines or electronic devices, that will automatically examine and count votes recorded on ballots.” R.C. 3506.01(C). Ohio law requires multiple public demonstrations of the accuracy, reliability, and security of automatic tabulating equipment. First, Ohio law requires that any automatic tabulating equipment used in elections meet the voluntary voting system guidelines promulgated by the federal Election Assistance Commission (EAC). R.C. 3506.05(H)(4)(a). To meet these guidelines, automatic tabulating equipment must be tested by independent laboratories certified by the EAC and meet required standards of functionality, accessibility, and security. Affidavit of Greg Fedak at ¶ 7. All EAC testing reports and communications with voting-machine vendors are made available for public review. *Id.* If an automatic tabulating equipment is certified by the EAC, the machine can proceed to state review.

The Secretary of State’s Office receives testing reports from the EAC, as well as hardware, procedure manuals, support arrangements, and other documentation. OAC 111:3-9-02. The Secretary’s Office reviews the reports and other submissions to ensure compliance with Ohio statutes and regulations, which are comprehensively set forth in a Voting System Requirements Matrix. Fedak Aff. at ¶ 9-10 & Exhibit A thereto. If the reports and other information indicate compliance, the Secretary’s Office forwards the automatic tabulating equipment to the bipartisan Board of Voting Machine Examiners. R.C. 3506.05(B)(1)-(3); Fedak Aff. at ¶ 10. The BVME conducts a battery of tests—all of which are open to the public and meetings transcribed for public

review—to ensure the functionality, accessibility, security, and reliability of the automatic tabulating equipment. Fedak Aff. at ¶ 10; R.C. 3506.05(C); OAC 111:3-9-07, 08. The BVME votes to recommend or not recommend certification of the automatic tabulating equipment, and the Secretary makes the final certification decision. Fedak Aff. at ¶ 11-12. During the LaRose administration, all BVME recommendations have been unanimous. Fedak Aff. at ¶ 11.

Before and after each election, all pieces of automatic tabulating equipment undergo extensive public testing. First, the boards perform a logic-and-accuracy test of automatic tabulating equipment, ensuring that the equipment accurately processes each ballot style and tabulates votes correctly. Fedak Aff. at ¶ 16. Next, the boards conduct statutorily mandated testing of the automatic tabulating equipment. R.C. 3506.14. Boards pre-mark ballots, including ballots containing intentional errors, to run through the automatic tabulating equipment. The boards then assess whether the equipment correctly counts the number of ballots and identifies the ballots containing errors. This testing process occurs prior to the start of the count of the ballots and at the conclusion of the count of the ballots. R.C. 3506.14(B). Boards give public notice of the time and place of the testing. Fedak Aff. at ¶ 17.

Finally, automatic tabulating equipment are subject to a post-election statutory audit. R.C. 3505.331. Boards audit not less than three contested races and at least five percent of the total number of votes cast in those races. *Id.*; Election Official Manual § 11.03. Bipartisan teams physically examine and hand-count ballots and compare the hand count to the recorded electronic

summary of the votes contained in the official certification of the votes. Fedak Aff. at ¶ 18.⁴ Again, boards provide notice of audits under R.C. 3505.331(C), and the public and any observers appointed under R.C. 3505.21 may attend. Fedak Aff. at ¶ 18.

Maras does not mention any of these public opportunities to observe and inspect automatic tabulating equipment. Likewise, she fails to explain why the certification, testing, and auditing processes described above do not provide her with sufficient opportunity to evaluate the reliability of automatic tabulating equipment. Simply put, Maras' contention that she must have physical access to software, hardware, and source codes to be able to assess the reliability and functionality of automatic tabulating equipment is unmoored from the law and the evidence. Thus, Maras' claim that she has a clear legal right to the software, hardware, and source codes of automatic tabulating equipment rests on fundamental misunderstandings of the laws and the testing processes governing that equipment.

2. Maras' argument that her observers have a clear legal right to physically access automatic tabulating equipment ignores and misapplies the relevant statutes.

Moreover, Maras's allegation that the language of R.C. 3505.21 gives her a clear legal right to access software, hardware, and source codes finds no statutory support. Without any analysis, statutory support, or legal reasoning, Maras baldly asserts that the term "inspect" in R.C. 3505.21 means that she has a clear legal right to access the software, hardware, and source codes for the automatic tabulating equipment. Maras provides nothing more than her own say-so to establish

⁴ Maras incorrectly asserts that the use of direct recording electronic voting machines makes the casting of ballots "unobservable because there is no paper ballot." Compl. at ¶ 29. Although DRE machines do not use paper ballots, no DRE machine can be certified by the Secretary of State unless it produces a voter verified paper audit trail, which records the voter's ballot choices. R.C. 3506.01(H); 3506.05(H)(3). During the statutory audit process, boards review and hand count paper ballots and voter verified paper audit trails, if used in that county. R.C. 3505.331(F)(1)-(2).

that R.C. 3505.21 gives her a clear legal right to software, hardware, and source codes. On that basis alone, her mandamus claim fails. In any event, an examination of the relevant statutes shows that observers do not have a clear legal right to physically access the components of automatic tabulating equipment.

When a statute provides an administrative agency authority to perform a specified act but does not provide the details by which the act should be performed, the agency is to perform the act in a reasonable manner based upon a reasonable construction of the statutory scheme. (Quotations omitted.) *State ex rel. Peregrine Health Servs. of Columbus v. Sears*, 10th Dist. Franklin No. 18AP-16, 2020-Ohio-3426, ¶ 32. In absence of evidence to the contrary, the Secretary’s Office is presumed “to have properly performed [its] duties in a regular and lawful manner and not to have acted illegally or unlawfully.” *State ex rel. Skaggs v. Brunner*, 120 Ohio St.3d 506, 2008-Ohio-6333, 85 N.E.3d 789, ¶ 51.

Here, the relevant statutes state that observers must be permitted to “observe” or “inspect” certain election processes, but do not provide details by which these acts should be performed. Accordingly, Secretary LaRose reasonably construed the statutes governing observers as permitting *visual* observation and inspection only, not physical access to automatic tabulating equipment or its components.

Maras’ Merit Brief wholly ignores the statute that specifically governs observers’ rights with respect to automatic tabulating equipment. *See* R.C. 3506.13. That statute provides as follows:

In precincts where marking devices, automatic tabulating equipment, voting machines, or any combination of these are used, observers may be appointed as prescribed in section 3505.21 of the Revised Code. The duties and privileges of observers in such precincts during the hours the polls are open shall be as provided in section 3505.21 of the Revised Code.

Observers shall be allowed to remain in the polling place after the polls close and may observe the processing of the ballots and the sealing and signing of the envelopes or containers or both containing the voted ballots.

R.C. 3506.13. Accordingly, to the extent Maras' argument hinges on the right to "inspect" somehow affording more access than the right to "observe," her argument fails on its own terms. With respect to automatic tabulating equipment, observers may only "observe the processing of ballots," not "inspect" that process. R.C. 3506.13.

But whether the statute governing observers' access to automatic tabulating equipment is R.C. 3505.21 or R.C. 3506.13 is ultimately immaterial. The Secretary reasonably interpreted these statutes in the Election Official Manual to permit visual inspection and watching only: "The role of observers is limited to observing the proceedings of an election. Accordingly, while observers are permitted to watch and inspect, observers are never permitted to handle any election materials." Election Official Manual § 9.08 at 278. This directive is consistent with the purpose of R.C. 3505.21 and R.C. 3506.13, both of which use verbs explicitly related to *vision*, not verbs relating to handling, possession, or physical control. "When the secretary of state, as the state's chief election officer, has adopted a reasonable construction of an elections statute, this court must defer to that interpretation." *State ex rel. Colvin v. Brunner*, 120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979, ¶ 57.

And the interpretation advanced by the Election Official Manual has been the practice of prior administrations. According to Directive 2015-29, a former version of the Election Official Manual in effect during the Secretary Husted administration, "observers are permitted to watch and inspect," but "observers are never permitted to handle any election materials." Fedak Aff. at ¶ 20. When the Secretary interprets statutes in line with the long-standing practice of Ohio

secretaries of state, he does not act unreasonably. *Ohio Democratic Party v. LaRose*, 10th Dist. Franklin Nos. 20AP-421, 20AP-428, 2020-Ohio-4664, ¶ 49.

Other statutes in Title 35 support a reading of R.C. 3505.21 and 3506.13 that precludes observers from physically accessing copies of software, source codes, and hardware. For example, the Secretary of State is statutorily prohibited from accessing *any* source codes for automatic tabulating equipment. When a voting machine or automatic tabulating equipment is certified by the Secretary of State, the vendor or computer software developers of the voting machine or automatic tabulating system place a copy of all source code and related documentation, including system configuration, in escrow with an independent escrow agent. R.C. 3506.05(H)(1); OAC 111:3-9-04. Maras cannot have a clear legal duty to access source codes from the Secretary of State that he is prohibited from maintaining.

Further, the Revised Code makes it a fifth-degree felony for an unauthorized person to possess any voting machine or automatic tabulating equipment, or to tamper or attempt to tamper with, deface, impair the use of, destroy or otherwise injure same. R.C. 3599.27. Unlike R.C. 3505.21 and R.C. 3506.13, which permit *visual* observations and inspections of automatic tabulating equipment, R.C. 3599.27 specifically addresses *physical* access to automatic tabulating equipment and prohibits it.

Moreover, providing Maras or anyone with the hardware, software, and/or source code for the automatic tabulating equipment would create an unacceptable risk that the equipment could be compromised by a malicious actor seeking to disrupt our elections. While it is true that Ohio's automatic tabulating machines and voting machines are not and cannot be connected to the

internet, R.C. 3506.23, and thus, cannot be compromised via remote internet access,⁵ a person with knowledge of the hardware, software, or source code could compromise a tabulating machine if they had physical access to it. While that would be difficult to do given the physical security measures the boards must use to protect their voting and tabulating equipment,⁶ it cannot be assumed that it is impossible. Thus, publicly disclosing the software and source code of the automatic tabulating machines, and allowing observers physical access to the machines, would create an unacceptable level of risk that the tabulating machines could be compromised.

Maras does not have a clear legal right to access software, hardware, or source codes for automatic tabulating equipment.

⁵ Maras falsely alleges that Ohio's election security can be compromised by anyone with online access to the automatic tabulating equipment. Relator's Br. at 4-5. This spurious allegation has little to do with whether observers' alleged rights to "observe" or "inspect" automatic tabulating equipment and therefore has little to do with this case. Nevertheless, false accusations of vulnerabilities and allegations that the use of automatic tabulating equipment somehow causes "mistrust of election results," Relator's Br. at 12, should not go uncontradicted. Ohio's voting machines and automatic tabulating equipment may not connect to the internet, R.C. 3506.23 and cannot be remotely compromised. The multiple tests of the tabulating equipment and the post-election audits of the vote tabulations are the proof that the equipment is trustworthy.

⁶ These measures include limited-access facilities, electronic security systems, a dual lock-and-key system requiring bipartisan participation, extensive recordkeeping requirements, and prohibitions on third-party access to automatic tabulating equipment. Fedak Aff. at ¶ 19. Given the robust physical security measures implemented by the boards, any unauthorized physical access to equipment would be highly unlikely without bipartisan participation by elections officials. Fedak Aff. at ¶ 23. Thus, although access to software or source codes, standing alone, would not compromise elections, the secrecy of software and source codes provides an important, additional layer of election security. Ohioans can have confidence in the integrity of elections because of the security measures in place at each step of the process. Those, like Maras, who choose to make unfounded accusations of election fraud that she cannot be bothered to support with evidence are, in reality, "the primary cause of mistrust of election results and the basis for claims of election fraud." Relator's Br. at 12.

3. Secretary LaRose does not have a clear legal duty to provide physical access to the source codes, software, or hardware for automatic tabulating equipment.

Maras also fails to show that Secretary LaRose has a clear legal duty to provide her access to software, hardware, and source codes for automatic tabulating equipment. First and foremost, Secretary LaRose is prohibited by statute from accessing source codes, R.C. 3506.05(H)(1); OAC 111:3-9-04, and he does not have a clear legal duty to provide such access to others. Moreover, Secretary LaRose does not have a clear legal duty to provide access to voting machines or automatic tabulating equipment to unauthorized persons, which is prohibited by law. R.C. 3599.27.

But even if these statutes did not prohibit Secretary LaRose from providing the access Maras seeks, he would not have a clear legal duty under R.C. 3505.21 or R.C. 3506.13 to provide observers with physical access to automatic tabulating equipment. Maras improperly seeks to use her mandamus claim to force Secretary LaRose to carry out his discretionary duties in a specific manner. “Absent an abuse of discretion, mandamus cannot compel a public official to act in a certain way on a discretionary matter.” *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 119, 2009-Ohio-4805, 914 N.E.2d 397, ¶ 20, quoting *State ex rel. Lee v. Montgomery*, 88 Ohio St.3d 233, 235, 724 N.E.2d 1148 (2000); *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 77 Ohio St.3d 247, 249, 673 N.E.2d 1281 (1997). “In other words, while the extraordinary remedy of mandamus may be available to compel a public entity to perform a duty specifically enjoined by law * * *, it does not permit the courts to control that public entity’s discretion.” *State ex rel. Carlson v. State Bd. of Pharm.*, Mahoning App. 7th Dist. No. 18 MA 006, 2018-Ohio-3102, ¶ 13, citing *City of Cleveland ex rel. Neelon v. Locher*, 25 Ohio St.2d 49, 51, 266 N.E.2d 831 (1971).

Because no statute prescribes exactly how Secretary LaRose is to go about enabling observers to inspect the counting of all ballots in a polling place, he has the discretion to carry out

its duty “in a reasonable manner not in conflict with any law of the state.” *State ex rel. Preston v. Ferguson*, 170 Ohio St. 450, 459, 166 N.E.2d 365 (1960).

C. Maras has no clear legal right to demand the hand-counting of ballots and Secretary LaRose has no clear legal duty to compel a hand-count of ballots.

