

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO ex rel.  
RHONDA L. COLVIN,  
1665 W. Choctaw Dr.  
London, Ohio 43140,

and

THE STATE OF OHIO ex rel.  
C. DOUGLAS MOODY,  
5419 Darcy Road  
Columbus, Ohio 43229,

Relators,

vs.

JENNIFER BRUNNER,  
SECRETARY OF STATE OF OHIO  
180 East Broad Street, 16th Floor  
Columbus, Ohio 43215,

Respondent.

Case No. **08-1813**

Original Action in Mandamus

Expedited Election Matter  
Under S.Ct. Prac.R.X. § 9

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VERIFIED PETITION FOR WRIT OF MANDAMUS

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This action is brought in the name of the State on the relation of Rhonda L. Colvin and C. Douglas Moody, who are requesting the writ of mandamus. Relators state for their Verified Petition and Complaint for a Writ of Mandamus:

**PARTIES, JURISDICTION, AND VENUE**

1. Rhonda L. Colvin ("Colvin") is a resident of the State of Ohio, County of Madison, and is a registered voter in the State of Ohio. Colvin is a qualified elector in the State of Ohio.

2. C. Douglas Moody ("Moody") is a resident of the State of Ohio, County of Franklin, and is a registered voter in the State of Ohio. Moody is a qualified elector in the State of Ohio.

3. Respondent Jennifer Brunner is the duly elected Ohio Secretary of State. Pursuant to R.C. 3501.05, Respondent shall, inter alia, "(B) Issue instructions by directives and advisories [in accordance with section 3501.053 of the Revised Code] to members of the boards as to the proper methods of conducting elections . . . ; (C) Prepare rules and instructions for the conduct of elections; (F) Prescribe the form of registration cards, blanks and records; (M) Compel the observance of election officers in the several counties of the requirements of the election laws . . . ." R.C. 3501.05; see also R.C. 3501.053(A) effective September 12, 2008 ("The secretary of state may issue instructions as to the proper method of conducting elections to members of the boards of elections by permanent or temporary directives.")

4. Pursuant to R.C. 3501.01(U)(1), Respondent Jennifer Brunner is an election officer and must, herself, observe the requirements of the election laws.

5. The Court possesses jurisdiction over the subject matter of this action and over Respondent pursuant to Article IV, § 2(B) of the Ohio Constitution and Rule 10 of the Rules of Practice of the Ohio Supreme Court. *See also State ex rel Melvin v. Sweeney* (1950), 154 Ohio St. 223, 94 N.E.2d 785 (noting that where the Secretary of State has erroneously informed members of the boards of elections as to their duties, the matter may be corrected through a Writ of Mandamus).

6. R.C. 3505.20 additionally provides that "prior to the nineteenth day before the day of an election and in accordance with section 3503.24 of the Revised Code, any person qualified to vote may challenge the right of any other person to be registered as a voter, or the

right to cast an absent voter's ballot, or to make application for such ballot." As qualified voters in the State of Ohio, Relators Colvin and Moody assert that Directive 2008-63 issued by Respondent on August 13, 2008, with regard to "Processing Voter Registration Applications Received the Week Immediately Preceding a Voter Registration Deadline" is erroneous and in violation of Ohio law in that the opinion expressed therein and the information and instructions contained in such Directive is not supported by and is directly contrary to Ohio law; that if such instructions are carried out by the County Board of Elections officials countless votes will be illegally cast in the State of Ohio in the upcoming election.

7. As a result of the office held by Respondent, she is specially enjoined by law to advise with and instruct members of the various boards of election in the State of Ohio as to the proper methods of conducting elections and to provide rules, regulations and instructions for the conduct thereof consistent with Ohio law. Thus, it is the mandatory duty of the Respondent to advise the various boards of election in the State of Ohio that the information contained in her Directive 2008-63 and the opinions expressed therein with regard to ordering the boards of election to permit "same day" registration and voting is contrary to existing Ohio law (R.C. §§ 3503.01, 3509.02, 3509.03 and 3509.04) and should be disregarded. Respondent further has the duty to correct her erroneous Directive by advising the various boards of election that R.C. 3509.04(B) specifically states that a board of elections can provide an absentee ballot only to an individual who is a "qualified elector" and that Ohio law mandates that for one to be a "qualified elector" they must have been registered for at least 30 days prior to participating in the ballot process, whether in person or by absentee ballot.

FACTUAL ALLEGATIONS

8. R.C. Chapter 3509 sets forth the laws governing absent voter's ballots. Pursuant to R.C. 3509.01, the "board of elections of each county shall provide absent voter's ballots for use at every primary and general election, or special election . . . ." R.C. 3509.02(A) provides that "[a]ny qualified elector may vote by absent voter's ballots at an election."

9. R.C. 3505.20 additionally provides that "prior to the nineteenth day before the day of an election and in accordance with section 3503.24 of the Revised Code, any person qualified to vote may challenge the right of any other person to be registered as a voter, or the right to cast an absent voter's ballot, or to make application for such ballot."

10. Pursuant to R.C. 3509.03, except in the case of circumstances not relevant here, "any qualified elector desiring to vote absent voter's ballots at an election shall make written application for those ballots to the director of elections of the county in which the elector's voting residence is located." The application shall contain inter alia "(G) A statement that the person requesting the ballot is a qualified elector. . . ." R.C. 3509.03(G).

11. The Ohio Revised Code defines "elector" or "qualified elector" as a "person having the qualifications provided by law to be entitled to vote." R.C. 3501.1(N). The Code further defines "voter" as "an elector who votes at an election." R.C. 3501.01(0).

12. Further, Article V, § 5 of the Ohio Constitution, defines a qualified elector as follows: "Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, *and has been registered to vote for thirty days, has the qualifications of an elector*, and is entitled to vote at all elections. Any elector who fails to vote in at least one election during any period of

four consecutive years shall cease to be an elector unless he again registers to vote.” Emphasis added.

13. The qualifications to be entitled to vote, and thus be a qualified elector or voter, are clearly set forth in R.C. 3503.01. This section provides: “[e]very citizen of the United States who is of the age of eighteen years or over and who has been a resident of the state thirty days immediately preceding the election at which the citizen offers to vote, is a resident of the county and precinct in which the citizen offers to vote, and has been registered to vote for thirty days, has the qualifications of an elector and may vote at all elections in the precinct in which the citizen resides.”

