

SECRETARY OF STATE
STATE OF INDIANA
200 W. WASHINGTON STREET, INDIANAPOLIS, IN 46204
WWW.SOS.IN.GOV

**ORDER MANDATING ABSENTEE BY MAIL VOTERS BE INFORMED OF A
MISMATCHED SIGNATURE AS REASON FOR REJECTION OF THEIR
BALLOT; SETTING FORTH THE PROCEDURE FOR INFORMING THE
VOTER WHEN A BALLOT IS REJECTED FOR A MISMATCHED
SIGNATURE; AND ESTABLISHING A PROCEDURE PERMITTING A VOTER
TO CURE A MISMATCHED BALLOT ENVELOPE SIGNATURE**

*Whereas, the Order issued in *Frederick v. Lawson*, No. 1:19-cv-01959-SEB-MJD, 2020 U.S. Dist. LEXIS 150995 (S.D. Ind. Aug. 20, 2020) enjoins the Secretary of State's office "...from rejecting any mail-in absentee ballot on the basis of a signature mismatch absent adequate notice and cure procedures to the affected voter."*

*Whereas, the Secretary of State's office is further ordered in *Frederick v. Lawson* to provide notice to Indiana election officials of the injunction and "...instruct such officials regarding the implementation of notice and cure procedures in time for the upcoming general election on November 3, 2020."*

Whereas, in issuing this Order, the Secretary of State's office is exercising authority reserved for the legislative branch of state government, authority the office would not possess absent a judicial order;

NOW THEREFORE, as the duly elected and acting Secretary of the State of Indiana,

IT IS THEREFORE ORDERED:

MISMATCHED SIGNATURES

SECTION 1. If in performing the procedures described in current law, the county election official determines that the signatures on the absentee documents are mismatched then the security envelope shall not be opened and the ballot shall not be counted. The county election official shall write the cause and date of the rejection on the face of the security envelope only after completing the procedures described below.

SECTION 2. The county shall send notice of a determination of mismatched signature no later than two (2) business days after determining the signature is mismatched. The county shall telephone or email the voter using any contact information available, if any, and shall send written notice by first class U.S. mail to the voter's registration address.

SECTION 3. Any ballot containing a mismatched signature will be treated as a provisional ballot under IC 3-11.7, which may be cured as provided in this Order.

SECTION 4. A voter must verify the voter's signature not later than noon, prevailing local time, eight (8) days after election day.

SECTION 5. The notice and instructions shall be in substantially the following form:

NOTICE FROM
COUNTY ELECTION BOARD
REGARDING SIGNATURE VERIFICATION STATEMENT
FOR ABSENTEE BALLOT

READ THESE INSTRUCTION CAREFULLY.
FAILURE TO FOLLOW THESE INSTRUCTION MAY CAUSE YOUR ABSENTEE
BALLOT NOT TO BE COUNTED

1. We have determined that the signature you provided on the envelope containing your absentee ballot does not match the signature on your absentee application, on the electronic pollbook, or any signature on file in your voter record. For further review, your signature verification statement must be completed and returned.
2. Your signature verification statement must be received by the county election official of the county where you are registered to vote not later than noon (local prevailing time), eight (8) days after election day. For the November 3, 2020 general election, the deadline is noon (local prevailing time), Wednesday, November 11, 2020.
3. You must sign your name where specified on the signature verification statement [Voter's Signature.]
4. Place the signature verification statement into a mailing envelope addressed to your county election official. Mail, hand deliver, or have your completed statement delivered to the county election official. Be sure there is sufficient postage, if mailed, and that the address of the county election official, as provided below, is correct.
5. If you do not wish to send your signature verification statement by mail or have it hand-delivered, you may submit your completed statement by email or facsimile transmission to your county election official using the following information provided by your county:

(County E-mail or Fax number)

SECTION 6. The election official shall not reject an absentee ballot with a non-conforming security envelope signature, if each of the following conditions is satisfied:

(A) The voter delivers, in person, by mail, by fax, or by email, a signature verification statement signed by the voter and the county election official receives the statement not later than noon eight (8) days after election day or the voter, before the close of the polls on election day, completes and files a signature verification statement with the inspector or other chief election official of the precinct or vote center within the county. The inspector or vote center official shall forward the signature verification statement to the county election board or board of elections and registration with the other materials from that precinct.

