

# **LOCAL PRIMARY ELECTIONS IN OHIO'S POLITICAL SUBDIVISIONS**

-- Interim report of the LWVO Primary Election Systems Study Committee

## **ABSTRACT:**

Voter participation in Ohio's municipal primary elections is very low. To address the question of whether the type of primary or other factors may affect voter turnout, this League of Women Voters of Ohio study explores how local primaries work. A spot sample of administrators at county boards of elections as well as officials of local governments across the state revealed that, basically, all statutory municipal corporations and counties statewide hold partisan primary elections, if and when needed, with their format and timing dictated by state law. However, many municipalities with home rule charters have altered that format, often establishing nonpartisan primaries, mixed primaries, or no primaries at all. Many of these charter subdivisions also prefer September primaries to the state-mandated May date with its six months of lead time before the November general election. Larger, more built-up counties with numerous variant systems complain of the expense, inefficiency and extra work of multiple primary formats and dates. The study documents conclusively that local primary elections of all types attract very little voter interest, regardless of structure.

The study also focuses on crossover voting in partisan primaries, as state challenge laws are differentially enforced from county to county and secretary of state to secretary of state. Regardless of system, a huge problem is the lack of voter information about the primary process, local races, and local issues. Proponents of partisan systems feel that the parties do a better job of voter registration, publicity, and get-out-the-vote, while proponents of nonpartisan systems point to the enfranchisement of over half of the electorate otherwise denied a primary voice where it can make the most difference. The latter also argue that ideological labels are irrelevant to most local government functions. Finally, the survey identifies one option in Ohio that does away with primary elections entirely, running all candidates with no labels together on the general election ballot.

## **INTRODUCTION:**

In order to consider how Ohio's primary election systems (PES) work at the local and county levels, the League of Women Voters of Ohio (LWVO) study committee undertook a literature search as well as interviews of officials at 15 county boards of elections (BOE) and almost 20 village or city halls. Input from the Secretary of State's office (SOS), from the Ohio Revised Code (ORC), and from legal counsel has also gone into this report of the study's findings.

## **GLOSSARY:**

1. Political subdivision -- generic term for ALL townships, villages, cities and counties
2. Municipal corporation (MC) -- term covering ALL villages and cities, "municipality"
3. Statutory (adj) -- governed by statutes in the Ohio Revised Code.

4. Charter (as an adj) -- governed by a charter (local constitution), adopted by its electors.
5. Partisan primary -- a primary in which members of a political party nominate their party's choice to represent it in the general election for local office. (ORC §3513). All statutory political subdivisions have this system, with minor exceptions. Procedures are set by the office of the Secretary of State.
6. Nonpartisan primary -- a primary in which all voters winnow a field of three or more candidates down to the top two who compete against each other in the general election, regardless of party affiliation, for local office. ONLY charter MC's or counties can adopt nonpartisan primaries, and the specifics must be written into their charters
7. Townships -- not MC's. Governed by elected boards of trustees and Ohio law for townships. They hold nonpartisan general elections but no primaries unless they petition for one.
8. Counties -- also not MC's. 86 are statutory and two are charter. All 88 either must stick to or have chosen to stick to Ohio's default system of partisan primaries.
9. School boards, municipal and county courts -- School boards hold nonpartisan general elections but no primaries unless they pass a resolution providing for one (ORC §3513). Judicial primaries are also partisan, followed by a nonpartisan general election (ORC §3505.04).

## **I. GENERAL INFORMATION ABOUT THE PRESENT SYSTEM:**

The baseline: Almost all political subdivisions in Ohio have primary elections if they have an excess of candidates for single offices, as spelled out in state law or their charters. Ohio law (ORC §3513) prescribes the format and process for such primaries, which constitute “technically a closed system,” according to the deputy elections administrator and elections counsel at the Secretary of State's office. That means that the members of political parties vote to select, from a field of candidates, those they want to represent their party in the November general election. Almost all political subdivisions, when a primary is needed, follow that format, spelled out in detail in procedural handbooks and directives from the Secretary of State's office. See below for the very few exceptions. The primary date set for all statutory political subdivisions, except counties, is the first Tuesday after the first Monday of May in odd-numbered years. County primaries take place during even-numbered years, although in presidential years it is at present [2015] set for March 15. Special elections to fill vacancies can take place on other dates, as do the primaries of some of Ohio's 256 charter MC's.

Features: One of the features of this default partisan primary system is a filing letter for prospective candidates, containing a required pledge to “support and abide by the principles enunciated by the \_\_\_ Party” (ORC §3513.07). Another is that a voter who is either independent or affiliated with one party may be challenged if he/she asks for the ballot of another party (ORC §3513.19-20). There is even a form (10 W, X or Z) to be filled out by such a crossover voter. Although the challenge requirement is spelled out in the law, only a few counties appear to enforce it, and the most current, more permissive SOS directive (# 2011.43) supersedes previous directives urging stricter enforcement. Another feature of Ohio's default system is the May primary election date required by state law, as stated above.

Charter options: Only charter villages, cities, or counties can depart from Ohio's default partisan primary system described above, if they so choose. A nonpartisan alternative has been adopted by a large majority of all charter MC's (The SOS does not keep this data). Such a nonpartisan system reflects a differing underlying purpose, not party-driven -- to winnow down a crowded field and advance only the top vote getters to the general election. In nonpartisan primaries, any registered voter may participate regardless of affiliation, and no statements of party loyalty are required of candidates or voters. Charter MC's have unlimited options, extending even to ranked choice, approval, proportional, or even caucus/convention options, although this study did not locate any Ohio examples of these. In addition, 51 of Ohio's 256 charter MC's have opted to hold primaries on a different date, most, but not all, on the first Tuesday after the first Monday of September, thus shortening the general election campaign season from six months to two.

