



DIRECTIVE 2020-22

October 5, 2020

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

Re: Directive 2020-16; The Use of Secure Receptacles Outside of the Boards of Elections; Litigation; and the Use of Election Officials to Receive Absentee Ballots Outside the Boards of Elections

SUMMARY

This Directive clarifies [Directive 2020-16](#) and the use of secure receptacles, commonly known as “drop boxes,” outside the board of elections; provides an overview of relevant litigation; and sets forth instructions on the use of election officials for the return of absentee ballots outside the board of elections.

INSTRUCTIONS

I. CLARIFICATION OF DIRECTIVE 2020-16 AND SECURE RECEPTACLES AND OVERVIEW OF RELEVANT LITIGATION

A. OVERVIEW AND CLARIFICATION OF DIRECTIVE 2020-16

On March 25, 2020, the Ohio General Assembly passed H.B. 197. Governor DeWine signed H.B. 197 into law on March 27, 2020. The legislation contained many provisions concerning Ohio’s response to COVID-19, including changes to the 2020 Primary Election. Those changes related to the 2020 Primary Election were temporary, uncodified law and do not appear in the Ohio Revised Code. In addition to other temporary changes to election law, H.B. 197 explicitly required boards to have a “secure receptacle” outside the office of each board of elections as an alternate means for the return of absentee ballots in the 2020 Primary Election.¹

On August 12, 2020, my Office issued [Directive 2020-16](#). Directive 2020-16 is based on the express language and legislative intent behind H.B. 197 and the express language of [R.C. 3509.05\(A\)](#), the latter of which provides that absentee voters may return their absentee ballots by mail or by personally delivering² their ballots “to the director” of their county board of elections.

¹ H.B. 197, Section 32(E)(1).

² An absentee voter may also have certain designated relatives deliver the voter’s ballot “to the director.” See [R.C. 3509.05\(A\)](#) (“spouse of the elector, the father, mother, father-in-law, mother-in-law, grandfather,

R.C. 3509.05(A) states that those are the only two methods by which absentee ballots can be returned “to the director” and that absentee ballots “shall be transmitted to the director in no other manner, . . .” In each county, the director of the board of elections maintains their office at the county board of elections.

While H.B. 197 required each county board of elections to procure and install a “secure receptacle” outside each board’s office for the return of absentee ballots in the conclusion of the 2020 Primary Election, H.B. 197 did not amend R.C. 3509.05 to require the continued use of the secure receptacle (otherwise known as a “drop box”) in the 2020 General Election. Because those secure receptacles were installed outside the office of each board of elections where the director has their office, my Office instructed the boards of elections in Directive 2020-16 that the secure receptacle each county installed for the Primary Election must also be used for the return of absentee ballots in the 2020 General Election.

In Directive 2020-16 my Office also expanded the use of secure receptacles to permit voters to deposit absentee ballot *applications* and voter registration forms in the secure receptacle. Directive 2020-16 also required boards, beginning September 1, 2020, to provide voters with 24/7 access to the secure receptacle. It also stated that the secure receptacle outside of the board of elections must be monitored 24/7, and at least one Republican and one Democratic member of the board or board staff must together retrieve the secure receptacle’s contents at least once daily. Boards of elections must also retrieve the contents at noon on October 31, 2020 and at 7:30 p.m. on November 3, 2020. The board must mark or personally monitor the last voter in line at 7:30 p.m. for the secure receptacle in order to allow voters who are in line at 7:30 p.m. for the secure receptacle to drop off their ballot.

Directive 2020-16 prohibits boards from installing a secure receptacle at any location other than outside the board of elections because R.C. 3509.05(A) states that if the voter elects *not* to return their ballot by mail, then the voter must personally deliver their ballot “to the director.” The director maintains their office at the board of elections. Moreover, as stated above, H.B. 197 required each board of elections to install a secure receptacle *outside the office of the board of elections*. As such, based on my Office’s interpretation of current permanent law and the express language and legislative intent behind the temporary law, a voter who opts to personally deliver their absentee ballot to the board of elections, as opposed to mailing their absentee ballot to the board of elections, must return their absentee ballots to the office of the board of elections.

To be clear, Directive 2020-16, never prohibited and does not prohibit a board of elections from installing more than one secure receptacle *outside the office of the board of elections*. If a majority of the board members vote to install additional secure receptacles outside the office of the board of elections, the same requirements set forth above apply to each additional secure receptacle installed outside the board of elections. Additionally, boards of elections must check the secure receptacle(s) as many times a day as necessary to ensure that it does not become over-filled and unusable.

grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of the elector”).

