

Minutes
Athens County Board of Elections
Regular Meeting
August 17, 2022, 3:30 pm

The Athens County Board of Elections met on August 17, 2022 at 3:30 pm at the board office. The meeting was called to order by Board Chair McGuckin, Roll Call – Aundrea S. Carpenter-Colvin, Gary Van Meter, Sky Pettey and Kate McGuckin all present. Also present at the meeting: Director Debra Quivey, Deputy Director Tony Brooks, Zach West Athens County Assistant Prosecutor, Beth Ferrier, Debbie Perry, Helen King from the League of Women Voters, Jimmy Stewart, Don Brey, Kathy Hecht, Sean Parson, Alexandra Buckley, Phil Perry, Suzanne Perry, Bonnie Perry, Jack Conrath-Sweeney, Jill Flowers, Diana Ray, Shelley R. Conrath, Matt Sweeney, Tanya Conrath, Andrea Reik, Natalie Witmann and Larry Conrath.

Ms. McGuckin led the pledge.

Ms. McGuckin presented the board with a proposal that the agenda be amended by moving the issue of Form 289 being received from the Democratic Central Committee be moved from the last item under new business to the first item under new business.

Motion 2022:08:03

Mr. Pettey moved, seconded by Mr. Van Meter that agenda be amended by moving the issue of Form 289 being received from the Democratic Central Committee be moved from the last item under new business to the first item under new business. Motion passed unanimously.

Minutes from July 13, 2022 Board Meeting and August 2, 2022 Election Day were presented to the board by email prior to the meeting and there were no edits received. Deputy Director Brooks ask the board to approve these minutes.

Motion 2022:08:04

Mrs. Carpenter-Colvin moved, seconded by Mr. Pettey that the minutes for July 13, 2022 be approved by the Board as presented. Motion passed unanimously.

Budget and Grant updates were provided and presented by Deputy Director Brooks. Bills from between July 14, 2022 and August 17, 2022 were also presented to the board for approval by Deputy Director Brooks. One Correction needed made to that list. Bill from Net Data for \$1,909.00 was put on the list twice in error and needed removed from the report.

Motion 2022:08:05 (Attachment 1)

Mr. Van Meter moved, seconded by Mrs. Carpenter-Colvin that bills from July 14, 2022 to August 17, 2022 be approved as presented by Deputy Director Brooks with the amendment of removing one duplicated expense on the report. Voting: Mrs. Carpenter-Colvin – Yes, Mr. Van Meter – Yes, Mr. Pettey – Yes and Ms. McGuckin – Yes

Director Quivey provided information regarding a Certification of Selection of Candidate to Fill Vacancy in Party Nomination forms (Form # 289) that was filed at the board office on Monday August 15, 2022 at 10:36 am by the Athens County Democratic Central Committee regarding replacing Rhyan Goodman for the Ohio House of Representatives - 94th District (Athens, Meigs, Morgan and part of Washington Counties). Rhyan withdrew from the race in writing to board office on Monday August 8, 2022. This was after election day, after the unofficial count (August 2, 2022) and before the official count (August 19, 2022).

Ms. McGuckin called on Assistant Prosecutor Zach West to present his finding regarding the research he has completed regarding the issue presented by Director Quivey.

Mr. West stated that our office has received a withdraw and a timely submission of Form 289 . This case is unusual due to the timing of the deadline for substitutions being prior to the deadline for certification of the August Primary Election. There isn't much directly on point with this matter, but is based on recent Supreme Court decisions, ORC 3513.31, Attorney General opinion 69-080. As well as case form the 1980's, State ex Rel. Ashbrooke V. Brown. Also sited O'Neil case and Morris case. He believes, based on this information listed, it shows a long-standing history of public policy of Ohio and the Supreme Court supporting competitive and free elections and granting access to the ballot and letting voters decide. Based on that information Mr. West recommended that the board accept the Form 289 and replace Rhyan Goodman on the ballot with the Democratic Central Committee's selection of Tanya Contrath.

Mr. Pettey made comments regarding this issue. He stated that in his review of ORC 3513.31 he found that the only deadline in the statute is that the paperwork for the substituting candidate be by the 86th day before the general election and that deadline was met. He stated that the other argument would perhaps be that Mr. Goodman had not been certified as the candidate by this board. The problem here is closeness in time between the August 2, 2022 Primary election and the November 8, 2022 General election, which has caused and overlap in the deadline to file for substitution and the Official Canvass of the August Primary election. It would be next to logically impossible to have moved the official canvass up to before the deadline because the other counties in the district would have had to certify before Monday August 15, 2022 due to them being the less populous counties in the district and they report to Athens. This also causes a domino effect with other districts. Washington county is the most for the 95th Senate District which would require all their 5 less populous counties to have to certify before they could certify to our office. Washington is also in the 30th Senate District (State Central Committee races are based on) which Belmont is the most populous. This would cause all the 10 counties in the 30th Senate District to Certify to Belmont before that office could certify to Washington county and before Washington county to certify to our office. This would be a total of 15 counties that would have to hold official counts within a 2-day period because official counts could not begin before August 13, 2022 per the Secretary of State Directive. The statute does not state that the board must certify the candidate as a nominee. It just states the nominee. We know from the Unofficial results that Mr. Goodman received all of the Democratic vote, there were zero votes for any other candidate and there were no other candidates in that race on that ballot. We also know from our last election audit that this board was 100% accurate as far as counting the vote, which is not an unusual thing for this board thanks to the staff of this office. We also know that the Official canvass would not change that result and we know who the nominee is in this race. The central committee and the substituting candidate have done everything that they are required to do under the statute and if we somehow say that we are not going to certify the substituting candidate, we are telling them that because we cannot meet our deadline through no fault of the board because of August Primary with no change in other deadline, you cannot be on the ballot. I feel we need to accept the certification of selection.

Mr. Van Meter responded to Mr. Pettey that a lot of points he made were well taken however the one word that was used was nominee. In a primary election, we have nominees. In this August 2, 2022 election in particular Mr. Goodman was the only nominee. It could have been possible that we could have had 10 nominees, each one of those is a nominee until after the election and one is certified as a candidate. We are in a situation where we don't have a certified candidate. I do not think we have a candidate. We have reached out to the Secretary of State and they gave some guidance on this by giving us an email that stated you should move your date. This has put us in between a rock and a hard place. You address that perfectly that there was no way we could move that certification date. The 86th day deadline is in the Ohio Revised Code; it is in the law and you can't change that. I am questioning if you can replace someone, the way I see it right now, when we don't have a candidate to certify because of Mr. Goodman's withdrawal.

Mrs. Carpenter-Colvin continued with what Mr. Van Meter was stating. Let's say, for example, that we had no candidate, no one ran on the Democratic ticket in the primary. You could not come along now and put someone on because they have not been through the process and they're not certified because you don't have a candidate to replace. I think we are in a similar situation here. We don't have a candidate, he's not a candidate. He will be Friday, hopefully, but he is not now.

Mr. Van Meter stated that if he has withdrawn, we will not even have a candidate on Friday.

Mr. Pettey stated that he thought it was important to look at the actual statutory language because what the language says if a person nominated in a primary election as a party candidate for the election withdraws then here is the process. It is saying is if a person nominated in a primary election withdraws. It is not saying if a candidate withdraws and it is not saying if a person who's been nominated and certified as the candidate. This person has been nominated in a primary election; we know that from the unofficial results without any uncertainty. The only issue is that we haven't certified them yet and statute does not say that they have to be certified. There were not other candidates on the ballot, there were no votes cast for anyone else. So, he has been nominated, and he will be certified on Friday. My concern is , if our standard is going to be you have to have been certified, then we are saying that there is no such thing as a substitution process.

Mr. Van Meter stated that he did not agree Mr. Pettey on that issue and stated that he had asked Mr. Don Brey to come and give us some information regarding this issue.

Ms. McGuckin acknowledge Mr. Brey and stated that she would call on him at the end of the discussion.

Mr. Pettey asked a question to Mr. West regarding the State ex Rel. Ashbrooke V. Brown case. You indicated that the candidate in that case actually died before the day of the primary?

Mr. West stated no, on the day of the primary and he was the only candidate in that race.

Mr. Pettey asked if the supreme court's decision was that he should be allow to be on the ballot?

Mr. West stated that the Supreme Court's decision was essentially that because he would have won, they granted the writ of mandamus allowing the substitution.

Mr. Van Meter asked if a death and a withdrawal were the same thing?

Mr. West stated that is a very grey area as far as statue goes. Had this happened before the primary, there would not be a right to substitute necessarily because the statute for withdrawal before a primary does not allow a replacement. Because we are after the primary we have to look at the Attorney General Opinion 69-080, which says that a candidate who withdraws, dies or is disqualified in time before the deadline laid out in ORC 3513.31 can be substituted after the primary. In that case, it is the most instructive, given the very limited fact the we're basically in ground. Also in the O'Neil, the Morris case out of Canton, and some other ballot access cases recently, the Supreme Court has erred on the side of favoring competitive elections and granting valid access whether that's by substitution or independent candidate. There is also a Wayne County case that is only tangentially connected, but in that case an independent state representative candidate in 2016 filed petitions and the next day voted in the Democratic primary. Case was filed claiming that the candidate was not disaffiliated, because he voted in a Democratic Primary. In this case the Wayne County Common Pleas court and the District Court of appeals did rule to allow him on the ballot because the trial court found that simply voting in a primary is not enough to overcome that policy. They were in competitive elections and there was no Democratic candidate it that race. So , I think that there is a very strong policy consistently for at least 30 some years

favoring, granting substitutions or granting access to the ballot. There would be a strong likelihood that some would file a challenge if the board denies the ability to substitute here.

Mr. Pettey stated that we as county board of elections and other county boards have a statutory duty to promptly certify candidates and if we are failing to certify candidates before substitution deadlines, we are essentially not allowing substitution and violating our duties to promptly certify.

Mr. Van Meter spoke up stating that goes against the argument that Mr. Pettey just made about the fact that the Secretary of States suggesting to us to consider to move up our certification, which we were willing to do, but no guidance was given regarding how to get multiple counties to change certification dates and what to do in the event that it could not happen.

Mr. Pettey stated that what was meant by his previous argument was that allowing the substitution is the only remedy to the situation, given this set of circumstances.

Mr. Van Meter stated that he believes that Mrs. Conrath's paperwork has done everything correctly but the issue remains we do not have a candidate to replace at this time because the primary results were not certified and Mr. Goodman withdrew before that happened.

Mr. Pettey again stated that the rules say nothing about a candidate being certified, it only speaks of nominated.

Mr. Van Meter stated what I am wondering is the word nominee and candidate interchangeable?

Mr. Carpenter-Colvin stated that she disagreed because the nominee categories are for the primary election because they have been nominated by their party and then the party decides who goes on in the fall as a candidate.

Ms. McGuckin stated that this board has always had the policy of allowing people on the ballot.

Mr. Van Meter agreed with Ms. McGuckin.

Mr. Don Brey was called on by the chair to present his findings to the board.

Mr. Brey stated that the board is a statutory entity and created by statute and only has such right and duties as the statute puts upon it. That means the board must apply the statute as written not as we might wish then to be. ORC 3513.31 states

that two things must be in place for a replacement to happen. First, there must be a replacement filed by last Monday, which happened. Secondly, there has to have been a withdraw by “a person who is nominated in a primary election as a party candidate.” Party Candidate is defined in Ohio Revised Code 3501.01 (K) as any candidate who claims to be a member of a political party and who has been certified to appear on the office-type ballot at a general or special election as the nominee of a political party because the candidate has won the primary election of the candidate's party for the public office the candidate seeks, has been nominated. Mr. Goodman withdrew before certification was completed on August 8, 2022 wish under the law does not intitled him to be replaced. In Ohio Supreme Court case State ex rel. White V. Franklin County Board of Election said that even though there was a withdrawn prior to certification after the primary, the candidate won most of the vote in the primary and was uncontested the Franklin County Board of Elections did not certify the candidate to the ballot, which the supreme court rule as correct. Secondly, Directive 2022-40 was received 6 weeks ago and in that directive we are not required to have a certification meeting before August 13th, 2022. Six weeks were there for some legal challenge to be filed regarding the overlapping dates for withdraw of a candidate, yet none were filed. General Assembly could have done something about this but yet they have not and the law they did not change is the one we are bond by. I would respectfully ask the board to follow the law to the best of their ability.

Mr. Pettey asked Directive 2022-40 that you referenced did not make reference to the substitution process.

Mr. Brey stated that Mr. Pettey was correct.

Mr. Pettey sited that in this case because the deadline to withdraw had already passed and had filed for two offices at the same time.

Mr. Brey disagreed with Mr. Pettey.

Mr. West and Mr. Brey had further conversation about the law and cases mentioned above in particular.

All legal sites that were made are under Attachment 2 of these minutes.

Motion 2022:08:06

Mr. Pettey moved, seconded by Ms. McGuckin to accept Form 289 and accept the substitution of Tanya Conrath as the candidate for the 94th District House of

Representatives. Voting: Mrs. Carpenter-Colvin – No, Mr. Van Meter – No, Mr. Pettey – Yes and Ms. McGuckin – Yes. Motion Failed.