NO primaries at all: An indeterminate number of charter MC's have a system that avoids primary elections altogether. These cities or villages have at-large, nonpartisan council races where all council candidates run together in the general election without party designation, to fill a specific number of open council seats. If there are four vacancies, for example, the top four vote getters fill them. The same charter MC might, however, have a different system for mayor (if any), and there are a number of hybrid versions. Furthermore, by law, most townships and statutory villages with a population below 2000 have no primaries at all, unless they petition their boards of elections to provide one.

County offices, boards of education, and judgeships: All but two of Ohio's 88 counties are statutory, holding partisan primary elections in the way prescribed by Ohio law. The remaining two, Summit and Cuyahoga, have charters which do not stipulate any variation from that practice, but they could do so if their voters so chose. Boards of Education do not hold primaries unless a three-fifths majority resolves to adopt procedures establishing a nonpartisan primary, as spelled out in ORC §3513.256. Finally, local (municipal) and county (common pleas) judgeships are elected in a hybrid system (ORC §3505.04). They run in partisan primaries, not by districts but by starting-dates of their six-year terms of office. The primary victors in each judicial race then appear on the November ballot stripped of party labels, but all but the most disengaged voters can easily tell which party's voters nominated them.

## **II. SURVEY RESULTS: OFFICIALS OF 15 COUNTY BOARDS OF ELECTIONS**

Study committee members interviewed officials from Butler, Cuyahoga, Delaware, Franklin, Geauga, Greene, Hamilton, Lake, Lorain, Lucas, Montgomery, Ottawa, Summit, Warren and Wood Counties, encountering some divergent, some unanimous, and some especially noteworthy comments on the following subjects:

Timing: Primaries are expensive to run, and the local governments have to foot part of the bill, so all BOE's seek to combine and keep the costs as low as possible. Therefore, county BOE's with local primaries seek to combine as many as possible on the default early May date. Of the 51 charter MC's in Ohio that have switched to autumn dates, 21 choose September 8, eight choose

September 15, two choose September 22, three choose October 6, and 17 held no primary election at all in 2015. One city in Lake County has scheduled a possible December 15 run-off, if no November winner gets a clear majority. Among those surveyed, only Lucas and Wood Counties have not been able to narrow primary dates down to at least two. Lucas officials point out that, with different primary dates, the filing and other deadlines do not match either, so it confuses candidates as well as voters. Conclusion: BOE's try, not always successfully, to clump primary elections as best they possibly can, but charters rule.

Frequency: Almost all MC's, even those that normally have no primaries, can do so if they have too many candidates. The most urbanized counties have many, with Cuyahoga and its 59 political subdivisions leading the pack. Smaller townships and villages have no primaries at all, however, even though there is a provision for adopting a nonpartisan format if desired (§3513.01(C)). For this reason, the more rural counties appear to have few if any local primary elections -- Delaware County reported no local primaries in 2015, while Greene, Geauga, Butler and Warren Counties reported none over the past five years.

Partisan, nonpartisan, or variant systems: Secretary of State sources say that partisan and nonpartisan are the only two varieties of primary elections held in Ohio. Several cities (Avon Lake, East Cleveland and Moraine) were mentioned as towns with combinations of the two. Of the 51 charter MC's holding autumn primaries, only six have chosen to keep the default primary system. (This survey sampled only six of those 51.) The SOS does not keep pertinent records of charter MC's with May primaries, so it is not possible to judge whether this huge ratio holds out, but clearly many charter cities have abandoned the primary model required of statutory MC's. The only significant variant in Ohio appears to be those charter MC's with at-large council races. Some of these choose to run all candidates at once on nonpartisan general election ballots. In such MC's, voters sift through all the candidates only once per annual election cycle, in November. Theoretically, a charter MC or county could stipulate any of a variety of other innovative primary election systems as well, but this study has discovered none.

System changes: A few BOE officials and study committee members mentioned local charter amendments which led to recent changes in primary election systems—Lakewood in Cuyahoga County and Avon Lake in Lorain County—but most counties surveyed reported no changes. It appears that most choices by charter MC's must have been made well before the 1990's, even back when Ohio villages and cities first adopted home rule charters and structured their own elections.

Availability of data: SOS officials explained that statistics documenting election results are required by law to be kept for six years. However, all of the county BOE's surveyed have been storing their records electronically at least since the middle 2000's and on paper indefinitely, some as far back as the 1930's. The actual ballots must be kept for about 22 months or until the possibilities for challenges or recounts are past. Many of these counties have websites where one can find the number of eligible voters, the number of ballots cast, and turnout percentages for each of the primary, general, or special elections held over as long a period as one could wish.

Lucas officials explained that employees must be specially trained and certified to post data to these records.

Turnout percentages: Actual figures from this limited sample are tabulated at the end of this report, but it is fair to generalize that voter turnout at all local primary elections in Ohio is very low, varying between five and 37 percent, depending upon the issues or offices to be voted upon. Contested mayoral races or high-profile tax levy issues, for example, attract more interest than single council seats or zoning variances. Ottawa County reported only a 30% turnout, even for the most recent general presidential election! Numerous other BOE officials reported their concern for low turnout and voter apathy in all elections except the presidential ones. Lake County notably reported that two-thirds of its voters are unaffiliated, never attend local government meetings, and don't participate at all in most elections. Another official attributed the apparent apathy to voter happiness with their local elected officials.