(B) Upon receipt of the signature verification statement, the county election board or county board of elections and registration shall open the provisional ballot envelope to access the voter's absentee ballot security envelope in order to compare the signature on the verification statement with the signature on the affidavit of the ballot envelope, (unless the military or overseas voter transmitted a ballot by fax or email in which case the comparison shall be made against the affidavit found

under IC 3-11-4-6(h)), and, if applicable, the signature found in the voter's registration record or the signature on the absentee ballot application.

(i) If, upon conducting the comparison of signatures, the board determines that the signatures match and assuming no other challenges have been made to that ballot, the board shall open the absentee ballot security envelope and add the votes cast on the ballot to the tally for the voter's precinct.

(ii) If, upon conducting the comparison of the signatures, the election officials determine that the signatures are mismatched, the voter's absentee ballot security envelope shall not be opened and the ballot shall not be counted. The election officials shall write "this ballot has been rejected because of a mismatched signature" on the face of the security envelope. The provisional ballot envelope shall be re-sealed and the status of the rejected ballot shall be made under the "County Election Board Findings" on the affidavit.

SECTION 7. The signature verification statement shall be in substantially the following form and may be included on the same page as the notice and instructions:

SIGNATURE VERIFICATION STATEMENT

I, [Voter's Name], am a registered voter of [Voter's County of Residence] County, State of Indiana. I declare under the penalties of perjury that I requested and returned an absentee ballot. I am a resident of the precinct in which I have voted (or I am entitled to vote in this precinct under Indiana law), and I am the person whose name appears on the absentee ballot envelope. I understand that if I commit or attempt any fraud in connection with voting, or if I aid or abet fraud or attempt to aid or abet fraud in connection with voting, I may be convicted of a felony punishable by imprisonment, a fine or both. I understand that my failure to sign this statement means my absentee ballot will not be counted.

[Voter's Signature]

[Voter's Printed Name]

[Voter's Registration Address]

If there is a reason why your signature does not match, please explain here. Some examples include age or disability of the voter or execution of the absentee affidavit by the person holding the voter's power of attorney or any person assisting a voter under IC 3-11-4-2(b) or a member of the voter's immediate household or power of attorney attesting to the voter's signature on the absentee-by-mail return envelope under IC 3-11.5-4-13(c).

SECTION 8. The Secretary of State shall include the absentee ballot signature verification statement and instructions set forth in this Order on IndianaVoters.com. The Secretary of State shall provide the mailing address, email address, and facsimile transmission number for each county election office along with the statement and instructions.

SECTION 9. If the county election board or board of elections and registration determines the signatures match, the board shall provide a copy of the statement to the county voter registration officer in any county where there is a separate board of registration. The board of registration shall then use the signature in the signature verification statement, even if returned untimely, to update the voter's signature in the voter's registration record.

MISSING SIGNATURE ON ABSENTEE SECURITY ENVELOPE OR AFFIDAVIT

SECTION 10. The election official shall not reject an absentee ballot with a missing security envelope signature, if each of the following conditions is satisfied:

(A) The voter delivers, in person, by mail, by fax, or by email, a unsigned ballot affidavit signed by the voter and the county election official receives the affidavit not later than noon eight (8) days after election day or the voter, before the close of the polls on election day, completes and files an unsigned ballot affidavit with the inspector or other chief election official of the precinct or vote center within the county. The inspector or vote center official shall forward the unsigned ballot affidavit to the county election board or board of elections and registration with the other materials from that precinct.

(B) Upon receipt of the unsigned ballot affidavit, the county election board or county board of elections and registration shall open the provisional ballot envelope to access the voter's absentee ballot security envelope in order to compare the signature on the unsigned ballot affidavit with the signature on the affidavit of the ballot envelope, (unless the military or overseas voter transmitted a ballot by fax or email in which case the comparison shall be made against the affidavit found under IC 3-11-4-6(h)), and, if applicable, the signature found in the voter's registration record or the signature on the absentee ballot application.

(i) If, upon conducting the comparison of signatures, the board determines that the signatures match and assuming no other challenges have been made to that ballot, the board shall open the absentee ballot security envelope and add the votes cast on the ballot to the tally for the voter's precinct.

(ii) If, upon conducting the comparison of the signatures, the election officials determine that the signatures are mismatched, the voter's absentee ballot security envelope shall not be opened and the ballot shall not be counted. The election officials shall write "this ballot has been rejected because of a mismatched signature" on the face of the security envelope. The provisional ballot envelope shall be re-sealed and the status of the rejected ballot shall be made under the "County Election Board Findings" on the affidavit.