As alternative relief, Maras seeks to force the boards to hand-tally all ballots statewide. *See* Compl. at 8. She cites no authority giving her a clear legal right to a hand-count of ballots. Indeed, the Revised Code specifically allows for the use of automatic tabulating equipment in lieu of hand tallying. R.C. 3506.02; R.C. 3506.07. Nor does the Secretary have a clear legal duty to order the boards to conduct a statewide hand-count of all ballots. In fact, Secretary LaRose has a clear legal duty to compel “the observance by election officers in the several counties of the requirements of the election laws.” R.C. 3501.05(M). These laws include provisions specifying the timelines for completing the unofficial canvass and beginning the official canvass. R.C. 3505.27; R.C. 3505.32(A). If boards were forced to hand-count ballots, it would be impossible for the Secretary’s Office and the boards to provide Ohioans with unofficial election results on the night of the election or even the day after. It would be days or weeks until Ohioans knew, for example, who won the Governor’s race, the U.S. Senate race, or the races for the three seats on this Court. Furthermore, many of the larger counties would be unable to finish the unofficial canvass before the statutory deadline for them to begin the official canvass. *Fedak Aff.* at ¶ 24. Secretary LaRose does not have a clear legal duty to compel boards to take actions that would compromise the statutory deadlines set forth in the Revised Code.

Moreover, the post-election audit process already provides for a partial hand-count of ballots. The boards must audit not less than three contested races and at least five percent of the total number of votes cast for the county in those races. *Election Official Manual* § 11.03 p. 346. Bipartisan teams physically examine and hand-count ballots and compare the hand-count to the

recorded electronic summary of the votes contained in the official certification of the votes. Accuracy rates falling below 99.5% require an additional 5% audit. If that audit likewise results in an accuracy rate under 99.5%, the board must report the results to the Secretary's Office, which may require a full hand-count. Election Official Manual § 11.03 p. 348. The audit is noticed and open to the public. R.C. 3505.331(C). Fedak Aff. at ¶ 18.

D. Maras has an adequate remedy at law for her equal protection claim.

As previously stated, Maras has an adequate remedy in law for her equal protection claim in the form of a declaratory judgment and prohibitory injunction. This would provide her with complete relief if successful. Thus, even if this Court finds that mandamus was the proper avenue for her equal protection claim, Maras is nonetheless unable to establish the requirements for a writ of mandamus.

Finally, while a majority of this Court recently questioned in *State ex rel. DeMora v. LaRose*, ___ Ohio St.3d ___, ¶ 43-44, 2022-Ohio-2173, whether the principles in *Purcell v. Gonzalez*, 549 U.S. 1, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006), could bar an otherwise successful mandamus action, those principles still ring soundly when you consider the level of disruption Maras's demands would cause the 2022 General Election. Again, Maras's constitutional challenge to R.C. 3505.21 comes with the demand for widescale, systematic changes to Ohio's elections, on the eve of an election. Indeed, Maras's requested relief would take Ohio's legal framework and extensive processes for validating and securing voting machines and automatic tabulating equipment and turn it on its head. Rightly forcing Maras to take her declaratory injunction action to the correct forum gives the Secretary of State and all of the 88 county boards of elections the opportunity to fully apprise courts of the real-world, practical dangers and disruptions in deeply changing election rules, especially on the eve of an election. *Purcell* at 4-5.

CONCLUSION

Relator neither establishes a clear legal right to the relief requested nor a clear legal duty by Secretary LaRose to perform. Further, Relator seeks a declaratory judgment, which is an adequate remedy at law. Relator satisfies none of the requirements for a writ of mandamus, and her request for a writ of mandamus against Respondent Ohio Secretary of State Frank LaRose should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October, 2022, the foregoing was filed electronically and served by electronic mail upon the following counsel:

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/s/ Ann Yackshaw

ANN YACKSHAW (0090623)
Assistant Attorney General

**In the
Supreme Court of Ohio**

State ex rel. Terpsehore Maras,	:
	:
<i>Relator,</i>	: Case No. 2022-1270
	:
	: Original Action in Mandamus
v.	: Expedited Election Matter Under
	: S.C.Prac.R. 12.08
Frank LaRose,	:
	:
<i>Respondent.</i>	:

EVIDENCE OF RESPONDENT OHIO SECRETARY OF STATE FRANK LAROSE

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Counsel for Respondent
Ohio Secretary of State Frank LaRose

Affidavit of Greg Fedak

Exhibit	Description
A	Ohio Voting System Requirements Matrix
B	Directive 2015-29



Fedak Affidavit.pdf

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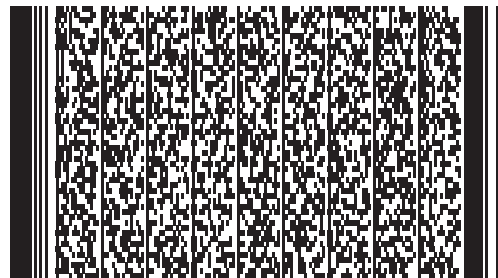
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E-Signature 1: Greg Fedak (gjf)

October 19, 2022 11:52:37 -8:00 [954DD02F0D51] [156.63.71.253]
 gfedak@ohiosos.gov (Principal) (Personally Known)

E-Signature Notary: MacKenzie S. Clayton (msc)

October 19, 2022 11:52:37 -8:00 [2451479E3231] [98.102.110.129]
 MacKenzie.Clayton@OhioAGO.gov
 I, MacKenzie S. Clayton, did witness the participants named above electronically sign this document.



**In the
Supreme Court of Ohio**

<i>State ex rel.</i> TERPSEHORE P. MARAS,	:	
	:	
<i>Relator,</i>	:	Case No. 2022-1270
	:	
v.	:	For Writ of Mandamus
	:	(Expedited Election Case
	:	Under S.Ct.Prac.R. 12.08)
OHIO SECRETARY OF STATE	:	
FRANK LAROSE,	:	
	:	
<i>Respondent.</i>	:	

AFFIDAVIT OF GREG FEDAK

STATE OF OHIO :
: SS
COUNTY OF PERRY :

Now comes Greg Fedak, having been first duly cautioned and sworn, and states and affirms as follows:

1. I have personal knowledge of the information set forth in this Affidavit, and I am competent to testify to the matters stated herein.

2. I currently serve as the Interim Elections Administrator in the Elections Division of the Ohio Secretary of State’s Office. I have served in this position since August 2022. I previously served as the Technical Elections Administrator beginning in November 2019.

3. In my role as Interim Elections Administrator, I assist and advise Ohio’s 88 county boards of elections (“boards”) with all technical aspects of elections administration, including voter registration, maintenance of the statewide voter registration database, candidate and issue petition filings, absentee ballots, voting machines, provisional ballots, vote tabulations, canvassing, auditing, and election certification. I assist with the review and certification of voting machines under Ohio law. I also assist and advise the boards as to all statutory and regulatory requirements governing voting machines, including certification, testing, auditing, and security.

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4. Under Ohio law, voting machines and automatic tabulating equipment may be adopted for use in elections by the board of elections, by a board of county commissioners on the recommendation of the board of elections, or by the affirmative vote of a majority of the electors of the county voting upon the question. R.C. 3506.02. Voting machines are “mechanical or electronic equipment for the direct recording and tabulation of votes,” and automatic tabulating equipment is “a machine or electronic device . . . that will automatically examine and count votes recorded on ballots.” R.C. 3506.01(E), (C). All 88 counties in Ohio have adopted voting machines and automatic tabulating equipment for use in elections.

5. The boards have discretion to select the voting machines and automatic tabulating equipment that will be used in each county. R.C. 3506.02. But the boards may not select any voting machine or automatic tabulating equipment for use in elections in Ohio unless the voting machine or automatic tabulating equipment has met a host of federal and state statutory and regulatory requirements.

6. The Secretary’s Office has developed a matrix setting forth the many statutory and regulatory requirements for voting machines and automatic tabulating systems. OAC 111:3-9-08(C). These requirements include federal Election Assistance Commission (“EAC”) certification, no connection to the internet, security measures locking the machines to all but authorized personnel, accurate ballot set-up and layout, ability to detect undervotes and overvotes, ability to accommodate write-in votes, tampering protections, and many, many others. A true and accurate copy of the matrix is attached hereto as EXHIBIT A.

7. The process of certifying voting machines or automatic tabulating equipment for use in elections begins at the federal level. The EAC promulgates voluntary voting system guidelines, a set of specifications and requirements against which voting systems can be tested to determine if the systems meet required standards of functionality, accessibility, and security. Ohio law requires that any voting machine or automatic tabulating equipment used in elections must meet the EAC’s voluntary voting system guidelines. R.C. 3506.05(H)(4)(a).

8. Under the EAC’s voluntary voting system guidelines, vendors submit voting machines and automatic tabulating equipment to independent testing laboratories certified by the EAC. The EAC approves a plan for testing the voting machines and automatic tabulating equipment, and the certified laboratories run the tests. If the voting machine or automatic tabulating equipment successfully meets the voluntary voting system requirements promulgated by the EAC and the testing laboratory recommends certification, the EAC may issue a certification that the voting machine or automatic tabulating equipment satisfies the guidelines. The EAC makes the testing plan, vendor correspondence, final test reports, and certification letters available for public inspection on the EAC website: <https://www.eac.gov/voting-equipment/certified-voting-systems>. Voluntary Voting System Guidelines Version 1.0 is available on the EAC’s website at: <https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines>. The EAC recently adopted Version 2.0; however, those guidelines have not yet been implemented by any certified testing laboratories. Accordingly, voting machines or automatic tabulating equipment that have been certified under the Voluntary Voting System Guidelines Version 1.0 may be considered for use in Ohio.



9. If a voting machine or automatic tabulating equipment receives EAC certification, it may be reviewed and certified by the State of Ohio for use in elections. R.C. 3506.05(H)(4)(a). First, the Secretary's Office receives the testing reports from the EAC, reviews the reports, and evaluates whether the voting machine or automatic tabulating equipment satisfies Ohio statutory and regulatory requirements. The Secretary's Office also receives hardware, procedure manuals, support arrangements, an application fee, and other documentation. OAC 111:3-9-02. Other information reviewed includes an elections report detailing how the voting machine or automatic tabulating equipment should function during an election and a wireless report detailing the steps taken to ensure that the voting machine or automatic tabulating equipment cannot connect to the internet, which is prohibited by Ohio law. R.C. 3506.23. At this stage, the Secretary's Office may solicit additional information from the vendor to ensure statutory and regulatory compliance and election security.

10. If the information is complete and indicates compliance with statutory and regulatory requirements, the Secretary's Office may then forward the voting machine or tabulating equipment to the Board of Voting Machine Examiners (BVME), a bipartisan four-member group. R.C. 3506.05(B)(1)-(3). The BVME reviews the voting machine or automatic tabulating equipment and subjects the machine to a battery of tests to ensure functionality, accessibility, security, and compliance with statutory and regulatory requirements. R.C. 3506.05(C); OAC 111:3-9-07, 08. The BVME uses the matrix compiled by the Secretary's Office to assess statutory and regulatory compliance. The BVME has physical access to each voting machine or automatic tabulating equipment that it reviews. All testing is conducted in open meetings, and transcripts are freely available for public review. OAC 111:3-9-01.

11. After public testing and deliberation, the BVME votes to recommend or not recommend certification of the voting machine or automatic tabulating equipment. R.C. 3506.05(D). During Secretary LaRose's tenure, all recommendations by the bipartisan BVME have been unanimous.

12. The Secretary's Office reviews the BVME's recommendation or lack thereof. The Secretary is briefed on the BVME's testing, recommendation, and any potential issues or deficiencies. The Secretary then formally approves the voting machine or automatic tabulating equipment, which is then certified for use in Ohio elections. R.C. 3506.05(B). The Secretary's Office notifies the boards when voting machines or automatic tabulating equipment have been certified for use in Ohio. R.C. 3506.05(D).

13. Only after a voting machine or automatic tabulating equipment has received approval from the EAC, BVME, and Secretary may a board of elections select that voting machine or automatic tabulating equipment for use in Ohio elections.

14. The process described in paragraphs 7-13 *supra* applies to all new voting machines and automatic tabulating equipment, as well as every modification to a voting machine or automatic tabulating equipment that has already been certified for use in Ohio elections.

15. When a voting machine or automatic tabulating equipment is certified by the Secretary of State, the vendor or computer software developers of the voting machine or automatic



tabulating system place a copy of all source code and related documentation, including system configuration, in escrow with an independent escrow agent. R.C. 3506.05(H)(1); OAC 111:3-9-04. No one in the Secretary's Office or at the boards has access to the source code or related documentation.

16. In addition to the rigorous certification process described above, all voting machines and automatic tabulating equipment are thoroughly tested before each election. First, each and every piece of voting equipment undergoes a logic and accuracy test in the weeks before an election. Election Official Manual § 5.08, *available at* https://www.ohiosos.gov/globalassets/elections/directives/2022/eom/eom_fullversion_2022-02.pdf. This testing ensures that each piece of voting equipment accurately processes each ballot style and tabulates votes correctly.

17. Next, the boards conduct statutorily required testing for the voting machines and automatic tabulating equipment. R.C. 3506.14. Boards must give notice of the time and place of the testing. Election Official Manual § 5.09. Boards pre-mark a set of ballots, including ballots containing intentional errors, to run through the automatic tabulating equipment. The boards assess whether the automatic tabulating equipment correctly counts the number of ballots and correctly identifies the ballots containing errors. This testing process occurs prior to the start of the count of the ballots and at the conclusion of the count of the ballots. R.C. 3506.14(B).