Crossover challenges: ORC §3513.19-20 requires election officials to discourage possible crossover voting by challenging those who ask for a party ballot different from that of the party he/she most recently affiliated with. Greene, Hamilton and Butler Counties did report that they train their poll workers to do this, but all other counties in the survey reported that they do not. The Cuyahoga County deputy director says they challenge only in cases of personal knowledge or known political personages. SOS directive # 2008-42 once required election and poll workers to keep records of crossover voters' histories. Delaware County's BOE complied briefly but did not like to challenge voters and so discontinued the practice after one year. A more recent directive from Ohio Secretary of State John Husted, #2011-43, indicates that party-affiliation history is NOT required to be in the poll books (but rather only in the lists that are posted three times at all polling places on Election Day). Furthermore, this directive actually prohibits any precinct or BOE official from challenging the right to vote of any elector on grounds of party affiliation, unless he/she has personal knowledge. "In these rare instances, either SOS Form 10 W, X or Z should be used." The interpretation of the challenge statute has changed over time and inconsistent implementation among county BOE's still remains.

Opinions: Most BOE officials interviewed had no dissatisfaction to report, other than with the abysmal turnout. The officials in Geauga and Lorain Counties indicated a need to coordinate or even consolidate primaries better. The Cuyahoga County spokesman thought that new electronic poll books would cut down on those who mistakenly turn up at the wrong precinct. The Greene County director was especially concerned about voter annoyance and misunderstanding when officials pry into their partisan voting histories and make them fill out 10 W forms. The Lucas County director commented that many unaffiliated voters don't seem to realize they may ask for a party ballot. Montgomery staff members opined that most local matters are practical rather than ideological, so local partisan primaries may not even be appropriate. On the other hand, the Geauga director indicated she favors the party system of controlling elections. None indicated difficulties following state law.

Observer status: It was not possible to obtain LWVO observer status in order to be inside polling places or interview precinct judges. The SOS officials and several county BOE sources explained that observers may be requested only by political parties, by issue committees, or by any group of five candidates. A number of League of Women Voters members do serve as poll workers in their communities; however, the opportunity to ask them specific questions about their local primary experiences in 2015 had already passed as this study got underway.

Other comments: A few BOE interviewees expressed interesting opinions apart from the specific concerns of this survey. The officials in Montgomery, Lucas and Greene Counties all find partisan elections to be problematic, as noted above. The Delaware County deputy director has difficulty because parts of Columbus overlap into the neighboring county. The Lake County director specifically criticized the partisan/nonpartisan mixed way of nominating and electing judges, and she also protested the inclusion of uncontested races on primary ballots. One other director thought more mail-in ballots might help, but the majority of BOE spokespersons interviewed made no additional suggestions.

### **III. SURVEY: DATA OR INTERVIEWS FROM 28 POLITICAL SUBDIVISIONS**

Study committee members also gathered information from records and/or local contacts in Akron, Avon Lake, Bay Village, Bowling Green, Burton, Cincinnati, Dayton, Elyria, Forest Park, Huntsburg Twp., Lorain, Maple Heights, Lakewood, Marblehead, Mentor, Miamisburg, Middlefield, North Ridgeville, Northwood, Norwood, Parma, Perrysburg, Port Clinton, Shaker Heights, South Russell Village, Twinsburg, Willoughby, and Xenia. The survey yielded limited data but a wealth of experience-based opinion regarding these MC's local primary elections.

Turnout: Five of the fifteen counties covered did not furnish local turnout figures at all, either because local statistics were not sought or because no primary elections were held during the past five years. The remaining turnout results did not furnish a large enough sample from which to derive valid comparisons. Regardless of the system employed, however, turnout was low even if the mayor or the whole council were on the ballot, but much lower if the primary featured only single wards, offices or ballot questions. A Port Clinton official explained that turnout variability depends on what was on the ballot and whether it was highly contested. Overall, the average turnout percentage of this sample was a uniformly dismal 15.61%! (Twenty-four partisan primaries averaged 16.59%, while 12 nonpartisan primaries averaged only 13.65%.) Interviewees attributed this either to apathy and lack of voter information, or to citizen satisfaction with their local governments. A Maple Heights official further attributed poor turnout to "low-information" voters and renters with no stake in the community. See Appendix F for the actual figures.

Type of primary election system: Of those MC's which did hold primaries when needed, all statutory MC's held partisan primaries; and among the 16 charter MC's with primaries, five held partisan and 11 held nonpartisan primaries. (Two more opted for no primary at all.) Judging from this relatively small sample, it appears that charter MC's with a choice tend to favor

nonpartisan systems. There were a few mixed systems, whereby some races were partisan while others were nonpartisan. However, the Dayton official (where there are nonpartisan elections) opined that partisan primaries actually produce better turnout because parties encourage voter registration and turnout. This study cannot sufficiently document that, however. She also noted that partisan petitions require fewer signatures than nonpartisan petitions. An Akron official commented of her city's partisan primary system: "That's just the way it's done." Officials from Mentor and Willoughby likewise felt no need to consider changing a system so rarely used.

Charter review changes: While most officials of charter MC's reported charter review during the previous ten years, only a few noted recent proposals to change their primary election systems. Miamisburg originally established a primary system back when the town sported active Democratic and Republican Clubs. Years later, after club activity dwindled, a nonpartisan alternative was floated, but the voters rejected it. The Miamisburg official believes that primary elections are not even relevant to local governance at all, because local issues are rarely ideological, for example, "Which street should we pave?" The primary issue did spur a successful 2002 initiative and referendum campaign in the city of Lakewood, however. And voters in Avon Lake in 2012 added a nonpartisan primary, if necessary, to its nonpartisan elections of some offices, motivated by the loss of needed transition time due to late certification after a December run-off. Bay Village likewise added a nonpartisan primary, if needed, with the aim of preventing general election winners with no majority mandate.