SECTION 11. The unsigned ballot affidavit shall be in substantially the following form and may be included on the same page as the notice and instructions:

UNSIGNED BALLOT AFFIDAVIT

I, [Voter's Name], am a registered voter of [Voter's County of Residence] County, State of Indiana. I declare under the penalties of perjury that I requested and returned an absentee ballot. I am a resident of the precinct in which I have voted (or I am entitled to vote in this

precinct under Indiana law), and I am the person whose name appears on the absentee ballot envelope. I understand that if I commit or attempt any fraud in connection with voting, or if I aid or abet fraud or attempt to aid or abet fraud in connection with voting, I may be convicted of a felony punishable by imprisonment, a fine or both. I understand that my failure to sign this statement means that my absentee ballot will not be counted.

[Voter's Signature]

[Voter's Printed Name]

[Voter's Address]

SECTION 12. Instructions shall accompany the unsigned ballot affidavit in substantially the following form:

**NOTICE FROM
COUNTY ELECTION BOARD
REGARDING AN UNSIGNED BALLOT AFFIDAVIT
FOR ABSENTEE BALLOT**

**READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE
STATEMENT. FAILURE TO FOLLOW THESE INSTRUCTION MAY CAUSE YOUR
BALLOT TO NOT BE COUNTED.**

1. We have determined that your signature is missing on your absentee ballot security envelope. To ensure that your absentee ballot will be counted, your unsigned ballot affidavit must be completed and returned.
2. Your unsigned ballot affidavit must be received by the county election official not later than noon (local prevailing time), eight (8) days after the election. For the November 3, 2020 general election, the deadline is noon (local prevailing time), Wednesday, November 11, 2020.
3. You must sign your name where specified on the unsigned ballot affidavit [Voter's Signature.]
4. Place the unsigned ballot affidavit into a mailing envelope addressed to your county election official. Mail, hand deliver, or have your completed affidavit delivered to the county election official. Be sure there is sufficient postage, if mailed, and that the address of the county election official, as provided below, is correct.
5. If you do not wish to send your unsigned ballot affidavit by mail or have it hand-delivered, you may submit your completed statement by email or facsimile transmission to your county election official using the following information provided by your county:

(County E-mail or Fax number)

SECTION 13. The Secretary of State shall include the unsigned ballot affidavit and instructions described above on IndianaVoters.com. The Secretary of State shall provide the mailing address, email address, facsimile transmission number for each county election office along with the statement and instructions.

SECTION 14. A ballot shall not be removed from its security envelope until the time for processing ballots.

SECTION 15. The Secretary of State directs the Indiana Election Division to amend the Absentee Voter's Bill of Rights, prescribed by IC 3-5-8-2.5, to read as follows.

THE ABSENTEE VOTER'S BILL OF RIGHTS

Last revised, September 8, 2020; Indiana Code 3-11-10-25(g)

INSTRUCTIONS:

The County Election Board mails a copy of this document to the voter with the absentee ballot.

Fellow Voter:

Every voter casting an absentee ballot has the following rights and responsibilities as part of absentee voting.

- You have the right to mark your absentee ballot secretly, without anyone else being present when you mark the ballot or seal the ballot in the envelope.
- You have the right to mark your ballot without anyone engaging in "electioneering" in your presence if that person knows that you have an unmarked absentee ballot.
 - "Electioneering" means expressing support or opposition to a candidate, a political party, or public question. However, your spouse, a member of your household (*or your guardian, if you are incapacitated*) may express this support or opposition to you without violating the "electioneering law."
- **IT IS A VIOLATION OF FEDERAL LAW AND INDIANA LAW FOR ANYONE TO ATTEMPT TO FORCE YOU TO MARK YOUR ABSENTEE BALLOT IN ANY PARTICULAR WAY.**
- **IT IS A VIOLATION OF INDIANA LAW FOR A PERSON TO PAY OR OFFER TO PAY AN INDIVIDUAL FOR CASTING AN ABSENTEE BALLOT, AND A VIOLATION OF INDIANA LAW FOR A PERSON TO ACCEPT ANY PAYMENT OR PROPERTY FOR CASTING AN ABSENTEE BALLOT.**
- If you are voting absentee by mail, then you must personally mark your ballot. A person with disabilities who is unable to make a voting mark on the ballot or sign the absentee ballot security envelope must vote before an absentee voter board. Please contact your county election board for more information.
- **CHECK YOUR BALLOT FOR 2 SETS OF INITIALS.** In order for an absentee ballot to be counted, it must contain two (2) sets of initials on the back of the ballot. Please inspect your ballot before mailing. If your ballot does not contain the initials, you have the right to request a replacement ballot. Please contact your county election board at the number provided on the bottom of this form and ask for an ABS-5 Affidavit or "Statement Concerning Defective, Lost, Destroyed, or Spoiled Absentee Ballot."
- After you mark and seal your absentee ballot inside the security envelope used to return your marked ballot, you have the responsibility to completely fill out and

sign the affidavit on the back of the security envelope. By signing the affidavit, you are swearing or affirming that all of the information on your affidavit is true. This information includes your name, complete residence address, and that you are eligible to vote in this election.