Motion 2022:08:07

Mr. Van Meter moved, seconded by Mrs. Carpenter-Colvin to approve Local Option Petition for Sunday Sales by Par Mar Oil on 235 Columbus Rd., Athens, Ohio and certify to the ballot for November 8, 2022 General Election. Motion passed unanimously.

Motion 2022:08:08

Mr. Pettey moved, seconded by Mrs. Carpenter-Colvin to approve Local Option Petition for Sunday Sales by Par Mar Oil on 139 N. Plains Rd., The Plains, Ohio and certify to the ballot for November 8, 2022 General Election. Motion passed unanimously.

Motion 2022:08:09

Mr. Van Meter moved, seconded by Mr. Pettey to approve Local Option Petition for Off-Premises sales of beer, wine and mixed beverages along with Sunday Sales by Lodi General Store on 2280 Old Route 33, Shade, Ohio and certify to the ballot for November 8, 2022 General Election. Motion passed unanimously.

Motion 2022:08:10 (Attachment 3)

Mr. Pettey moved, seconded by Mrs. Carpenter-Colvin to approve and add the 16 valid Provisionals to the August 2, 2022 Special Primary Election as presented by Director. Motion passed unanimously.

Motion 2022:08:11 (Attachment 3)

Mrs. Carpenter-Colvin moved, seconded by Mr. Van Meter to not approve 1 Provisional ballot due to voting in the wrong precinct and polling location. Motion passed unanimously.

Motion 2022:08:12 (Attachment 4)

Mrs. Carpenter-Colvin moved, seconded by Mr. Van Meter to not approve 7 Absentee ballots due to postmarked the day of election or later and they arrived late. Motion passed unanimously.

Motion 2022:08:13

Mr. Van Meter moved, seconded by Mr. Pettey to delegate the proofing of ballots to be completed by Director Quivey, Deputy Director Brooks and the Board of Elections office staff in three bipartisan teams of two for the November 8, 2022 General Election as described by Director Quivey. Motion passed unanimously.

Motion 2022:08:14

Mrs. Carpenter-Colvin moved, seconded by Mr. Pettey to allow the Director, Deputy Director and Board office staff to process provisional ballots, according to Directive 2022-12 page 245 for the November 8, 2022 General Election. Motion passed unanimously.

Motion 2022:08:15

Mr. Pettey moved, seconded by Mr. Van Meter to outsource the printing and mailing of absentee ballots to Graphic Village for the November 8, 2022 General Election. Motion passed unanimously.

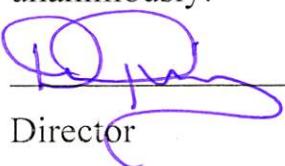
Motion 2022:08:16

Mr. Van Meter moved, seconded by Mr. Pettey to allow the Director, Deputy Director and Board Members or their designee to approve infrequent and minimally valued expenditures for food/snacks & non-alcoholic drinks for elections workers, poll workers and training in which the community is involved for the November 8, 2022 General Election. Pursuant to IRS Reg. 1.132-6 and IRS Reg. 1.119-1 all expenses meet the De Minimis Exclusion and/or Meals for the Convenience of the Employer and are excludable as taxable fringe. Motion passed unanimously.

All board members were asked to take the Annual Cyber Security Training need to be completed as soon as possible.

Motion 2022:08:17

Mr. Pettey moved, seconded by Mr. Van Meter to adjourn. Motion passed unanimously.



Director



Chair

Attachment 1 - Motion 2022:08:05

Expenses Paid Between July 14, 2022 and August 17, 2022

Time Warner Cable/Spectrum	Cable	\$103.42
The Dairy Barn	Rental Fee May	\$300.00
Glacier Mountain Bottled Water	Water	\$38.00
Amazon	Misc Supplies	\$131.42
Quill.com	Lamination & Cups	\$121.97
Amazon	Misc Supplies	\$151.61
Tony L. Brooks II	Bungee Cords	\$216.66
Net Data	Monitors	\$46.31
Tony L. Brooks II	Parking for Temp Workers	\$1,909.00
Minuteman Press	Photos for E-Pollbooks	\$82.00
Mark Porter Auto Plex	Repairs to Box Truck	\$561.83
Mark Porter Auto Plex	Repairs to Box Truck	\$1,751.91
Tony L. Brooks II	Snacks for Poll School	\$40.44
HVB Cardmember Services	Food for Staff	\$568.50
Gary Van Meter	Travel to Summer Conference	\$93.48
Tony L. Brooks II	Travel for Nursing Home Absentee	\$97.50
Debra Quivey	Travel to Summer Conference	\$93.48
Quadient	Mail Opener	\$11,761.00
Quadient	Folding and Stuffing Machine	\$11,547.00
Graphic Village	Absentee Printing and Mailing	\$1,169.42
Tony L. Brooks II	Travel for Nursing Home Absentee	\$48.75
Hocking Valley Bank	Gas for Vehicles	\$40.00
Tony L. Brooks II	Travel for Nursing Home Absentee	\$46.25

Ohio University	Signs for Election	\$4,578.65
Waterloo Community Senior Center	Rental Fee	\$100.00
Election Systems & Software	Election Day and Provisional Ballots	\$5,000.00
Election Systems & Software	Election Day and Provisional Ballots	\$2,005.37
Election Systems & Software	Test Ballots	\$101.92
Triad	Backup Signature Lists for Polling Locations	\$412.20
The Dairy Barn	Rental Fee August	\$300.00
Total		<u>\$43,618.09</u>

Attachment 2 – Discussion Regarding Form 289

Section 14.06 Death of Candidate Prior to General Election³⁶

MAJOR POLITICAL PARTY NOMINEE DIES AFTER THE DAY OF THE PRIMARY ELECTION MAJOR POLITICAL PARTY³⁷

If a person who was nominated in the party's primary election dies, the vacancy so created may be filled by the appropriate party committee by certifying to the board of elections the name of the person selected to fill the vacancy at a meeting called for that purpose.

The committee's chairperson must call a meeting and give each member of the committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of the committee are present at the meeting, a majority of those present may select a person to fill the vacancy.

The chairperson and secretary of the meeting shall certify, in writing and under oath, the name of the person selected to fill the vacancy. If the candidacy appears in more than one county, the certification must be filed with the board of elections of the most populous county not later than 4 p.m. on the 10th day before the general election. If the candidacy appears in only one county or part of a county, the certification is filed with the appropriate board of elections not later than 4 p.m. of the 5th day before the general election. The certification must be accompanied by the written acceptance of the nomination by the person whose name is certified.

MINOR POLITICAL PARTY NOMINEE DIES AFTER THE DAY OF THE PRIMARY ELECTION³⁸

If a person nominated by a minor political party in a primary election or nominated by petition under R.C. 3517.012 as a minor party candidate for election at the next general election dies, the vacancy so created may be filled by the appropriate party committee in accordance with the party's rules.

Certification must be made as in the manner provided for a major political party.

The chairperson and secretary of the meeting shall certify, in writing and under oath, the name of the person selected to fill the vacancy. If the candidacy appears in more than one county, the certification must be filed with the board of elections of the most populous county not later than 4 p.m. on the 10th day before the general election. If the

³⁶ R.C. 3513.30; R.C. 3513.31.

³⁷ R.C. 3513.31(G).

³⁸ R.C. 3513.31(G).

candidacy appears in only one county or part of a county, the certification is filed with the appropriate board of elections not later than 4 p.m. of the 5th day before the general election. The certification must be accompanied by the written acceptance of the nomination by the person whose name is certified.³⁹

INDEPENDENT OR NONPARTISAN CANDIDATE⁴⁰

If a person nominated by petition as an independent or nonpartisan candidate for the next general election dies prior to the 10th day before the general election, the vacancy may be filled by a majority of the committee of five designated in the nominating petition.

To fill the vacancy, a member of the committee shall, not later than 4 p.m. of the 5th day before the day of the general election, file with the election officials with whom the petition nominating the person was filed, a certificate signed and sworn to under oath by a majority of the members, designating the person they select to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is so certified.

VACANCY ON GENERAL ELECTION BALLOT MAY TRIGGER OTHER RIGHTS OF SELECTION⁴¹

When a person nominated as a candidate by a political party in a primary election or by nominating petition for an elective office for which candidates are nominated at a party primary election withdraws, dies, or is disqualified prior to the general election, the appropriate committee of any other major political party or committee of five that has not nominated a candidate for that office, or whose nominee as a candidate for that office has died without the vacancy so created having been filled, may fill the vacancy. The vacancy is filled in the same way a vacancy in a party nomination or nomination by petition is filled.

Section 14.07 Withdrawal

DEADLINES

1. Generally

Generally, a candidate may withdraw their candidacy at any time before a primary or general election by filing a written statement of withdrawal with the board of elections with whom the declaration of candidacy was filed or, in the

³⁹ R.C. 3513.31(A)-(E).

⁴⁰ R.C. 3513.31(H).

⁴¹ R.C. 3513.31(K).

case of a candidate for statewide office, the Secretary of State. However, there is an exception to this rule for partisan presidential candidates in a presidential primary election.

2. Presidential Primary Election⁴²

Ohio law imposes a different withdrawal deadline for candidates in primary elections in presidential years. The deadline for partisan presidential candidates to withdraw is 4 p.m. on the 40th day before the primary.

VALID NOTICE: WRITTEN STATEMENT FILED WITH APPROPRIATE ELECTION OFFICIALS⁴³

State law requires that a withdrawal of candidacy must be made in writing and filed with the election officials with whom the declaration of candidacy or nominating petition was filed. No board of elections may take action relating to a reported withdrawal before receiving the official written notice of the withdrawal from the candidate.

SELECTION OF PERSON TO FILL VACANCY ON GENERAL ELECTION BALLOT⁴⁴

1. Major Political Party

If a person nominated in a party primary election withdraws as the nominee, the vacancy in nomination may be filled by the appropriate party committee.

A meeting must be called by the committee chairperson, who must give each member of the committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of the committee are present at the meeting, a majority of those present may select a person to fill the vacancy.

The chairperson and secretary of the meeting must certify the name of the person selected to fill the vacancy to the appropriate election officials, in writing and under oath, not later than the 86th day before the general election. The certification must be accompanied by the written acceptance of the person chosen to fill the vacancy.

2. Minor Political Party⁴⁵

A vacancy created by a minor political party candidate's withdrawal may be filled in accordance with the party's rules by authorized officials of the party.

⁴²R.C. 3513.30(C).

⁴³R.C. 3513.30(B)-(E).

⁴⁴R.C. 3513.31(A)-(E).

⁴⁵R.C. 3513.31(A)-(E).

The chairperson and secretary of the meeting must certify the name of the person selected to fill the vacancy to the appropriate election officials, in writing and under oath, not later than the 86th day before the general election. The certification must be accompanied by the written acceptance of the person chosen to fill the vacancy.

3. Independent or Nonpartisan Candidate⁴⁶

A vacancy created by the withdrawal of a person nominated by petition as an independent or nonpartisan candidate for election at the next general election may be filled by a majority of the committee of five designated on the candidate's nominating petition. A member of that committee must certify the name of the person selected to fill the vacancy to the election officials with whom the candidate filed the nominating petition, in writing and under oath, not later than the 86th day before general election. The certification must be accompanied by the written acceptance of the person chosen to fill the vacancy.

4. Vacancy on General Election Ballot May Trigger Other Rights of Selection⁴⁷

When a person nominated as a candidate by a political party in a primary election or by nominating petition for an elective office for which candidates are nominated at a party primary election withdraws, dies, or is disqualified prior to the general election, the appropriate committee of any other major political party or committee of five that has not nominated a candidate for that office, or whose nominee as a candidate for that office has died without the vacancy so created having been filled, may fill the vacancy. The vacancy is filled in the same way a vacancy in a party nomination or nomination by petition is filled.

SELECTION OF CANDIDATES FOR ELECTION TO FILL AN UNEXPIRED TERM

If a person holding elected office dies or resigns after the 115th day before the day of a primary election and a person may lawfully be elected at the next general election to fill the unexpired term,⁴⁸ the appropriate committee of each political party, acting as in the case of a vacancy in a party nomination, may select a person as the party candidate for election for the unexpired term at the general election. The deadline for certifying the candidate's name to the board of elections depends on the timing of the vacancy:

- If the vacancy occurs prior to the 86th day before the general election, the

⁴⁶R.C. 3513.31(f).

⁴⁷R.C. 3513.31(k).

⁴⁸R.C. 3513.31(l); See Filling Vacancies in Elective Office.

committee must certify the person's name to the appropriate election official no later than 4:00 p.m. on the 86th day before the general election or the 10th day after the vacancy occurs, whichever is later.

- If the vacancy occurs after the 86th day before the next general election and 6 or more days prior to the 40th day before the general election, the appropriate committee may select a person as the party candidate and certify that person no later than 4:00 p.m. on the 10th day after the vacancy occurs.
- When the vacancy occurs fewer than 6 days before the 40th day before the general election, the filing deadline is 4:00 p.m. on the 36th day before the general election.