No primary at all: A number of charter MC's surveyed have adopted nonpartisan general elections, often in conjunction with at-large council seats, and no primary elections at all. Two examples of such an arrangement in this survey are Xenia and Shaker Heights, but some study committee members report from experience that other charter MC's do the same. The Akron official opined that primaries ought to be eliminated entirely, because there would be more interest if all races would focus on a single day in November when more voters are paying attention. The Shaker Heights official also noted lower cost and better efficiency. Such general elections, especially mayoral ones, might occasionally produce bare plurality winners, however, or else indicate need for a December run-off election, such as that recently eliminated by Avon Lake. One interviewee stated the opposing belief that primaries of any type are good, because they familiarize citizens with the candidates and issues twice rather than only once.

Satisfaction/problems: Most local officials reported no problems with their current primary election systems, even while complaining about the above-documented low turnout. The Parma official complained that whoever wins their Democratic primary in May has little or no competition in November, a system that gives over 70% of the electorate no choice at all in the matter. A desire for shorter lead time was likewise mentioned often, with Miamisburg's mayor going so far as to recommend England's six-week time frame with a cap on spending. He also regretted the thousands of dollars he will have to spend to get re-elected. Additionally, numerous charter MC's have moved their primary dates to September. Northwood and East Cleveland have even opted for early October.

Other comments: The Maple Heights official observed that their nonpartisan primary is not a hedge against extremism, because a populist insurgency with a small core of support is currently able to influence election outcomes disproportionately. The Dayton official believes Ohio ought to “go big”, as Oregon did, and switch to automatic registration and all mail-in ballots.

#### **IV. SUMMARY and CONCLUSIONS:**

From this sprawling array of fact and opinion, it may be difficult to distill any clear call for change. It is a somewhat easier task to list the most interesting ideas which surely deserve further consideration. If not a single solution, then perhaps a combination of the suggestions by c. 35 county and municipal interviewees might help to improve the lamentable state of local primary election turnout in Ohio.

\* **Purpose of primary elections** -- Ohio law has instituted direct primaries for party members to select from a field of candidates who will best represent their party on the November ballot. The law also requires a pledge of party loyalty from each candidate as a part of his/her filing document. Charter MC's, on the other hand, state the fundamental purpose to be that of winnowing down a crowded field of candidates and advancing the top vote getters to the November ballot, regardless of party affiliation -- a very different purpose.

\* **Voter turnout** -- Turnout in this survey ranges between 5% and 37% depending not on primary election structure but rather on what high-profile races or issues or candidates may be on the ballot. Arithmetic average turnout in 36 local primaries documented by this survey was only 15.61%.

\* **Partisan vs. nonpartisan primaries** -- By several measures, most of Ohio's charter MC's have already departed from the default partisan structure spelled out in Ohio law. PRO nonpartisan: Local issues are rarely ideological anyway, and it is wrong to exclude unaffiliated and minor-party voters from important decisions that affect their civic lives. PRO partisan: grassroots party involvement promotes increased voter registration, publicity and turnout. PRO no change: The causes of primary disinterest and dysfunction may not be significantly addressed by structural changes at all.

\* **Timing issues** -- Most charter MC's have NOT moved their primaries to September from the March date required by Ohio law. However, some argue that 6-month lead time before November is excessive, and two-month lead time may be preferable. See “Coordination” below.

\* **Crossover voting** -- Ohio's challenge laws have not been consistently interpreted or implemented by county BOE's and secretaries of state in recent years. The current, infrequent-challenge policy toward unaffiliated, minor-party and crossover voters may still discourage some interest and turnout in partisan primary elections. Without crossover voting, a heavily one-party city could nominate its likely November victor with only a small turnout of that one party's

faithful, excluding all others. With enough crossover support in the primary, however, that same party's resulting nominee may no longer truly reflect the preference of that party's members.

\* **Coordination** -- Two or more primary dates each year, with an assortment of special elections in between, cause Boards of Elections much added expense, inefficiency and extra work. They also cause confusion by voters and candidates over resultant multiple deadlines and filing dates.

\* **Urban vs. rural differences** -- It appears that smaller and more rural counties and political subdivisions are less likely to have primary elections, for a variety of reasons.

\* **No primary elections at all** -- Some charter MC's have opted to do away with local primaries altogether, opting to tackle all races and candidates at once on Election Day in November, without party labels. The upside of this is that voters may be more likely to be focussed on elections on that single day in the fall. The downside is that such nonpartisan general elections sometimes result in plurality winners, possibly necessitating an inconvenient December run-off.

\* **Voter education** -- Many voters do not understand the primary election process, regardless of what system is employed. In particular, voters do not appear to understand the ease with which affiliated and unaffiliated alike can simply ask for one or the other's party ballot at any primary. Additionally, many communities lack the local means and media to publicize voter information adequately.

\* **Party polarization** -- Only one city surveyed reported a problem with disproportional, insurgent influence due to low participation in its nonpartisan primary election. Their top-two, nonpartisan, ward and mayoral system did not protect them from polarizing politics, at least not at the primary election stage.

It may be that a combination of thoughtful conclusions arising from a discussion of these ideas can contribute to improvements in the structure and administration of local primary elections in Ohio.