- You must also swear or affirm that you voted your absentee ballot in secret, and sealed the ballot in the envelope without any other person seeing how you voted. *(If you are voting by mail and another person provided verbal assistance to you or assisted you in sealing your ballot in the envelope, that person must also swear or affirm that they did not coerce or improperly influence you by completing the affidavit of assistance.)*
- Failure to sign an absentee ballot, or signing an absentee ballot in a manner that does not match the most recent signature contained in your voter registration record is grounds for rejection of your ballot. If your ballot is rejected due to failure to sign or because of a mismatched signature, you will be notified by the county election board and will be given an opportunity to cure this problem. The cure process will require you to complete and sign an affidavit stating that the voted absentee ballot you returned was indeed your ballot. The signature on the affidavit will then be compared with the most recent signature on your voter registration record. You will have until noon, prevailing location time, eight (8) days after election day to submit the affidavit to your county election official. The cure procedure can be reviewed in its entirety on IndianaVoters.com.
- After you have sealed your absentee ballot inside the envelope you must return the envelope to the county election board in one of the following ways: 1) by U.S. mail or a bonded courier company; 2) by hand-delivering the envelope yourself to the county election board; 3) by delivering the envelope to a member of your household (or to a person to whom you have given your power of attorney). If you deliver the sealed envelope to a household member or your power of attorney, that person must deliver your ballot to the county election board in person, by U.S. mail, or by using a bonded courier company.
- IT IS A VIOLATION OF INDIANA LAW FOR YOU TO DELIVER THE SEALED ENVELOPE CONTAINING YOUR MARKED ABSENTEE BALLOT TO ANY PERSON OTHER THAN THOSE PERSONS IDENTIFIED ABOVE, OR FOR THAT PERSON TO ACCEPT THIS ENVELOPE.
- Even if you mail your ballot before election day, it will not count unless it is received by your county election board not later than 12 noon (local prevailing time) on election day.

If you think that a violation of Indiana election law has occurred, contact your county election board immediately at the telephone number or mailing address below to provide all the information you have about this violation.

You may also contact your county prosecuting attorney's office, the Indiana State Police Bureau of Criminal Investigation at (317) 232-4338, or the Indiana Election Division of the Office of the Secretary of State at (800) 622-4941. The county prosecuting attorney and Indiana State Police can investigate election crimes. The Election Division is not a law enforcement agency, but can provide you with information about Indiana election laws and refer you to law enforcement agencies.

Thank you again for exercising your right to vote.

NAME COUNTY ELECTION BOARD

Phone number

Mailing address

SECTION 16. Except as expressly provided in this Order and where clearly inapplicable under IC 3-11.7, a mismatched ballot for an unsigned ballot is to be treated as a provisional ballot and is subject to the same confidentiality restrictions under IC 3-11.7-6-3. If treated as a provisional ballot, the ballot envelope and the unsigned ballot affidavit and signature verification statement executed by the voter are confidential under 3-11.7-6-3.

SECTION 17. The Secretary of State's office shall promptly provide a copy of this Order to each Indiana county election board member, circuit court clerk, county election director in a county where the election director performs certain election related functions of the circuit court clerk, each county board of registration member, and the Indiana Election Division and direct them to comply with the provisions of this Order. The Secretary of State's office may provide guidance of the above enumerated changes in procedure and provide guidance on complying with the Order issued in *Frederick v. Lawson*.

SECTION 18. No election official or other person shall alter or amend an absentee ballot security envelope with a mismatch or missing signature except as provided in this Order. No county election official shall permit another person to take custody or have possession of a security envelope with a mismatch or missing signature, except as provided in this Order.

This Order is the exclusive method to be used to cure or attempt to cure any mismatch or missing signature on an absentee security envelope.

SECTION 19. This Order is effective September 4, 2020.

/s/ Connie Lawson
Connie Lawson
Indiana Secretary of State

Date: 9-4-20