18. In addition to the required testing under R.C. 3506.14, the accuracy of the vote tabulation is further confirmed by a statutory audit following the board's certification of its official canvass of the election. R.C. 3505.331; Election Official Manual § 11.03. The boards must audit not less than three contested races and at least five percent of the total number of votes cast for the county in those races. Election Official Manual § 11.03 p. 346. Bipartisan teams physically examine and hand count ballots and compare the hand count to the recorded electronic summary of the votes contained in the official certification of the votes. Hand counting 5% of the ballots may take hours in small counties and multiple days in large counties. Accuracy rates falling below 99.5% require an additional 5% audit. If that audit likewise results in an accuracy rate under 99.5%, the board must report the results to the Secretary's Office, which may require a full hand count. Election Official Manual § 11.03 p. 348. The audit is noticed and open to the public. R.C. 3505.331(C). The boards certify the results of the audit to the Secretary's Office, and the results are publicly available on the Secretary's website: <https://www.ohiosos.gov/elections/election-results-and-data/>. For example, the post-election audits for the May 3, 2022, primary election showed that the tabulated results were 99.9% accurate when compared to the audited hand counts of ballots with nearly all county boards reporting 100% accuracy.

19. The Secretary's Office ensures the integrity of voting machines and automatic tabulating equipment through testing and auditing requirements, as well as physical security requirements. Boards of elections must adhere to strict security requirements in storing, maintaining, and accessing voting machines and automatic tabulating equipment. Voting machines and automatic tabulating equipment must be maintained in secure facilities, with access limited to the least number of personnel possible. Election Official Manual § 3.01 p.55. Either the entire board office or the rooms used to store voting machines and automatic tabulating equipment must be equipped with a monitored security system. *Id.* p. 56. The equipment must be kept under a dual



lock-and-key system, such that access to any voting machine or automatic tabulating equipment requires bipartisan participation. *Id.* Visitors must be verified, logged, and monitored at all times. *Id.* The boards must keep records relating to the purchase, usage, repair history, chain of custody, and any damage or unauthorized use of voting equipment. *Id.* p. 57. Boards must prohibit third-party access to voting machines and automatic tabulating equipment, except for employees, contractors, or consultants of the board or the Secretary's Office, or upon written authorization of the board's chairman and director. *Id.* p. 62. It is a felony of the fifth degree for an unauthorized person to possess any voting machine or automatic tabulating equipment, or to tamper or attempt to tamper with, deface, impair the use of, destroy or otherwise injure same. R.C. 3599.27.

20. As part of the physical security protections for voting machines and automatic tabulating equipment, observers appointed under R.C. 3505.21 are not given physical access to any component of voting machines or automatic tabulating equipment, including software, hardware, and source codes. Election Official Manual § 9.08. This was also the practice of the Husted administration, which prohibited observers from handling any election materials. Directive 2015-29 at 7-33. A true and accurate copy of Directive 2015-29 is attached hereto as EXHIBIT B.

21. If a candidate or a candidate's agent accessed voting machine or automatic tabulating equipment hardware or software, these carefully considered security measures would be undermined. The boards would be unable to verify that the candidate or candidate's agent had not altered the machines or equipment or tampered with them. Allowing candidates or their representatives the type of unfettered, free access to voting machines or automatic tabulating equipment that Maras requests would likely prevent the boards from being able to re-use that equipment in subsequent elections. For example, in Arizona, a "cybersecurity" firm called Cyber Ninjas conducted a non-statutory post-election audit on various voting machines. But because the firm failed to follow the state's rules for maintaining a chain of custody for the machines, the Arizona Secretary of State had to de-certify the machines, which cannot be used in future elections. Third-party access to voting equipment could ultimately cost taxpayers millions of dollars.

22. Even if a board or the Secretary's Office had access to the source codes for a voting machine or automatic tabulating equipment, which they do not, *see* R.C. 3506.05(H)(1), extending that access to candidates or candidates' agents would cause significant security risks. For instance, candidates or candidates' agents might publicize such information, which would enable third parties to write malware specific to the machine or equipment. Likewise, bad actors could find vulnerabilities if source code or software information were released to the public.

23. Ohio has taken steps to ensure that its elections are not open to compromise by way of the internet. Because Ohio's voting machines and automatic tabulating equipment may not connect to the internet, R.C. 3506.23, any bad actor possessing the source codes or software for the equipment would need also physical access to the equipment. To get such access, the bad actor would need to overcome the physical security measures described in paragraph 19 *supra* to physically access voting equipment to tamper with it. Given the robust physical security measures implemented by the boards, such physical tampering would be highly unlikely but not impossible. Thus, maintaining the secrecy of software and source codes of voting and tabulating equipment



provides an important, additional layer of election security. Ohioans can have confidence in the integrity of elections because of the security measures in place at each step of the process.

24. Counties could not fulfill many of their statutory duties without the use of voting equipment. Automatic tabulating machines significantly expedite the process of tabulating ballots in Ohio. Ohio law requires an unofficial canvass, or count, of ballots beginning on Election Day and continuing “until all of the ballots that are required to be counted on the day of the election after the close of the polls have been counted.” R.C. 3505.27; Election Official Manual § 10.02. That is, the unofficial canvass must be *continuous* from the start of the tabulation process on Election Day. Without the ability to use automatic tabulating equipment, hand-counting ballots for the unofficial canvass would take days or weeks. Some larger counties would be unable to complete the *unofficial* canvass before the statutory deadline to begin the *official* canvass, between 11 and 15 days after Election Day. R.C. 3505.32(A). Even small counties would be obliged to hire additional bipartisan teams to hand-tally ballots. If boards had to hand-count ballots, candidates and the public would be deprived of speedy election results from the unofficial canvass.

25. The November 8, 2022 General Election features 810 candidates other than Relator Maras. Of these 810 candidates, 245 are listed on the ballots as unaffiliated with any political party. Additionally, nine candidates for statewide office are listed as independent write-in candidates.

Further affiant sayeth naught.

Greg Fedak

Signed on 2022/10/19 11:52:37 -8:00

GREG FEDAK

Sworn to in my presence and subscribed before me this 19th day of October, 2022.



MacKenzie S. Clayton

Signed on 2022/10/19 11:52:37 -8:00

NOTARY PUBLIC

Notarial act performed by audio-visual communication



Exhibit A
Ohio Voting Systems
Requirements Matrix

Ohio Voting System Requirements Matrix

Revised June 15, 2021

For use by the Board of Voting Machine Examiners' examination of voting systems submitted for approval and certification in Ohio elections.

For purposes of this matrix, the "acceptable" rating means the voting equipment satisfies the certification requirements established by Chapter 3506 of the Ohio Revised Code and Rule 111:3-9-08 of the Ohio Administrative Code. "Not acceptable" means the voting equipment does not meet the requirement.

System Overview

1. Display and discuss all manuals, including precinct election official instructional manuals.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A
Additional Information Concerning Testing Information:

Comments: _____

2. Equipment has received a federal certification number issued by the U.S. Election Assistance Commission ([R.C. 3506.10\(H\)\(4\)\(a\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A
Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

3. Equipment has been certified by an independent testing authority as meeting or exceeding the minimum requirements of the U.S. Election Assistance Commission voting system standards ([OAC 111:3-9-08\(C\)\(15\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

4. A voting machine shall not be connected to the Internet ([R.C. 3506.23](#)). A voting system or voting machine is prohibited from containing any wireless communication hardware or software components.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

Hardware Configurations and Opening Procedures

5. Demonstrate opening of polls including the printing of a "Zero Tape."

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

6. Demonstrate means of locking out access to set up procedures to anyone but authorized personnel.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

Election Management-System Setup and Configuration-General Election

7. Demonstrate actual ballot set up, using the following races and questions and issues:

- The 2012 Presidential Election ballot, including all write-ins;
- The 2008 15th Congressional district race;
- A city council race where a voter can vote for two of five or seven candidates;
- A bond issue per [R.C. 133.18](#); and
- An emergency requirements levy issue with statutory font size and bold typeface per [R.C. 5705.197](#).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

8. General election ballot shall include independent candidates and candidates from six political parties: Democratic, Republican, Libertarian, Green, Socialist, and Constitution parties ([R.C. 3506.10\(K\)](#), [OAC 111:3-3- 01\(C\)\(11\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

9. Ability to vote for candidates of one party for president, vice-president, and presidential electors by one mark ([R.C. 3506.10\(F\)](#), [R.C. 3506.06\(D\)](#), [OAC 111:3-9-08\(C\)\(6\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments:

10. Rotation:

- **Ability to arrange all candidates for an office in a group under the title of the office and printed so that they may be rotated as provided in [R.C. 3505.03](#) and [SOS Directive 2021- 04](#).**
- **Ability to produce a report verifying rotation and correct ballot layout.**

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments:

Ohio Voting System Requirements Matrix

Revised June 15, 2021

11. Machine Setup:

- **Demonstrate programming over vote, blank vote, and undervote detection.**
- **Demonstrate programming of multiple precincts per single unit.**

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

12. Ability to generate merger and charter commission issues on the questions and issue ballot with candidate names listed.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

13. Capable of adhering to ballot layout as prescribed by [R.C. 3505.03](#) and [3513.15](#) and [SOS Directive 2021-04](#), including format, boldface, and font sizes.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

14. Capacity to contain at least 15 questions and issues ([R.C. 3506.10\(K\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

Election Management-System Setup and Configuration-Primary Election

15. Ability to create and read a primary election ballot with six (6) political parties and issues only ballots ([R.C. 3506.10\(G\)](#), [OAC 111:3-9-08\(C\)\(7\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

16. Ability to create and read a primary election ballot in which a 17 year old may vote for candidates only and not on any question or issue.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

17. Ability to create and read a primary election ballot in which voter does not declare party but votes a question and issues ballot only ([R.C. 3506.10\(G\), \(H\)](#); [OAC 111:3-9-08\(C\)\(8\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments:

18. Ability to create and read nonpartisan candidates only ballot ([R.C. 3506.10\(G\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments:

Ohio Voting System Requirements Matrix

Revised June 15, 2021

19. Capable of primary election ballot with write- in for each partisan ballot [\(R.C. 3506.10\(D\), OAC 111:3-9-08\(C\)\(4\)\)](#).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

20. Ballots accommodate facsimile signatures [\(R.C.3505.08\)](#).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

21. Tabulating software must be adequately protected against tampering.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Construction and Security of Voting Machine-Hardware Construction, Hardware Test Results, and Security Measures

22. Counter or other device visible from the outside, which will show, at any time, the number of electors who have voted ([R.C. 3506.10\(I\)](#), [OAC 111:3-9-08\(C\)\(9\)](#))

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

23. Protective counter, or other device, the register of which cannot be reset, which will record the cumulative total number of movements of the internal counters ([R.C. 3506.10\(I\)](#), [OAC 111:3-9-08\(C\)\(9\)](#))

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

24. Built with locks, seals, and other safeguards by the use of which, immediately after the polls are closed or the operation of the machine is completed, no further changes to internal counters can be allowed ([R.C.3506.10\(J\)](#), [OAC 111:3-9-08\(C\)\(10\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

25. Durably constructed of material of good quality in a neat and workerlike manner and in a form that shall make it safely transportable ([R.C. 3506.10\(L\)](#), [R.C. 3506.06\(E\)](#), [OAC 111:3-9-08\(C\)\(12\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

26. Constructed so that a voter may readily learn the method of operating it ([R.C. 3506.10\(M\)](#), [R.C. 3506.06\(F\)](#), [OAC 111:3-9-08\(C\)\(13\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

27. Constructed so that a voter may expeditiously cast a vote for all candidates of the voter's choice ([R.C. 3506.10\(M\)](#), [R.C. 3506.06\(F\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

28. Constructed to preclude any person from tampering with any of the internal counters ([R.C. 3506.10\(N\)](#); [OAC 111:3-9-08\(C\)\(14\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

29. Capable of being manufactured for use and distribution beyond a prototype ([R.C. 3506.07](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

30. Ability to track and assign access to system by board of elections staff with access to marked or unmarked ballots, tabulating software, and voting equipment.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

31. Shall not provide voter any type of receipt or voter confirmation that the voter may retain after leaving polling place ([R.C. 3506.10\(O\)](#), [R.C. 3506.06\(G\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

32. Demonstrate secure portability to polling places.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

33. Discuss sensitivity to variations in operating conditions, in general, and provide a reference in testing materials to the following:

- Sensitivity of equipment to temperature;
- Sensitivity of equipment to humidity;
- Sensitivity of equipment to dust; and
- Sensitivity of equipment to transportation.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Voting and Tabulation Functional Testing

34. Demonstrate means by which a voter can change or cancel vote.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

35. Demonstrate write-in capacity ([R.C. 3506.10\(B\)](#), [R.C. 3506.10\(D\)](#), [R.C. 3506.06\(B\) & \(C\)](#), [OAC 111:3-9-08\(C\)\(4\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments:

36. Demonstrate response to the following:

- **Overvotes, undervotes, and blank ballots;**
- **Ballots being inserted headfirst, tail- first, face-up, or face-down;**
- **Multi-sheet detection; and**
- **Safeguards against inserting memory cards incorrectly.**

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments:

Ohio Voting System Requirements Matrix

Revised June 15, 2021

37. Demonstrate accessibility to voters with disabilities.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

38. Demonstrate ability of machine to function during a power failure and the ability of the machine to successfully recovery from a power failure (system continues to operate when unplugged).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

39. Demonstrate counting the ballots, based on an actual series of votes cast during a mock election:

- **50 general election ballots as prescribed above**
- **100 primary election ballots (may be programmed, printed, and voted before the meeting)**
- **Field test report (for logic and accuracy testing)**

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

40. In case of one or more jammed ballots or a misfeed of ballots, demonstrate ability and methods designated in user manual to determine whether or not votes from such ballots were counted.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

41. Ability to advise a voter of an overvote [\(R.C. 3506.10\(C\), OAC 111:3-9-08\(C\)\(3\)\)](#).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments:

42. Permits elector to change vote until elector registers his/her vote for up to three ballots [\(R.C. 3506.10\(E\), OAC 111:3-9-08\(C\)\(5\)\)](#).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments:

Ohio Voting System Requirements Matrix

Revised June 15, 2021

43. Ability to limit possibility of double counting by notifying user that memory card has already been read.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

44. Permits voting in secrecy ([R.C. 3506.10\(A\)](#), [R.C. 3506.06\(A\)](#), [OAC 111:3-9-08\(C\)\(1\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

45. Provided with screen, hood, curtain, or other technology, which shall conceal voter while voting ([R.C. 3506.10\(N\)](#), [OAC 111:3-3- 01\(C\)\(14\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

46. Discuss and demonstrate backup memory features and physical audit trail, if any.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

47. Demonstrate closing of the polls and ability to run reports required by Ohio law (e.g., precinct reports).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

48. Demonstrate report of results and format variations.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

49. Discuss and demonstrate recount and post- election audit procedures. See [SOS Directive 2019-30](#).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

50. Ability to produce reports in the format requested by the secretary of state.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

51. Ability to allow all electors to vote for all candidates in which he/she entitled to vote [\(R.C. 3506.10\(B\)](#), [R.C. 3506.06\(B\)](#), [OAC 111:3-9-08\(C\)\(2\)](#)).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

52. No discrepancies arising from multiple voting machine count accumulation processes.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

53. How an individual vote cannot be traced to the individual voter using an electronic machine with a paper audit trail or optical scan system.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

54. Ability to manually enter data by boards of election staff under the appropriate circumstances.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

55. Ability and methods designated in user manual to clear tabulating memory and re-run ballots.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

56. Voting system's ability to be "backed-up" on- site or off-site; demonstrate back-up system's capability to prevent loss of data.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

Warranty/Bond/Service

Below are additional statutory requirements that a manufacturer must satisfy before a county board of elections may purchase, rent, acquire, or use new voting equipment.