## **V. APPENDICES:**

### **A. INTERVIEW QUESTIONNAIRES FOR COUNTY BOARD OF ELECTIONS OFFICIALS:**

1) On what dates do this county's local primaries take place? Do you try to synchronize dates? Why? Elaborate.

2) Which political subdivisions in your county even HAVE primaries and when?

3) Do any of these charter MC's have variant primary systems other than P and NP?

4) Are there any MC's that don't even have primaries? How do their general elections produce winners?

5) Have any cities, to your knowledge, changed P/NP systems recently? Do you know why?

- 6) How long to you store data on # of eligible voters and # of ballots cast in the primary (especially 2015, 2013, 2011)?
- 7) May I please see or copy that data for the 2 or 3 local governments I'm pinpointing?
- 8) Do you train poll workers to challenge those who change their party ballot?
- 9) Do you keep a record of those who change their party ballot?
- 10) Do poll workers have handy access to records of past party affiliation of primary voters?
- 11) Have you, with an administrative eye, developed any opinions about primaries in your county that we can share with our membership? (Turnout? competitiveness? timing?)
- 12) Could I, as a LWVO researcher, have official observer status, so that I can observe the upcoming primary elections in my two MC's? Does that permit my questioning precinct judges?
- 13) Could you give me the address of one voting location w/ several precincts in each of these 2 or 3 MC's? [#12 and 13 were dropped early in the project -- observer status not available.]
- 14) Answers to other unanticipated questions or opinions or problems that may pop up spontaneously

#### B. INTERVIEW QUESTIONNAIRES FOR LOCAL OFFICIALS:

- 1) Does your city have a charter? If so, does your charter prescribe any departures from Ohio's default primary system?
- 2) If you are a charter city, have charter review commissions over the years ever proposed changing your primary system? Why and what was the outcome?
- 3) Do you even HAVE a municipal primary at all? If not, how does your general election work?
- 4) Are you satisfied with the means by which your citizens elect their representatives? Elaborate.
- 5) Do you see any problems with your current system? If you could change it, what would you do differently?
- 6) Answers to other unanticipated questions or opinions or problems that may pop up spontaneously

#### C. RELEVANT PROVISIONS: OHIO CONSTITUTION

##### § 5.07 Primary elections

All nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law, and provision shall be made by law for a preferential vote for United States senator; but direct primaries shall not be held for the nomination of township officers or for the officers of municipalities of less than two thousand population, unless petitioned for by a majority of the electors of such township or municipality. All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors in a manner provided by law. Each candidate for such delegate shall state his first and second choices for the presidency, but the name of no candidate for the presidency shall be so used without his written authority.

(Amended, effective January 1, 1976; SJR No.10.)

##### § 17.01 Time for holding

Elections for state and county officers shall be held on the first Tuesday after the first Monday in November in even numbered years; and all elections for all other elective officers shall be held on the first Tuesday after the first Monday in November in the odd numbered years.

The term of office of all elective county, township, municipal, and school officers shall be such even number of years not exceeding four as may be prescribed by law or such even number of years as may be provided in municipal or county charters.

The term of office of all judges shall be as provided in Article IV of this constitution or, if not so provided, an even number of years not exceeding six as provided by law.

The General Assembly may extend existing terms of office as to effect the purpose of this section.

#### D. RELEVANT STATUTES: OHIO REVISED CODE

##### **3513.01 Primary elections.**

(A) Except as otherwise provided in this section and section 3517.012 of the Revised Code, on the first Tuesday after the first Monday in March of 2000 and every fourth year thereafter, and on the first Tuesday after the first Monday in May of every other year, primary elections shall be held for the purpose of nominating persons as candidates of political parties for election to offices to be voted for at the succeeding general election.

(B) The manner of nominating persons as candidates for election as officers of a municipal corporation having a population of two thousand or more, as ascertained by the most recent federal census, shall be the same as the manner in which candidates were nominated for election as officers in the municipal corporation in 1989 unless the manner of nominating such candidates is changed under division (C), (D), or (E) of this section.

(C) Primary elections shall not be held for the nomination of candidates for election as officers of any township, or any municipal corporation having a population of less than two thousand, unless a majority of the electors of any such township or municipal corporation, as determined by the total number of votes cast in such township or municipal corporation for the office of governor at the most recent regular state election, files with the board of elections of the county within which such township or municipal corporation is located, or within which the major portion of the population thereof is located, if the municipal corporation is situated in more than one county, not later than one hundred twenty days before the day of a primary election, a petition signed by such electors asking that candidates for election as officers of such township or municipal corporation be nominated as candidates of political parties, in which event primary elections shall be held in such township or municipal corporation for the purpose of nominating persons as candidates of political parties for election as officers of such township or municipal corporation to be voted for at the succeeding regular municipal election. In a township or municipal corporation where a majority of the electors have filed a petition asking that candidates for election as officers of the township or municipal corporation be nominated as candidates of political parties, the nomination of candidates for a nonpartisan election may be reestablished in the manner prescribed in division (E) of this section.

(D)

(1) The electors in a municipal corporation having a population of two thousand or more, in which municipal officers were nominated in the most recent election by nominating petition and elected by nonpartisan election, may place on the ballot in the manner prescribed in division (D)(2) of this section the question of changing to the primary-election method of nominating persons as candidates for election as officers of the municipal corporation.