14. Pursuant to R.C. 3509.04(B), an election officer may not deliver an absent voter’s ballot to a person who has not provided the information required by R.C. 3509.03, including a statement that he or she is a “qualified elector,” meaning that such person has been registered to vote for thirty days.

15. The prescribed thirty day registration period allows state election officials to verify the registration information and legal status of newly registered voters. Section 3503.15 of the Revised Code requires that election officials establish and maintain a statewide voter registration database that shall be continuously available to each board of elections and to other agencies as authorized by law. The database shall include, inter alia, a search program capable of verifying registered voters and their registration information by name, driver’s license number, birth date, social security number, or current address. R.C. 3503.15(A) and (C)(4). The thirty day registration period thus furthers the state’s “strong interest” in the “smooth and effective administration of [voting laws].” *Summit County Democratic Cent. and Executive Comm. v.*

*Blackwell* (6<sup>th</sup> Cir. 2004), 388 F.3d 547, 551 (issued a stay of a TRO affecting election day requirements).

16. On August 13, 2008, Secretary of State Jennifer Brunner issued Directive 2008-63, a true and accurate copy of which is attached hereto as Exhibit A. This Directive ordered all Ohio County Boards of Elections to “expedite the processing of voter registrations received during the week immediately preceding the voter registration deadline” in light of the “significant number of new and changed registrations . . . generated by voter registration drives conducted up to the registration deadline.”

17. Directive 2008-63 instructs the County Boards of Elections that “there are several days before the 2008 general election during which a person may appear at the board of elections and *simultaneously submit* for that election applications to register to vote or to update an existing registration and to request an absentee ballot.” Exhibit A, emphasis added.

18. The Directive further orders that “County Boards of elections are required to develop procedures to *immediately register the applicant* and *issue an absentee ballot* to the newly registered elector of the county *at the time of registration . . .*” Exhibit A, emphasis added.

19. R.C. 309.09(A) provides that each county’s “prosecuting attorney shall be the legal advisor of the . . . board of elections . . . , and any of them may require written opinions or instructions from the prosecuting attorney in matters connected with their official duties.” A number of Prosecuting Attorneys have advised their County Boards of Elections that the Secretary of State’s Directive 2008-63 is unlawful and should be disregarded.

20. For example, on August 25, 2008, Steve Knowling, Holmes County Prosecuting Attorney, issued an opinion to the Holmes County Board of Elections that Directive 2008-63 “to

the extent that it orders a local board of election to permit 'same day' registration and voting is contrary to existing Ohio law." A true and accurate copy of the August 25, 2008 Opinion Letter of the Holmes County Prosecuting Attorney is attached hereto as Exhibit B (hereinafter, "Holmes County Opinion Letter"). The Holmes County Opinion Letter advised the County Board of Election that there was no basis in Ohio law to support the position taken by Respondent in her Directive because Ohio Revised Code "clearly mandates that for one to be a 'qualified elector' they must have been registered for at least 30 days prior to participating in the ballot process, whether in person or by absentee ballot." See Exh. B. The Prosecuting Attorney in the Holmes County Opinion Letter directed the County Board of Election that "[t]o the extent that the Secretary of State Directive 2008-63 orders a board of elections to act contrary to the above stated existing Ohio law, I find *it is without legal foundation and should be disregarded.*" See Exh. B, emphasis added.

21. On September 4, 2008, Gary A. Nasal, Prosecuting Attorney, Miami County, Ohio issued an opinion to the Miami County Board of Elections, addressed to the Director of the Miami County Board of Elections, Steve Quillen, that Directive 2008-63 to the extent that it mandates that county board of elections ". . . develop procedures to immediately register an applicant and issue an absentee ballot to the newly registered elector of the county at the time of registration" is impermissible, despite the deference that should be afforded to Ohio's chief election official. A true and accurate copy of the September 4, 2008 Opinion Letter of the Miami County Prosecuting Attorney is attached hereto as Exhibit C (hereinafter, "Miami County Opinion Letter"). Specifically, the Miami County Opinion Letter advises the Miami County Board of Elections Director that "the suggestion that your office engage in same day registration

and voting in a manner which is contrary to Ohio law as described above is *illegal, inappropriate, and impermissible.*” Exh. C, p. 2 (emphasis added).

22. On September 5, 2008, Stephen J. Pronai, Madison County, Ohio Prosecuting Attorney, issued an opinion to the Madison County Board of Elections that it needed to follow the law as stated in the Ohio Revised Code with regard to processing voter registration applications, in particular with regard to newly registered voters applying for an absentee ballot at the time of registration, and not Directive 2008-63. A true and accurate copy of the September 5, 2008 Opinion Letter of the Madison County Prosecuting Attorney is attached hereto as Exhibit D (hereinafter, “Madison County Opinion Letter”). The Madison County Opinion Letter provides that “[a]ccording to Ohio law, an absentee ballot cannot be issued to a person who is not a qualified elector. One of the requirements to be a qualified elector is to be a registered voter for 30 days. Therefore, according to the law you cannot issue an absentee ballot until the voter has been registered for 30 days.” The Madison County Opinion Letter also advises the Madison County Board of Election that the County Prosecutor is “unclear of the Secretary of State’s reasoning” and he “urge[s] the Board of Elections to follow the law as statue [sic] in the Ohio Revised Code.”

23. On September 10, 2008, Ohio Democratic Party Chairman Chris Redfern advised the Associated Press that in Ohio “there are an additional 490,000 college students who can register and vote on the same day.” See a true and accurate copy of the Associated Press’ article “*Democrats’ advice for Obama: Tie McCain to Bush*” published and distributed nationally on September 10, 2008, attached hereto as Exhibit E. Chairman Redfern’s comments reflect a clear intention for his party and others to use the “same day” registration provisions set forth in Directive 2008-63 to register nearly a half million college students to vote on November 4, 2008



and to have them vote on November 4, 2008 without regard to their actual residence and whether or not they are a qualified elector eligible to vote under Ohio law, registered for at least 30 days prior to participating in the ballot process.

24. The Secretary of State's issuance of Directive 2008-63 has precipitated a situation in which some County Boards of Election may follow the instructions of the Secretary of State and other County Boards of Election will follow the advice of their County Prosecuting Attorneys that it would be illegal to follow Directive 2008-63. Wholly apart from the fact that Directive 2008-63 is contrary to Ohio's statutes, the Secretary of State has failed to initiate any legal action to ensure statewide uniformity in how absentee ballots are counted.