Thereafter, the candidate's name will appear on the ballot as the party candidate. If a person has been nominated in a primary election or nominated by petition under R.C. 3517.012, the authorized committee of that political party cannot select and certify a person as the party candidate.

Section 14.08 Special Circumstances (Death or Withdrawal of Candidate for Governor / Lieutenant Governor or Representative to Congress)

CANDIDATE FOR GOVERNOR / LIEUTENANT GOVERNOR⁴⁹

1. Death, Withdrawal, or Disqualification Before the Primary Election

If a candidate for governor or lieutenant governor dies, withdraws, or is disqualified as a candidate prior to the 70th day before the day of a primary election, the vacancy on the ballot is filled by appointment by the joint candidate for the office of governor or lieutenant governor, respectively. Such candidate for governor must certify the name and residence address of the person selected to fill such vacancy to the Secretary of State in writing and under oath, not later than the 65th day before the primary election.

If a candidate for the office of governor or lieutenant governor dies on or after the 70th day, but prior to the 10th day, before a primary election, the vacancy so created is filled by appointment by the joint candidate for the office of

⁴⁹ R.C. 3513.311

Section 3513.31 | Withdrawal, disqualification, or death of candidate prior to general election.

Ohio Revised Code / Title 35 Elections / Chapter 3513 Primaries; Nominations

Effective: February 5, 2014 Latest Legislation: Senate Bill 193 - 130th General Assembly

(A) If a person nominated in a primary election as a candidate for election at the next general election, whose candidacy is to be submitted to the electors of the entire state, withdraws as that candidate or is disqualified as that candidate under section 3513.052 of the Revised Code, the vacancy in the party nomination so created may be filled by the state central committee of the major political party that made the nomination at the primary election, if the committee's chairperson and secretary certify the name of the person selected to fill the vacancy by the time specified in this division, at a meeting called for that purpose. The meeting shall be called by the chairperson of that committee, who shall give each member of the committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of the committee are present at the meeting, a majority of those present may select a person to fill the vacancy. The chairperson and secretary of the meeting shall certify in writing and under oath to the secretary of state, not later than the eighty-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is certified. A vacancy in a party nomination that may be filled by a minor political party shall be filled in accordance with the party's rules by authorized officials of the party. Certification must be made as in the manner provided for a major political party.

(B) If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a district comprised of more than one county but less than all of the counties of the state, withdraws as that candidate or is disqualified as that candidate under section 3513.052 of the Revised Code, the vacancy in the party nomination so created may be filled by the state central committee of the major political party that made the nomination at the primary election, if the committee's chairperson and secretary certify the name of the person selected to fill the vacancy by the time specified in this division, at a meeting called for that purpose. The meeting shall be called by the chairperson of that committee, who shall give each member of the committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of the committee are present at the meeting, a majority of those present may select a person to fill the vacancy. The chairperson and secretary of the meeting shall certify in writing and under oath to the secretary of state, not later than the eighty-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is certified. A vacancy in a party nomination that may be filled by a minor political party shall be filled in accordance with the party's rules by authorized officials of the party. Certification must be made as in the manner provided for a major political party.

the vacancy in the party nomination so created may be filled by a district committee of the major political party that made the nomination at the primary election, if the committee's chairperson and secretary certify the name of the person selected to fill the vacancy by the time specified in this division, at a meeting called for that purpose. The district committee shall consist of the chairperson and secretary of the county central committee of such political party in each county in the district. The district committee shall be called by the chairperson of the county central committee of such political party of the most populous county in the district, who shall give each member of the district committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of the district committee are present at the district committee meeting, a majority of those present may select a person to fill the vacancy. The chairperson and secretary of the meeting shall certify in writing and under oath to the board of elections of the most populous county in the district, not later than four p.m. of the eighty-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is certified. A vacancy in a party nomination that may be filled by a minor political party shall be filled in accordance with the party's rules by authorized officials of the party. Certification must be made as in the manner provided for a major political party.

(C) If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a county, withdraws as that candidate or is disqualified as that candidate under section 3513.052 of the Revised Code, the vacancy in the party nomination so created may be filled by the county central committee of the major political party that made the nomination at the primary election, or by the county executive committee if so authorized, if the committee's chairperson and secretary certify the name of the person selected to fill the vacancy by the time specified in this division, at a meeting called for that purpose. The meeting shall be called by the chairperson of that committee, who shall give each member of the committee at le Top

days' notice of the time, place, and purpose of the meeting. If a majority of the members of the committee are present at the meeting, a majority of those present may select a person to fill the vacancy. The chairperson and secretary of the meeting shall certify in writing and under oath to the board of that county, not later than four p.m. of the eighty-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is certified. A vacancy in a party nomination that may be filled by a minor political party shall be filled in accordance with the party's rules by authorized officials of the party. Certification must be made as in the manner provided for a major political party.

(D) If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a district within a county, withdraws as that candidate or is disqualified as that candidate under section 3513.052 of the Revised Code, the vacancy in the party nomination so created may be filled by a district committee consisting of those members of the county central committee or, if so authorized, those members of the county executive committee in that county of the major political party that made the nomination at the primary election who represent the precincts or the wards and townships within the district, if the committee's chairperson and secretary certify the name of the person selected to fill the vacancy by the time specified in this division, at a meeting called for that purpose. The district committee meeting shall be called by the chairperson of the county central committee or executive committee, as appropriate, who shall give each member of the district committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of the district committee are present at the district committee meeting, a majority of those present may select a person to fill the vacancy. The chairperson and secretary of the district committee meeting shall certify in writing and under oath to the board of the county, not later than four p.m. of the eighty-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification must be accompanied by the w Top

acceptance of the nomination by the person whose name is certified. A vacancy in a party nomination that may be filled by a minor political party shall be filled in accordance with the party's rules by authorized officials of the party. Certification must be made as in the manner provided for a major political party.

(E) If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a subdivision within a county, withdraws as that candidate or is disqualified as that candidate under section 3513.052 of the Revised Code, the vacancy in the party nomination so created may be filled by a subdivision committee consisting of those members of the county central committee or, if so authorized, those members of the county executive committee in that county of the major political party that made the nomination at that primary election who represent the precincts or the wards and townships within that subdivision, if the committee's chairperson and secretary certify the name of the person selected to fill the vacancy by the time specified in this division, at a meeting called for that purpose.

The subdivision committee meeting shall be called by the chairperson of the county central committee or executive committee, as appropriate, who shall give each member of the subdivision committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of the subdivision committee are present at the subdivision committee meeting, a majority of those present may select a person to fill the vacancy. The chairperson and secretary of the subdivision committee meeting shall certify in writing and under oath to the board of the county, not later than four p.m. of the eighty-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is certified. A vacancy in a party nomination that may be filled by a minor political party shall be filled in accordance with the party's rules by authorized officials of the party. Certification must be made in the manner provided for a major political party.

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(F) If a person nominated by petition as an independent or nonpartisan candidate for election at the next general election withdraws as that candidate or is disqualified as that candidate under section 3513.052 of the Revised Code, the vacancy so created may be filled by a majority of the committee of five, as designated on the candidate's nominating petition, if a member of that committee certifies in writing and under oath to the election officials with whom the candidate filed the candidate's nominating petition, not later than the eighty-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification shall be accompanied by the written acceptance of the nomination by the person whose name is certified and shall be made in the manner provided for a major political party.

(G) If a person nominated in a primary election or nominated by petition under section 3517.012 of the Revised Code as a party candidate for election at the next general election dies, the vacancy so created may be filled by the same committee in the same manner as provided in this section for the filling of similar vacancies created by withdrawals or disqualifications under section 3513.052 of the Revised Code, except that the certification, when filling a vacancy created by death, may not be filed with the secretary of state, or with a board of the most populous county of a district, or with the board of a county in which the major portion of the population of a subdivision is located, later than four p.m. of the tenth day before the day of such general election, or with any other board later than four p.m. of the fifth day before the day of such general election.

(H) If a person nominated by petition as an independent or nonpartisan candidate for election at the next general election dies prior to the tenth day before the day of that general election, the vacancy so created may be filled by a majority of the committee of five designated in the nominating petition to represent the candidate named in it. To fill the vacancy a member of the committee shall, not later than four p.m. of the fifth day before the day of the general election, file with the election officials with whom the petition nominating the person was filed, a certificate signed and sworn to under oath by a

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of the members, designating the person they select to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is so certified.

(I) If a person holding an elective office dies or resigns subsequent to the one hundred fifteenth day before the day of a primary election and prior to the eighty-sixth day before the day of the next general election, and if, under the laws of this state, a person may be elected at that general election to fill the unexpired term of the person who has died or resigned, the appropriate committee of each political party, acting as in the case of a vacancy in a party nomination, as provided in divisions (A) to (D) of this section, may select a person as the party candidate for election for such unexpired term at that general election, and certify the person's name to the appropriate election official not later than four p.m. on the eighty-sixth day before the day of that general election, or on the tenth day following the day on which the vacancy occurs, whichever is later. When the vacancy occurs on or subsequent to the eighty-sixth day and six or more days prior to the fortieth day before the general election, the appropriate committee may select a person as the party candidate and certify the person's name, as provided in the preceding sentence, not later than four p.m. on the tenth day following the day on which the vacancy occurs. When the vacancy occurs fewer than six days before the fortieth day before the general election, the deadline for filing shall be four p.m. on the thirty-sixth day before the general election. Thereupon the name shall be printed as the party candidate under proper titles and in the proper place on the proper ballots for use at the election. If a person has been nominated in a primary election or nominated by petition under section 3517.012 of the Revised Code, the authorized committee of that political party shall not select and certify a person as the party candidate.

(J) Each person desiring to become an independent candidate to fill the unexpired term shall file a statement of candidacy and nominating petition, as provided in section 3513.261 of the Revised Code, with the appropriate election official not later than four p.m. on the tenth day following the day on which the vacancy occurs, provided that when the vacanc Top

fewer than six days before the fifty-sixth day before the general election, the deadline for filing shall be four p.m. on the fiftieth day before the general election. The nominating petition shall contain at least seven hundred fifty signatures and no more than one thousand five hundred signatures of qualified electors of the district, political subdivision, or portion of a political subdivision in which the office is to be voted upon, or the amount provided for in section 3513.257 of the Revised Code, whichever is less.

(K) When a person nominated as a candidate by a political party in a primary election or by nominating petition for an elective office for which candidates are nominated at a party primary election withdraws, dies, or is disqualified under section 3513.052 of the Revised Code prior to the general election, the appropriate committee of any other major political party or committee of five that has not nominated a candidate for that office, or whose nominee as a candidate for that office has withdrawn, died, or been disqualified without the vacancy so created having been filled, may, acting as in the case of a vacancy in a party nomination or nomination by petition as provided in divisions (A) to (F) of this section, whichever is appropriate, select a person as a candidate of that party or of that committee of five for election to the office.

Available Versions of this Section

February 5, 2014 – Senate Bill 193 - 130th General Assembly

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Section 3513.052 | Candidacy for more than one office at a time prohibited.

Ohio Revised Code / Title 35 Elections / Chapter 3513 Primaries; Nominations

Effective: July 2, 2010 Latest Legislation: House Bill 48 - 128th General Assembly

(A) No person shall seek nomination or election to any of the following offices or positions at the same election by filing a declaration of candidacy and petition, a declaration of intent to be a write-in candidate, or a nominating petition, or by becoming a candidate through party nomination in a primary election, or by the filling of a vacancy under section 3513.30 or 3513.31 of the Revised Code:

- (1) Two or more state offices;
- (2) Two or more county offices;
- (3) A state office and a county office;
- (4) A federal office and a state or county office;
- (5) Any combination of two or more municipal or township offices, positions as a member of a city, local, or exempted village board of education, or positions as a member of a governing board of an educational service center.

(B) The secretary of state or a board of elections shall not accept for filing a declaration of candidacy and petition, a declaration of intent to be a write-in candidate, or a nominating petition of a person seeking to become a candidate if that person, for the same election, has already filed a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition, or has become a candidate through party nomination at a primary election or by the filling of a vacancy under section 3513.30 or 3513.31 of the Revised Code for:

- (1) Any federal, state, or county office, if the declaration of candidacy, declaration of intent to be a write-in candidate, or nominating petition is for a state or county office;
- (2) Any municipal or township office, or for member of a city, local, or exempted village board of education, or for member of a governing board of an educational service center, if the declaration of candidacy, declaration of intent to be a write-in candidate, or nominating petition is for a municipal or township office, or for member of a city, local, or exempted village board of education, or for member of a governing board of an educational service center.
- (C)(1) If the secretary of state determines, before the day of the primary election, that a person is seeking nomination to more than one office at that election in violation of division (A) of this section, the secretary of state shall do one of the following:
- (a) If each office or the district for each office for which the person is seeking nomination is wholly within a single county and none of those offices is a federal office, the secretary of state shall notify the board of elections of that county. The board then shall determine the date on which the person first sought to become a candidate for each of those offices by filing a declaration of candidacy or a declaration of intent to be a write-in candidate or by the filling of a vacancy under section 3513.30 of the Revised Code. The board shall vote promptly to disqualify that person as a candidate for each office for which the person sought to become a candidate after the date on which the person first sought to become a candidate for any of those offices. If the board determines that the person sought to become a candidate for more than one of those offices on the same date, the board shall vote promptly to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks nomination, according to the ballot order prescribed under section 3505.03 of the Revised Code.
- (b) If one or more of the offices for which the person is seeking nomination is a state office or an office with a district larger than a single county and none of the offices for which the

person is seeking nomination is a federal office, the secretary of state shall determine the date on which the person first sought to become a candidate for each of those offices by filing a declaration of candidacy or a declaration of intent to be a write-in candidate or by the filling of a vacancy under section 3513.30 of the Revised Code. The secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office for which the person sought to become a candidate after the date on which the person first sought to become a candidate for any of those offices. If the secretary of state determines that the person sought to become a candidate for more than one of those offices on the same date, the secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks nomination, according to the ballot order prescribed under section 3505.03 of the Revised Code. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state.