(2) The board of elections of the county within which the municipal corporation is located, or, if the municipal corporation is located in more than one county, of the county within which the major portion of the population of the municipal corporation is located, shall, upon receipt of a petition signed by electors of the municipal corporation equal in number to at least ten per cent of the vote cast at the most recent regular municipal election, submit to the electors of the municipal corporation the question of changing to the primary-election method of nominating persons as candidates for election as officers of the municipal corporation. The ballot language shall be substantially as follows:

"Shall candidates for election as officers of ..... (name of municipal corporation) in the county of ..... (name of county) be nominated as candidates of political parties?" Yes / No

The question shall be placed on the ballot at the next general election in an even-numbered year occurring at least ninety days after the petition is filed with the board. If a majority of the electors voting on the question vote in the

affirmative, candidates for election as officers of the municipal corporation shall thereafter be nominated as candidates of political parties in primary elections, under division (A) of this section, unless a change in the manner of nominating persons as candidates for election as officers of the municipal corporation is made under division (E) of this section.

(E)

(1) The electors in a township or municipal corporation in which the township or municipal officers are nominated as candidates of political parties in a primary election may place on the ballot, in the manner prescribed in division (E)(2) of this section, the question of changing to the nonpartisan method of nominating persons as candidates for election as officers of the township or municipal corporation.

(2) The board of elections of the county within which the township or municipal corporation is located, or, if the municipal corporation is located in more than one county, of the county within which the major portion of the population of the municipal corporation is located, shall, upon receipt of a petition signed by electors of the township or municipal corporation equal in number to at least ten per cent of the vote cast at the most recent regular township or municipal election, as appropriate, submit to the electors of the township or municipal corporation, as appropriate, the question of changing to the nonpartisan method of nominating persons as candidates for election as officers of the township or municipal corporation. The ballot language shall be substantially as follows:

"Shall candidates for election as officers of ..... (name of the township or municipal corporation) in the county of ..... (name of county) be nominated as candidates by nominating petition and be elected only in a nonpartisan election?" Yes / No

The question shall appear on the ballot at the next general election in an even-numbered year occurring at least ninety days after the petition is filed with the board. If a majority of electors voting on the question vote in the affirmative, candidates for officer of the township or municipal corporation shall thereafter be nominated by nominating petition and be elected only in a nonpartisan election, unless a change in the manner of nominating persons as candidates for election as officers of the township or municipal corporation is made under division (C) or (D) of this section.

Amended by 130th General Assembly File No. 43, SB 193, §1, eff. 2/5/2014. Amended by 128th General Assembly File No. 29, HB 48, §1, eff. 7/2/2010.

#### **3513.04 Filing declaration of candidacy.**

Candidates for party nominations to state, district, county, and municipal offices or positions, for which party nominations are provided by law, and for election as members of party controlling committees shall have their names printed on the official primary ballot by filing a declaration of candidacy and paying the fees specified for the office under divisions (A) and (B) of section 3513.10 of the Revised Code, except that the joint candidates for party nomination to the offices of governor and lieutenant governor shall, for the two of them, file one declaration of candidacy.

#### **3513.07 Form of declaration of candidacy and petition.**

The form of declaration of candidacy and petition of a person desiring to be a candidate for a party nomination or a candidate for election to an office or position to be voted for at a primary election shall be substantially as follows:

##### **DECLARATION OF CANDIDACY PARTY PRIMARY ELECTION**

I, ..... (Name of Candidate), the undersigned, hereby declare under penalty of election falsification that my voting residence is in ..... precinct of the ..... (Township) or (Ward and City or Village) in the county of ....., Ohio; that my voting residence is ..... (Street and Number, if any, or Rural Route and Number) of the ..... (City or Village) of ....., Ohio; and that I am a qualified elector in the precinct in which my voting residence is located. I am a member of the ..... Party. I hereby declare that I desire to be ..... (a candidate for nomination as a candidate of the Party for election to the office of .....) (a

candidate for election to the office or position of ..... for the ..... in the state, district, (Full term or unexpired term ending ..... ) county, city, or village of ....., at the primary election to be held on the ..... day of ....., .., and I hereby request that my name be printed upon the official primary election ballot of the said ..... Party as a candidate for ..... (such nomination) or (such election) as provided by law.

I further declare that, if elected to said office or position, I will qualify therefor, and that I will support and abide by the principles enunciated by the ..... Party.

Dated this ..... day of ....., ..... (Signature of candidate)

### **3513.13 Separate primary election ballots for political parties.**

Separate primary election ballots shall be provided by the board of elections for each political party having candidates for nomination or election in a primary election.

### **3513.19 Challenges at primary elections.**

(A) It is the duty of any precinct election official, whenever any such official doubts that a person attempting to vote at a primary election is legally entitled to vote at that election, to challenge the right of that person to vote. The right of a person to vote at a primary election may be challenged upon the following grounds:

- (1) That the person whose right to vote is challenged is not a legally qualified elector;
- (2) That the person has received or has been promised some valuable reward or consideration for the person's vote;
- (3) That the person is not affiliated with or is not a member of the political party whose ballot the person desires to vote. Such party affiliation shall be determined by examining the elector's voting record for the current year and the immediately preceding two calendar years as shown on the voter's registration card, using the standards of affiliation specified in the seventh paragraph of section 3513.05 of the Revised Code. Division (A)(3) of this section and the seventh paragraph of section 3513.05 of the Revised Code do not prohibit a person who holds an elective office for which candidates are nominated at a party primary election from doing any of the following:
  - (a) If the person voted as a member of a different political party at any primary election within the current year and the immediately preceding two calendar years, being a candidate for nomination at a party primary held during the times specified in division (C)(2) of section 3513.191 of the Revised Code provided that the person complies with the requirements of that section;
  - (b) Circulating the person's own petition of candidacy for party nomination in the primary election.

