

## Section B

### U.S. ELECTION ASSISTANCE COMMISSION



#### 2008 Election Administration & Voting Survey

## Statutory Overview

In order to better understand state laws governing federal elections, the U.S. Election Assistance Commission, as part of its biennial Election Administration and Voting Survey, is collecting information on state election laws and procedures. These answers will help us to better understand the quantitative data relating to the 2008 general election that we are collecting from all U.S. states and territories.

We understand that responding to this Statutory Overview may require significant staff time on the part of your office. Please be assured that we have attempted to minimize the burden, and we appreciate your cooperation in this very important project.

Information Supplied By	
Name	Erick Gale
Title	Elections Counsel
Office/Agency Name	Ohio Secretary of State Jennifer Brunner
Address 1	180 East Broad Street
Address 2	15th Floor
City	Columbus
State	Ohio
Zip Code	43215
Email Address	egale@sos.state.oh.us
Telephone (area Code and number)	(614) 644-1236
Fax Number (area code and number)	(614) 685-7512

## DIRECTIONS AND EXAMPLE

Please provide your state's legal citation for the responses to these questions (where applicable).

Please answer each question to the best of your ability. If terms are ambiguous or not relevant, please explain why. If a question is not applicable to your state, please explain why. If a definition or term lacks legal standing but is widely understood in practice, please explain. If election procedures vary at the local level within your state, please explain to the best of your ability.

If state laws are currently enjoined or otherwise blocked from enforcement by a state or federal court, please specify.

Please put your responses between the red, bracketed text lines. This will help us extract your answers into our central database.

### Example:

A1. How does your state define the following terms related to votes and ballots? Please provide your state's legal citation defining these terms, where applicable.

- a. Over-vote

[Begin definition (a) below this line.]

*Your answer goes here. You may enter the text directly, or cut and paste from another word processing program.*

*There is no limit to the length of your response.*

[End definition (a) above this line.]

## SECTION A: GENERAL

A1. How does your state define the following terms related to votes and ballots? Please provide your state's legal citation defining these terms, where applicable.

a. Over-vote

[Begin definition (a) below this line.]

There is no statutory definition of "over-vote" in Ohio law. Ohio law addresses over-votes in R.C. 3506.10(C), which prohibits certification of any voting machine that does not preclude an elector from voting for more persons for any office than the elector is entitled to vote for and from voting for any candidates for the same office or upon any question more than once; and R.C. 3506.21(B)(3), which provides that if an elector over-votes for one race, the ballot shall not be invalidated for other races in which he or she did not over-vote. See also OAC 111:3-3-01(C)(3).

[End definition (a) above this line.]

b. Under-vote

[Begin definition (b) below this line.]

There is no statutory definition of "under-vote" in Ohio law

[End definition (b) above this line.]

c. Blank ballot

[Begin definition (c) below this line.]

There is no statutory definition of "blank ballot" in Ohio law. In general, Ohio election administrators and election officials refer to a "blank ballot" as a ballot that was not marked by a voter.

[End definition (c) above this line.]

d. Void/Spoiled ballot

[Begin definition (d) below this line.]

There is no statutory definition of a "void" or "spoiled" ballot in Ohio law. Ohio law addresses spoiled ballots in R.C. 3505.12, which provides that ballot instructions shall inform voters how to obtain a new ballot in case of accidentally spoiling one; and Secretary of State Directive 2008-65 provides reconciliation procedures by poll workers for spoiled ballots after the polls close on Election Day.

[End definition (d) above this line.]

e. Provisional/Challenged ballot

[Begin definition (e) below this line.]

Provisional ballots are explained in Ohio Revised Code sections 3505.181, .182, and .183.

[End definition (e) above this line.]

f. Absentee

[Begin definition (f) below this line.]

Absentee ballots are explained in Chapters 3509 and 3511 of the Ohio Revised Code. Absentee ballot procedures are also addressed in multiple Secretary of State Directives and advisories.

[End definition (f) above this line.]

g. Early voting

[Begin definition (g) below this line.]

The term “early voting” is not used in the Ohio Revised Code. However, “early voting” has often been referred to as in person absentee voting at a board of elections office, or an alternative site designated by the board of elections for absentee voting, during the absentee voting period, which is 35 days before a general election.