(c) If each office or the district for each office for which the person is seeking nomination is wholly within a single county and any of those offices is a federal office, the secretary of state shall notify the board of elections of that county. The board then shall vote promptly to disqualify that person as a candidate for each office that is not a federal office.

(d) If one or more of the offices for which the person is seeking nomination is a state office and any of the offices for which the person is seeking nomination is a federal office, the secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state.

(2) If a board of elections determines, before the day of the primary election, that a person is seeking nomination to more than one office at that election in violation of division (A) of

this section, the board shall do one of the following:

- (a) If each office or the district for each office for which the person is seeking nomination is wholly within that county and none of those offices is a federal office, the board shall determine the date on which the person first sought to become a candidate for each of those offices by filing a declaration of candidacy or a declaration of intent to be a write-in candidate or by the filling of a vacancy under section 3513.30 of the Revised Code. The board shall vote promptly to disqualify that person as a candidate for each office for which the person sought to become a candidate after the date on which the person first sought to become a candidate for any of those offices. If the board determines that the person sought to become a candidate for more than one of those offices on the same date, the board shall vote promptly to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks nomination, according to the ballot order prescribed under section 3505.03 of the Revised Code.
- (b) If one or more of the offices for which the person is seeking nomination is a state office or an office with a district larger than a single county and none of the offices for which the person is seeking nomination is a federal office, the board shall notify the secretary of state. The secretary of state then shall determine the date on which the person first sought to become a candidate for each of those offices by filing a declaration of candidacy or a declaration of intent to be a write-in candidate or by the filling of a vacancy under section 3513.30 of the Revised Code. The secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office for which the person sought to become a candidate after the date on which the person first sought to become a candidate for any of those offices. If the secretary of state determines that the person sought to become a candidate for more than one of those offices on the same date, the secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that would be listed on the ballot below the

highest office for which that person seeks nomination, according to the ballot order prescribed under section 3505.03 of the Revised Code. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state.

(c) If each office or the district for each office for which the person is seeking nomination is wholly within a single county and any of those offices is a federal office, the board shall vote promptly to disqualify that person as a candidate for each office that is not a federal office.

(d) If one or more of the offices for which the person is seeking nomination is a state office and any of the offices for which the person is seeking nomination is a federal office, the board shall notify the secretary of state. The secretary of state then shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state.

(D)(1) If the secretary of state determines, after the day of the primary election and before the day of the general election, that a person is seeking election to more than one office at that election in violation of division (A) of this section, the secretary of state shall do one of the following:

(a) If each office or the district for each office for which the person is seeking election is wholly within a single county and none of those offices is a federal office, the secretary of state shall notify the board of elections of that county. The board then shall determine the offices for which the person seeks to appear as a candidate on the ballot. The board shall vote promptly to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section 3505.03 of the Revised Code. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination,

the board shall not issue that certificate for that person for any office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section 3505.03 of the Revised Code.

(b) If one or more of the offices for which the person is seeking election is a state office or an office with a district larger than a single county and none of the offices for which the person is seeking election is a federal office, the secretary of state shall promptly investigate and determine the offices for which the person seeks to appear as a candidate on the ballot. The secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section 3505.03 of the Revised Code. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section 3505.03 of the Revised Code.

(c) If each office or the district for each office for which the person is seeking election is wholly within a single county and any of those offices is a federal office, the secretary of state shall notify the board of elections of that county. The board then shall vote promptly to disqualify that person as a candidate for each office that is not a federal office. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that is not a federal office.

(d) If one or more of the offices for which the person is seeking election is a state office and any of the offices for which the person is seeking election is a federal office, the secretary of state shall order the board of elections of each county in which the person is seeking to

appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that is not a federal office.

(2) If a board of elections determines, after the day of the primary election and before the day of the general election, that a person is seeking election to more than one office at that election in violation of division (A) of this section, the board of elections shall do one of the following:

(a) If each office or the district for each office for which the person is seeking election is wholly within that county and none of those offices is a federal office, the board shall determine the offices for which the person seeks to appear as a candidate on the ballot. The board shall vote promptly to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section 3505.03 of the Revised Code. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section 3505.03 of the Revised Code.

(b) If one or more of the offices for which the person is seeking election is a state office or an office with a district larger than a single county and none of the offices for which the person is seeking election is a federal office, the board shall notify the secretary of state. The secretary of state promptly shall investigate and determine the offices for which the person seeks to appear as a candidate on the ballot. The secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that would be listed on the ballot below the

highest office for which that person seeks election, according to the ballot order prescribed under section 3505.03 of the Revised Code. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that would be listed on the ballot below the highest office for which that person seeks election, according to the ballot order prescribed under section 3505.03 of the Revised Code.

(c) If each office or the district for each office for which the person is seeking election is wholly within that county and any of those offices is a federal office, the board shall vote promptly to disqualify that person as a candidate for each office that is not a federal office. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that is not a federal office.

(d) If one or more of the offices for which the person is seeking election is a state office and any of the offices for which the person is seeking election is a federal office, the board shall notify the secretary of state. The secretary of state shall order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified shall vote promptly to disqualify the person as a candidate in accordance with the order of the secretary of state. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board shall not issue that certificate for that person for any office that is not a federal office.

(E) When a person is disqualified as a candidate under division (C) or (D) of this section, on or before the seventieth day before the day of the applicable election, the board of elections shall remove the person's name from the ballot for any office for which that person has been disqualified as a candidate according to the directions of the secretary of state. When a

person is disqualified as a candidate under division (C) or (D) of this section after the seventieth day before the day of the applicable election, the board of elections shall not remove the person's name from the ballot for any office for which that person has been disqualified as a candidate. The board of elections shall post a notice at each polling location on the day of the applicable election, and shall enclose with each absent voter's ballot given or mailed after the candidate is disqualified, a notice that votes for the person for the office for which the person has been disqualified as a candidate will be void and will not be counted. If the name is not removed from the ballots before the day of the election, the votes for the disqualified candidate are void and shall not be counted.

(F) Any vacancy created by the disqualification of a person as a candidate under division (C) or (D) of this section may be filled in the manner provided for in sections 3513.30 and 3513.31 of the Revised Code.

(G) Nothing in this section or section 3513.04, 3513.041, 3513.05, 3513.251, 3513.253, 3513.254, 3513.255, 3513.257, 3513.259, or 3513.261 of the Revised Code prohibits, and the secretary of state or a board of elections shall not disqualify, a person from being a candidate for an office, if that person timely withdraws as a candidate for any offices specified in division (A) of this section for which that person first sought to become a candidate by filing a declaration of candidacy and petition, a declaration of intent to be a write-in candidate, or a nominating petition, by party nomination in a primary election, or by the filling of a vacancy under section 3513.30 or 3513.31 of the Revised Code.

(H) As used in this section:

(1) "State office" means the offices of governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, member of the state board of education, member of the general assembly, chief justice of the supreme court, and justice of the supreme court.

(2) "Timely withdraws" means either of the following:

(a) Withdrawing as a candidate before the applicable deadline for filing a declaration of candidacy, declaration of intent to be a write-in candidate, or nominating petition for the subsequent office for which the person is seeking to become a candidate at the same election;

(b) Withdrawing as a candidate before the applicable deadline for the filling of a vacancy under section 3513.30 or 3513.31 of the Revised Code, if the person is seeking to become a candidate for a subsequent office at the same election under either of those sections.

Available Versions of this Section

July 2, 2010 – House Bill 48 - 128th General Assembly

38 Ohio St. 3d 115 (1988)

THE STATE, EX REL. ASHBROOK ET AL.,
v.
BROWN, SECY, OF STATE, ET AL.

No. 88-1165.

Supreme Court of Ohio.

Submitted September 20, 1988.

Decided September 23, 1988.

Schaller, Hostetter & Campbell and *Thomas K. Campbell*, for relators.

Anthony J. Celebrezze, Jr., attorney general, and *Catherine M. Cola*, for respondent Secretary of State.

B. Kevin Bennett, assistant prosecuting attorney, for respondent Board of Elections of Licking County.

Per Curiam.

Relators argue that Wheeler's death must be considered an involuntary withdrawal of a candidate for which the law permits 116 a substitution. Respondent Secretary of State #116 argues that the law concerning deceased candidates does not allow substitution for a candidate who dies on primary election day, and that even if it did, the central committee did not follow the applicable procedures in making the substitution. We agree with relators and grant the writ.

R.C. 3513.17 requires removal from the primary ballot of the name of a candidate for county office who dies more than five days before the primary election. For other candidates, it requires removal of the name if death occurs more than ten days before the election. R.C. 3513.17 then concludes:

"In no case shall votes cast for a deceased candidate be counted or recorded."

The Secretary of State contends that this is a comprehensive prohibition applicable to all deceased candidates and that, since Wheeler was a deceased candidate on and after election day, votes for him may not be counted or recorded.

R.C. 3513.31 provides in part:

"If a person nominated in a primary election as a party candidate for election at the next general election dies, the vacancy so created may be filled by the same committee in the same manner as provided in this section for the filling of similar vacancies created by withdrawals ***."

The Secretary of State contends that since Wheeler's votes could not be counted or recorded pursuant to R.C. 3513.17, he was not a "person nominated in a primary election" whose vacancy could be filled under R.C. 3513.31.

Relators argue that the public policy favoring freely competitive elections should prevent such a result. They rely on *State, ex rel. Flex, v. Gwin* (1989), 20 Ohio St. 2d 29, 49 O.O. 2d 185, 252 N.E. 2d 289, and *State, ex rel. Giuliani, v. Cuyahoga Cty. Bd. of Elections* (1984), 14 Ohio St. 3d 8, 14 OBR 314, 471 N.E. 2d 148, in which this court declined to interpret statutes literally when the result would have been to prevent freely competitive elections.

We note that the prohibition of R.C. 3513.17, that "[i]n no case shall votes cast for a deceased candidate be counted or recorded," is ambiguous as applied to deceased candidates for whom absentee votes have been cast before their death. Such votes, when cast, were not cast for a deceased candidate. R.C. 1.49 provides in pertinent part: "If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters *** (E) [i]he consequences of a particular construction ***." The consequences of construing R.C. 3513.17 as the Secretary of State contends would be to preclude a freely competitive general election in November because an untimely death had occurred in May. We reject this construction and construe the prohibition of R.C. 3513.17 narrowly, to apply only to votes cast after a candidate dies.

We note from the certification of the board of elections that absent voters' ballots containing votes for Wheeler were received before his death. We hold that these votes were not cast for a deceased candidate when cast and therefore must be counted and recorded. Wheeler having thus received votes in an uncontested primary, we hold that the respondents have a clear duty to declare him the nominee.

The Secretary of State also argues that Ashbrook's appointment should be prohibited because the notice of the meeting to fill the vacancy was vague and not in compliance with the notice requirements of R.C. 3513.31. We have examined the 117 notice and find *117 that, although it was not a model of clarity, it did fairly inform the members of the central committee that the purpose of the meeting was to select a replacement for Wheeler. Accordingly, R.C. 3513.31 requires the respondents to permit relators to fill the vacancy as provided in that section.

Mandamus will issue if the court finds that the relator has a clear legal right to the relief prayed for, the respondent is under a clear legal duty to perform the requested act, and the relator has no plain and adequate remedy at law. *State, ex rel. Westchester, v. Bacon* (1980), 61 Ohio St. 2d 42, 15 O.O. 3d 53, 399 N.E. 2d 81, paragraph one of the syllabus. Moreover, the court has a duty to construe statutes, if necessary, and thereafter evaluate the clear right or duty. *State, ex rel. Melvin, v. Sweeney* (1950), 154 Ohio St. 223, 43 O.O. 36, 94 N.E. 2d 785. Here, the construction accorded R.C. 3513.17 and 3513.31 establishes relators' clear right and respondents' clear duty. Respondents have not argued, and we do not find, that relators have a plain and adequate remedy at law. Accordingly, we grant the writ and order respondents to count and record the absent voters' ballots for Wheeler received before May 3, 1988; to certify him as the nominee; to permit the relator central committee to substitute relator Ashbrook for Wheeler as the party candidate for county commissioner at the general election to be held in November 1988, pursuant to the "certification of candidate" and "acceptance of nomination" filed with the board of elections on July 1, 1988, and as otherwise provided in R.C. 3513.31; and to take all further actions necessary for Ashbrook's name to appear on the ballot at the general election.