25. In *Bush v. Gore* (2000), 531 U.S. 98, the U.S. Supreme Court found that permitting different methods of determining voter intent that varied from county to county failed to satisfy "the rudimentary requirements of equal treatment and fundamental fairness" and thus violated the equal protection clause of the U.S. Constitution.

26. A writ of mandamus is necessary to ensure that there is statewide uniformity in permitting only qualified electors to cast ballots, as provided in the Ohio Revised Code, and to prevent the disparity of permitting unqualified voters to cast ballots in some counties while prohibiting them from doing so in other counties.

27. Relators Colvin and Moody are qualified, registered voters in Madison and Franklin County, respectively, in the State of Ohio. They are impacted by Directive 2008-63 because they are both qualified electors.

#### **CLAIM FOR RELIEF**

28. The Ohio Revised Code and Ohio's Constitution create a thirty day period after voter registration before a citizen becomes a qualified elector or voter. The Secretary of State's

Directive, in effect, prescribes violations of Ohio election law in three respects. First, the Directive encourages a person to appear at the board of elections and simultaneously submit an application to register to vote and a request for an absent voter's ballot, even though such person is not a qualified elector or voter. Second, in order to request an absent voter's ballot, the Directive encourages a citizen to falsely attest that he is a qualified elector or voter. Third, contrary to Ohio election law, the Directive requires election officials to issue an absent voter's ballot to applicants that officials know are not qualified electors.

29. Sections 3509.02 and 3509.03 of the Revised Code govern the qualifications to request and vote via absent voter's ballot. The Revised Code provides that "any *qualified elector* may vote by absent voter's ballots at an election." R.C. 3509.02(A) (emphasis added). Thus, the limitation of the right to vote by absent voter's ballot to a qualified elector means that only a citizen who has been registered to vote for thirty days may vote by absent voter's ballot.

30. Additionally, in order to request an absent voter's ballot, a citizen must, in a written application, attest that he is, at present, a "qualified elector." R.C. 3509.03(G). Further underscoring the fact that only registered voters may request such a ballot, a citizen must additionally provide an "address at which the elector is registered to vote" at the time of application. R.C. 3509.03(C).

31. Ohio law requires election officials to reject an absent voter's ballot if the official finds that "the applicant is not a qualified elector." R.C. 3509.07.

32. Incorporating the mandatory provisions of R.C. 3509.03(G), Ohio's current Application for absent voter's ballot (Form No. 11-A Prescribed by the Secretary of State (08-08)) requires a citizen to attest that he is a qualified voter at the time he requests an absent voter's ballot. The declaration reads: "I hereby declare, under penalty of election falsification, I

am a qualified voter and the statements above are true to the best of my knowledge and belief. I understand that if I do not provide the requested information, my application cannot be processed.” A true and accurate copy of the Form No. 11-A Application is attached hereto as Exhibit F. There is no basis for distinguishing between the terms “qualified elector” and “qualified voter” under Ohio election law. See R.C. 3501.01(N)-(O).

33. The Form No. 11-A declaration is accompanied by a section wherein the citizen indicates the date he signed the declaration requesting an absent voter’s ballot.

34. Both R.C. 3509.03(G) and the Form No.11-A application indicate that a citizen must be a qualified elector or voter at the time at which he requests an absent voter’s ballot.

35. Directive 2008-63, however, contemplates that persons “may appear at the board of elections office and simultaneously submit for that election applications to register to vote or to update an existing registration and to request an absentee ballot.” Exhibit A. Any simultaneous application to register to vote and to request an absent voter’s ballot will require that the person swear or attest to being a qualified elector or voter as required to request an absent voter’s ballot. Such an affirmation would be false and in obvious contravention of established Ohio law because a person cannot be a qualified elector or voter unless such person has been registered to vote for thirty days.

36. Directive 2008-63 requires local election officials to immediately issue an absent voter’s ballot to a person who simultaneously submits an application to register to vote and request for an absentee ballot with full knowledge of the falsity of the registrant’s declaration that he is a qualified elector or voter. In so doing, the Directive orders local election officials to act in a manner that contravenes established Ohio law.

37. Form No. 11-A states that a person who “. . . commits election falsification is guilty of a felony of the fifth degree.” Exhibit F. Thus, citizens who are not qualified electors or voters, but nevertheless request an absent voter’s ballot by attesting to being a qualified voter, are potentially guilty of a felony. Similarly, election officials who comply with Directive 2008-63, and thus direct a citizen to attest to being a qualified elector or voter, with knowledge that the citizen is not a qualified voter, are also potentially guilty of a felony.

38. Relators, qualified and registered voters in the State of Ohio, believe that Respondent’s acts with regard to Directive 2008-63 are contrary to established Ohio law, and have caused and will continue to cause irreparable harm for which there exists no adequate remedy at law. Relators also believe that Respondent’s acts will require citizens to attest to an untrue statement in violation of Ohio law.

39. Relators are therefore entitled to a writ of mandamus compelling the Secretary of State to issue a clarifying Directive reiterating that thirty days must elapse, consistent with sections of the Revised Code cited above, before an Application for absent voter’s ballot may be accepted by the election official following the registration of an elector.

WHEREFORE, Relators request relief from this Court as follows:

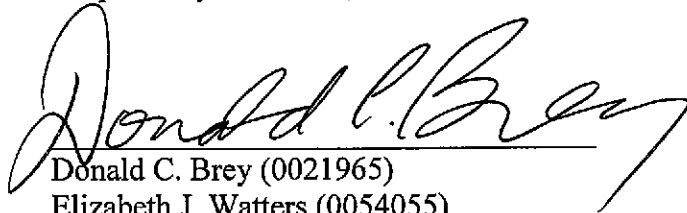
(A) An alternative writ directing Respondents to show cause why a permanent writ of mandamus should not enter;

(B) A writ of mandamus to direct Respondent Secretary of State Jennifer Brunner to issue a Directive to the County Boards of Election that they must void any applications for absent voters’ ballots that were accepted by the election official following the registration of voters and prior to the lapsing of the thirty (30) day required period under Ohio law;

(C) A writ of mandamus to direct Respondent Secretary of State Jennifer Brunner to issue a clarifying Directive to the County Board of Elections reiterating that thirty (30) days must elapse, consistent with the Revised Code, before an application for absent voter's ballot may be accepted by the election official following the registration of a voter, and clarifying that Directive 2008-63 should be construed consistent with Ohio law and does not change or modify the requirement under Ohio law that thirty (30) days must elapse before an application for an absent voter's ballot may be accepted by the election official following the registration of a voter; and

(D) Such further and additional relief as is necessary and appropriate.