[End definition (g) above this line.]

h. Active Voter

[Begin definition (h) below this line.]

“Active voter” is not statutorily defined in Ohio law.

[End definition (h) above this line.]

i. Inactive Voter

[Begin definition (i) below this line.]

“Inactive voter” is not statutorily defined in Ohio law.

[End definition (i) above this line.]

j. Other terms (please specify) \_\_\_\_\_

[Identify each TERM and definition separately and begin below this line.]

N/A

[End TERM(s) and definition(s) above this line.]

A2. Please provide the legal citation for any **significant** changes to election laws or procedures that have been enacted or adopted since the previous Federal election. By “significant,” we do not mean routine or technical changes (such as changes to election district boundaries or polling place changes). However, we would like to learn about any new identification requirements for voters or registrants; changes in eligibility for voting or registering; adoption of alternative voting methods; and other changes that you believe represent a significant change in the way your state runs its elections.

[Begin response to above question (A2) below this line.]

Significant election law procedures or changes since the 2006 federal general election:

- Ohio law was amended to prohibit a board of elections from adopting a central count optical scan system as its primary voting system on Election Day. R.C. 3506.21(D) requires that any board of elections using optical scan ballots and automatic

- Ohio law was amended to alter the membership and appointment process of the Ohio Board of Voting Machine Examiners to four members. Two members are appointed by the Secretary of State, and the other two members are appointed by the General Assembly leaders of the opposite political party of the Secretary of State. The Secretary of State has the authority to cast a tie-breaking vote. The board of voting machines examiners approves and tests voting equipment for use in Ohio elections. *See R.C. 3506.05.*
- Ohio law was amended to require that all voting equipment acquired after December 1, 2008, must have a federal certification number issued by the Elections Assistance Commission, and all voting equipment used in Ohio must meet, as a condition of continued certification, the 2002 voting system standards adopted by the federal elections commission. *See R.C. 3506.05.*
- Ohio law was amended so that beginning with the November 2008 general election, absentee ballots postmarked before Election Day and received after the close of polls on Election Day but before the eleventh day after the election shall be included in the official canvass if the ballots meet all other requirements of law. *R.C. 3509.05.*
- Three counties changed voting systems from a DRE system to a precinct-based optical scan system.
- The Secretary of State created a statewide Poll Worker Training Manual to ensure uniformity among the poll workers.
- The Secretary of State required that all county boards of elections using DREs as the primary voting system must make optical scan ballots available for voters at the polling places on Election Day. *Secretary of State Directive 2008-59.*

[End response to above question (A2) above this line.]

## SECTION B: VOTER REGISTRATION

B1. Is your state's voter registration database system best described as a bottom-up, a top-down, or a hybrid? (Note: A bottom-up system generally uploads information retained at the local level and compiled at regular intervals to form the statewide voter registration list. A top-down system is hosted on a single, central platform/mainframe and is generally maintained by the state with information supplied by local jurisdictions. A hybrid is some combination of both systems described above.)

[Begin response to above question (B1) below this line.]

Bottom up

[End response to above question (B1) above this line.]

If your state has a bottom-up or hybrid system, how often do local jurisdictions transmit registration information to the state list?

[Begin response to above clarification question to B1 below this line.]

Reporting period is dependent upon specific county and local practices. [End response to above clarification question to B1 above this line.]

B2. Please describe the process used in your state to move voters from the active list to the inactive list, and from the inactive list to the active list. Is a different process used for UOCAVA voters?

[Begin response to above question (B2) below this line.]

N/A

[End response to above question (B2) above this line.]

B3. Please describe your state's process for removing voters from the voter registration rolls (not merely moving them from active to inactive). Please include information regarding notices and confirmations. Are these procedures the same for UOCAVA voters?

[Begin response to above question (B3) below this line.]

See Secretary of State Directive 2007-11:

<http://www.sos.state.oh.us/SOS/Upload/elections/directives/2007/Dir2007-11.pdf>

[End response to above question (B3) above this line.]