Writ granted.

MOYER, C.J., SWEENEY, LOCHER, HOLMES, DOUGLAS, WRIGHT and H. BROWN, JJ., concur.

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OPINION NO. 69-080

Syllabus:

If for any reason a political party candidate for public office withdraws, dies, or is incapacitated to hold office at any time, not excluded by the time limits specified in Section 3513.31, Revised Code, such candidate vacancy may be filled pursuant to such section.

To: Ted W. Brown, Secretary of State, Columbus, Ohio
By: Paul W. Brown, Attorney General, July 3, 1969

Your request for my opinion reads in pertinent part as follows:

"Can the vacancy created by the death of a candidate who filed a declaration of candidacy for nomination as a candidate for a political party be filled by said political party after the May primary date in accordance with the provisions of Section 3513.31 of the Revised Code when said candidate died in April, prior to the date when a primary election would have been held by his political party, although in fact, no such primary election was held due to a lack of contest for the nomination as Republican party candidates to any elective office? We will appreciate your advice on this question so that we can relay the answer to the Belmont County Board of Elections."

The per curiam opinion in The State, ex rel. Gottlieb v. Sulligan, et al., 175 Ohio St. 238 (1963), along with two reasonable assumptions, is, in my opinion, completely dispositive of your question. Random statements of the court are as follows:

"The sole issue in this case is whether a person selected as a party candidate for an office in a primary election who withdraws his candidacy for that office is eligible for selection as a party candidate by the party committee to fill a vacancy in the nomination for another office created by the withdrawal of the candidate originally nominated."

"The determination of this question rests on the construction of Section 3513.04, Revised Code, which reads in part as follows:

"No person who seeks party nomination for an office or position at a primary election by declaration of candidacy shall be permitted to become a candidate at the following general election for any office by nominating petition or by write-in."

* * * * *

* * * * an examination of this section reveals that by its very terms its operation is confined to those situations where a candidate seeks a place on the ballot either by a write-in vote or by nominating petition. No reference is made to the present situation whereby a candidate is selected by a party committee under the provisions of Section 3513.31, Revised Code. Thus, there is no direct prohibition of respondent Flask's candidacy by this section unless, as urged by relator, selection by party committee is equivalent to selection by nominating petition.

* * * * *

"Inasmuch as Section 3513.04, Revised Code, specifically refers to a 'nominating petition,' it is necessary to determine the meaning of this phrase under the Ohio statutes. An examination of the election laws indicates that the phrase, 'nominating petition,' has a specific meaning. Under our statutes the candidates for public office may gain nomination by two methods: One, by filing a declaration of candidacy accompanied by a petition entitling one to be a participant in the direct party primary wherein candidates from all political parties seek their nomination; or, two, by what is designated as a nominating petition, the method by which the independent candidate may seek his place on the elective ballot. (See Section 3513.252, Revised Code.) In other words, the nominating petition is the method by which the independent candidate seeks his place on the elective ballot. Clearly a selection by a party committee of a party candidate to fill a vacancy on the ballot would not fall within the meaning of a nominating petition. The purpose of Section 3513.31, Revised Code, is to replace a duly nominated party candidate, who, because of death or withdrawal, has created a vacancy in the party ticket. The selection is of a party candidate and not an independent candidate and thus does not constitute a nominating petition or a petition in any sense.

"The purpose of Section 3513.04, Revised Code, clearly is to prevent a disappointed party candidate who has failed to be selected as a nominee in the primary from again trying to be placed on the elective ballot by entering the arena as an independent candidate.

"The operation of Section 3513.04, Revised Code, is confined to a nominating petition within the meaning of such term as used in the Ohio statutes and does not re-

late to persons selected by a party committee under the terms of Section 3513.31, Revised Code.

*** * ***

Section 3513.31, Revised Code, relating to the selection of candidates to fill vacancies, is therefore, valid, and a selection thereunder does not constitute a selection by nominating petition. Therefore, inasmuch as Section 3513.04, Revised Code, confines its prohibitions to those seeking candidacy or election by write-in votes or nominating petition, it does not apply to a candidate selected by party committee under the provisions of Section 3513.31, Revised Code."

(Emphasis added.)

My first assumption, if one is indeed necessary, is that if for any reason a political party candidate for public office withdraws, dies, or is incapacitated to hold office at any time, not excluded by the time limits specified in Section 3513.31, Revised Code, such candidate vacancy may be filled pursuant to such section, which provides in pertinent part as follows:

"If a person nominated in a primary election as a candidate for election at the next general election dies, the vacancy so created may be filled by the same committee in the same manner as provided in the first five paragraphs of this section for the filling of similar vacancies created by withdrawals, except that the certification when filling a vacancy created by death, may not be filed with the secretary of state, or with a board of the most populous county of a district, or with the board of a county in which the major portion of the population of a subdivision is located, later than four p.m. of the tenth day before the day of such general election, or with any other board later than four p.m. of the fifth day before the day of such general election."

My second assumption is that when a person has filed a declaration for candidacy and is nominated pursuant to Section 3513.02, Revised Code, it is tantamount to having been nominated at a primary election for the purposes of Section 3513.31, Revised Code.

It is, therefore, my opinion, and you are advised that when a vacancy is created by the death of a candidate who filed a declaration of candidacy for nomination as a candidate for a political party, it may be filled by said political party after the May primary date in accordance with the provisions of Section 3513.31 of the Revised Code, when said candidate died in April, prior to the date when a primary election would have been held by his political party, although in fact, no such primary election was held due to a lack of contest for the nomination as Republican party candidates to any elective office.

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65 Ohio St.3d 45
600 N.E.2d 656

The STATE ex rel. WHITE et al.
v.

FRANKLIN COUNTY BOARD OF
ELECTIONS et al.
No. 92-1809.
Supreme Court of Ohio.
Submitted and Decided Oct. 2, 1992.

[600 N.E.2d 657] Relators are Dennis White, the Democratic nominee for Franklin County Recorder, and Leonard Hart, a registered Republican elector in Franklin County who voted in the June 2, 1992 primary election. Respondents are the Franklin County Board of Elections and its individual members, Secretary of State Bob Taft, and Joseph W. Testa. Recently, in State ex rel. White v. Franklin Cty. Bd. of Elections (1992), 65 Ohio St.3d 5, 598 N.E.2d 1152 ("White I"), we granted relators' request for a writ of mandamus and ordered the board of elections to count primary votes cast for Testa as the Republican nominee for Franklin County Recorder and to certify the results of that election, even

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though Testa had filed a statement of his withdrawal as a candidate for that office. Now, relators challenge the board's certification of Testa as the Republican nominee for Franklin County Auditor to appear on the November 3, 1992 general election ballot. They seek writs of prohibition and mandamus (1) to prevent the board from accepting Testa's nomination for auditor and placing his name on the ballot, and (2) to compel the board to issue a certificate of nomination to Testa as the Republican nominee for county recorder.

The evidence submitted in this case establishes the following.

Testa was the only candidate to file a declaration of candidacy for the Republican nomination for county recorder. The board

certified his candidacy for the primary ballot on February 27, 1992, but Testa filed a statement of withdrawal on May 15, 1992. The statement came after absentee ballots had been sent out and too late for his name to be taken off the ballot.

On May 14 and 15, 1992, respectively, the Franklin County Republican Party Central Committee appointed and certified Testa to immediately fill a vacancy in the office of county auditor pursuant to R.C. 305.02. Also on May 14 and

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15, 1992, respectively, the central committee nominated and certified Testa as the Republican candidate in the general election for the unexpired term for the office of county auditor pursuant to R.C. 3513.31.

White and Hart protested Testa's statement of withdrawal on May 15 and 22, 1992, respectively. The board heard White's protest on May 18, 1992 and voted in a tie on motions to either deny the withdrawal or, if withdrawal is approved, to unofficially count the votes for Testa, but not certify the results. On May 27, 1992, the Secretary of State broke the tie, voting to allow the withdrawal.

In addition to the protests against Testa's statement of withdrawal as a candidate for recorder, White and Hart protested Testa's county auditor nomination on May 15 and 22, 1992, respectively. On July 7, 1992, the board certified Testa to appear on the general election ballot as the Republican nominee for county auditor.

The board complied with the order in White I by certifying, on September 2, 1992, that 44,012 primary votes were cast in favor of Testa as the Republican nominee for county recorder. Also on September 2, 1992, the board voted in a tie on a motion not to issue Testa a certificate of nomination as the Republican county recorder nominee, and on September 3, 1992, the Secretary of State broke the tie, voting [600



State ex rel. White v. Franklin Cty. Bd. of Elections, 65 Ohio St.3d 45, 600 N.E.2d 656 (Ohio 1992)

N.E.2d 658] against issuing the certificate of nomination for that office.

Donald J. McTigue, Columbus, for relators.

Michael Miller, Pros. Atty., and Harland H. Hale, Asst. Pros. Atty., for respondents Franklin County Bd. of Elections and its members.

Lee I. Fisher, Atty. Gen., and Cherry Lynne Poteet, Asst. Atty. Gen., for respondent Secretary of State.

Chester, Hoffman, Willcox & Saxbe and Donald C. Brey, Columbus, for respondent Joseph W. Testa.

PER CURIAM.

Relators argue that the Secretary of State and board of elections abused their discretion and disregarded the law, such that writs of prohibition and mandamus should issue to overturn their decisions, which are otherwise final. *State ex rel. Higgins v. Brown* (1960), 170 Ohio St. 511, 11 O.O.2d 322, 166 N.E.2d 759, paragraph two of the syllabus; *State ex rel. Senn v. Cuyahoga Cty. Bd. of Elections* (1977), 51 Ohio St.2d 173, 175, 5 O.O.3d 381, 382, 367 N.E.2d 879, 880; *State ex rel. Shumate v. Portage Cty. Bd. of Elections* (1992), 64 Ohio St.3d 12, 14, 591 N.E.2d 1194, 1196. With

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respect to prohibition, relators claim that Testa must be considered to have been a candidate for county recorder "until at least the close of voting at the primary election," that he was, at the same time, the Republican nominee for county auditor, an incompatible office, R.C. 3.11 and 319.07, and, therefore, that the board improperly certified him as a candidate for county auditor on the general election ballot. With respect to mandamus, they contend that the board must issue Testa a certificate of nomination for county recorder because R.C. 3513.22 provides that "[e]lection officials, who are required to declare the results of primary elections, shall issue to each

person declared nominated for * * * an office an appropriate certificate of nomination * * *."

The Secretary of State responds that, in view of *White I*, this action should be dismissed on the basis of res judicata. He relies on the principle of merger, which prevents a successful claimant from recovering again on the same cause of action against the same party or a party in privity, *Whitehead v. Gen. Tel. Co* (1969), 20 Ohio St.2d 108, 112-113, 49 O.O.2d 435, 437-438, 254 N.E.2d 10, 13, and the rule that a judgment is conclusive, not only as to what was raised and determined in the action, but also as to all germane matters that might have been raised and determined. *Norwood v. McDonald* (1943), 142 Ohio St. 299, 312, 27 O.O. 240, 246, 52 N.E.2d 67, 74; *State ex rel. Ohio Water Serv. Co. v. Mahoning Valley Sanitary Dist.* (1959), 169 Ohio St. 31, 8 O.O.2d 1, 157 N.E.2d 116, paragraph one of the syllabus; *Stromberg v. Bratenahl Bd. of Edn.* (1980), 64 Ohio St.2d 98, 100, 18 O.O.3d 343, 344, 413 N.E.2d 1184, 1186. He essentially argues that relators have split a single cause of action and that the entire cause must be merged into the judgment in *White I*, thereby eliminating relators' claim for further relief.

We disagree. While the Secretary of State, who was not a party in *White I*, arguably is a party in privity with the board of elections, the respondent in that case, see *Johnson's Island, Inc. v. Danbury Twp. Bd. of Twp. Trustees* (1982), 69 Ohio St.2d 241, 244-245, 23 O.O.3d 243, 245, 431 N.E.2d 672, 675, this is not the same cause of action. The most accurate test for deciding if two cases are based on the same cause of action is whether different proof is required to sustain them. *Norwood*, *supra*, 142 Ohio St. at 311, 27 O.O. [600 N.E.2d 659] at 245, 52 N.E.2d at 73. We acknowledge that in *White I*, there was evidence to

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establish that the board had certified Testa to appear on the general election ballot as the Republican nominee for county auditor; however, this fact was not necessary for us to hold that the



State ex rel. White v. Franklin Cty. Bd. of Elections, 65 Ohio St.3d 45, 600 N.E.2d 656 (Ohio 1992)

election laws required the board to count votes cast for him in the primary election for nomination as recorder and to certify the election results. Moreover, there was no evidence in White I to establish that the board, if ordered to perform these duties, would deadlock on whether to issue Testa a certificate of nomination as the Republican candidate for county recorder, or that the Secretary of State would break the deadlock by voting against issuing the certificate.