Respectfully submitted,



Donald C. Brey (0021965)  
Elizabeth J. Watters (0054055)  
Deborah Scott (0079253)  
CHESTER, WILLCOX & SAXBE, LLP  
65 E. State Street, Suite 1000  
Columbus, Ohio 43215  
Telephone: (614) 221-4000  
Facsimile: (614) 221-4012  
Email: [dbrey@cwsllaw.com](mailto:dbrey@cwsllaw.com)  
[ewatters@cwsllaw.com](mailto:ewatters@cwsllaw.com)  
[dscott@cwsllaw.com](mailto:dscott@cwsllaw.com)

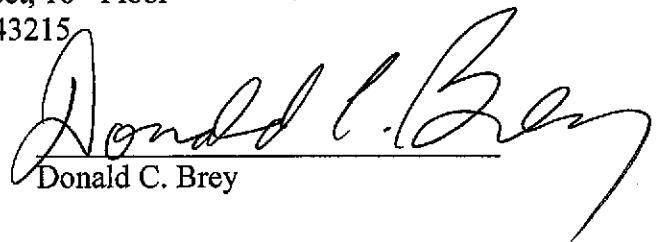
Attorneys for Relators  
Rhonda L. Colvin and C. Douglas Moody

**CERTIFICATE OF SERVICE**

A copy of the foregoing Complaint has been served by hand-delivery upon the following  
this 12<sup>th</sup> day of September, 2008:

JENNIFER BRUNNER,  
SECRETARY OF STATE OF OHIO  
180 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215

KENT SHIMEALL  
Chief of Ohio Attorney General  
Constitutional Offices Section  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215

  
Donald C. Brey

ND: 4829-2344-6275, v. 1

**VERIFICATION & AFFIDAVIT OF RHONDA L. COLVIN**

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF FRANKLIN        )

BEFORE ME, the undersigned Notary, personally came and appeared Rhonda L. Colvin, who, after being duly sworn, deposes and says as follows:

1. I am a resident and qualified elector of the State of Ohio.
2. I have reviewed the foregoing Verified Petition and Complaint for Writ of Mandamus, *State ex rel. Colvin v. Brunner*, which action is brought in the name of the State on my relation and on the relation of C. Douglass Moody.
3. I have personal knowledge of the matters forth in the Verified Petition and Complaint. The facts in the Verified Petition and Complaint are based on my personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

Rhonda L. Colvin  
Rhonda L. Colvin

Sworn and subscribed before me this 12th day of September, 2008.

Elizabeth J. Watters  
Notary Public



ELIZABETH J. WATTERS, ATTORNEY AT LAW  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.

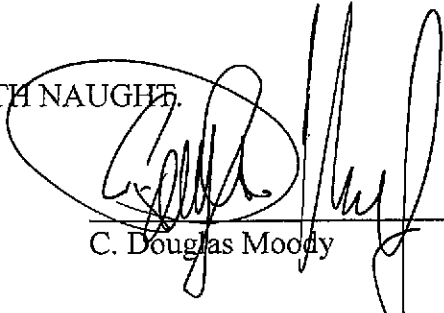
**VERIFICATION & AFFIDAVIT OF C. DOUGLAS MOODY**

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF FRANKLIN        )

BEFORE ME, the undersigned Notary, personally came and appeared C. Douglas Moody, who, after being duly sworn, deposes and says as follows:

1. I am a resident and qualified elector of the State of Ohio.
2. I have reviewed the foregoing Verified Petition and Complaint for Writ of Mandamus, *State ex rel. Colvin v. Brunner*, which action is brought in the name of the State on my relation and on the relation of Rhonda L. Colvin.
3. I have personal knowledge of the matters forth in the Verified Petition and Complaint. The facts in the Verified Petition and Complaint are based on my personal knowledge.

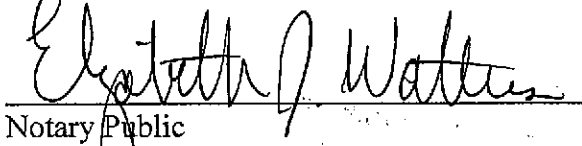
FURTHER AFFIANT SAYETH NAUGHT.




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C. Douglas Moody

Sworn and subscribed before me this 12th day of September, 2008.




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Notary Public



**ELIZABETH J. WATTERS, ATTORNEY AT LAW**  
 NOTARY PUBLIC - STATE OF OHIO  
 My commission has no expiration date,  
 Section 147.03 R.C.



**VERIFICATION & AFFIDAVIT OF DONALD C. BREY**

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF FRANKLIN        )

BEFORE ME, the undersigned Notary, personally came and appeared Donald C. Brey, who, after being duly sworn, deposes and says as follows:

1. I am an attorney in good standing in the State of Ohio and am counsel for Relators Colvin and Moody. I practice law as a partner of Chester, Willcox & Saxbe, LLP.

2. I participated in the drafting of the foregoing Verified Petition and Complaint for Writ of Mandamus, *State ex rel. Colvin v. Brunner*, which action is brought in the name of the State on the relation of Rhonda L. Colvin and C. Douglass Moody.

3. I have personal knowledge of the matters set forth in the Verified Petition and Complaint. The facts in the Verified Petition and Complaint are based on my personal knowledge.

4. Exhibit A to the Complaint is a true and accurate copy of Directive 2008-63, which was issued by Secretary of State Jennifer Brunner to all County Boards of Elections on or about August 13, 2008.

5. Exhibit B to the Complaint is a true and accurate copy of a letter issued by Holmes County Prosecuting Attorney Steve Knowing to the Holmes County Board of Elections on or about August 25, 2008

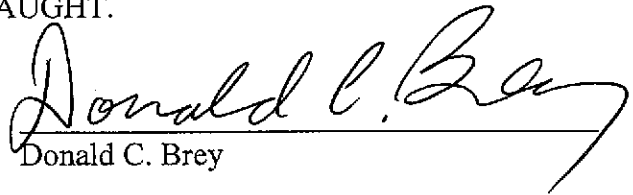
6. Exhibit C to the Complaint is a true and accurate copy of an Opinion issued by Miami County Prosecuting Attorney Gary A. Nasal to the Miami County Board of Elections on or about September 4, 2008.