B4. Can your state's voter registration database (or equivalent) share information electronically with your state's drivers license agency (for example, to match records or trace changes in address)? Can your voter registration database be similarly linked with databases in any other state or federal agencies? Please describe these links, including any use of database matching to verify voter registration applications.

[Begin response to above question (B4) below this line.]

Yes, the Ohio voter registration system connects to the BMV to verify name, address, driver's license number, or last four digits of SSN. BMV is the single state agency interface and is connected to the Social Security Administration.

[End response to above question (B4) above this line.]

B5. Please describe how your state uses National Change of Address (NCOA). What has been your state's experience with using NCOA?

[Begin response to above question (B5) below this line.]

SOS IT: The entirety of the Ohio voter registration database is submitted to an USPS approved vendor to undertake address correction and verification of registered voters with NCOA every two years. Results for each county are then forwarded to their respective Boards of Elections for follow-up processing per Ohio Secretary of State Directive 2007-11:

<http://www.sos.state.oh.us/SOS/Upload/elections/directives/2007/Dir2007-11.pdf>

[End response to above question (B5) above this line.]

B6. Please describe your state's voting eligibility requirements as they relate to individuals with a felony conviction. (For example, are convicted felons allowed to vote while in prison or while on parole or probation? Are voting rights automatically restored or does the individual have to apply for a pardon, certificate of eligibility or other similar certificate? Does an individual whose voting rights have been restored have to produce documentation of his/her status when registering to vote?)

[Begin response to above question (B6) below this line.]

Under sections 2961.01 and 3503.21 of the Ohio Revised Code, any person convicted of a felony is incompetent to be an Ohio elector while the person is incarcerated for the felony conviction. For the purposes of voter registration and voting, an otherwise competent elector will lose the right to register and to vote only as long as he or she is actually incarcerated under a felony sentence.

An otherwise competent elector convicted and incarcerated for a felony is allowed to register to vote and to vote once one of the following takes place: parole, post-release control, judicial release or conditional pardon is granted; upon the final discharge of the imposed incarceration; or if the felony conviction is reversed or set aside. Ohio law does not require a released felon to produce documentation of release when registering to vote. Ohio law places no affirmative duty on the Secretary of State or boards of elections to notify an individual of his or her renewed competency to be an elector.

[End response to above question (B6) above this line.]

B7. Does your state currently use the Internet in any way to facilitate voter registration? If yes, please describe how your state allows voters to use the Internet in the registration

process (e.g., entire registration completed online; completed online but then must be printed, signed, and mailed by voter, etc.).

[Begin response to above question (B7) below this line.]

Ohio provides numerous opportunities for voters to access and complete voter registration materials on the Internet, including a link prominently displayed on the Secretary of State's website. However, section 3503.14 of the Ohio Revised Code requires voter registration forms to be signed by the voter. Accordingly, although voters may largely complete the form online, they must thereafter print the forms, sign them, and then return them in order for the registration to be valid. The procedures may be different for overseas citizens or armed services members.

[End response to above question (B7) above this line.]



## SECTION C: ELECTION ADMINISTRATION

C1. Please describe how all votes cast at a place other than the voter's precinct of registration are tabulated (for example, please include descriptions of such votes as absentee ballots, mail-in ballots, votes cast at vote centers, provisional ballots, early voting locations, etc.).

- a. Are the votes counted centrally or at the precincts?

[Begin response to above question (a) below this line.]

### Absentee Ballots

Electors may vote absentee on a paper optical scan ballot that is mailed to the elector by the board of elections; in the alternative, an elector may vote an absentee ballot at the board of elections office – or an alternative location designated by the board of elections for absentee voting– by paper optical scan ballot or a DRE voting machine (in DRE counties only). Boards of Elections are required to begin absentee voting 35 days before a federal general election and twenty-five days before a presidential primary election.

Boards may begin tabulating absentee ballots after the polls close on Election Day. Secretary of State Directive 2008-67 allows boards of elections to begin processing absentee ballots prior to Election Day but tabulation may not occur before the close of the polls on Election Day.

See chapters 3509 and 3511 of the Ohio Revised Code and Secretary of State Directive 2008-82, "Guidelines for Absentee Voting," for additional information on absentee voting.