The Secretary of State also argues, as do the other respondents, that relators' failure to bring all their causes of action at once caused delay and material prejudice. This argument has merit.

We have routinely dismissed complaints or otherwise denied extraordinary relief in election-related cases due to laches. See, e.g., State ex rel. Lightle v. Glass (1983), 8 Ohio St.3d 1, 8 OBR 72, 455 N.E.2d 1275 (writ of mandamus to certify resolutions for placement on ballot denied because complaint filed approximately three weeks before election); State ex rel. Bargahiser v. Richland Cty. Bd. of Elections (1968), 14 Ohio St.2d 129, 43 O.O.2d 238, 237 N.E.2d 133 (writ of mandamus to place candidates on ballot denied because complaint filed approximately three weeks before election); State ex rel. Weldon v. Franklin Cty. Bd. of Elections (1964), 176 Ohio St. 92, 26 O.O.2d 438, 197 N.E.2d 802 (dismissal of prohibition complaints to prevent putting candidates' names in voting machines and counting absentee ballots when complaints filed thirty-three days after protests decided); State ex rel. Schwartz v. Brown (1964), 176 Ohio St. 91, 26 O.O.2d 438, 197 N.E.2d 801 (dismissal of mandamus complaint to place candidate on ballot where complaint filed after ballot form certified); State ex rel. Hawke v. Myers (1936), 132 Ohio St. 18, 7 O.O. 10, 4 N.E.2d 397 (dismissal of mandamus complaint to place candidates on ballot where complaint filed after absentee ballots in use); State ex rel. Friedlander v. Myers (1934), 128 Ohio St. 568, 1 O.O. 167, 192 N.E. 737 (writ of mandamus denied for same reason); State ex rel. Winterfeld v. Lucas Cty. Bd. of Elections (1958), 167 Ohio St. 531, 5 O.O.2d 208, 150 N.E.2d 420 (dismissal of prohibition complaint to prevent

placement of annexation issue on ballot where complaint filed less than three weeks before election); and State ex rel. Peirce v. Stark Cty. Bd. of Elections (1958), 168 Ohio St. 249, 6 O.O.2d 339, 153 N.E.2d 393 (writ of prohibition to remove nominee from ballot denied because complaint filed after period for replacing nominee for general election). See, also, State ex rel. Hinkle v. Franklin Cty. Bd. of Elections (1989), 47 Ohio St.3d 117, 548 N.E.2d 230 (writ of mandamus to place issues on ballot denied because complaint filed after absentee ballots mailed).

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In all these cases, delay allowed some deadline to pass, usually the date for certifying the ballot form, see R.C. 3505.01 (sixty days before election), or for providing absentee ballots, see R.C. 3509.01 (thirty-five days before election). In some, relief was also impossible to grant because the case was filed just before the impending election.

Impossibility was not immediately apparent when relators filed this complaint on September 8, 1992. However, the record shows that relators anticipated their prohibition action nearly two months before the board of elections certified Testa's nomination for county auditor, and that they waited another two months after that certification to file the instant complaint. We find this delay unreasonable because "extreme diligence and the promptest of action" are required in election-related matters. Schwartz, *supra*, 176 Ohio St. at 91, 26 O.O.2d at 438, 197 N.E.2d at 802. The delay was also prejudicial because, as of September 22, 1992, the date our expedited briefing schedule was completed, the board of elections could no longer make changes to the absentee ballots and still have those ballots ready for use by September 29, [600 N.E.2d 660] 1992, as R.C. 3509.01 requires.² Laches, therefore, prevents us from granting the requested writ of prohibition.

By accepting laches as a defense, we reject the argument, advanced by relators, that their cause of action in prohibition arose only after our



decision in White I. All of the events underlying relators' complaint occurred prior to White I except two: the certification of the primary election results and the refusal to issue Testa a certificate of nomination as the Republican candidate for county recorder. Relators' argument for the writ of prohibition, however, is not based on these two events. On the contrary, they argue that Testa is a candidate for incompatible offices, despite the absence of a certificate of nomination for one of them, because his name appeared on the primary ballot as a candidate for nomination for that office. Relators' prohibition action, therefore, actually arose on July 7, 1992, when the board certified Testa as the Republican nominee for county auditor in the general election. Nothing prevented them from filing the action and asserting their argument at that time.

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However, even if laches were not applicable in this case, we could not accept relators' argument that Testa was a candidate for incompatible offices at the same time. Underlying this argument is the theory that Testa's statement of withdrawal had no effect at all and that he can be compelled against his will to be a candidate for county recorder for the purpose of invoking a common-law rule, effective in other states, against simultaneously running for incompatible offices. E.g., *Burns v. Wiltse* (1951), 303 N.Y. 319, 102 N.E.2d 569. This theory is not supported by State ex rel. Ashbrook v. Brown (1988), 39 Ohio St.3d 115, 529 N.E.2d 896, and White I.

In White I, we held that the board of elections was required by statute to count the votes cast for Testa and certify the results of the election because his statement of withdrawal was ineffective to remove his name from the primary election ballot. In doing so, we merely recognized that Testa's candidacy might have some vitality apart from his personal interest in the nomination. To illustrate, we cited Ashbrook, *supra*, in which the candidacy of a deceased incumbent retained such vitality long enough for his replacement to be selected pursuant to R.C.

3513.31, so that a free, competitive general election might take place.

Although the candidate's death in Ashbrook did not permit removal of his name from the primary ballot, it plainly terminated his personal candidacy. Similarly, Testa's statement of withdrawal also terminated his personal candidacy. Even under the policy of protecting the elective franchise, no one can be compelled against his or her will to accept an elective office, and giving effect to Testa's candidacy beyond the fact that his name appeared on the primary ballot would ignore this basic reality. Thus, Testa's statement of withdrawal was sufficient to renounce his personal candidacy for county recorder, even though it did not relieve the board of elections from its statutory duties to count the ballots and certify the results.

We conclude, therefore, that Testa was never a candidate for incompatible offices at the same time and, thus, we do not decide whether the rule prohibiting such candidacies exists in Ohio. But, see, 1948 Ohio Atty.Gen.Ops. No. 2922. However, our holdings in Ashbrook and White I imply, relative to relators' mandamus action, that a board of elections has a duty to issue a certificate of nomination even for a withdrawing primary candidate whose name appears on a primary ballot, so that his party may choose a substitute to appear on the general election ballot. A writ of [600 N.E.2d 661] mandamus might issue for this purpose in another case, but here, the period for selecting a replacement nominee under R.C. 3513.31 (withdrawal prior to eighty days before the general election) has already passed. As mandamus does not lie to

b/w
for relief
to court

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compel a vain act, State ex rel. Sawyer v. O'Connor (1978), 54 Ohio St.2d 380, 383, 8 O.O.3d 393, 395, 377 N.E.2d 494, 497, we also do not grant this relief.

Accordingly, the writs of prohibition and mandamus are denied.



State ex rel. White v. Franklin Cty. Bd. of Elections, 65 Ohio St.3d 45, 600 N.E.2d 656 (Ohio 1992)

Writs denied.

MOYER, C.J., and HOLMES, WRIGHT and HERBERT R. BROWN, JJ., concur.

RESNICK, J., concurs in judgment only.

DOUGLAS, J., concurs separately in judgment only.

SWEENEY, J., dissents.

DOUGLAS, Justice, concurring.

I concur with the judgment of the majority but for a reason different from that set forth in the majority opinion. This cause should be dismissed--or at the very least the writs denied--on the basis that the decision of the Secretary of State, in breaking a tie vote of a local elections board, is final. R.C. 3501.11. In this regard, I continue to adhere to my position set forth in *State ex rel. White v. Franklin Cty. Bd. of Elections* (1992), 65 Ohio St.3d 5, 10, 598 N.E.2d 1152, 1156 ("White I") (Douglas, J., dissenting).

ballots for use in Franklin County at the general election. Keeler attests (1) that proofs of the Franklin County absentee ballots list Testa as the Republican candidate for county auditor only, (2) that his company could not accommodate changes to the ballots after September 22, 1992 and still have them ready by the September 29 deadline, and (3) that the printing process had, therefore, already begun.

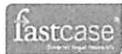
¹ R.C. 3.11 and 319.07 establish that the offices of county auditor and recorder may not be held at the same time. R.C. 3.11 states:

"No person shall hold at the same time by appointment or election more than one of the following offices: sheriff, county auditor, county treasurer, clerk of the court of common pleas, county recorder, prosecuting attorney, and probate judge."

R.C. 319.07 provides:

"No judge or clerk of a court, county commissioner, county recorder, county engineer, county treasurer, or sheriff shall be eligible to the office of county auditor."

² Specific evidence of the prejudice caused by relators' delay is presented in the affidavit of D. Robert Keeler, who is the president of the company under contract to print the absentee



Section 3501.01 | Election procedure - election officials definitions.

Ohio Revised Code / Title 35 Elections /
Chapter 3501 Election Procedure; Election Officials

Effective: September 30, 2021 Latest Legislation: Senate Bill 80 - 134th General Assembly

As used in the sections of the Revised Code relating to elections and political communications:

(A) "General election" means the election held on the first Tuesday after the first Monday in each November.

(B) "Regular municipal election" means the election held on the first Tuesday after the first Monday in November in each odd-numbered year.

(C) "Regular state election" means the election held on the first Tuesday after the first Monday in November in each even-numbered year.

(D) "Special election" means any election other than those elections defined in other divisions of this section. A special election may be held only on the first Tuesday after the first Monday in May, August, or November, or on the day authorized by a particular municipal or county charter for the holding of a primary election, except that in any year in which a presidential primary election is held, no special election shall be held in May, except as authorized by a municipal or county charter, but may be held on the third Tuesday after the first Monday in March.

(E)(1) "Primary" or "primary election" means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties and as delegates and alternates to the conventions of political parties. Primary elections shall be

held on the first Tuesday after the first Monday in May of each year except in years in which a presidential primary election is held.

(2) "Presidential primary election" means a primary election as defined by division (E)(1) of this section at which an election is held for the purpose of choosing delegates and alternates to the national conventions of the major political parties pursuant to section 3513.12 of the Revised Code. Unless otherwise specified, presidential primary elections are included in references to primary elections. In years in which a presidential primary election is held, all primary elections shall be held on the third Tuesday after the first Monday in March except as otherwise authorized by a municipal or county charter.

(F) "Political party" means any group of voters meeting the requirements set forth in section 3517.01 of the Revised Code for the formation and existence of a political party.

(1) "Major political party" means any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received not less than twenty per cent of the total vote cast for such office at the most recent regular state election.

(2) "Minor political party" means any political party organized under the laws of this state that meets either of the following requirements:

(a) Except as otherwise provided in this division, the political party's candidate for governor or nominees for presidential electors received less than twenty per cent but not less than three per cent of the total vote cast for such office at the most recent regular state election. A political party that meets the requirements of this division remains a political party for a period of four years after meeting those requirements.

(b) The political party has filed with the secretary of state, subsequent to its failure to meet the requirements of division (F)(2)(a) of this section, a petition that meets the requirements of section 3517.01 of the Revised Code.

A newly formed political party shall be known as a minor political party until the time of the first election for governor or president which occurs not less than twelve months subsequent to the formation of such party, after which election the status of such party shall be determined by the vote for the office of governor or president.

(G) "Dominant party in a precinct" or "dominant political party in a precinct" means that political party whose candidate for election to the office of governor at the most recent regular state election at which a governor was elected received more votes than any other person received for election to that office in such precinct at such election.

(H) "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 to be held in this state, 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 to be held in this state.

(I) "Independent candidate" means any candidate who claims not to be affiliated with a political party, and whose name has been certified on the office-type ballot at a general or special election through the filing of a statement of candidacy and nominating petition, as prescribed in section 3513.257 of the Revised Code.

(J) "Nonpartisan candidate" means any candidate whose name is required, pursuant to section 3505.04 of the Revised Code, to be listed on the nonpartisan ballot, including all candidates for judge of a municipal court, county court, or court of common pleas, for member of any board of education, for municipal or township offices in which primary elections are not held for nominating candidates by political parties, and for offices of municipal corporations having charters that provide for separate ballots for elections for these offices.

(K) "Party candidate" means any candidate who claims to be a member of a political party and who has been certified to appear on the office-type ballot at a general or special election as the nominee of a political party because the candidate has won the primary election of the candidate's party for the public office the candidate seeks, has been nominated under section 3517.012, or is selected by party committee in accordance with section 3513.31 of the Revised Code.

(L) "Officer of a political party" includes, but is not limited to, any member, elected or appointed, of a controlling committee, whether representing the territory of the state, a district therein, a county, township, a city, a ward, a precinct, or other territory, of a major or minor political party.