7. Exhibit D to the Complaint is a true and accurate copy of a memo issued by Madison County Prosecuting Attorney Stephen J. Pronai to the Madison County Board of Elections on or about September 5, 2008

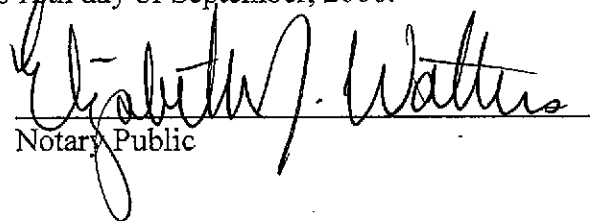
8. Exhibit E to the Complaint is a true and accurate copy of an AP News Article in which political party and political campaign leaders are quoted regarding efforts to target "an additional 490,000 college students who can register and vote on the same day".

9. Exhibit F to the Complaint is a true and accurate copy of the Ohio Secretary of State's Form No. 11-A Application for Absent Voter's Ballot.

FURTHER AFFLIANT SAYETH NAUGHT.

  
Donald C. Brey

Sworn and subscribed before me this 12th day of September, 2008.

  
Notary Public



ELIZABETH J. WATTERS, ATTORNEY AT LAW  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.



Directive 2008-63 Processing Voter Registrations Received the Week before the Deadline Page 2 of 2

provisions of R.C. 3503.19(C)(1)<sup>1</sup>. In light of the increasing numbers of absentee voters by mail, this directive is essential to permit new and changed registrations to be processed in time to enable the board to mail an absentee ballot to such a voter and for the voter to timely return the voted ballot.

A board that is satisfied as to the truth of the statements made on the voter registration application shall register the applicant not later than the second Friday after the voter registration deadline, i.e., not later than October 17, 2008, and shall immediately send to the applicant an acknowledgement notice. The acknowledgement notice must contain notification of the applicant's registration, the precinct in which the applicant is to vote and the notice required by R.C. 3503.19(C)(1)(c) regarding acceptable proof of voter identity.

If a newly registered elector submitted an absentee ballot application with his or her voter registration application, the board shall issue the appropriate absentee ballot to that elector as soon as practicable, but not more than five business days after mailing the acknowledgement notice to that elector.

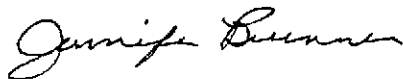
Additionally, there are several days before the 2008 general election during which a person may appear at the board of elections office and simultaneously submit for that election applications to register to vote or to update an existing registration and to request an absentee ballot. As discussed above, a board of elections must first obtain from the person who presents himself or herself to vote during this period a completed voter registration or change of address form.

Boards of elections are required to develop procedures to immediately register the applicant and issue an absentee ballot to the newly registered elector of the county at the time of registration, reserving the right to delay registration and immediate absentee voting if a board is not satisfied as to validity of the application and the applicant's qualifications. Boards of elections utilizing satellite locations for early in-person absentee voting should develop sufficient procedures to enable them to comply with this directive as they would if in-person absentee voting were taking place at the board's office.

It is critical that all Ohio elections officials work to ensure that persons eligible to vote in the general election by absentee ballot be afforded a timely opportunity to do so. Boards of elections may wish to consider hiring temporary employees to assist in this process to meet the deadlines set forth in this directive and in order to timely process the large number of voter registration applications and absentee ballot applications that are expected in connection with the 2008 general election.

If you have any questions about this directive, please contact your assigned elections counsel by email or at telephone number (614) 466-2585.

Sincerely,



Jennifer Brunner

<sup>1</sup> R.C. 3503.19(C)(1) provides in pertinent part:

"A board of elections that receives a voter registration application and is satisfied as to the truth of the statements made in the registration form shall register the applicant not later than twenty business days after receiving the application, unless that application is received during the thirty days immediately preceding the day of an election.

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The notification shall be by nonforwardable mail. If the mail is returned to the board, it shall investigate and cause the notification to be delivered to the correct address."



**JENNIFER BRUNNER**  
**OHIO SECRETARY OF STATE**

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

**MEMORANDUM**

**To:** All Counties; BOE Contacts  
**Cc:** Field Staff; Elections  
**From:** Secretary of State, Jennifer Brunner  
**Date:** 08/13/2008  
**Re:** Processing Voter Registration Applications Received the Week Immediately Preceding a Voter Registration Deadline

Directive 2008-63, among other subjects, clarifies issues surrounding the overlap between the end of voter registration and the beginning of absentee voting in Ohio. This is the first election in which issues have been raised regarding the overlap.

In instituting no-fault absentee voting, the General Assembly also created a 5-day overlap between the end of voter registration and the beginning of absentee voting. This overlap has existed since the 2006 primary election.

Sub. H. B. No. 234 was passed by the General Assembly on 10-19-05 and became effective on 01-27-06. According to the Legislative Service Commission, this bill changed Ohio absentee voting laws as follows:

- Permits any qualified elector to vote by absent voter's ballots at an election (R.C. 3509.02(A)).
- Eliminates the qualifications that electors were required to meet under former law in order to vote by absent voter's ballots (R.C. 3509.02(A) and (C), 3509.03, and 3509.04(B)).

According to R.C. 3509.02, "Those ballots shall be designated as "Absent Voter's Ballots" and shall be printed and ready for use on the thirty-fifth day before the day of the election, except that those ballots shall be printed and ready for use on the twenty-fifth day before the day of a presidential primary election." This law became effective on 08-28-2001.

R.C. 3503.19 stipulates the voter registration deadlines for Ohio elections. This law became effective on 08-22-1995 and was amended on 05-02-2006, after the legislature created no-fault absentee voting.

To address these questions, the Secretary of State has provided the following guidance, in keeping with long-standing Ohio law:

- Notes that a board of elections must register a person as an elector before issuing an absentee ballot to that person.
- Requires boards to complete voter registration processing no later than 10-17-08, to assure every qualified elector is able to vote via absentee or on Election Day.
- Requires boards to develop procedures to immediately register an applicant and issue an absentee ballot to the newly registered elector of the county at the time of registration. During the overlap period.
- Allows boards to delay registration and immediate absentee voting if the board is not satisfied as to validity of the application and the applicant's qualifications.