### Provisional Ballots

Some provisional ballots are cast at the board of elections rather than at a precinct. For any election other than a presidential primary election, provisional voting begins twenty-eight days before an election. R.C. 3503.16 (B) & (C). For presidential primary elections, provisional voting begins twenty-five (25) days before an election. Certain voters may vote a provisional ballot at the board of elections prior to Election Day. See R.C. 3503.16 (B) & (C). Similarly, the following electors may cast a provisional ballot at the board of elections office on Election Day: electors who move from one precinct to another within a county; electors who move from one precinct to another within a county and change their name; and electors who move from one county to another county within Ohio.

All provisional ballots must be cast on a paper optical scan ballot. Secretary of State Directive 2008-81 requires that no person, other than a person eligible to vote on a DRE because of a disability, may vote a provisional ballot on a DRE machine.

Provisional ballots are not counted on election night in the unofficial canvass. All valid provisional ballots are counted in the official canvass, which begins no earlier than the 11<sup>th</sup> day and no later than the 15<sup>th</sup> day after Election Day (except a

presidential primary). All provisional ballots are centrally counted at the board office.

See sections 3503.16 and R.C. 3505.181, .182, and .183 of the Ohio Revised Code and Secretary of State Directive 2008-81, entitled “Guidelines for Provisional Voting” for more information on provisional voting.

[End response to above question (a) above this line.]

b. If centrally tabulated, are the votes redirected to the appropriate precinct for reporting in the canvass?

[Begin response to above question (b) below this line.]

State law (R.C. 3509.06) allows boards of elections to determine whether absentee ballots shall be counted in each precinct, the board office, or at some other location designated by the board. Boards typically choose to tabulate absentee ballots at the board office and follow the procedures in R.C. 3509.06(C) and (D).

[End response to above question (b) above this line.]

c. Are the absentee, mail, etc., votes reported separately for each precinct, or are they added to the in-precinct results and reported as just a single number?

[Begin response to above question (c) below this line.]

Boards have the option of reporting all absentee ballots as separate precincts or adding the absentee ballots to the in-precinct results for the unofficial canvass on election night. However, for the official canvass and reporting of results, all absentee ballots are included in the in-precinct results.

[End response to above question (c) above this line.]

d. How are UOCAVA ballots counted and reported?

[Begin response to above question (d) below this line.]

UOCAVA ballots are treated as other absentee ballots.

[End response to above question (d) above this line.]

C2. Does your state require a reason for voting absentee, or does your state allow no-excuse absentee voting? (If a reason is required, please provide the legal citation.)

[Begin response to above question (C2) below this line.]

Under R.C. 3509.02(A), any elector may vote by absent voter’s ballot at an election. Ohio allows no-excuse absentee voting.

[End response to above question (C2) above this line.]

C3. Does your state provide for in-person early voting? If so, how is early voting defined? When early voting is used, are the ballots counted at the precinct or at a central location? How are these votes reported?

[Begin response to above question (C3) below this line.]

Ohio electors may vote absentee at their board of elections office beginning 35 days before a general election (25 days before a presidential primary). While this may be referred to as “early voting,” the electors are simply voting absentee ballots that are tabulated in the same manner as any other absentee ballot on election night.

[End response to above question (C3) above this line.]

C4. Do any jurisdictions in your state use a vote-by-mail system to replace (and not merely supplement) at-the-precinct voting in any elections?

[Begin response to above question (C4) below this line.]

No jurisdictions in this state have replaced a precinct voting system with a vote-by-mail system.

[End response to above question (C4) above this line.]

C5. Please list each of the situations that require a provisional ballot in your state. Please provide the relevant legal citation for each situation.

[Begin response to above question (C5) below this line.]