(B) When the right of a person to vote is challenged upon the ground set forth in division (A)(3) of this section, membership in or political affiliation with a political party shall be determined by the person's statement, made under penalty of election falsification, that the person desires to be affiliated with and supports the principles of the political party whose primary ballot the person desires to vote.

### **3513.20 Effect of challenge to voter at primary.**

Before any challenged person shall be allowed to vote at a primary election, the person shall make a statement, under penalty of election falsification, before one of the precinct officials, blanks for which shall be furnished by the board of elections, giving name, age, residence, length of residence in the precinct, county, and state; stating that the person desires to be affiliated with and supports the principles of the political party whose ballot the person desires to vote; and giving all other facts necessary to determine whether the person is entitled to vote in that primary election. The statement shall be returned to the office of the board with the poll books and tally sheets.

If a person challenged refuses to make that statement under penalty of election falsification, the person shall be permitted to vote a provisional ballot under section [3505.181](#) of the Revised Code. If a majority of the precinct

officials finds that the statements of a person challenged or the person's voting record or other evidence shows that the person lacks any of the qualifications required to make the person a qualified elector at the primary election or that the person is not affiliated with or is not a member of the political party whose ballot the person desires to vote, the person shall be permitted to vote a provisional ballot under section [3505.181](#) of the Revised Code.

#### **3505.04 nonpartisan ballot.**

On the nonpartisan ballot shall be printed the names of all nonpartisan candidates for election to judicial office, office of member of the state board of education, office of member of a board of education, municipal or township offices for municipal corporations and townships in which primary elections are not held for nomination of candidates by political parties, and municipal offices of municipal corporations having charters which provide for separate ballots for elections for such municipal offices. Such ballots shall have printed across the top, and below the stubs, "Official Nonpartisan Ballot."

The order in which the offices are listed on the ballot shall be prescribed by, and certified to each board of elections by, the secretary of state; provided that the office of member of the state board of education shall be listed first on the ballot, then state, district, and county judicial offices shall be listed on the ballot in such order, followed by municipal and township offices, and by offices of member of a board of education, in the order stated.

Within the rectangular space within which the title of each judicial office is printed on the ballot and immediately below such title shall be printed the date of the commencement of the term of the office, if a full term, as follows: "Full term commencing (Date)," or the date of the end of the term of the office, if an unexpired term, as follows: "Unexpired term ending . . . . . (Date) . . . . ." The secretary of state shall prescribe the information and directions to the voter to be printed on the ballot within the rectangular space in which the title of office of member of the state board of education appears.

Within the rectangular space within which the title of each office for member of a board of education is printed on the ballot shall be printed "For Member of Board of Education," and the number to be elected, directions to the voter as to voting for one, two, or more, and, if the office to be voted for is member of a board of education of a city school district, words shall be printed in said space on the ballot to indicate whether candidates are to be elected from subdistricts or at large.

The names of all nonpartisan candidates for an office shall be arranged in a group under the title of that office, and shall be rotated and printed on the ballot as provided in section [3505.03](#) of the Revised Code.

No name or designation of any political party nor any words, designations, or emblems descriptive of a candidate or his political affiliation, or indicative of the method by which such candidate was nominated or certified, shall be printed under or after any nonpartisan candidate's name which is printed on the ballot.

## **E. TEXTS OF SECRETARY OF STATE DIRECTIVES**

### **(1) # 2008.42 -- (from S.O.S. Jennifer Bruner)**

Directive 2008-38 required all board of elections to report the number of voters changing party affiliation from Republican to Democratic and from Democratic to Republican as part of the official canvass of the March 4, 2008 Primary Election.

In counties in which the precinct election officials were not instructed to challenge voters who requested a ballot different than the person's primary voting history indicated, or where the poll workers failed to mark in the poll book or on the poll list whether a previously affiliated voter took a party ballot, those

boards of elections must post the primary voting history of each voter as it appeared in the board's records prior to the primary election. However, boards of elections are reminded that a voter may request a correction of the precinct registration list using prescribed Form #257 in accordance with R.C. 3503.24.

**Additional Information:** Please provide on the attached reporting form the number of persons who previously had not declared party affiliation, but cast a partisan ballot in this presidential primary election. Attached to this Directive is a reporting form to report those totals. The form includes lines to report the number of undeclared persons who requested a Democratic ballot or a Republican ballot.

Please send the report form to the attention of Robin Fields via fax at 614-752-4360 or via email [atrfields@sos.state.oh.us](mailto:atrfields@sos.state.oh.us). The completed form must be returned **by** May 20, 2008. If you have any questions, please contact the Elections Division administrative staff at 614-466-2585.

(2) # 2011.43 -- (from S.O.S. Jon Husted)

**SUMMARY:** This Directive creates a uniform policy for implementing the party challenge requirements of R.C. 3513.19(A)(3): precinct election officials, board of elections members, directors, deputy directors, and clerks can only challenge the right to vote of any elector on the grounds that the voter is not affiliated with or is not a member of the political party whose ballot the person desires to vote, if that official has personal knowledge that the individual is a member of a different party. Directive 2010-44 is rescinded.