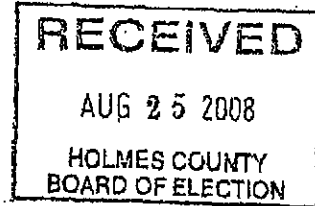
**Steve Knowing**  
Holmes County Prosecuting Attorney  
164 East Jackson Street  
Millersburg, Ohio 44654  
Phone 330-674-4841  
Fax 330-674-0183



Assistant Prosecuting Attorneys  
**Robert D. Rinfret**  
**Christine C. Williams**  
**F. Christopher Oehl**  
Investigator  
**Chuck DeFelice**

August 25, 2008

Holmes County Board of Elections  
75 East Clinton Street  
Millersburg, Ohio 44654



**Re: Ohio Secretary of State Directive 2008-63**

Dear Board Members:

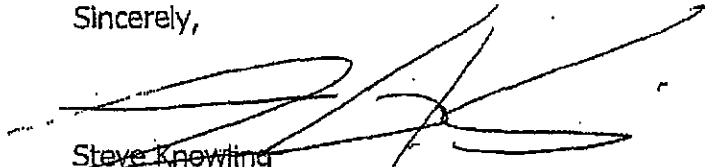
At your request I have reviewed Ohio Secretary of State Directive 2008-63 dated August 13, 2008. I have also reviewed the accompanying Memorandum issued by the Secretary of State on the same date. In addition I have reviewed certain relevant sections of the Ohio Revised Code specifically including but not limited to 3503.01, 3509.02, 2509.03 and 3509.04.

You have requested an opinion as to whether Secretary of State Directive 2008-63, to the extent it orders a local board of elections to permit "same day" registration and voting is contrary to existing Ohio law. Upon review I find that it is. I can find no basis in the Ohio Revised Code or any reported case law to support the position taken by the Secretary of State as expressed in her Directive. The Ohio Revised Code clearly mandates that for one to be a "qualified elector" they must have been registered for at least 30 days prior to participating in the ballot process, whether in person or by absentee ballot.

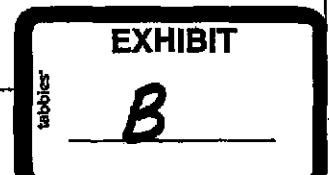
You should also be aware that Ohio Revised Code Section 3509.04(B) specifically provides that a board of elections can only provide an absentee ballot to an individual who is a "qualified elector".

To the extent that Secretary of State Directive 2008-63 orders a board of elections to act contrary to the above stated existing Ohio law, I find it is without legal foundation and should be disregarded.

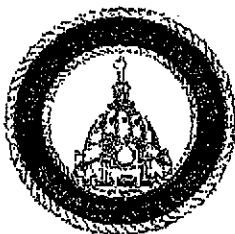
Sincerely,

  
Steve Knowing  
Prosecuting Attorney

SDK/krw







**GARY A. NASAL**

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**OPINION NO. 08-515**

**SUBJECT TO ATTORNEY/CLIENT PRIVILEGE  
NOT FOR PUBLIC DISSEMINATION**

September 4, 2008

Mr. Steve Quillen  
Director  
The Miami County Board of Elections  
The Old Court House  
215 West Main Street  
Troy, Ohio 45373

Dear Mr. Quillen:

I have before me your letter of September 2, 2008, which relates to a matter incident to your service as the Director of the Miami County Board of Elections. Your letter was accompanied by a copy of an opinion letter dated August 25, 2008, issued by the Honorable Steve Knowing, the Prosecuting Attorney of Holmes County, Ohio. You also provided my office with a copy of Directive 2008-63 issued by Ohio Secretary of State Jennifer Brunner.

You indicate in your letter that you are asking for my opinion, but you provide me with no specific inquiry or information as to the question which you now pose. I note that this is the second time that you have had contact with my office in this regard, and you have yet to frame your inquiry in a substantive and understandable manner.

Based upon my extrapolation from the information which has been made available to my office, however, it is my understanding that it relates to the concept of "same day" registration and voting. Although Secretary Brunner's Directive meanders through the subject at hand





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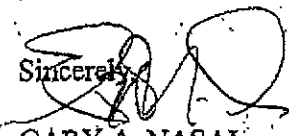
occasionally touching on relevant authority, a memorandum which accompanies the same indicates that she is mandating that county boards of elections "...develop procedures to immediately register an applicant and issue an absentee ballot to the newly registered elector of the county at the time of registration."

In his opinion, Mr. Knowling offers his judgment the requirement advanced by Secretary Brunner that local boards of elections provide "...same day' registration and voting is contrary to existing Ohio law." He suggests that the proposed procedure is "...without legal foundation and should be disregarded."

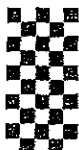
I concur in this judgment. Section 3503.01 of the Ohio Revised Code sets forth the qualifications of Ohio electors. Among the prerequisites to voting which are contained in that enactment is the requirement that an individual who proposes to vote in an Ohio election must have "... registered to vote for thirty days...". Section 3509.02 indicates that "[a]ny qualified elector may vote by absent voter's ballot at an election." (Emphasis Added) Under Section 3509.03 of the Code it is provided that "...any qualified elector, desiring to vote absent voter's ballots at an election shall make written application for those ballots to the director of elections of the county...". (Emphasis Added) Further, under Section 3509.04, the director is to provide a prospective voter with an absent voter's ballot if he or she "...finds that the applicant is a qualified elector. "

The Secretary of State of the State of Ohio is Ohio's chief election official, and, as such, the pronouncements of the holder of said position as to election matters should be afforded deference. The discretion of the Secretary is not unbridled, however, and he or she is obliged, as are we all, to follow the legal enactments of the Ohio General Assembly regardless of our personal or partisan preferences. It is my opinion, and you are advised that the suggestion that your office engage in same day registration and voting in a manner which is contrary to Ohio law as described above is illegal, inappropriate, and impermissible.

I am hopeful that my thoughts and opinions in this regard will prove of benefit and assistance to you. I very much appreciate your efforts, and those of your colleagues and Board members to ensure your continued successful efforts in the administration of fair and effective voting processes throughout Miami County. I thank you for your concern and your attention to this matter.