(M) "Question or issue" means any question or issue certified in accordance with the Revised Code for placement on an official ballot at a general or special election to be held in this state.

(N) "Elector" or "qualified elector" means a person having the qualifications provided by law to be entitled to vote.

(O) "Voter" means an elector who votes at an election.

(P) "Voting residence" means that place of residence of an elector which shall determine the precinct in which the elector may vote.

(Q) "Precinct" means a district within a county established by the board of elections of such county within which all qualified electors having a voting residence therein may vote at the same polling place.

(R) "Polling place" means that place provided for each precinct at which the electors having a voting residence in such precinct may vote.

(S) "Board" or "board of elections" means the board of elections appointed in a county pursuant to section 3501.06 of the Revised Code.

(T) "Political subdivision" means a county, township, city, village, or school district.

(U) "Election officer" or "election official" means any of the following:

(1) Secretary of state;

(2) Employees of the secretary of state serving the division of elections in the capacity of attorney, administrative officer, administrative assistant, elections administrator, office manager, or clerical supervisor;

(3) Director of a board of elections;

(4) Deputy director of a board of elections;

(5) Member of a board of elections;

(6) Employees of a board of elections;

(7) Precinct election officials;

(8) Employees appointed by the boards of elections on a temporary or part-time basis.

(V) "Acknowledgment notice" means a notice sent by a board of elections, on a form prescribed by the secretary of state, informing a voter registration applicant or an applicant who wishes to change the applicant's residence or name of the status of the application; the information necessary to complete or update the application, if any; and if the application is complete, the precinct in which the applicant is to vote.

(W) "Confirmation notice" means a notice sent by a board of elections, on a form prescribed by the secretary of state, to a registered elector to confirm the registered elector's current

address.

(X) "Designated agency" means an office or agency in the state that provides public assistance or that provides state-funded programs primarily engaged in providing services to persons with disabilities and that is required by the National Voter Registration Act of 1993 to implement a program designed and administered by the secretary of state for registering voters, or any other public or government office or agency that implements a program designed and administered by the secretary of state for registering voters, including the department of job and family services, the program administered under section 3701.132 of the Revised Code by the department of health, the department of mental health and addiction services, the department of developmental disabilities, the opportunities for Ohioans with disabilities agency, and any other agency the secretary of state designates. "Designated agency" does not include public high schools and vocational schools, public libraries, or the office of a county treasurer.

(Y) "National Voter Registration Act of 1993" means the "National Voter Registration Act of 1993," 107 Stat. 77, 42 U.S.C.A. 1973gg.

(Z) "Voting Rights Act of 1965" means the "Voting Rights Act of 1965," 79 Stat. 437, 42 U.S.C.A. 1973, as amended.

(AA) "Photo identification" means a document that meets each of the following requirements:

(1) It shows the name of the individual to whom it was issued, which shall conform to the name in the poll list or signature pollbook.

(2) It shows the current address of the individual to whom it was issued, which shall conform to the address in the poll list or signature pollbook, except for a driver's license or a state identification card issued under section 4507.50 of the Revised Code, which may show

either the current or former address of the individual to whom it was issued, regardless of whether that address conforms to the address in the poll list or signature pollbook.

(3) It shows a photograph of the individual to whom it was issued.

(4) It includes an expiration date that has not passed.

(5) It was issued by the government of the United States or this state.

Last updated July 14, 2021 at 11:08 AM

Available Versions of this Section

September 29, 2013 – Senate Bill 193, Senate Bill 109, House Bill 59 - 130th General Assembly

September 9, 2015 – House Bill 153, House Bill 64 - 131st General Assembly

September 29, 2015 – House Bill 153 - 131st General Assembly

October 17, 2019 – Amended by House Bill 166 - 133rd General Assembly

September 30, 2021 – Amended by Senate Bill 80 - 134th General Assembly



Frank LaRose

Ohio Secretary of State

DIRECTIVE 2022-40

June 30, 2022

To: All County Boards of Elections
Board Members, Directors, and Deputy Directors
Re: Unofficial and Official Canvasses of the August 2, 2022 Primary/Special Election

SUMMARY

This Directive outlines the procedures that boards of elections must follow when conducting both the Unofficial and Official Canvasses of the August 2, 2022 Primary/Special Election.

To assist boards of elections with any problems, questions, or concerns on Election Day, the Secretary of State's Office is staffed on Election Day from 6:00 a.m. until all boards report their unofficial results to our Office. Boards should contact the Secretary of State's Office using the dedicated telephone number that will be emailed prior to August 2, 2022.

All board members, directors, and deputy directors must ensure that they are able to receive emails via their .gov address and other communications sent from the Secretary of State's Office on August 2, 2022 (including after the polls close).

PART ONE – UNOFFICIAL CANVASS

The Unofficial Canvass of the August 2, 2022 Primary/Special Election must be conducted on Election Night in accordance with state law¹ and Chapter 10, Section 10.02 of the Election Official Manual. Each board must reconcile results with records from the poll books and voter registration system to ensure that only one ballot per voter is counted.² This includes ensuring that all returned absentee ballots are logged in the voter registration system and reconciling the list of voters whose ballots were returned with the number of physical ballots returned.

The Unofficial Canvass must be conducted in full view of the members of the board of elections and any observer appointed in accordance with R.C. 3505.21.³ The board must continuously count the ballots during the Unofficial Canvass.⁴

I. PROCESSING ABSENTEE BALLOTS

Boards of elections may begin processing (including scanning, but not tabulating) absentee ballots on July 6, 2022, the day after the close of voter registration. Boards must begin this process prior to Election Day to ensure the Unofficial Canvass includes all absentee ballots received by the close of polls on August 2, 2022. Boards are prohibited from tabulating any absentee ballot prior to 7:31 p.m. on

¹ R.C. 3505.27 (counting regular ballots that were cast at precinct polling locations); R.C. 3505.28 (ballots not counted); R.C. 3509.06 (counting absentee ballots); R.C. 3509.07 (absentee ballots not counted); R.C. 3511.11- 3511.13 (uniformed service and overseas voter absentee ballots).

² R.C. 3505.26 and R.C. 3505.27

³ R.C. 3505.27.

⁴ R.C. 3505.27; R.C. 3505.29; R.C. 3505.30.

August 2, 2022. If a court orders polls to remain open later than 7:30 p.m. on Election Day, boards will receive a directive with alternate instructions.

II. ELECTION NIGHT REPORTING ("ENR")

State law requires boards of elections to provide election results for certain contests to the Secretary of State's Office.⁵ Election Night Reporting will consist of races for the following offices:

- State Senator
- State Representative
- Member of State Central Committee

All counties must use the Secretary of State's County Submission System ("CSS") to provide summary results on all candidates that appear on the county's ballot.

Although boards of elections will have access to hand-key the results at the time frames below, the upload tool allows each board to do this more efficiently. This method also helps prevent data entry errors. Boards must use the USB thumb drives provided by the Secretary of State's Office to ensure the security of the ENR system and election management system ("EMS"). The USB thumb drives must be used only once.

For the Unofficial Canvass, boards must provide summary-level election results, rather than precinct-level results. Boards will upload precinct-level results for the Official Canvass.

A. SCHEDULE FOR REPORTING RESULTS

Each board must log in to the CSS no later than 7:45 p.m. on August 2, 2022. The board must immediately notify the Secretary of State personnel of delays in completing any portion of the results reporting activity.

B. REPORTING ABSENTEE BALLOT RESULTS

Each board must upload vote totals for absentee ballots by 8:00 p.m., unless the voting system is technologically unable to do so. If necessary, partial absentee results may be uploaded by the county. If the board uploads partial absentee results at 8:00 p.m., the board must not double-report the initial upload. Contact the board's voting system vendor if you need technical assistance. The board must enter zero (0) precincts reporting when it uploads its first absentee results.

C. MAXIMUM TIME BETWEEN ENR REPORTS

ENR begins with the first upload of absentee results by 8:00 p.m. and will continue at the assigned time throughout the night. After the board uploads its first summary election results, it must report on the following time increment assigned to the county:

1. "Half-Hour" Counties - *Allen, Ashtabula, Athens, Belmont, Butler, Clark, Clermont, Columbiana, Cuyahoga, Delaware, Erie, Fairfield, Franklin, Geauga, Greene, Hamilton, Hancock, Jefferson, Knox, Lake, Lawrence, Licking, Lorain, Lucas, Mahoning, Marion, Medina, Miami, Montgomery, Muskingum, Portage, Richland, Ross, Sandusky, Scioto, Stark, Summit, Trumbull, Tuscarawas, Union, Warren, Washington, Wayne, and Wood Counties.*

⁵R.C. 3505.27(C).

"Half-hour" counties must report at each half-hour (e.g., 8:30 p.m., 9:00 p.m., 9:30 p.m., etc.), beginning at 8:30 p.m., the first half-hour that follows the upload of the board's absentee summary election results at 8:00 p.m., then on every half hour after and continuing until all precincts report results.

The board must notify the Secretary of State personnel if, as the board approaches full reporting, one or more precincts did not report and it is more than 30 minutes since the last report, to explain the delay. Once 100 percent of the precincts have reported, boards must enter final vote tallies into the ENR system. The board does not have to wait until its designated reporting time (noted above) before reporting the final results.

2. "Hourly" Counties

Adams, Ashland, Auglaize, Brown, Carroll, Champaign, Clinton, Coshocton, Crawford, Darke, Defiance, Fayette, Fulton, Gallia, Guernsey, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Logan, Madison, Mercer, Meigs, Monroe, Morgan, Morrow, Noble, Ottawa, Paunder, Perry, Pickaway, Pike, Preble, Putnam, Seneca, Shelby, Van Wert, Vinton, Williams, and Wyandot Counties.

"Hourly" counties must report summary election results at the top of every hour, as specified above, and continue until all precincts have reported. If the board reports more frequently, it must still report on the hour.

The board must notify the Secretary of State personnel if, as the board approaches full reporting, one or more precincts did not report and it is more than 60 minutes since the last report, to explain the delay. Once 100 percent of the precincts have reported, boards must enter final vote tallies into the ENR system. The board does not have to wait until its designated reporting time (noted above) before reporting the final results.

D. SUPPLEMENTAL STATISTICS

Boards of elections must provide supplemental statistics upon reporting the county's last precinct or shortly thereafter. Boards must promptly report vote totals, even if supplemental statistics are not yet available. Upload the election results, then submit the statistics when ready.

The required supplemental statistics are as follows:

Counted Ballots

- Total number of regular ballots counted from Election Day precincts (not including absentee ballots).
- Total number of absentee ballots counted (both UOCAVA and Non-UOCAVA).
- Total regular Election Day and absentee ballots counted.

Outstanding Ballots

- Total number of outstanding absentee ballots (issued but not yet counted).
- Total number of provisional ballots (issued at the polls or the board office before or on Election Day).

III. SUMMARY AND FINAL REPORTS

Boards of elections must follow the procedures outlined in Chapter 10, Section 10.02 of the

Election Official Manual for reporting summary results and submitting final summary reports in even-numbered year elections. The required reports and forms (listed below) for the Unofficial Canvass and the instructions and deadline for submission will be provided to boards of elections via email before Election Day:

1. Unofficial Vote Total Summary Report;
2. Group Detail Report;
3. Write-In Report;
4. Most Populous Report(s) (when applicable); and
5. Signature Form.

In addition to the Unofficial Vote Total Summary Report submitted on Election Night, each board must print Current County Results from the CSS, proof to the Unofficial Vote Total Summary Report, and email the Current County Results along with the Report to Results@OhioSoS.gov. Instructions outlining this requirement will be provided separately. All final summary reports, and Group Detail Report must be transmitted to the Elections Division via email to Results@OhioSoS.gov.

On Election Night, once the Secretary of State's Office receives, reviews, and compares the board's Unofficial Vote Total Summary Report, and Group Detail Report, a Secretary of State staff member will contact the Director.

The Director and Deputy Director must not leave the office until the assigned Secretary of State staff member contacts the Director to confirm that its reports have been received and reviewed to ensure the results match. The Director is responsible for releasing the board's staff.

PART TWO – POST-ELECTION CURE PERIOD

Each board of elections must be open to the public on each of the seven calendar days immediately following Election Day, and during the hours specified below, in order to allow voters to cure a deficiency on an absentee or provisional ballot, as provided for in state law:⁶

- Wednesday, August 3rd 8:00 a.m. – 5:00 p.m.
- Thursday, August 4th 8:00 a.m. – 5:00 p.m.
- Friday, August 5th 8:00 a.m. – 5:00 p.m.
- Saturday, August 6th 8:00 a.m. – 12:00 p.m.
- Sunday, August 7th 1:00 p.m. – 5:00 p.m.
- Monday, August 8th 8:00 a.m. – 5:00 p.m.
- Tuesday, August 9th 8:00 a.m. – 5:00 p.m.

Whenever a board of elections receives an absentee ballot identification envelope that is missing required information or that contains information that does not conform to the voter's registration record,

⁶ R.C. 3505.181(B)(7); R.C. 3509.06(D)(3). See also *Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d 612 (6th Cir. 2016) (holding that the seven-day post-election cure period for absentee and provisional ballots established in state law is constitutional).

the board must follow the instructions set forth in Chapter 7, pages 228 to 230 of the Election Official Manual.