57. Manufacturer has ability to give adequate guarantee in writing and post a bond in an amount sufficient to cover cost of any recount or new election resulting from use or malfunction of equipment ([R.C. 3506.10](#)).

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments:

58. Manufacturer has ability to accompany bond with satisfactory surety, as determined by Secretary of State and board of county commissioners, guaranteeing and securing machines have been and continue to be certified and will correctly, accurately, and continuously record every vote for a period of five years ([R.C. 3506.10](#)).

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments:

Ohio Voting System Requirements Matrix

Revised June 15, 2021

59. Manufacturer has ability to guarantee machines against defects in workmanship and materials for a period of five years from date of acquisition ([R.C. 3506.10](#)).

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments:

60. Explanation of support services required for voting system maintenance and services offered by voting machine manufacturer, including speed of service options, election day consultation, and general trouble- shooting.

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments:

Ohio Voting System Requirements Matrix

Revised June 15, 2021

61. Explanation of all product and services covered under the warranty and identification of the products and services that are NOT covered under the warranty.

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Miscellaneous/General Properties

62. Voting systems capacity to communicate with the voter registration system or other software.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

63. Voting system's ability to accept up-grades without the replacement of entire system.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

64. Complexity of operation of equipment or system can be mastered with reasonable amount of training.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

65. Instructions in user manual match the actual operation described and produces the intended results.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

66. Explanation of cost and compatibility of newly Election Assistance Commission certified components or upgrades with currently certified equipment or system.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

67. Inclusion and sufficiency of contracted terms for the purchase/lease of equipment.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

68. Explanation of all additional products and materials necessary for polling place setup and election night tabulation, including transportation requirements.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

69. Availability of supplies and services required for use of the voting system; explain which supplies and services are available only from the manufacturer and which are available from sources other than the manufacturer.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Evaluation rating sheet for DREs (OAC 111:5-1-01 and VVPAT requirements)

70. Demonstrate means by which a voter casts a ballot.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

71. Shall include a VVPAT [\(R.C. 3506.10\(P\)\)](#).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

72. One VVPAT for each DRE, which will allow a voter to view his or her paper record copy while preventing the voter from directly handling the paper record copy or receiving a receipt or any other type of confirmation.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

73. Every electronic record must have a corresponding paper ballot record copy.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

74. Paper used shall be sturdy, clean, and resistant to degradation.

- No less than 15 pounds
- White

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

75. A VVPAT storage unit shall store cast and spoiled paper record copies.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

76. The paper ballot copy must be printed and the voter must have the opportunity to verify that record prior to the final electronic record being recorded; VVPAT allow every voter to review, accept, or reject his or her paper record privately and independently.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

77. A unique identifier must appear on each individual paper ballot record produced – the identifier must not reveal the identity of the voter.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

78. The VVPAT shall easy for a voter to read (readability).

- **Headline at least 25 point font or not less than 9 point font with magnification capability to read as 30 point font.**
- **Ballot language at least 9 point font with magnification capability to read as 30 point font.**
- **Type face – new roman, arial, myriad or equivalent**
- **Printed in black ink**
- **Image created shall include every contest, including write-ins and undervotes.**

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

79. VVPAT must be accessible to those with disabilities.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

80. VVPAT designed to ensure that there is an adequate amount of ink, toner, ribbon, or other like supply units to accommodate voters. The system should provide a warning and an opportunity for a poll worker to add a supply of paper, ink, toner, ribbon or other like supply units before the item runs out. Precinct election official should be able to add supplies without reading the VVPAT.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

81. VVPAT is on the same power system as the DRE and have a battery back-up of at least 2 hours (note: VVPAT may have a separate battery but cannot be functional without the DRE).

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

82. Security protection for VPPAT is build into DRE.

- **Printer secure from tampering**
- **Routine maintenance may be performed without altering the records that have been recorded and without tampering with the VVPAT**

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

83. Provisional ballot – image created for provisional ballot must be identifiable as a provisional ballot.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

84. Spoiled ballot – image created for a spoiled ballot must be identifiable as a spoiled ballot.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Ohio Voting System Requirements Matrix

Revised June 15, 2021

85. Voter may spoil his or her ballot no more than two times.

Acceptable Not Acceptable

Covered in EAC Test Report/VSTL Test Materials? Yes No N/A

Additional Information Concerning Testing Information:

Comments: _____

Exhibit B

Directive 2015-29

Election Day Voting Directive 2015-29

Jon Husted
Ohio Secretary of State 

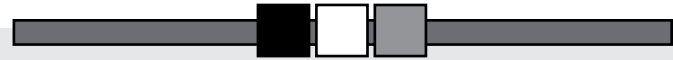
SECTION 1.01 DELIVERY AND RETURN OF BALLOTS AND VOTING EQUIPMENT

A. Delivery to Polling Location

Each board of elections must arrange for the delivery of voting equipment to polling locations prior to or on Election Day. If voting equipment will be delivered to a polling location prior to Election Day, the board must arrange for the security of the equipment at the polling location. The storage of voting equipment at a precinct election official's home, vehicle, or place of employment is prohibited, and a precinct election official must never retain custody of voting equipment overnight.

At a polling location, voting equipment must be stored in the manner recommended by the voting equipment manufacturer and in a clean and climate-controlled environment. The equipment must not be stored on the ground in an area prone to flooding or where liquids accumulate.

If memory cards are inserted into the voting machines when they are delivered to a polling location or transferred to a precinct election official, the board is required to use tamper evident seals to allow detection if the memory card is tampered with while in the machine. The seal must be unique to each machine with a documented, unique identifier that corresponds to the particular voting machine. Documentation of the unique identifier for the



tamper evident seal as it corresponds to a particular voting machine should be maintained on three lists. Two lists must be retained in a secure location at the board office, with one kept by the director and the other by the deputy director.

Upon set up and closing, precinct election officials must inspect all pieces of voting equipment that are assigned to their precinct for any physical damage. Precinct election officials must document the inspections on a maintenance/event log provided by the board of elections and must specifically note any signs of damage or tampering discovered on the equipment or cases used to house the equipment.

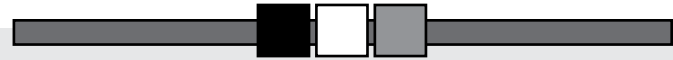
Additionally, boards of elections must use a Chain of Custody Log ([Form 400](#) or local equivalent) to document the exchange of custody of voting equipment, election supplies, and/or ballots. Boards should train precinct election officials on inspection of tamper evident seals so they know what to look for when inspecting the equipment.

B. Polling Place Security and Emergency Response

Precinct election officials must maintain control over all voting equipment, keys, memory cards, ballots, and all other election supplies at all times. Any suspicious activity or damage to the equipment must be reported to the board immediately. The board must provide each voting location manager with a list of persons to contact in the event of an emergency.

Precinct election officials must be instructed that, in the event of an emergency, their first priority is the safety of the electors and other election officials. Precinct election officials should remove voting equipment, election supplies, and ballots only if it may be done safely. If any voting equipment, election supplies, and ballots are removed from a polling location, at least one (preferably two, one of each major political party) must remain with the equipment and supplies at all times.





C. Secure Return of Ballots, Election Day Supplies, and Electronic Poll Books

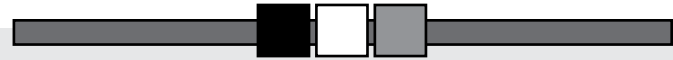
At the close of polls, all ballots and election supplies (i.e., paper and electronic poll books, poll lists, tally sheets, election reports, and other materials) must be returned by a bipartisan team to the board of elections office or other location designated and staffed by the board. The bipartisan team must consist of the voting location manager and an employee or appointee of the board who is a member of a different political party than the voting location manager and “has taken an oath to uphold the laws and constitution of this state, including an oath that the person will promptly and securely perform the duties [of promptly and securely transporting and delivering ballots and election supplies to the board of elections].”¹

Each electronic poll book must be sealed by the precinct election officials with a tamper-evident seal before being returned from the polling location to the board of elections’ office. If the e-poll book uses a removable data storage unit or produces a paper record, the data storage unit and the paper record must also be sealed with a tamper-evident seal in an appropriate storage container before being returned to the board office.

When transporting ballots and election supplies, the bipartisan team must travel in the same vehicle. The board is permitted to have one or more additional persons, such as a law enforcement official, accompany the bipartisan team. One bipartisan team may transport the ballots and election supplies for an entire multi-precinct polling location.

¹ [R.C. 3505.31](#).





SECTION 1.02 LIST OF REGISTERED VOTERS

Copies of the official Precinct Voter Registration Lists must be provided to each precinct and updated and posted at specific times during the day.

- The first copy of the list should be posted at 6:30 a.m., after the absentee and early provisional voters have been marked by the voting location manager. The precinct election officials must keep the other copies, updating them by checking off voters as they vote.
- The second copy of the list, marked to indicate who has voted since 6:30 a.m., must be posted at 11:00 a.m. The precinct election officials must keep the other copies, updating them by checking off voters as they vote.
- The third copy of the list must be posted at 4:00 p.m., marked to indicate who has voted from 11:00 a.m. to 4:00 p.m. After 4:00 p.m., the precinct election officials are not required to post another updated list.

Party affiliation is required to be included in the registration list that is posted at 6:30 a.m., 11 a.m., and 4 p.m. on Election Day at each polling place.²

Please note that any person may enter the polling location for the sole purpose of checking and taking notes from the official Precinct Voter Registration List that is posted at 6:30 a.m., 11:00 a.m., and 4:00 p.m. Such persons may not wear any electioneering or campaign clothes or accessories and may not interfere with or disrupt the election. Such persons may not remove the posted official Precinct Voter Registration List, and election officials should be careful to post the list in a manner that it cannot be removed unnoticed by an election official.

² [R.C. 3503.23](#).





SECTION 1.03 SIGNATURE POLL BOOKS – PAPER OR ELECTRONIC

A. Contents

The signature poll book – or signature poll list – is a required element for any election. It is the record that precinct election officials use to determine whether or not a voter is registered to vote and eligible to vote in that election at that precinct. A signature poll book must contain four primary elements:

- The voter's name;
- The voter's address;
- An image of the voter's signature; and
- A space for the voter to sign his or her signature.

In a partisan primary election, there must also be a space for the precinct election official to record the political party ballot selected by the voter.

The signature poll book may also contain additional information necessary for the precinct election official to determine the type of ballot (i.e., ballot style number; house, senate and congressional or school district name/number, etc.).

The poll book can be in paper or electronic form.³ An electronic poll book contains the same information on the voters assigned to the precinct and polling location as a paper poll book contains.

Each voter is required to sign the poll book (if electronic, the voter signs the signature pad or on the screen of the poll book using a stylus).⁴ If the voter is physically unable to sign, he or she may have his or her properly appointed attorney-in-fact sign on the voter's behalf.⁵

³ [R.C. 3503.23](#).

⁴ [R.C. 3505.18](#).

⁵ [R.C. 3501.382](#).





B. Special Notations in the Poll Book

The board of elections is also required to provide special notations in the signature poll book identifying voters who may require special processing (i.e., a 17-year-old voter) or who must vote by provisional ballot.

1. ~~17-Year-Old Voter~~

~~Ohio law allows a 17-year-old voter who will be 18 years of age on or before the date of the next general election to vote in the primary election solely on the nomination of candidates.⁶ This is because the 17-year-old voter will be eligible to vote for the nominees at the November general election.~~

~~As with every voter, a 17-year-old voter must be registered to vote and satisfy Ohio's voter identification requirements.~~

~~Voters who are 17 years old as of the primary election are not permitted to vote on any of the following:~~

- ~~• State Party Central Committee~~
- ~~• County Party Central Committee~~
- ~~• Questions and Issues~~

~~In presidential primary elections, a 17-year-old voter is not permitted to vote for presidential delegates, because delegates are elected and not nominated.⁷~~

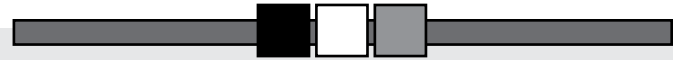
~~The ballot style given to a seventeen-year-old voter is determined in accordance with the type of voting system used by the county and instructions of the board.~~

See [Directive 2016-08](#) for updated information and instructions regarding 17-year old voters.

⁶ [R.C. 3503.01](#); [R.C. 3503.011](#); [R.C. 3503.07](#). *State ex rel. Webber v. Felton*, 77 Ohio St. 554 (1908).