Sincerely,  
  
GARY A. NASAL  
Prosecuting Attorney  
Miami County, Ohio

GAN:mwa



ASSISTANT PROSECUTING ATTORNEYS  
RAMON P. COSTELLO  
RACHEL M. PRICE  
GREGORY T. MERRITT

OFFICE OF  
**STEPHEN J. PRONAI**  
**MADISON COUNTY PROSECUTING ATTORNEY**  
59 North Main Street • London, Ohio 43140  
Phone: (740) 852-2259 • Fax: (740) 845-1694

VICTIM/WITNESS ADVOCATE  
CAROL A. MEADE, R.A.

OFFICE ADMINISTRATOR  
JANICE MERNACE

MEMO

Re: DIRECTIVE 2008-63  
September 05, 2008

Ohio Secretary of State Jennifer Brunner issued Directive 2008-63 on August 13, 2008, which discussed processing voter registration application. The bulk of the directive urges the Board of Elections to expedite the voter registration process. However the directive also discusses newly registered voters applying for an absentee ballot at the time of registration. The directive states:

If a newly registered elector submitted an absentee ballot application with his or her voter registration application, the board shall issue the appropriate absentee ballot to that elector as soon as practicable, but not more than five business days after mailing the acknowledgement notice to that elector.

Additionally, there are several days before the 2008 general election during which a person may appear at the board of elections office and simultaneously submit for that election applications to register to vote or to update an existing registration and to request an absentee ballot. As discussed above, a board of elections must first obtain from the person who presents himself or herself to vote during this period a completed voter registration or change of address form.

Boards of elections are required to develop procedures to immediately register the applicant and issue an absentee ballot to the newly registered elector of the county at the time of registration, reserving the right to delay registration and immediate absentee voting if a board is not satisfied as to validity of the application and the applicant's qualifications.

This appears to be in contravention of the Ohio Revised Code and the Ohio Constitution. To understand the ramification of this directive an examination of pertinent law is necessary.

O.R.C. 3501.01(N) defines elector. It states: "elector or qualified elector means a person having the qualifications provided by law to be entitled to vote." O.R.C. 3503.01 and the Ohio Constitution define the qualification of an elector. O.R.C. 3503.01 states: " Every citizen of the United States who is of the age of eighteen years or over



and who has been a resident of the state thirty days immediately preceding the election at which the citizen offers to vote, is a resident of the county and precinct in which the citizen offers to vote, and has been registered to vote for thirty days, has the qualifications of an elector and may vote at all elections in the precinct in which the citizen resides." Ohio O Const V § 1 states: "Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections. Any elector who fails to vote in at least one election during any period of four consecutive years shall cease to be an elector unless he again registers to vote."

From these definitions we find that an elector is someone who is:

- (1) A citizen of the United States
- (2) 18 years of age or older
- (3) Resident of the state 30 days immediately preceding the election
- (4) A resident of the county and precinct in which the citizen offers to vote
- (5) And has been registered to vote for 30 days.

O.R.C. 3503.19 details the methods of registering to vote. For our purposes O.R.C. § (C) (1) is the law concerning registering a voter. It states: "A board of elections that receives a voter registration application and is satisfied as to the truth of the statements made in the registration form shall register the applicant not later than twenty business days after receiving the application, unless that application is received during the thirty days immediately preceding the day of an election." The board shall promptly notify the applicant in writing of each of the following:

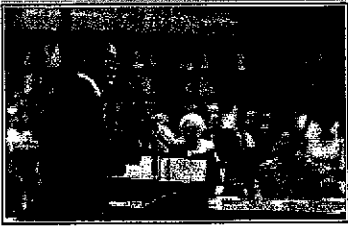
- (a) The applicant's registration;
- (b) The precinct in which the applicant is to vote;
- (c) In bold type as follows:

**"Voters must bring identification to the polls in order to verify identity. Identification may include a current and valid photo identification, a military identification that shows the voter's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than this notification or a notification of an election mailed by a board of elections, that shows the voter's name and current address. Voters who do not provide one of these documents will still be able to vote by providing the last four digits of the voter's social security number and by casting a provisional ballot. Voters who do not have any of the above forms of identification, including a social security number, will still be able to vote by signing an affirmation swearing to the voter's identity under penalty of election falsification and by casting falsification and by casting a provisional ballot."**

Finally, O.R.C. 3509.03 details the steps necessary to apply and receive an absentee ballot. It states that any qualified elector may apply for an absent voters ballot. The section details various requirements, specifically section (G) states: "A statement that the person requesting the ballots is a qualified elector." "O.R.C. 3509.04 directs the director issue a ballot "if the director finds that the applicant is a qualified elector: Per the O.R.C. to apply for and receive an absentee ballot, the voter must be a qualified elector. Again, per the O.R.C. and the Ohio Constitution, one of the requirements to be considered a qualified elector is that the voter be registered to vote for 30 days.

The Madison County Board of Elections is to follow the law of Ohio. According to Ohio law an absentee ballot cannot be issued to a person who is not a qualified elector. One of the requirements to be a qualified elector is to be a registered voter for 30 days: Therefore, according to the law you cannot issue an absentee ballot until the voter has been registered for 30 days. I am unclear of the Secretary of State's reasoning. I urge the Board of Elections to follow the law as statute in the Ohio Revised Code.

**AP** Associated Press



Democratic presidential candidate Sen. Barack Obama, D-Ill., speaks during a town hall meeting at Granby High School in Norfolk, Va., Wednesday, Sept. 10, 2008. (AP Photo/Chris Carlson)



## Democrats' advice for Obama: Tie McCain to Bush

By DAVID ESPO - 1 day ago

WASHINGTON (AP) — With John McCain gaining in the polls, Democrats have a short checklist for Barack Obama: Tie the Republican to an unpopular President Bush. Let no charge go unanswered. And stress plans to fix the economy.

In more than a dozen interviews, prominent Democrats agreed that McCain's improved position in the race is due to a predictable gain after a successful national convention and likely to subside in the next several days.

Yet there was also a recognition that Obama's campaign needs improvements and that Alaska Gov. Sarah Palin's selection as McCain's running mate shook up the race.

Obama is "ahead by a couple of points in Pennsylvania at this point," said the state's Sen. Bob Casey, who quickly added, "In my view that's not good enough. We've got a lot of work to do."

Casey's summation — confidence tempered by concern that the race is far from settled — was a common theme among party strategists, state chairmen, lawmakers and others.

Once the immediate post-convention effect wears off, "I think the race will come back to where it was, a close race, a very close race, with a slight but real advantage for Obama," said Tad Devine, who was a top aide to Sen. John Kerry in the 2004 presidential race.