For absentee voters, a board of elections must receive a completed Form 11-S to cure a deficiency by the 7th day after the election, or the Form 11-S must be postmarked by the 7th day after the election and received by the 10th day after the election.

If a board of elections has no voters with a deficiency on their absentee or provisional ballot after Election Day (i.e., there is nothing *possible* to cure for any voter that cast a ballot in the election) or all deficiencies have been cured, the board may return to its normal operating hours for the remainder of the cure period.

PART THREE – OFFICIAL CANVASS

IV. TIMELINE FOR OFFICIAL CERTIFICATION

Boards of elections may begin the Official Canvass of the August 2, 2022 Primary/Special Election no earlier than the 11th day after the election (Tuesday, August 13, 2022) and must begin no later than the 15th day after the election (Wednesday, August 17, 2022). Each board must complete its Official Canvass and certify no later than the 21st day after the election (Tuesday, August 23, 2022).⁷

V. PRE-CANVASS AND CANVASS ACTIVITY

Boards of elections must follow the instructions for pre-canvass activity that are outlined in Chapter 10, Section 10.03 of the Election Official Manual. Boards must also follow the rules and procedures outlined in Chapter 10, Section 10.04 of the Election Official Manual for conducting the Official Canvass. Each board must reconcile results with records from the poll books and the voter registration system to ensure that only one ballot per voter is counted.⁸ This includes ensuring that all returned absentee ballots are logged in the voter registration system and reconciling the list of voters whose ballots were returned with the number of physical ballots returned.

Boards must wait until the 11th day after the election to examine provisional ballot affirmations to determine the eligibility of provisional ballots to be counted. Board members must vote on the eligibility of every provisional ballot cast in the county for this election. It is rare, but possible for a military or overseas voter to be issued a provisional ballot by mail.⁹ If the board issues a provisional ballot to a military or overseas voter and it is returned by mail no later than the 20th day after the election, the board must vote on its eligibility for counting before proceeding with the Official Canvass. No earlier than the start of the Official Canvass on August 23, 2022, the board may open the provisional ballot envelopes and count the ballots that are eligible for counting.¹⁰

Pursuant to R.C. 3505.32, board members and employees are prohibited from disclosing partial or final results of any contest in the election between the completion of the Unofficial Canvass and the certification of official results.

⁷ R.C. 3505.32(A).

⁸ R.C. 3505.32(D).

⁹ See Form 11-I ("Application for Absent Voter's Ballot by a Voter With a Personal Illness, Physical Disability, or Infirmity and an Unreported Change of Address and/or Name") and Form 11-I-2.

¹⁰ R.C. 3505.183(F) and R.C. 3505.32(D).

VI. FORMS FOR OFFICIAL CERTIFICATION

After the Unofficial Canvass, our Office will provide the forms for reporting official results. All certifications and reports must be signed by the appropriate board personnel before the board submits them to our Office, another board of elections, or another public entity. The board may not use digital or stamped signatures for these reports. Each board of elections must submit the signature form to certify the Official Election Results, including the Supplemental Reports for both Absentee Ballots and Provisional Ballots, to the Secretary of State's Office.

E. CERTIFICATION AND REPORTING OF OFFICIAL RESULTS¹¹

After a board completes its Official Canvass, it must email Results@OhioSoS.gov a copy of the official vote total summary report generated by the board's voting system. This report must be clearly labeled "[County]'s Official Canvass," and it must contain *only* vote totals for that county.

The board of elections for the most populous county of any multi-county jurisdiction or district must generate a separate report from its voting system, create a report outside of its voting system, or use a reporting form which will be provided after the Unofficial Canvass. This report must be clearly labeled "[County]'s Official Canvass – Most Populous County." The report must include the total number of votes recorded for the office, question, or issue from each county in a multi-county jurisdiction and the sum total for all counties. The board must clearly mark the contest(s) for which a board is the most populous county to clearly identify it as a contest contains vote totals from other counties. The board must email the report(s) to Results@OhioSoS.gov.

F. ABSENTEE AND PROVISIONAL BALLOT SUPPLEMENTAL REPORT

State law requires the Secretary of State to publish a report on the number of absentee and provisional ballots cast and counted for the election in each county.¹² Each board of elections must provide this supplemental data for absentee and provisional ballots. Our Office will provide the reporting forms after the Unofficial Canvass.

G. CERTIFICATE OF OFFICIAL SUMMARY RESULTS FOR LIQUOR OPTION QUESTIONS AND LOCAL QUESTIONS AND ISSUES

Each board of elections must send a completed copy of Secretary of State Form No. 126-B to the Secretary of State's Office via email to Results@OhioSoS.gov and a copy of the completed form to the Ohio Division of Liquor Control via email: LiquorLicensingMailUnit@com.state.oh.us or by mailing to the following address:

Division of Liquor Control
6606 Tussing Road
Reynoldsburg, Ohio 43068-9005

The board of elections (most populous county only if it is a multi-county issue) must certify the results of an election on tax levies and bond issues to the following offices and agencies:

- The county auditor of each county in which the election was held.

¹¹ R.C. 3505.30.

¹² R.C. 3501.05(Y).

- The fiscal officer of the subdivision in which the election was held.
- The Tax Commissioner of the State of Ohio via email at: DTE@tax.state.oh.us.
- The Secretary of State.

The board of elections of the most populous county must certify the results of an election on a school district income tax on Secretary of State Form 125-A to the following offices and agencies:

- The board of education that placed the issue on the ballot.
- The Tax Commissioner of the State of Ohio via email at DTE@tax.state.oh.us.
- The Secretary of State.

VII. TIMELINE FOR REPORTS

No later than 2:00 p.m. on Friday, August 26, 2022, the Secretary of State's Office must receive each of the following:

- Certification report and signature form;
- Write-In Report;
- Report forms;
- Electronic turnout detail by precinct;
- SOVC report; and
- Group Detail Report.

Each board must submit these reports to Results@OhioSoS.gov as soon as the board completes its official certification. Boards must not delay submitting the official certification forms because of a recount for any race or issue. Every board must maintain a copy of each of its completed certification and report forms.

VIII. CERTIFICATES OF ELECTION AND/OR NOMINATION

Each board of elections must follow the instructions for issuing certificates of election and/or nomination that are contained in Chapter 10, Section 10.04, of the Election Official Manual.

IX. RECOUNTS

Before scheduling and conducting a recount, please review the procedures set forth in state law and Chapter 11, Section 11.02 of the Election Official Manual. The deadline for a candidate or group to request a recount is five days after the certification of official results. A recount must take place no later than ten days after an application for a recount is filed or an automatic recount is declared.¹³

The Secretary of State's Office will provide the boards a spreadsheet along with the Official Canvass report forms. Boards must complete the spreadsheet to notify the Secretary of State of a recount. All boards must complete the survey, regardless of whether there is a recount in their county. If the board must conduct a recount, the board must provide the information regarding the recount in the spreadsheet provided by the Secretary of State's Office when the board emails the completed Official Canvass Report

¹³ [R.C. 3515.02](#) and [R.C. 3515.03](#).

forms.

If the recount to be conducted is for a multi-county jurisdiction, the Secretary of State's Office will issue the notice of recount after receiving notice from the most populous county. If a recount changes vote totals, the board of elections must submit a properly completed and signed amended certification and abstract to Results@OhioSOS.gov.

X. POST-ELECTION AUDITS

Ohio law requires every board of elections to conduct a post-election audit¹⁴ The law generally requires boards to audit not less than three contested races, questions, or issues, as directed by the Secretary of State. If fewer than three contested races, questions, or issues appear on the ballot at the election, then the board must audit every contested race, question, and issue. Before scheduling and conducting the post-election audit, please review the procedures set forth in state law and Chapter 11, Section 11.03 of the Election Official Manual. The timeline for post-election audits depends on whether there is a recount, as explained below:

1. **If there is no recount:** The audit may start six days after the official results are declared and must be completed by the 21st day after that declaration. The board has five days after completion to certify those audit results to the Secretary. A form will be offered for certifying audit results.
2. **If there is a recount:** The audit must begin immediately after the board certifies the results of the recount and be complete within 14 days. The board has five days after completion to certify those audit results to the Secretary.

After Election Day, the Secretary of State's Office will provide more instructions for the post-election audit.

XI. VOTER HISTORY

All boards must upload voter history for the August 2, 2022 Primary/Special Election to the Statewide Voter Registration Database no later than 14 days after the board's official certification. Counties with more than 100,000 registered voters must email SWVRD@OhioSoS.gov to schedule their upload in advance. The election name to submit the history for the election is 2022_AUG_PRIM.

For purposes of assigning voter history, a voter record should be marked as having voted in an election, only if any of the following are true:¹⁵

- The voter signed the signature poll book on Election Day.
- The voter was issued an absentee ballot in-person during the period for in-person absentee voting.
- The voter timely returned the voter's identification envelope (including UOCAVA and Federal Write-In Absentee Ballot (FWAB)), regardless of whether the ballot was eligible to be counted.
- The voter is an eligible elector of the State of Ohio and cast a provisional ballot, regardless of whether the ballot was eligible to be counted. If a provisional ballot affirmation is used to register an individual to vote, the newly registered voter should be assigned

¹⁴ R.C. 3505.331.

¹⁵ Election Official Manual Chapter 10, page 316.

voter history for casting a provisional ballot.

Following each primary election, a board of elections must program its county voter registration system to reflect a voter's party affiliation in accordance with R.C. 3513.05.

XII. RETENTION OF BALLOTS

Boards must retain all ballots prepared for an election for at least 60 days following the election.¹⁶ If the board uses a voting system and software that captures images of ballots as they are scanned by a high-speed scanner, those images may be subject to disclosure pursuant to a public records request and must be retained.¹⁷ Accordingly, consult with the county prosecuting attorney regarding their retention.

PART FOUR – OPEN MEETINGS DURING THE CANVASS

Consistent with R.C. 3505.30, board members must remain in session from the time of the opening of the polls on Election Day until the results of the election are received from every precinct in the county and such results are communicated to the Secretary of State. Board members must also meet to adjudicate the validity of provisional ballots, certify the official results of the election, and certify the results of any recount or post-election audit.

Boards should work with their technical points of contact (i.e., IT professionals) to determine whether livestreaming meetings is an option, including whether there is enough bandwidth to allow for public viewing. To the maximum extent possible, any livestream of board meetings should be advertised on social media and include video of the staff undertaking duties that would normally be observable by members of the public if they were physically present at the meeting.

PART FIVE – SECURE RECEP TACLES

For the August 2, 2022 Primary/Special Election, boards of elections must follow the same rules and procedures set forth in Directive 2021-10 for the use of secure receptacle(s) outside the county board of elections. A bipartisan team must retrieve the contents of the secure receptacle upon all of the following deadlines:

- (1) Voter registration deadline: **Tuesday, July 5, 2022** at 9:00 p.m.
- (2) Absentee ballot application deadline: **Saturday, July 30, 2022** at 12:00 noon; and
- (3) Personal delivery absentee ballot deadline: **Tuesday, August 2, 2022** at 7:30 p.m.

If you have any questions regarding this Directive, please contact the Secretary of State's elections counsel at (614) 728-8789.

Yours in service,

Frank LaRose
Ohio Secretary of State

¹⁶ R.C. 3505.31.

¹⁷ See Election Official Manual Chapter 10, pages 321 to 323.

Attachment 3 - Motion 2022:08:10 & 2022:08:11

For ATHENS COUNTY OHIO
Election: 08/02/22 - PRIMARY

For Status: Accepted

	Application #	Voted Precinct
1	9	ATHENS 1-2
2	2	ATHENS 1-3
3	17	ATHENS 1-4
4	7	ATHENS 2-2
5	10	ATHENS 3-4
6	5	ATHENS 3-5
7	11	ATHENS 3-6
8	1	ATHENS 4-3
9	12	NELSONVILLE 3
10	8	NELSONVILLE 4
11	4	PLAINS 1
12	3	PLAINS 1
13	6	CHAUNCEY VLG
14	13	CIRCLE HILL
15	14	LEE TOWNSHIP
16	16	YORK TOWNSHIP

Total For Status: Accepted

16

For Status: Rejected: Wrong Precinct/Wrong Poll

	Application #	Voted Precinct	
17	15	BUCHTEL VLG	YORK TOWNSHIP

Total For Status: Rejected: Wrong Precinct/Wrong Poll

1

ABSENTEE PROBLEMS
Primary Election
08/02/2022

Absentee

Postmarked ON/AFTER Election Day too late

1. Matthew Aaron Connell	Athens 1-3
2. Sandy Changfeng Chen	Athens 2-4
3. Jonathan T Humphreys	Athens Baker
4. Laura Chelsea Marie Humphreys	Athens Baker
5. Shirley A Russell	Plains 1
6. Jeffrey C Holliday	Carthage Township
7. Tina S Kocher	Carthage Township