⁷ [R.C. 3513.12](#); [R.C. 3513.121](#).





2. First-time Registrant By-Mail

Under federal law, a first-time registrant by mail who does not provide a valid form of identification at the time of registration (i.e., driver's license number, last four digits of the voter's Social Security number, or a copy of an acceptable form of voter identification) must be flagged as such in the poll book and must show identification in order to vote a regular ballot.⁸ State law requires all voters to provide identification at the polls prior to casting a regular ballot. If any voter does not provide an acceptable form of identification, that voter must cast a provisional ballot.

3. BMV/SSA Mismatch

Under federal law, a new voter registration must be compared with records from the Bureau of Motor Vehicles or the Social Security records to verify the voter's identification (i.e., the voter's driver's license number and/or the last four digits of the voter's Social Security number).⁹ In the event the information provided by the voter and entered into the county voter registration system does not match the information in the other government databases, the board of elections must send a confirmation card to that voter, informing the voter of the mismatch and giving the voter an opportunity to correct it. If the voter does not correct the mismatch, that voter must be flagged in the voter registration data base.

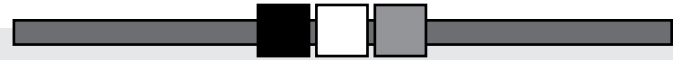
4. Requested Absentee Ballot

If a voter has submitted a valid application for an absentee ballot (either by-mail or in person) that voter must be flagged in the poll book. If that voter appears to vote on Election Day, he or she must cast a provisional ballot, even if the voter states that the voter did not receive or has

⁸ 52 U.S.C.A. §21083.

⁹ 52 U.S.C.A. §21083(a).





not returned the voter's absentee ballot.¹⁰ Boards must ensure that all signature poll books have been printed with these flags, including updating them on Election Day using a supplemental list prepared after the signature poll books have been prepared. If using electronic poll books, the board must ensure that all voters who have requested an absentee ballot have been flagged and must upload the supplemental list of absentee voters onto its electronic poll books prior to the opening of polls.

A board of elections may not permit a precinct election official to accept a voted absentee ballot at the polling place on Election Day. No absentee ballot can be accepted at a polling location on Election Day.¹¹ The voter must return it to the office of the county board of elections before 7:30 p.m. on Election Day.¹²

5. Acknowledgement Card Returned as Undeliverable

Whenever an acknowledgement notice is returned as undeliverable, the board of elections must send a confirmation card by forwardable mail to the voter giving the voter an opportunity to correct or confirm the information on file with the board of elections. If the voter does not correct or confirm the information by returning the confirmation card or submitting another voter registration record, the voter must be flagged as such in the poll book and must cast a provisional ballot at the polls on Election Day.¹³

6. Party Affiliation

Party affiliation, defined in [R.C. 3513.19](#) as the most recent ballot selected at a partisan primary held during a look-back period that is limited to the current year and two immediately preceding calendar

¹⁰ [R.C. 3509.09](#).

¹¹ [R.C. 3509.05\(A\)](#).

¹² [R.C. 3509.05\(A\)](#).

¹³ [R.C. 3503.19](#).





years, is not required to be included in the poll list or signature poll book.¹⁴

7. Challenged Voter – Hearing Delayed

If a challenge of an elector's right to vote has been filed after the 30th day before an election, and the board of elections has delayed the hearing of that challenge until after the election, the signature poll book must be marked such that the voter who has been challenged must cast a provisional ballot on Election Day in the event the voter desires to vote.¹⁵

8. Former Ohio Resident — Presidential Election Only

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.¹⁶ On Election Day, former Ohio residents must vote at the precinct and polling place where their voting residence was located at the time the voter moved from Ohio to another state.

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 must issue a centrally counted, optical scan, paper ballot from the correct precinct's ballot of the voter's former Ohio voting residence.

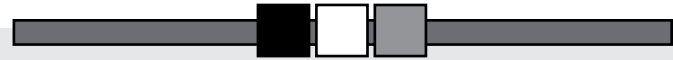
After the former Ohio resident has marked the ballot, the ballot must be placed in an envelope (identification envelope for absentee ballots or an envelope created specifically for Election Day former Ohio resident voters) and the envelope must be clearly labeled "Former Ohio Resident's Presidential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

¹⁴ [R.C. 3501.30](#).

¹⁵ [R.C. 3503.24\(D\)](#).

¹⁶ [R.C. 3504.04](#).





For more information, please refer to the information regarding Former Ohio Resident voters in [Chapter 5](#) Absentee Voting.

SECTION 1.04 PROCEDURE

A. Identifying Voter in Signature Poll Book

1. PEO Must Direct Voter to Correct Polling Place

It is the voter's responsibility to be timely registered to vote at the proper residential address, to know the correct precinct and voting location assigned, and to bring a valid form of identification to the polls on Election Day. Precinct and voting location information for registered voters is available online at www.sos.state.oh.us/SOS/pollinglocation.aspx?page=361.

When a voter appears to vote in the wrong precinct, Ohio law requires that the precinct election officials direct that voter to his or her correct precinct and polling location, explain that a provisional ballot cast in the wrong precinct cannot be counted, and provide the voter with a phone number for the board of elections.¹⁷ Accordingly, boards of elections must instruct precinct elections officials on how to comply with these requirements.

2. Use of Form 12-D for Wrong Precinct but Correct Polling Place

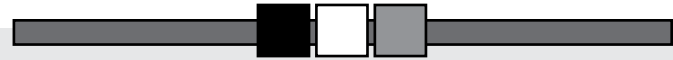
Under Ohio law, a provisional ballot cast in the wrong precinct of a multi-precinct polling location may be eligible to be counted if the precinct election official did not notify the voter that he or she was in the wrong precinct.¹⁸

If a voter refuses to cast a ballot in the correct precinct, he or she must be permitted to cast a provisional ballot and advised that a ballot cast

¹⁷ [R.C. 3505.181\(C\)](#).

¹⁸ [R.C. 3505.181\(C\)\(1\)](#).





in the wrong precinct cannot be counted.¹⁹ To document the fact that the voter was directed to the correct precinct but opted to cast a provisional ballot in the wrong precinct, a precinct election official must complete [Form 12-D](#) and attach it to the provisional voter's provisional ballot envelope.²⁰

If a precinct election official does not complete and attach [Form 12-D](#) to the provisional envelope, the board must remake and count the provisional ballot for any contest in which the voter would be eligible to vote if the voter were to cast a ballot in the correct precinct.

B. Identification

Ohio law requires that every voter, upon appearing at the polling place to vote on Election Day, must announce his or her full name and current address and provide proof of identity.²¹

The forms of identification that may be used by a voter who appears at a polling place to vote on Election Day include:

- An unexpired Ohio driver's 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's 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;

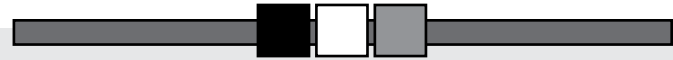
Note: Military identification cards or copies of such cards must be accepted whether or not they contain the voter's name or address.

¹⁹ [R.C. 3505.181\(C\)\(1\)](#).

²⁰ [R.C. 3505.181\(C\)\(2\)](#).

²¹ [R.C. 3505.18](#).





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.

- 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.

For additional information on voter identification, please see [*Directive 2008-80*](#) in the Resources section of this Manual.

The following forms of identification are not acceptable for voting purposes:

1. Driver's license or photo identification card issued by a state other than Ohio;
2. Social Security card;
3. Passport;
4. Birth certificate, unless the voter still lives at the house where he or she resided at birth and the birth certificate contains that home address, in which case this is acceptable as an "other government document";
5. Insurance card; or
6. Any registration acknowledgment notice from the county board of elections.

C. Determining Voter Ballot Type

1. Regular Ballots

If a voter meets all of the following criteria, the voter is to be provided a regular ballot:

- The voter's name and address are listed in the Signature Poll Book; and
- The voter provides a form of valid identification that conforms to the information in the Signature Poll Book.
- The voter changed his or her name and provides proof of the legal name change (e.g., a marriage license, a court order, or other document that includes both the voter's current and prior





names), the voter may complete and sign a Notice of Change of Name ([Form 10-L](#)) and cast a regular ballot, as long as the voter is registered to vote in that precinct.

If the voter changed his or her name and does not have proof of the legal name change, he or she must cast a provisional ballot.

If a voter moved within the precinct, he or she must also complete a Voter Registration Form in order to change his or her address in the county's voter files and vote a regular ballot.

2. Provisional Ballots

The reasons that a voter must cast a provisional ballot are:

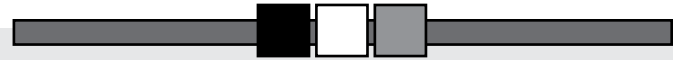
- a. The voter's name is not in the Signature Poll Book or on the Supplemental Voter List.

Note: Before a precinct election official issues a provisional ballot for this reason, he or she must make sure that the voter is in the correct precinct and is not eligible to cast a regular ballot in a different precinct or polling location. If the voter is in the wrong precinct, the precinct election official must direct the voter to the correct precinct.²²

- b. The voter does not provide or is unable to provide proper or valid identification.
- c. The voter has moved from one precinct to another without updating his or her voter registration by the registration deadline (30 days prior to the election).
- d. The voter has changed his or her name and moved to a different precinct without updating his or her voter registration by the registration deadline (30 days prior to the election).

²² [R.C. 3505.181\(C\)\(1\)](#).





- e. The voter has changed his or her name and does not have proof of the legal name change.

Note: A voter who changes his or her name and fails to update his or her registration may be eligible to cast a regular ballot if that voter presents one of the following to the precinct election officials on Election Day and completes and signs [Form 10-L](#):

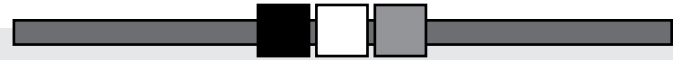
- i. Court order;
 - ii. Marriage license; or
 - iii. Proof of legal name change that includes both the voter's former and current names.²³
- f. The voter's signature does not match the signature on file with the board of elections (i.e., the signature in the poll book or displayed by the electronic poll book).
 - g. The voter has been challenged, and the challenge has not been resolved or has been resolved against the voter.
 - h. The notice of registration or acknowledgment notice has been returned to the board as undeliverable.
 - i. The voter requested an absentee ballot for the election.
 - j. The voter already has cast a provisional ballot.

For reasons h, i, and j, the voter should be marked or flagged in the poll book as needing to cast a provisional ballot.

For additional information on the casting and counting of provisional ballots, see [Chapter 6](#) of this Manual.

²³ [R.C. 3503.16\(B\)\(1\)\(b\)](#).





D. Signing Signature Poll Book

Once the precinct election officials have determined the type of ballot to be issued to the voter, the voter must sign or make his or her legal mark²⁴ in the poll book (paper or electronic). The precinct election official who witnessed the voter mark the poll book then must write the voter's name on the signature line in the Signature Poll Book following the voter's mark.²⁵

If the voter is physically unable to mark the poll book, the voter's attorney-in-fact can sign the voter's name for him or her. In order to have an attorney-in-fact, the voter must fill out and file the correct form with the county board of elections ([Form 10-F](#) or [Form 10-G](#)). If that voter has an attorney-in-fact form on file with the board of elections, the attorney-in-fact's signature will be on file, and it will be noted in the Signature Poll Book or on the Poll List. The voter must have his or her attorney-in-fact accompany him or her to the polling place. The attorney-in-fact should be allowed to sign the voter's name in the Signature Poll Book, in the presence and at the direction of the voter. The signature of the attorney-in-fact should be examined, and if it appears on its face to conform to the attorney-in-fact's signature pre-printed in the Signature Poll Book, the voter should be given a regular ballot.²⁶

Please note that an attorney-in-fact is different from a power of attorney. In order for a person with power of attorney to sign election forms for another person, a valid appointment as an attorney-in-fact must be on file with the county board of elections.

E. Issuing Regular Ballot / Authority to Vote

If the right of the elector to vote is not then challenged, or, if being challenged, the elector establishes the elector's right to vote, the elector shall be issued an Authority to Vote slip for their correct precinct and/or split and be allowed to proceed to use the voting machine. If voting machines

²⁴ [R.C. 3501.011](#).

²⁵ [R.C. 3505.18](#).

²⁶ [R.C. 3501.382](#).





are not being used in that precinct, the precinct election official in charge of ballots shall then detach the next ballots to be issued to the elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call the elector's name and the stub number on each of the ballots. The precinct election official shall enter the stub numbers opposite the signature of the elector in the poll book. The elector shall then retire to one of the voting compartments to mark the elector's ballots. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted the ballot.

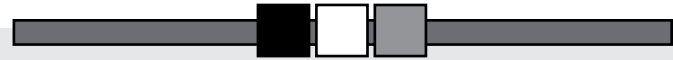
F. Curbside Voting

Curbside voting is the process followed when a person who is physically unable to enter a polling location can send another person into the polling location to inform precinct election officials of his or her desire to vote.

When precinct election officials are made aware of the name of a voter who is physically outside of the polling location, but is physically unable to enter the polling location, the following should be done:

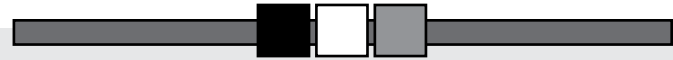
- One of the election officials checks the Signature Poll Book for the name of the voter.
- If the voter is a qualified elector and in the correct precinct, the election official places the voter's name and address on a blank sheet of paper.
- Two election officials of different political parties take the sheet containing the voter's name and address outside the polling place to the voter.
- The voter confirms the name and address are correct.
- The voter provides appropriate identification for voting purposes.
- The voter's identification is examined.
- The voter signs the sheet containing his or her name and address.