Provisional voting rules are explained in sections 3503.16, 3503.19(C), 3505.181 - .183, and 3509.09, of the Ohio Revised Code and Secretary of State Directive 2008-81, entitled “Guidelines for Provisional Voting.” The situations that require a provisional ballot include:

- Registered electors who move from one precinct to another within a county and who, on or before the day of the election, have not filed a notice of change of residence with the board of elections at least 30 days before the election.
- Registered electors who move from one precinct to another within a county and who change their name but have not filed a change of residence or change of name with the board of elections at least 30 days before the election.
- Registered electors who move from one county to another county within the state and have not registered to vote in the new county at least 30 days before the election.
- Registered electors who have changed their name and who have not filed a notice of a change of name with the board of elections at least 30 days before the election.
- Voters whose name does not appear in the poll list or signature poll book on Election Day.
- Voters who present themselves to vote on Election Day but do not possess one of the acceptable forms of identification.
- If a voter registration confirmation notice is returned to the board of elections as undeliverable, then at the first election thereafter at which the voter named in the

confirmation notice seeks to vote, that voter must vote a provisional ballot. *See* R.C. 3503.19(C).

- If a voter requested an absent voter's ballot and the board of elections has not received a sealed identification envelope purporting to contain that elector's voted absent voter's ballot, the voter shall be required to vote a provisional ballot if the elector appears to vote on Election Day.
- On Election Day, if election officials cannot determine a voter's eligibility to vote, or if a voter does not appear to be eligible to vote and that voter insists on voting, the voter must cast a provisional ballot.
- If a challenge to that voter's right to vote is filed with the board of elections after the 30<sup>th</sup> day before the day of the election and the board has postponed the hearing on the challenge, the elector is required to vote a provisional ballot.
- If the election officials determine that the signature of an individual who appears and attempts to vote does not match the signature on file for that voter, that voter must cast a provisional ballot.

[End response to above question (C5) above this line.]

C6. Does your state count provisional ballots of voters who are registered in different precincts, or are those ballots automatically rejected? Please describe the process used by local election officials in determining whether to count a provisional ballot.

[Begin response to above question (C6) below this line.]

Provisional ballots must be cast in the elector's assigned precinct to be counted. The provisional ballot voting process is explained in Secretary of State Directive 2008-8

[End response to above question (C6) above this line.]

C7. Please describe your state's laws regarding post-election audits, if any.

[Begin response to above question (C7) below this line.]

Ohio law does not require post-election audits. The Ohio Secretary of State requested that a sample of counties conduct a post-election audit for the 2008 presidential primary. The Secretary of State may require post election audits in the future.

[End response to above question (C7) above this line.]

C8. Please describe any state requirements for poll worker training.

[Begin response to above question (C8) below this line.]

R.C. 3501.27(A) provides that all poll workers "shall complete a program of instruction." R.C. 3501.27(B) thereafter provides that each board of elections shall establish a program as prescribed by the Secretary of State for the instruction of election officials in the rules, procedures, and laws relating to elections. In each program, the boards shall use training materials prepared by the Secretary of State and may use additional materials prepared by the board of elections. The Ohio Secretary of State recently issued Directive 2008-77, which requires each county board of elections to make a part of its poll worker training curriculum, the materials produced by the Secretary of State, including a Poll Worker Quick Manual of Instructions, Poll Worker Reminder Sheet, and the Poll Worker Quick Reference Guide.

[End response to above question (C8) above this line.]

## SECTION D: ELECTION DAY ACTIVITIES

D1. Please describe your state's process for capturing "over-vote" and "under-vote" counts.

[Begin response to above question (D1) below this line.]

All voting machines used in a precinct on Election Day have the capability of detecting over-votes, and all county boards of elections are required to ensure that all voting machines over-vote detections are "on."

Per Secretary of State Directive 2008-32, the tabulator may be set to reject undervotes, if desired: <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-32.pdf>

[End response to above question (D1) above this line.]

D2. What identification does your state require from voters in the following situations:

a. registering to vote;

[Begin response to above question (a) below this line.]

Under section 3503.14 of the Ohio Revised Code, an individual registering to vote must provide one of the following forms of identification:

1. His or her Ohio driver's license number; or
2. The last four digits of his or her Social Security number; or
3. A copy of his or her current and valid Ohio driver's license; or
4. A copy of his or her photo identification card issued by the State of Ohio or the United States government; or
5. A copy of his or her military identification; or
6. An original or copy of a utility bill; or
7. An original or copy of a bank statement; or
8. An original or copy of a paycheck; or
9. An original or copy of a government check; or
10. An original or copy of another government document.

[End response to above question (a) above this line.]

b. casting an in-person ballot;

[Begin response to above question (b) below this line.]