**BACKGROUND:** Some counties have previously required either every voter, or every voter who previously voted a ballot for a different political party, to sign a "Statement of Person Challenged as to Party Affiliation" (50S Forms 10-W, X, or Z) before permitting that person to cast a ballot, either in person or by mail. Such blanket policies impose an affirmative duty on elections officials that is not contemplated in R.C. 3513.19, which reads "[i]t is the duty of any judge of elections, *whenever any judge of elections doubts* that a person attempting to vote at a primary election is legally entitled to vote at that election, to challenge the right of that person to vote." (emphasis not in original) State law contemplates infrequent party challenges, based upon the election official's personal knowledge, similar to infrequent challenges based on whether a person is a legally qualified elector and whether a person has received or been promised some valuable reward or consideration for the person's vote. R.C. 3513.19(A). Any such challenge is serious and must not be subject to unilateral, blanket action.

**CONSIDERATIONS FOR COUNTY BOARDS OF ELECTIONS:** When calculating the number of paper ballots to print, or direct recording electronic (ORE) machines to deploy for any partisan primary election, the board of elections should consider the number of individuals who may switch parties from one election to the next in order to ensure a sufficient number of ballots for all parties with candidates for that election. Party affiliation, defined in R.C. 3513.19 as the most recent ballot selected at a partisan primary held during a look-back period that is limited to the current year and two immediately preceding calendar years, is not required to be included in the poll list or signature pollbook. R.C. 3501.30. However, party affiliation is required to be included in the registration list that is posted at 6:30 a.m., 11 a.m., and 4 p.m. on Election Day at each polling place. R.C. 3503.23.

**CONCLUSION:** Ohio's primary process strikes a balance between the statutory deference to an individual voter's participatory rights and the political parties' associative rights. This Directive's prohibition against any precinct election official or board of elections member, director, deputy director, or clerk from challenging the right to vote of any elector on the grounds that the voter is not affiliated with or is not a member of the political party whose ballot the person desires to vote, unless that official

has personal knowledge to the contrary, protects this balance. **In** these rare instances, either SOS Form 10-W, X, or Z should be used, depending on the circumstance, pursuant to R.C. 3510.06(D) and 3513.20.

If you have any questions about this Directive, please do not hesitate to contact the elections attorney assigned to your county.

**F. LOCAL PRIMARY SURVEY AND TURNOUT HISTORY:**

Municipality	County	MC	Charter	Statutory	P/NP	Local Primary Election Turnout		
						2015	2013	2011
Akron	Summit	C	Ch		P	16.26%	9.42%	20.68%
Avon Lake	Lorain	C	Ch		NP	-----	35.35%	16.24%
Burton	Geauga	V		S	P	-----	-----	6.35%
Cincinnati	Hamilton	C	Ch		NP	-----	5.74%	-----
Dayton	Montgomery	C	Ch		NP	5.60%	10.30%	-----
Elyria	Lorain	C	Ch		P	7.91%	8.55%	23.30%
Forest Park	Hamilton	C	Ch		NP	10.79%	-----	-----
Lakewood	Cuyahoga	C	Ch		NP	14.18%	-----	-----
Lorain	Lorain	C		S	P	7.90%	9.63%	17.27%
Maple Heights	Cuyahoga	C	Ch		NP	11.34%	12.00%	17.70%
Mentor	Lake	C	Ch		NP	-----	-----	-----
Miamisburg	Montgomery	C	Ch		P	30.00%	-----	22.90%
N. Ridgeville	Lorain	C	Ch		P	12.32%	17.98%	36.23%
Norwood	Hamilton	C		S	P	9.70%	9.78%	18.61%
Parma	Cuyahoga	C		S	P	8.60%	16.00%	37.50%
Port Clinton	Ottawa	C		S	P	16.70%	9.30%	-----
Shaker Heights	Cuyahoga	C	Ch		N/A	N/A	N/A	N/A
South Russell	Geauga	V		S	P	-----	-----	25.28%
Twinsburg	Summit	C	Ch		NP	20.11%	-----	4.40%
Willoughby	Lake			S	P	-----	-----	-----
Xenia	Greene	C	Ch		N/A	N/A	N/A	N/A

## **VI. SOURCES:**

### **COUNTY BOARDS OF ELECTIONS:**

Butler County, Director and Deputy Director  
Cuyahoga County, Executive Assistant to the Director  
Delaware County, Deputy Director  
Franklin County, Information Officer  
Geauga County, Director  
Green County, Director  
Hamilton County, Deputy Director  
Lake County, Director  
Lorain County, Director  
Lucas County, Director and Deputy Director  
Montgomery County, staff members, Campaign Finance Department  
Ottawa County, Director  
Summit County, Deputy Director  
Warren County, Deputy Director and Board Member  
Wood County, Director

### **OFFICERS OR STAFF OF MUNICIPAL CORPORATIONS and TOWNSHIP:**

Akron, Deputy Clerk of Council  
Avon Lake, City Mayor  
Burton, Village Mayor  
Dayton, City Mayor  
Forest Park, Clerk of Courts  
Huntsburg, Township Trustee  
Lakewood, Clerk of Council  
Maple Heights, City Council President  
Mentor, Clerk of Council and City Manager  
Miamisburg, City Mayor  
Middlefield, Village Mayor  
Norwood, City Mayor  
Parma City, Former City Council President  
Shaker Heights, Law Director  
South Russell, Council Member and Village Mayoral Candidate  
Twinsburg, Clerk of Council  
Willoughby, Assistant to the City Mayor  
Xenia, City Mayor

### **ADDITIONAL SOURCES:**

Interview: Pat Wolf, Elections Administrator, and Brandi Seskes, Elections Counsel,  
Office of the Ohio Secretary of State  
Interview: Eugene L. Kramer, Attorney specializing in Municipal Law  
Report of Bay Village Chapter, LWV Greater Cleveland, June 2007