

**DIRECTIVE RE: ELECTRONIC VOTING SYSTEMS – EMERGENCY BACK-UP PAPER BALLOTS**

Please be advised that on October 29, 2008, U.S. District Court for the Eastern District of Pennsylvania entered an Order **requiring** the Secretary of the Commonwealth to do the following:

[T]he Secretary of the Commonwealth, Pedro A. Cortés, is preliminarily ENJOINED to direct forthwith all the County Boards of Elections throughout Pennsylvania as follows:

If 50% of electronic voting machines in a precinct are inoperable, “paper ballots, either printed or written and of any suitable form,” for registering votes (described herein as “emergency back-up paper ballots”) shall be distributed immediately to eligible voters pursuant to section 1120-A(b) of the Election Code. Emergency back-up paper ballots shall be used thereafter until the county board of elections is able to make the necessary repairs to the machine(s) or is able to place into operation a suitable substitute machine(s).[.]

[T]he Secretary of the Commonwealth, Pedro A. Cortés, is further preliminarily ENJOINED to advise forthwith all the County Boards of Elections throughout Pennsylvania that this Order supersedes his Directive to the contrary issued on September 3, 2008 and that his Directive in this regard is no longer in effect[.]

*NAACP, et al. v. Cortés, et al.*, No. 08-5048 (E.D. Pa. October 29, 2008).

In compliance with the Order of the District Court, the Secretary of the Commonwealth hereby **DIRECTS** all county boards of elections to comply with this Order relating to the use and operation of electronic voting systems.

This Directive **SUPERSEDES** ¶ 7 of the September 3, 2008 Directive, which shall now read as follows:

**7. *Inoperable electronic voting systems - repairs, substitutes and emergency back-up paper ballots.*** If 50% of electronic voting machines in a precinct are inoperable, “paper ballots, either printed or written and of any suitable form,” for registering votes (described herein as “emergency back-up paper ballots”) shall be distributed immediately to eligible voters pursuant to section 1120-A(b) of the

Election Code. Emergency back-up paper ballots shall be used thereafter until the county board of elections is able to make the necessary repairs to the machine(s) or is able to place into operation a suitable substitute machine(s).

For this purpose, county boards of elections may use, as “emergency back-up paper ballots,” ballots specifically designed for use as emergency back-up paper ballots; surplus, un-voted absentee ballots; surplus, un-voted alternative ballots; ballots that the county board of elections has supplied to the district election board for use as provisional ballots; or other paper ballots that are “either printed or written and of any suitable form.”

- **Except as noted below, the procedures applicable to the casting of absentee ballots, alternative ballots or provisional ballots (declaration and affidavit requirements) do not apply to an emergency back-up paper ballot that is cast under section 1120-A(b) of the Election Code.**
- When ballots originally intended for use as absentee ballots, alternative ballots or provisional ballots are used as emergency back-up paper ballots under section 1120-A(b) of the Election Code, the ballot is cast as a regular ballot, and not as an absentee ballot, alternative ballot or provisional ballot. **Provisional ballots which are used as emergency back-up paper ballots must be clearly distinguished from provisional ballots and may not be rejected if the envelope in which the ballot is placed is missing any information that would be required of a provisional ballot.**
- A county board of elections must supply an adequate amount of emergency back-up paper ballots to ensure that voting continues uninterrupted until the voting systems become operable.

As a regular ballot, the emergency back-up ballot shall be deposited by the voter in a ballot box or other secure receptacle designated by the board of elections for the deposit of completed emergency back-up paper ballots, as required for paper ballots by Section 1003(a) of the Election Code, 25 P.S. §2963(a). Absentee ballots, alternative ballots or provisional ballots that are being used as emergency back-up paper ballots must be identified as regular ballots and must be segregated from absentee ballots, alternative ballots and provisional ballots.

**EXCEPTION NOTE: Persons permitted or required to vote by provisional ballot must follow the procedures applicable to casting of provisional ballots, whether electronic voting systems or paper ballots are used to conduct an election.** When ballots labeled as provisional ballots are employed under section 1120-A(b) of the Election Code, 25 P.S. §3031.20(b) as emergency back-up paper ballots for the casting of regular ballots in place of inoperable machines, the local board of

elections must continue to require individuals to cast provisional ballots when those individuals are required by law to vote in that manner, subject to all of the procedures prescribed for casting a provisional ballot at section 1210(a.4) of the Election Code, 25 P.S. § 3050(a.4).