- The two election officials return the sheet containing the voter's signature to the polling location and attempt to verify the voter's signature in the Signature Poll Book.
- The two election officials should verify that the voter's signature substantially conforms to the voter's signature in the Signature Poll Book.
- The two election officials record next to the voter's name in the Signature Poll Book "Curbside Voter."
- The two election officials determine the type of ballot to be issued to voter.
- The two election officials obtain the paper ballot and the appropriate ballot envelope or secrecy sleeve (an envelope provided in the precinct election supply kit which is labeled: "Curbside Ballot Envelope or secrecy sleeve" for voted regular curbside ballots or "Provisional Curbside Ballot Envelope" for voted provisional curbside ballots).
- The two election officials take the appropriate ballot (regular or provisional) and corresponding envelope or secrecy sleeve to the voter located outside the polling place.
- The two election officials provide instructions to the voter on how to mark the ballot.
- The voter marks the ballot and places it in the appropriate envelope or secrecy sleeve (if a provisional ballot, the voter must complete the Identification Envelope – Provisional Affirmation ([Form 12-B](#)) and be given a copy of the Provisional Ballot Notice ([Form 12-H](#))).
- The two election officials take the appropriate envelope or secrecy sleeve containing the corresponding voted ballot back into the polling location and place it in the appropriate ballot container.





If a voter who wishes to utilize the curbside voting process is unable to sign his or her name:

- The two election officials witness the voter's mark on the sheet containing the voter's name and address that was taken outside the polling place.
- The two election officials return the sheet containing the voter's mark to the polling location.
- The two election officials record next to the voter's name in Signature Poll Book "Curbside Voter – Unable to Sign."

If a voter who wishes to utilize the curbside voting process is unable to mark his or her ballot:

- The two election officials follow the procedures for a voter who wishes to cast a ballot (regular or provisional) and is unable to mark his or her ballot.

SECTION 1.05 MARKING THE BALLOT

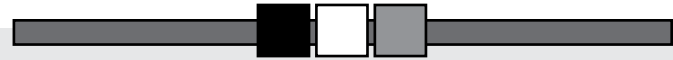
A. Time to mark ballot

The permissible time limit for a voter to occupy a voting compartment or use a voting machine is 10 minutes. However, a voter should be given a reasonable amount of time to mark and check his or her ballot. The 10-minute time limit does not apply to any voter requiring the use of an accessible voting machine.²⁷

If a voter seems to be taking an unusually long period of time while in the voting compartment, two precinct officials of different political parties may inquire, in a polite and professional manner, if the voter requires assistance.

²⁷ [R.C. 3505.23](#).





B. Replacement ballots

If a voter tears, soils, defaces, or erroneously marks a paper ballot, the voter may return it and receive a replacement. Replacement ballots are not necessary for an electronically-displayed ballot on a voting machine, because the voter has the ability to change his or her selections before casting the ballot.

The following procedure must be followed when issuing a replacement ballot:²⁸

- If a voter tears, soils, defaces, or erroneously marks a ballot, the voter may return it to a precinct election official, and a second ballot must be issued to the voter. Before a voter turns in a torn, soiled, defaced, or erroneously marked ballot, the voter must fold it to conceal any marks the voter made.
- If the voter tears, soils, defaces, or erroneously marks a second ballot, the voter may return it to the precinct election official, and a third ballot must be issued to the voter. In no case may more than three ballots be issued to a voter.
- When a precinct election official receives a returned torn, soiled, defaced, or erroneously marked ballot, he or she must write “Defaced” on the back of the ballot and place the stub and the ballot in the separate containers provided by the board of elections.
- No voter voting a paper ballot may leave the polling place until he or she returns to a precinct election official every ballot issued to him or her, regardless of whether or not the voter has made any marks on the ballot.

²⁸ [R.C. 3505.23](#).





C. “Fleeting Voters”

If a voter begins a voting session on a voting machine and does not cast his or her ballot by pressing the ‘cast ballot’ button before leaving the polling place, two precinct election officials, each of different political affiliations, must cancel that voter’s ballot.

If a voter is issued an optical scan paper ballot and leaves without feeding it into the scanner (or the scanner rejects the ballot due to an over-vote or blank ballot and the voter does not correct the over-vote or override the error notice), two precinct election officials, each of different political affiliations, must place that voter’s ballot in the spoiled ballot container.

In both cases, with a voting machine or optical scan ballot, the precinct election officials must make a notation of their action for ballot-reconciliation purposes.

D. List of Write-In Candidates Available Upon Request

The board of elections must provide each precinct polling location with a list of the names of candidates who have filed a declaration of intent to be a write-in candidate for the election.

The list of write-in candidates should not be posted in a precinct polling location, but it must be shown to voters if they request to see it. Additionally, a board may, but is not required to, post a list of write-in candidates on its website.

SECTION 1.06 ASSISTING VOTERS²⁹

Under both state and federal law, Ohio polling locations are required to be accessible to people with disabilities. The Help America Vote Act requires that all voters must have the ability to independently cast a private ballot.

²⁹ [R.C. 3505.24](#).





The Americans with Disabilities Act sets standards for ensuring that people with disabilities have equal access to public services and facilities, including polling locations.

No person should be denied the right to vote because of mobility, vision, speech, cognitive, intellectual, or hearing impairments.

Any voter with a disability may ask for assistance in marking the ballot. Voters who require assistance may have a person of the voter's choice or two precinct election officials – each from a different political party – assist them. The voter may choose anyone he or she wants to provide assistance other than the voter's employer, an agent of the voter's employer, or an officer or agent of the voter's union, if any, or any candidate whose name appears on the ballot.³⁰

Boards of elections must train their precinct election officials on the rights of voters with disabilities and how to assist and communicate effectively and politely with all voters.

The Secretary of State's Office publishes a Precinct Election Official Manual prior to each major election. It provides precinct election officials with guidelines for communicating and assisting a voter who has a disability.

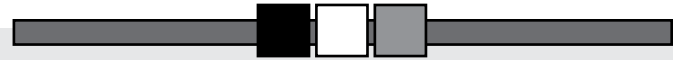
SECTION 1.07 CHALLENGE OF ELECTOR BY PRECINCT ELECTION OFFICIAL

On Election Day, a voter may be challenged only by a precinct election official or the voting location manager and only for the following reasons:

- The voter is not a resident of the precinct;
- The voter is not a resident of Ohio;
- The voter is not a U.S. citizen; or

³⁰ [R.C. 3505.24](#).





- The voter is not of legal voting age.³¹

If challenged by a precinct election official for one of the four reasons, above, the prospective voter should complete the Affidavit Oath Examination of Person Challenged ([Form 10-U](#)).

- If the voter completes [Form 10-U](#) and a majority of the precinct election officials is able to determine that the voter is eligible to cast a ballot, the voter must be given a regular ballot.
- If the voter refuses to complete [Form 10-U](#), the voter must vote a provisional ballot, and the precinct election official will need to make a note on the Precinct Elections Officials Problems and Corrections page or Precinct Election Officials Notes page that is included in the precinct election official kit.

If a majority of the precinct election officials is unable to determine the person's eligibility to cast a ballot, the precinct election officials shall provide a provisional ballot to the person.³²

SECTION 1.08 OBSERVERS

A. Categories of Observers

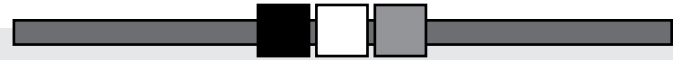
There are several points during an election at which the presence of observers is contemplated. For ease of discussion, these types of observers have been grouped into separate categories as follows:

- Observers at an In-Person Absentee Voting Location;
- Observers at a Board of Elections Office prior to the Official Canvass;
- Observers at Precincts on Election Day;

³¹ [R.C. 3505.20](#); *Boustani v. Blackwell* (2006), 460 F.Supp.2d 822.

³² [R.C. 3505.20](#).





- Official Canvass Observers;
- Recount Observers; and
- Election Audit Observers.

B. General Rules for All Categories of Observers

There are some general principles that apply to all observers, regardless of what category the observer falls into.

1. Qualifications

All observers (except recount observers) must be qualified electors in the State of Ohio. However, observers do not need to be registered to vote in the particular county where they will observe.

2. Persons Not Eligible to Observe

The following people are not permitted to serve as observers at an in-person absentee voting location, at a board office prior to the official canvass, or at a precinct on Election Day ³³:

- Uniformed peace officer;
- Uniformed state highway patrol trooper;
- Uniformed member of any fire department;
- Uniformed member of the armed services or the organized militia;
- No person wearing any other uniform; or
- No candidate, unless the candidate is also a member of the party controlling committee.

³³ [R.C. 3505.21, ¶1.](#)





A candidate is permitted to serve as an observer at an official canvass, recount, or election audit. An observer may not accept compensation from a county, city, village, or township for serving as an observer.³⁴

3. Oath

Every observer is required to take an oath prior to commencing his or her duties. The form of the oath is prescribed as follows:

“You do solemnly swear that you will faithfully and impartially discharge the duties as an official observer, assigned by law; that you will not cause any delay to persons offering to vote; and/or that you will not disclose or communicate to any person how any elector has voted at such election.”³⁵

For observers on Election Day, a precinct election official must administer the above oath. For all other observers, an election official, director, or deputy director may administer the oath. Additionally, where an observer is observing over the course of multiple days, that observer does not need to take the oath every day. It is sufficient to have the observer affirm to an election official each day that the observer understands that he or she is still under oath.

4. Election Officials' Duties

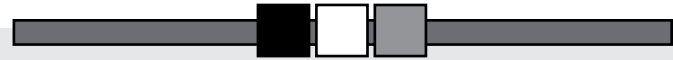
Several Ohio statutes provide that election officials have a responsibility to allow observers to be present. That responsibility carries with it a connected right to remove observers from their posts under very limited circumstances including behavior inconsistent with Ohio law or Secretary of State Directive, or that interferes with, impedes, or disrupts an election.³⁶

³⁴ [R.C. 3505.21, ¶4.](#)

³⁵ [R.C. 3505.21, ¶5.](#)

³⁶ [R.C. 3501.33; R.C. 3505.21, ¶1.](#)





C. Observers at In-Person Absentee Voting Locations, Board of Elections Offices, and Precincts on Election Day

Appointing authorities are permitted to appoint observers at an in-person absentee voting location, a board of elections office prior to the official canvass, and precincts on Election Day.

1. Appointing Authority Defined

The following “appointing authorities” are permitted to appoint observers at any primary, special, or general election:

- Any political party (county or state) that is supporting candidates to be voted upon at that election.
- Any group of five or more candidates.
- A ballot issue committee recognized by the board of elections pursuant to law as supporting or opposing a ballot issue.³⁷

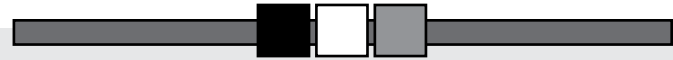
Any committee that in good faith advocates or opposes a ballot question or issue may file a petition with the county board of elections asking to be recognized as the committee entitled to appoint observers for the election. Such petitions must be filed no later than 4:00 p.m. on the 20th day before election.³⁸ If more than one committee files to be the recognized committee advocating or opposing a measure, the board must decide which committee will be recognized as being entitled to appoint observers. The board must make this decision not less than 12 days prior to the election and send a notice via registered mail to each committee.³⁹

³⁷ [R.C. 3505.21, ¶1, ¶3.](#)

³⁸ [R.C. 3505.21, ¶3.](#)

³⁹ [R.C. 3505.21, ¶3.](#)





2. Notice of Appointment

An appointing authority must first notify the board of elections of the names and addresses of its appointees and the location(s) at which they will serve.⁴⁰ As discussed above, potential locations include the board's in-person absentee voting location, the board office, and specific precincts for Election Day. Keep in mind that one person is permitted to observe at multiple locations, as the observer may spend parts of the day at several locations, or observe at different locations depending on the day and point in the election.

a. Timing

Written notification must be given to a board of elections not less than 11 days before the election on forms prescribed by the Secretary of State. Written amendments for a notification may be filed with the board of elections at any time until 4:00 p.m. the day before the election.⁴¹ An amendment may substitute one observer for another at a precinct or board of elections identified in the original filing. However, an amendment cannot add a location that was not identified in the original filing. An amendment also cannot add additional observers at a location or serve to expand the number of observers at a location beyond what is permitted.

b. Forms

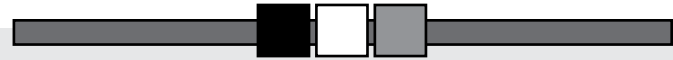
The following Secretary of State forms should be used to notify boards of elections of appointments and any subsequent amendments:

- A state or county political party committee will use [Form 214](#), signed by the chairperson and secretary of the controlling committee.

⁴⁰ [R.C. 3505.21](#).

⁴¹ [R.C. 3505.21](#).





- Groups of candidates will use [Form 216](#), signed by the group of candidates.
- A recognized ballot issue committee will use [Form 219](#), signed by committee members.

Appointing authorities are encouraged to file original documents with a county board of elections in person. However, filing by facsimile or e-mail with a PDF attachment is permissible. An appointing authority bears the risk of improper or incomplete transmittal of a notice of appointment or amendment for an observer.

3. Certificate of Appointment

After filing a timely notice of appointment with the board of elections, the appointing authority is responsible for issuing a certificate of appointment to the observer. The following Secretary of State forms should be used to issue certificates of appointment to observers:

- A state or county political party committee will use [Form 215](#), signed by the chairperson and secretary of the controlling committee.
- Groups of candidates will use [Form 217](#), signed by the group of candidates.
- A recognized ballot issue committee will use [Form 220](#), signed by committee members.

The duly appointed observer will present his or her certificate of appointment to the appropriate election official at the time that the observer arrives at the location where he or she will observe.





4. Observers at an In-Person Absentee Voting Location

Observers may be appointed to observe the casting of ballots at an in-person absentee voting location. Depending on the particular county, this location will either be the board office or a separate designated site.⁴²

An appointing authority is permitted to appoint one observer to the in-person absentee voting location. Because in-person absentee voting occurs over multiple days, it may be prudent for a board to permit the substitution of observers on different days. However, an appointing authority cannot have more than one observer observing the casting of ballots at an in-person absentee voting location at any one time.