Under section 3505.18 of the Ohio Revised Code, an elector casting a regular ballot at the polls on Election Day is first required to provide one of the following forms of identification:

1. A current and valid Ohio driver's license; or

2. A current and valid photo identification card issued by the State of Ohio or the United States government; or

3. Military identification; or

4. An original or copy of a current utility bill; or

5. An original or copy of a current bank statement; or

6. An original or copy of a current paycheck; or

7. An original or copy of a current government check; or

8. An original or copy of a current other government document.

Additional information regarding the definition of any ambiguous terms may be found in Directive 2008-80.

[End response to above question (b) above this line.]

c. casting a mail-in or absentee vote;

[Begin response to above question (c) below this line.]

Under section 3509.05 of the Ohio Revised Code, an elector casting an absentee ballot is first required to provide one of the following forms of identification:

1. His or her Ohio driver's license number; or

2. The last four digits of his or her Social Security number; or

3. A copy of his or her current and valid Ohio driver's license; or

4. A copy of his or her photo identification card issued by the State of Ohio or the United States government; or

5. A copy of his or her military identification; or

6. An original or copy of a current utility bill; or

7. An original or copy of a current bank statement; or

8. An original or copy of a current paycheck; or

9. An original or copy of a current government check; or

10. An original or copy of a current other government document.

Additional information regarding the definition of any ambiguous terms may be found in Directive 2008-82.

[End response to above question (c) above this line.]

d. casting a ballot under UOCAVA;

[Begin response to above question (d) below this line.]

For qualified electors voting a full ballot (local, state, and federal candidates or issues), the identification requirements are explained in R.C. 3509.05, R.C. 3511.09, and/or Advisory 2008-29. For voters who are only voting a federal ballot, the identification requirements are as set forth in Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff).

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[End response to above question (d) above this line.]

- e. any other stage in registration or voting process in which identification is required (please specify).

[Begin response to above question (e) below this line.]

Identification is also required when an elector submits an absentee ballot application. The identification requirements are the same as for casting an absentee ballot, which are noted above.

[End response to above question (e) above this line.]



D3. Please describe your state's laws regarding access to the polling place for election observers. Election observers are people allowed inside the polling place who are not poll workers, election officials or voters. If decisions on access to observers are left to local jurisdictions, please explain.

[Begin response to above question (D3) below this line.]

Under section 3505.21 of the Ohio Revised Code, any political party with a candidate in that election, any group of five or more candidates, or any issue committee may appoint a qualified Ohio elector to serve as an observer for that party, candidate(s), or issue committee during the casting and counting of ballots on Election Day. See R.C. 3505.21 and Secretary of State Directive 2008-29, entitled "Rights and limitations of election observers," for further explanation of the role of observers under Ohio law.

[End response to above question (D3) above this line.]

## SECTION E: OTHER

E1. Under HAVA, Section 402, states are required to have in place administrative complaint procedures to remedy grievances. Has your state revised its administrative complaint procedures since they were first implemented? If so, how?

[Begin response to above question (E1) below this line.]

No changes.

[End response to above question (E1) above this line.]

E2. Please add any additional comments or information about your state's election administration processes that would help to inform the EAC's interpretation of your data.

[Begin response to above question (E2) below this line.]

None

[End response to above question (E2) above this line.]

\* The information collection associated with the Election Administration and Voting Survey is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301), the National Voter Registration Act (NVRA) (42 U.S.C. 1973gg-1 et seq.), and the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA) (42 U.S.C. 1973ff-1). Respondent's obligation to reply to this information collection is mandatory as required under NVRA (42 U.S.C. 1973gg-1 et seq.) and UOCAVA (42 U.S.C. 1973ff-1). This part of the information collection is being requested to help the EAC to better understand state laws governing federal elections. Respondents include the fifty states, the District of Columbia, and the U.S. Territories. This information will be made publicly available on the EAC website ([www.eac.gov](http://www.eac.gov)). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0006 (expires 3/31/09). The time required to complete this information collection is estimated to average 59 hours per state response. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent the U.S. Election Assistance Commission – 2008 Election Administration and Voting Survey, 1225 New York Avenue, Suite 1100, Washington, DC 20005.