Ohio law prohibits any person from “loiter[ing], congregat[ing], or engag[ing] in any kind of election campaigning within the area between the polling place and the small flags of the United States placed on the thoroughfares and walkways leading to the polling place, and if the line of electors waiting to vote extends beyond those small flags, within ten feet of any elector in that line.”³ Additionally, Ohio law prohibits any person from “hinder[ing] or delay[ing] an elector [from] reaching or leaving the place fixed for casting the elector’s ballot.”⁴ These same prohibitions against loitering and congregating and against hindering or delaying an elector from reaching or leaving the place fixed for casting their ballot apply to any secure receptacle installed outside the board of elections.

B. OHIO DEMOCRATIC PARTY V. LAROSE⁵

Directive 2020-16 and the underlying interpretation of R.C. 3509.05 upon which we based Directive 2020-16 were challenged in the Franklin County Court of Common Pleas. The trial court ruled in favor of Plaintiffs’ alternative interpretation of R.C. 3509.05 and preliminarily enjoined the requirement in Directive 2020-16 that secure receptacles must be located only outside the board of elections. My Office previously notified boards of elections that the injunction was stayed pending the outcome of the appeal of the trial court’s ruling.

On Friday, October 2, 2020, the Tenth District Court of Appeals⁶ reversed that injunction, meaning that Directive 2020-16 is still in effect. The Court’s majority opinion also ruled in favor of the defendant that Directive 2020-16 is not in violation of Ohio law.

II. ELECTION OFFICIALS RECEIVING ABSENTEE BALLOTS OUTSIDE THE BOARD OF ELECTIONS

Similarly, Directive 2020-16 does not prohibit a board of elections from having permanent⁷ or temporary board employees who have undergone a criminal background check (hereinafter, collectively referred to as “board employees”) collect absentee ballots outside the office of the board of elections from electors personally delivering⁸ their absentee ballots to the board. Boards of elections, by a vote of a majority of the board’s members, may have board employees collect absentee ballots outside of the office of the board of elections in addition to the secure receptacle(s) that are available 24 hours a day. If a majority of the board members vote to have board employees receive absentee ballots outside the office of the board of elections from electors who opt to

³ [R.C. 3501.35\(A\)\(1\)](#).

⁴ [R.C. 3501.35\(A\)\(2\)](#).

⁵ *Ohio Democratic Party v. LaRose*, Franklin C.P. No. 20CV-5634 (Sept. 16, 2020).

⁶ *Ohio Democratic Party v. LaRose*, 10th Dist. Franklin No. 20AP-432.

⁷ All permanent board of elections employees are required to have a criminal background check conducted. See [Election Official Manual Chapter 2](#), page 11.

⁸ Again, an absentee voter may also have certain designated relatives deliver the voter’s ballot “to the director.” See [R.C. 3509.05\(A\)](#) (“spouse of the elector, the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of the elector.”).

personally deliver their ballots to the board, then the board's plan must meet the following requirements:

- (1) At least one Republican and one Democrat board employee must be paired together and trained to receive absentee ballots outside the board of elections from electors who opt to personally deliver their ballots to the board;
- (2) The board of elections must follow the [Ohio Secretary of State's Health Guidance for Boards of Elections](#) and equip the bipartisan board employees with personal protective equipment;
- (3) The board must have enough additional staff to also continue the successful operation of all other duties at the board of elections;
- (4) The board must provide the bipartisan team with a secure container in to which the bipartisan team will place the delivered absentee ballots and to maintain the secure and bipartisan chain of custody of such delivered absentee ballots from outside the board of elections to inside of the board of elections;
- (5) The board must secure the ballots in a dual locked room once inside the board of elections;⁹
- (6) The board, by a majority vote of its members, must vote to set the schedule during which bipartisan teams of board employees will receive absentee ballots outside the office of the board of elections and publicize it throughout the county. That staffed collection schedule may begin when early, in-person voting begins on October 6 and may be whatever the board determines to be necessary in the county through 7:30 p.m. on Election Day, November 3, 2020;
- (7) The board must work with the board's law enforcement point of contact to ensure that there is appropriate traffic control and appropriate signage outside the board of elections instructing voters on where to park or drive up to return absentee ballots; and
- (8) The bipartisan team of board employees must remind any elector returning more than one ballot that only the elector themselves or a near relative¹⁰ of the elector may personally deliver an absentee ballot to the board of elections.

⁹ Access to ballots and election data media must be restricted to authorized personnel only. These items should be segregated and stored in a separate, locked room or storage unit (e.g. cabinet) designated for that purpose. As with voting equipment, ballots and election data media must be locked under a dual-control lock system. *See Election Official Manual Chapter 2*, page 73.

¹⁰ [R.C. 3509.05\(A\)](#)("the spouse of the elector, the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of the elector.")

Thank you again for all that you have done and are doing to prepare for the November 3, 2020 General Election. If you have any questions concerning this Directive, please contact the Secretary of State's elections counsel at (614) 728-8789.

Yours in service,

A handwritten signature in blue ink, reading "Frank LaRose". The signature is fluid and cursive, with the first name "Frank" and last name "LaRose" clearly legible.

Frank LaRose
Ohio Secretary of State