5. Observers at a Board of Elections Office

Observers may be appointed to a board of elections office to observe the casting of ballots, the examination and opening of absent voters' ballots, the casting and counting of ballots at the board of elections office on Election Day, and the processing of provisional ballots leading up to the official canvass.

A board of elections must notify appointed observers of the times when the board will be processing and counting absent voters' ballots. Likewise, a board of elections must notify all duly appointed observers of the times when the board will be determining the eligibility of provisional ballots to be counted.⁴³

An appointing authority is permitted to appoint one observer to the board of elections office.⁴⁴ Under appropriate circumstances, a board of elections may choose to permit an appointing authority to appoint more than one observer to a board of elections office. For instance, where the

⁴² [R.C. 3505.21\(A\)](#); *State ex rel. Stokes v. Brunner*, 120 Ohio St.3d 250.

⁴³ [R.C. 3505.183\(D\)](#).

⁴⁴ [R.C. 3505.21](#).





processing of provisional ballots will take place over a number of days, it would be prudent for the board to permit an appointing authority to appoint multiple observers and/or permit the substitution of observers.

Please note that an observer appointed to observe at the board office is permitted to observe at the board office and at any precinct in the county.⁴⁵ An appointing authority is only allowed to have one observer who is permitted to observe at both the board office and at any precinct in the county. Such an observer will file his or her certificate of appointment with the board of elections, and then shall take a copy of the certificate with him or her to present to the voting location manager at any of the precincts he or she visits.

6. Observers at Precincts on Election Day

Observers may be appointed to observe the casting and counting of ballots at one or multiple precincts on Election Day.

An appointing authority for candidates is permitted to appoint one observer to each precinct in a county. An observer may be appointed to observe at multiple precincts, but no more than one observer may be appointed to each precinct.⁴⁶

An appointing authority for a ballot question or issue is permitted to appoint one observer to each precinct in a county. An observer may be appointed to observe at multiple precincts, but no more than one observer may be appointed to each precinct.⁴⁷

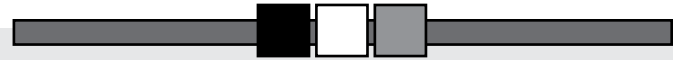
However, there are some additional limitations where ballot question or issue observers are involved. At any election, a precinct cannot have more than six observers total appointed by separate ballot issue committees. Where the number of observers exceeds six, the recognized

⁴⁵ [R.C. 3505.21, ¶1.](#)

⁴⁶ [R.C. 3505.21, ¶1.](#)

⁴⁷ [R.C. 3505.21, ¶3.](#)





ballot issue committees may agree upon which observers will observe. If the committees fail to agree, the precinct election officials will choose six observers from the certified appointees in a manner that represents each side of the several issues.⁴⁸

Observers appointed to precincts on Election Day are permitted to be present from the opening until the closing of the polls, as well as after the polls close. Accordingly, an observer would be permitted to be present from one-half hour before the polling place opens through the time the poll workers for that precinct finish processing the ballots cast or collected in that precinct, and have completed all other post-closing responsibilities and have taken all actions to return the ballots and other supplies to the board of elections.⁴⁹

D. Official Canvass Observers

Certain appointing authorities are permitted to designate a qualified elector to observe the making of the official canvass. The following “appointing authorities” are permitted to appoint an observer to the official canvass:

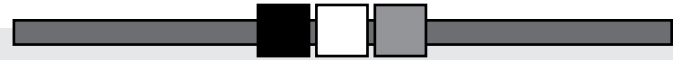
- The county executive committee of each political party;
- Each committee designated in a petition nominating an independent or nonpartisan candidate;
- Each committee designated in a petition to represent the petitioners for a ballot question or issue; or
- Any committee opposing a ballot question or issue that was permitted to have a qualified elector serve as an observer at the election pursuant to [R.C. 3505.21](#).⁵⁰

⁴⁸ [R.C. 3505.21](#).

⁴⁹ [R.C. 3505.21](#); [R.C. 3506.13](#).

⁵⁰ [R.C. 3505.32](#).





Boards of elections must require the designation of an official canvass observer to be in writing, signed by a recognized member of the group appointing the observer. An appointing authority may file this written appointment in person, via facsimile or e-mail using a PDF.

E. Recount Observers

1. Candidate Recounts

For candidate recounts, each candidate in the contest to be recounted may attend and observe the recount and may designate one other person in addition to him or herself, not necessarily an elector, to also observe the recount on his or her behalf. In the event that a county board of elections performs the recount at more than one station, the candidate may appoint a sufficient number of observers to have one at each station for the time during which that station is actively recounting ballots.⁵¹

2. Question or Issue Recounts

For question or issue recounts, the designated chairperson of a committee organized in accordance with [R.C. 3505.21](#) to support or oppose a ballot question or issue may observe. Additionally, an attorney appointed as legal counsel by the committee may also observe.⁵²

3. Method of Appointment

The appointment of recount observers must be in writing, signed by the candidate or ballot issue chairperson, and submitted to the board of elections no later than five days following board notification of the date and time of the recount.⁵³ An appointing authority may file these documents in person, via facsimile or e-mail using a PDF.

⁵¹ [R.C. 3515.03](#).

⁵² [R.C. 3515.03](#).

⁵³ [R.C. 3515.03](#).





F. Election Audit Observers

Any entity that appointed observers pursuant to [R.C. 3505.21](#), or official canvass observers pursuant to [R.C. 3503.32](#), may appoint observers to the post-election audit. Appointments must be made in writing, signed by a recognized member of the group appointing the observer, no later than five days after the board gives notice of the date and time of the post-election audit. Substitutes may be appointed if notice of the substitution is made in writing and filed with the board of elections at least one day before the post-election audit begins. An appointing authority may file these documents in person, via facsimile, or e-mail using a PDF.

G. Rights and Limitations of Observers

The provisions of this section apply to observers at all stages of an election. However, please note that some provisions will relate solely to a certain category of observers or a particular situation as described below.

1. Watching and Inspecting

Observers at a precinct are permitted to “watch every proceeding of the precinct election officials from the time of the opening until the closing of the polls.”⁵⁴ Observers are also permitted to “inspect the counting of all ballots in the polling place or board of elections from the time of the closing of the polls until the counting is completed and the final returns are certified and signed.”⁵⁵ The role of observers is limited to observing the proceedings of an election. Accordingly, while observers are permitted to watch and inspect, observers are never permitted to handle any election materials.

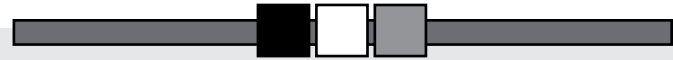
2. Observer Communication with Election Officials

While observers are permitted to engage precinct election officials in casual conversation, including gathering information about how the

⁵⁴ [R.C. 3505.21](#).

⁵⁵ [R.C. 3505.21](#).





voting location is being run during down times, their statutorily appointed purpose is to “watch.” Observers are not to serve as enforcers of the laws nor act as advocates for voters before the precinct election officials. They may, however, leave the voting area to contact the board of elections to raise concerns, which, the board may, in turn and as appropriate, address. Observers may never interfere with election officials completing their official duties.

3. Movement of Observers within Polling Place

Observers are permitted to move freely about the polling place to the extent that they do not engage in any prohibited activity (see Limitations).⁵⁶

Observers are not permitted to observe at precincts to which they are not duly appointed.

4. Movement of Observers within Board of Elections

Observers are permitted to observe in any area where ballots are being cast, processed, counted, or recounted at a board of elections office, and generally, may move about freely to do so to the extent that they do not engage in any prohibited activity (see Limitations). A board may deny an observer access to parts of its office where ballots are not being cast, processed, counted, or recounted.

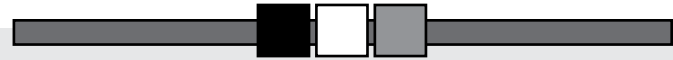
5. Recount Observer Conduct

A recount observer may freely observe the recount, but cannot interfere with the recount or touch the ballots. Because such challenges are reserved for a Contest of Election, observers at a recount may not challenge the board’s determination of whether or not a ballot or vote is counted during a recount.⁵⁷

⁵⁶ [R.C. 3505.21](#).

⁵⁷ [OAG 1974-103](#)





6. Limitations

a. *Statutory Prohibitions*

Although observers are granted the ability to move about the polling place as they conduct their duties within the polling place, including the area marked by the flags, observers must be mindful that certain behavior is prohibited, including:

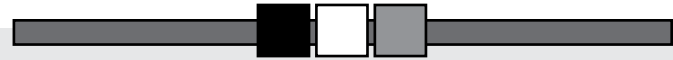
- Engaging in any kind of election campaigning;
- Hindering or delaying an elector in reaching or leaving the polling place;
- Impeding, interfering with, or disrupting the election in some manner;
- Intimidating, harassing, or attempting to influence voters or precinct election officials;
- Carrying a firearm or other deadly weapon; or
- Risk violating the secrecy of the ballot or the privacy of voters.

Unless specifically exempted by law, all observers are subject to the statutory prohibitions in Title 35 of the Revised Code, including, but not limited to, [R.C. 3501.35](#); [R.C. 3501.90](#), and any relevant section of Chapter of [3599](#).

b. *Communication Devices and Audio Video Devices*

Observers may not use any electronic or communication device or any audio/visual recording device in any manner that impedes, interferes with, or disrupts an election, or in any way intimidates a voter, risks violating the secrecy of the ballot or voter privacy. Observers using a cellular or digital telephone, walkie-talkie, or any other wired, wireless, or satellite audio communication device to discuss the election or a perceived problem with the administration





of the election may not do so within the polling place. Absent a person engaging in harassment,⁵⁸ nothing in this section shall be interpreted to prevent an observer from collecting or transmitting information from the registration lists posted throughout the day in each precinct pursuant to [R.C. 3503.23\(C\)](#).

Observers may use communication devices and audio/video devices in and about the polling place subject to the following conditions:

- i. The devices must be set so as to produce no noise (low volume vibration settings are permitted);
- ii. The devices may not be used to take photographs, videos, or to record or transcribe any conversations inside the polling place (a camera is considered a device for purposes of these instructions);
- iii. The Observer may not have an audible conversation inside the polling place using a communications device or audio/video device;
- iv. The Observer may send and receive text messages, e-mail communications, instant messages, and similar other non-verbal, electronic communications using a communications device or audio/video device;
- v. The Observer may not use the communications device or audio/video device in any manner that creates a disruption or disturbance within the polling place; and
- vi. The Observer may not use the communications device or audio/video device in any manner that is intended or perceived to impede, interfere with, or disrupt an election, or in

⁵⁸ As defined by [R.C. 3501.90](#).





any way intimidates a voter, or risks violating the secrecy of the ballot or a voter's privacy.

7. Removal

Only the voting location managers, directors, deputy directors, and appointing authorities have the authority to administratively remove observers from their posts. Additionally, law enforcement officials have the statutory duty to remove observers at the order of one of the above listed election officials.⁵⁹

If the observer is removed, the person removing the observer may request his or her certificate of appointment and return it to the board office with a notation that the observer was removed from the polling location.

H. International Observers

Periodically, elected officials and government administrators from other countries come to the United States to learn more about our democratic processes and public institutions, usually under the auspices of the U.S. Department of State, an academic institution, or other similar organizations. In certain cases, such visits are obligations of international treaties entered into by the federal executive branch and ratified by the United States Senate.

However, state law limits the individuals who are permitted to be present in a polling place on Election Day. Only an election official,⁶⁰ an observer, a police officer, a person reviewing the 6:30 a.m., 11 a.m. or 4 p.m. list of registered electors, a voter (including the voter's children who are of nonvoting age when accompanied by the voter), or a person assisting another person to vote shall be allowed to enter the polling place during

⁵⁹ [R.C. 3501.33](#).

⁶⁰ [R.C. 3501.01\(U\)](#).





the election.⁶¹ By not including “international observers” and others not specifically listed in state law, the Ohio General Assembly has prohibited their presence in a polling place on Election Day.

SECTION 1.09 CLOSING THE POLLS

Each board of elections must train its precinct election officials on how to close a polling location properly and on what steps need to be taken if voting hours are extended by court order.

All polls must close at 7:30 p.m.,⁶² unless a court order extends the voting period. Beginning about a half hour before the close of polls, the precinct election officials (PEOs) should repeatedly announce the name of the precinct to voters waiting in line and make sure that all voters in line are in the correct polling location and precinct. PEOs should announce that the polls are closing shortly and that anyone in line will have the opportunity to cast a ballot.

A. Announcement of Close of Polls

At 7:30 p.m., the official closing time, one precinct election official must announce that “The polls are closed!”⁶³ If people are waiting to vote at closing time, they must be permitted to vote.⁶⁴ To accommodate voters waiting in line, the PEOs must:

- Move the line inside the locked door of the polling location, if possible; or
- Place a PEO after the last person who is in line at 7:30 p.m. to prevent additional people from joining the line.

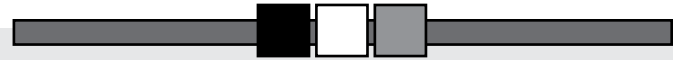
⁶¹ [R.C. 3501.35\(B\)](#); [R.C.3503.23\(C\)](#).

⁶² [R.C. 3501.32\(A\)](#).

⁶³ [R.C. 3505.26](#).

⁶⁴ [R.C. 3501.32\(A\)](#).





B. Court Order

If there is a court order to keep a polling location open past 7:30 p.m., the PEOs need to know who the last person in line was at 7:30 p.m. They must then make sure of the following:

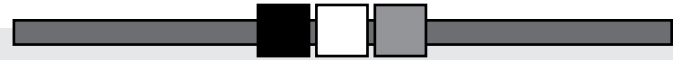
- Voters who were already in line at 7:30 p.m. get to vote a regular ballot.
- All voters who arrive at the polling location to vote between 7:30 p.m. and the court-ordered closing of the polling location must vote a provisional ballot.⁶⁵
- These provisional ballots must be kept separate from other provisional ballots voted during the regular voting hours in case the court decision is later overturned. Note on each Identification Envelope - Provisional Ballot Affirmation (*Form 12-B*) that the provisional ballot was cast after 7:30 p.m. pursuant to a court order. To do so, the PEOs must write "After Close of Polls by Order of the Court" on the provisional envelope.