At the same time, several Democrats said Obama had erred in recent days by personally trying to counter Palin, who has sparked fresh excitement among Republicans.

They added that the result was to dilute the time and focus Obama could devote to McCain.

In addition, several Democrats said disapprovingly that the Obama campaign has rejected pleas to encourage the creation of outside political groups that can accept donations in unlimited amounts — entities that could air commercials to diminish Palin's standing or free up party funds for other uses.

They also said his campaign must do more to stress the anti-abortion views of McCain and — particularly — his running mate. The issue is key to suburban women voters in several states, including Pennsylvania, who support abortion rights.

None of those interviewed agreed to place their criticisms on the record, saying they did not want to create evidence of Democratic dissension as the fall campaign was beginning.

At the same time, several said Obama's long battle with Sen. Hillary Rodham Clinton for the Democratic nomination was paying dividends. They cited strong organizations in states such as Pennsylvania, where victory is critical to the Democrats' chances of winning the White House.

They also pointed to Iowa, where any voter is eligible to cast an absentee ballot beginning Sept. 25, and Ohio, where a one-week early-voting window opens on Sept. 30. Bush won both states in 2004, and his triumph in Ohio sealed his re-election.

"We have almost a 95,000 voter registration advantage over Republicans in the state, which is a huge difference," said Scott Brennan, the Iowa Democratic chairman.

In Ohio, Democratic Party Chairman Chris Redfern said his party has registered 900,000 new voters since March. He also said there are an additional 490,000 college students who can register and vote on the same day. "We have the best organization I've seen since 1992," he said, referring to the year Bill Clinton carried the state.

While one Democrat said he was surprised at the extent of McCain's recent gains in the polls, there was relatively little concern expressed overall.

"It would be nice if it didn't occur," said Peter Brodnitz, a Democratic pollster, but he added it is a common post-convention occurrence. "We're still going through the settling out" phase, he said.

As did others, Brodnitz said the Obama campaign "has to show they're the agent of change,"

EXHIBIT

E

and refute McCain's claims in that area.

Casey said Democrats must make sure that McCain's previous statements favorable to the privatization of Social Security are well-known, as well as his votes against expanding children's health care. "I think John McCain's record is not very well-known, frankly," he added.

Palin's presence on the ticket presents a challenge for Obama, according to Democrats. "What's happened in the last two weeks has caught a lot of Democrats by surprise," said Simon Rosenberg, the president of the NDN, a think tank. "The Obama campaign and the party are recalibrating."

Several Democrats said the Alaska governor is experiencing a political honeymoon and predicted it would not last until Election Day. They expressed hope that the news media would investigate her record aggressively.

They also advised Obama to hand off the task of challenging her to his own running mate, Sen. Joe Biden of Delaware, or Democratic women.

"I think Barack Obama is running against John McCain and I think what he needs to do is get out there and talk about who really is able to change the direction of this country," said Ellen Malcolm, the head of Emily's List, which works to elect female Democrats who support abortion rights.



Form No. 11-A Prescribed by the Secretary of State (08-08)

**APPLICATION FOR ABSENT VOTER'S BALLOT**

PLEASE PRINT OR TYPE (See Instructions at Bottom of Page)

**Send Ballot to:**  
(if different from home address)  
Name \_\_\_\_\_

**Voter's Name** \_\_\_\_\_

care of/PO Box \_\_\_\_\_

**Home Address** \_\_\_\_\_

Address \_\_\_\_\_

**City, Village, Office** \_\_\_\_\_

**County** \_\_\_\_\_ **Zip Code** \_\_\_\_\_ **City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip Code** \_\_\_\_\_

You must provide your birthdate: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ and one of the following:  
(month) (day) (year)

- Your Ohio driver's license number \_\_\_\_\_, or
- The last four digits of your social security number \_\_\_\_\_, or
- Copy of a current and valid photo identification, a military identification, or a current (within the last 12 months) utility bill, bank statement, government check, paycheck or other government document (other than a voter registration notification mailed by a board of elections) that shows your name and current address.

I wish to vote in the following election to be held on \_\_\_\_\_.  
(month-date-year of election)

Check ONLY one (A separate application must be completed for each election):

**1. Primary Election:**

- Democratic
- Republican
- Nonpartisan or issues only

**2. General Election**

**3. Special Election**

I wish to have a ballot mailed to me at the address listed above. I understand that if a ballot is mailed to me and I change my mind and appear at my polling place to vote on Election Day, I will be required to vote a provisional ballot that can not be counted until at least 10 days after the election.

I hereby declare, under penalty of election falsification, I am a qualified voter and the statements above are true to the best of my knowledge and belief. I understand that if I do not provide the requested information, my application cannot be processed.

X \_\_\_\_\_  
Signature of Voter Date Signed

**Voluntary:** To assist the board of elections in contacting you in a timely manner if your application is incomplete:

Your daytime telephone number (\_\_\_\_) \_\_\_\_\_ Your e-mail address \_\_\_\_\_

**WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE**

**INSTRUCTIONS**

Chapter 3509. of the Revised Code of Ohio

1. Use of this form is optional. To be valid, your application must include your name, voting residence address, date of birth, and signature; the election for which the ballot is requested and, if a partisan primary election, your political party affiliation; statement you are a qualified elector in the county; and one of the following: your Ohio drivers license number, the last four digits of your social security number, or a copy of your current and valid photo identification, a military identification, or a current (within the last 12 months) utility bill, bank statement, government check, paycheck or other government document (other than a voter registration notification mailed by a board of elections) that shows your name and address.
2. An application by mail must be received by your county board of elections by noon on the third day before the election. An application by you in person must be received by the close of regular board office hours the day before the election. Applications for persons who are hospitalized or for persons whose minor child is hospitalized due to an accident or unforeseeable medical emergency will be accepted until 3 p.m. on Election Day.
3. When you receive your ballot: If you return your ballot by mail, it must be postmarked\* no later than the day before Election Day and received by your county board of elections no later than 10 days after the election. If you return your ballot in person or if a near relative delivers it to the board for you, it must be delivered to your county board of elections no later than the close of polls on Election Day. If you are a voter outside of the United States on Election Day, the ballot envelope must be signed or postmarked before the close of polls and received by the board no later than 10 days after Election Day or 20 days after a presidential primary election.

\*Postmarked does not include a date marked by a postage evidence system such as a postage meter.