C. Closing the polling location

- Record/count the total number of regular ballots voted (per local BOE instructions).
- Count and record the total number of paper provisional ballots cast by voters who arrived between 6:30 a.m. and 7:30 p.m.
- In case of a court order only, count and record the total number of provisional paper ballots cast by voters who arrived after 7:30 p.m.
- Count and record the total number of soiled or defaced paper ballots.
- Count and record the total number of unvoted paper ballots.

⁶⁵ 52 U.S.C.A. §21082(c).





- Count and record the total number of signatures in the Signature Poll Book, or, if using electronic poll books, the PEOs must follow the instructions provided by the board for recording the number of signatures.
- Post precinct results at the polling place as directed by the board of elections.
- Record all ballot statistics (e.g., regular, provisional, soiled and defaced, unvoted) on the Balance/Reconciliation Sheet provided by the board of elections.
- Double-check ballot statistics, and sign the Closing Certificate and Election Day Balance/Reconciliation Sheet.

In precincts using electronic poll books, the PEOs must:

- Transport any electronic poll book, any removable data storage unit, and any paper record produced by the poll book to the board office in the same manner in which all other election materials are transported to the board office.
- Seal each electronic poll book with a tamper-evident seal before returning it from the polling location to the board of elections' office.
- If an electronic poll book uses a removable data storage unit or produces a paper record, seal the data storage unit and the paper record with a tamper-evident seal and place them in an appropriate storage container before returning them to the board office.

Finally, in all precincts, the PEOs must:

- Bring in the flags and take down signs inside and outside the polling location.
- Close out and pack up the voting equipment following the directions provided by the board of elections.





- Securely pack ballots and supplies and immediately return them to the board of elections or a designated drop off location as outlined in the following section.

D. Secure Return of Ballots and Election Day Supplies

At the close of polls, all ballots and election supplies (i.e., poll books, poll lists, tally sheets, election reports, and other materials) must be returned by a bipartisan team to the board of elections office or other location designated and staffed by the board. The bipartisan team must consist of the voting location manager and an employee or appointee of the board who is a member of a different political party than the voting location manager and “has taken an oath to uphold the laws and constitution of this state, including an oath that the person will promptly and securely perform the duties [of promptly and securely transporting and delivering ballots and election supplies to the board of elections].”⁶⁶

When transporting ballots and election supplies, the bipartisan team must travel in the same vehicle. The board is permitted to have one or more additional persons, such as a law enforcement official, accompany the bipartisan team. One bipartisan team may transport the ballots and election supplies for an entire multi-precinct polling location.

SECTION 1.10 PARTISAN PRIMARY ELECTIONS

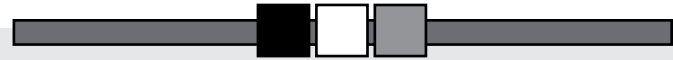
A. Challenges Based on Party Affiliation

Precinct election officials, board of elections members, directors, deputy directors, and clerks can only challenge the right to vote of any elector on the grounds that the voter is not affiliated with or is not a member of the political party whose ballot the person desires to vote, if that official has personal knowledge that the individual is a member of a different party.⁶⁷

⁶⁶ [R.C. 3505.31](#).

⁶⁷ [R.C. 3513.19\(A\)\(3\)](#).



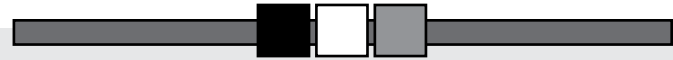


Boards of elections may not require every voter, or every voter who previously voted a ballot for a different political party, to sign a “Statement of Person Challenged as to Party Affiliation” (Forms [10-W](#), [X](#), or [Z](#)) before permitting that person to cast a ballot, either in person or by mail. Such blanket policies impose an affirmative duty on elections officials that is not contemplated in [R.C. 3513.19](#), which reads “[i]t is the duty of any precinct election official, whenever any precinct election official doubts that a person attempting to vote at a primary election is legally entitled to vote at that election, to challenge the right of that person to vote.” (emphasis not in original) State law contemplates infrequent party challenges, based upon the election official’s personal knowledge, similar to infrequent challenges based on whether a person is a legally qualified elector and whether a person has received or been promised some valuable reward or consideration for the person’s vote.⁶⁸ Any such challenge is serious and must not be subject to unilateral, blanket action.

Ohio’s primary process strikes a balance between the statutory deference to an individual voter’s participatory rights and the political parties’ associative rights. The prohibition against any precinct election official or board of elections member, director, deputy director, or clerk from challenging the right to vote of any elector on the grounds that the voter is not affiliated with or is not a member of the political party whose ballot the person desires to vote, unless that official has personal knowledge to the contrary, protects this balance. In these rare instances, either Form [10-W](#), [X](#), or [Z](#) should be used, depending on the circumstance, pursuant to [R.C. 3510.06\(D\)](#) and [R.C. 3513.20](#).

⁶⁸ [R.C. 3513.19\(A\)](#).





B. Issuing a ballot during a primary election

When issuing a ballot during a primary election the precinct election official should ask the voter what type of ballot he or she would like – a political party ballot or an issues only ballot. If a voter asks what his or her choices are, the precinct election official should explain the political party ballot choices, if any. Once a voter indicates his or her choice of ballot, political party or issues only, the precinct election official must record the voter's choice of ballot in the Signature Poll Book regardless of a change in political party or not by marking either 1) the appropriate political party for the ballot requested by the voter, or 2) that the voter requested an issues only ballot. Next the precinct election official must give the voter the proper ballot or appropriate authority to vote slip/device and direct the voter to the appropriate voting location in the polling place.

SECTION 1.11 REQUIRED POSTINGS

A. Generally

The posting of a number of voting-related signs inside and outside the polling location is required.

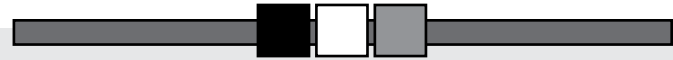
B. Signs Outside

Precinct election officials must place one (large) flag at the entrance to the polling location.

Precinct election officials must place two (small) flags 100 feet from the entrance to the polling location. The placement of the flags establishes the “neutral zone” of the polling location. Permissible and prohibited conduct within the neutral zone of the polling location is discussed in Section 1.13.

Directional signs can be placed to lead voters from the parking lot or street to the entrance of the polling location.





C. Signs Inside

Boards of elections must direct PEOs to display several notices and signs where voters easily can see them:

- Precinct signs that identify the precinct, especially in multiple precinct polling locations, must be placed wherever a line might form;
- Voting Rights Information Poster;
- General information on federal and state laws regarding prohibitions on fraud and misrepresentation;
- Special Voting Instructions Poster that indicates how to cast a regular ballot and a provisional ballot;
- Official sample ballot;
- Full text of condensed ballot language for state or local question(s) or issue(s);
- Notice regarding voting more than once at the same election ([Form 10-V](#)); and
- Any other notice required by law.

One set of the notices and signs must be displayed at approximate eye level for voters who are seated or using a wheelchair. To ensure visibility for persons using wheelchairs, the tops of the signs should be about four feet from the floor.

Prior to each election, boards of elections must consult the Secretary of State's website for the most-current list of signs and notices required for a polling location.





SECTION 1.12 PROHIBITIONS

A. Congregating, Campaigning, Distributing Food, or Soliciting Inside a Polling Location

A polling location is a “neutral zone.” Accordingly, Ohio law imposes specific limitations on who may enter a polling location and what conduct is permissible therein. Only an election official,⁶⁹ an observer,⁷⁰ a police officer, a person reviewing the 6:30 a.m., 11 a.m. or 4 p.m. list of registered electors, a voter (including the voter’s children who are of non-voting age when accompanied by the voter), or a person assisting another person to vote shall be allowed to enter the polling place during the election.⁷¹

Two small United States flags must be placed 100 feet from the entrance to each polling location on the thoroughfares or walkways leading to the polling location (or as near to 100 feet as possible). No one, other than an election official, observer, police officer, or an elector waiting to mark, marking, or casting his/her ballot, may “loiter, congregate, or engage in any kind of election campaigning” within this “neutral zone” or within 10 feet of any elector waiting in line to vote if the line of voters extends beyond the flags.⁷² Ohio law prohibits anyone from soliciting or attempting to influence any elector’s vote at a polling location and from preventing or delaying an elector from entering or leaving a polling location.⁷³

⁶⁹ [R.C. 3501.01\(U\)](#). An “election official” includes the following individuals: (1) Secretary of State; (2) Employees of the Secretary of State serving in an elections-related capacity; (3) Members, Director or deputy director, and/or employees of a board of elections (including part-time and temporary employees); and (4) Voting location manager and other precinct election officials.

⁷⁰ [R.C. 3505.21](#).

⁷¹ [R.C. 3501.35\(B\)](#); [R.C. 3503.23\(C\)](#).

⁷² [R.C. 3501.30\(A\)\(4\)](#).

⁷³ [R.C. 3501.35\(A\)](#); [R.C. 3599.24](#); [R.C. 3599.26](#).





Campaigning, displaying campaign material or distributing food inside of the neutral zone of a polling location is prohibited.⁷⁴ However, nothing in Ohio's election laws prohibit a person or entity from campaigning, displaying campaign material, or distributing food outside of the neutral zone of a polling location (i.e., outside of the flags marking the 100 foot barrier or beyond 10 feet from any elector waiting in line to vote, if the line to vote extends beyond the flags).

Ohio law prohibits anyone from procuring or offering "money or other valuable thing to or for the use of another, with the intent that it or part thereof shall be used to induce such person to vote or to refrain from voting."⁷⁵ Food, discounts, and other such inducements are "things of value" for purposes of the election law statutes on bribery.⁷⁶

B. Collecting Signatures at a Polling Location

Occasionally, groups may station persons outside of a polling location to gather signatures on a petition. Persons are not permitted to collect signatures inside of a polling location or within the "neutral zone" outside of the polling location (i.e., within the area marked by the placement of two small U.S. flags).⁷⁷ However, there is no prohibition against collecting signatures outside the neutral zone.

C. Problems with Conduct at a Polling Location

Boards of elections must instruct PEOs to contact the board office or the appropriate law enforcement official immediately if they experience a problem with the conduct of any person at a polling location.

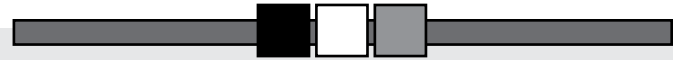
⁷⁴ [R.C. 3501.35\(A\)](#).

⁷⁵ [R.C. 3599.01\(A\)\(3\)](#); See also the prohibitions contained in [R.C. 3599.02](#).

⁷⁶ Even a professor's award of extra credit to a student who votes in an election has been considered to be "a thing of value." [Ohio Attorney General Opinion No. 96-033](#).

⁷⁷ [R.C. 3501.35\(A\)](#). *United Food & Commercial Workers Local 1099 v. City of Sidney* (6th Cir. 2004), 364 F.3d 738 (circulators were not deprived of their free speech rights when they were prohibited from collecting signatures within the "campaign-free zone").





D. Unlawful Possession of Ballots

No PEO can possess or transfer possession of a ballot outside of his or her official Election Day duties.⁷⁸

SECTION 1.13 MEDIA ACCESS TO POLLING LOCATIONS

A. Media Access inside the Polls

Elections officials must grant members of the media reasonable access to polling locations. This mandate stems from a United States Court of Appeals decision, which held that the media must be granted “reasonable access * * * for the purpose of news-gathering and reporting so long as [the members of the media] do not interfere with poll workers and voters as voters exercise their right to vote.”⁷⁹

In its decision, the court did not define “reasonable access.” Therefore, a board of elections must consider the following factors to ensure that the voting process is not disrupted:

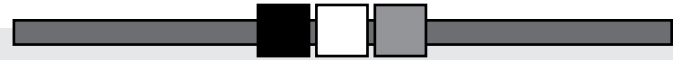
- whether the media representative is credentialed (i.e., is the person from an accredited media source);⁸⁰
- the length of time the media is present at a polling location;
- the length of voter lines at the polling location;
- the size and layout of the polling location;
- protecting voter secrecy during the media's presence;
- the conduct of the media representative; and

⁷⁸ [R.C. 3505.25](#).

⁷⁹ *Beacon Journal Publishing Company, Inc. v. Blackwell* (6th Cir. 2004), 389 F.3d 683 at 685; [R.C. 3501.35\(B\)\(2\)](#).

⁸⁰ A board of elections does not issue credentials to a member of the media. A member of the media already should possess press credentials. These credentials are sufficient to grant the member access to a polling location.





- the effect of the presence of the media on voters and election officials.

No person – including a representative of the media – may disrupt the voting process, interfere with the election, intimidate voters, or jeopardize the secrecy of any ballot. If a member of the media interferes with the administration of the election, intimidates a voter, or jeopardizes the secrecy of a ballot, he or she may be removed from the polling location. The media must respect a voter's right to privacy by requesting the voter's permission prior to recording the voter or the voter's actions while in or about the polling place.

No person may attempt to subvert the statutory observer process by attempting to gain access to a polling place as member of the media.

PEOs should inform the director and deputy director if the media visits a polling location.

B. Exit Polling at a Polling Location

Exit polling is not electioneering and is therefore permissible within 100 feet of the entrance to a polling location (i.e., within the area marked by the placement of two small U.S. flags).⁸¹

Persons conducting exit polls may not enter a polling location, interfere with or disrupt the election, or otherwise violate the law. Further, persons conducting exit polls at a polling location may not wear anything that may be construed as campaigning for or against any candidate or issue on the ballot.

⁸¹ *American Broadcasting Co., Inc. v. Blackwell* (S.D. Ohio 2006), 479 F.Supp.2d 719 at 744.

