



**Lawyers' Committee for
Civil Rights Under Law**

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**STATEMENT OF Jon Greenbaum, DIRECTOR OF THE VOTING
RIGHTS PROJECT
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Thank you Mr. Chairman. Good morning. When the United States Supreme Court stated that “[t]he right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the very heart of representative government” that august body articulated the central principle of our great democracy; that our nation’s progress and stature relies on our ability to foster the electorate’s confidence in the democratic process.

My name is Jon Greenbaum, I am the Director of the Lawyers' Committee for Civil Rights Under Law’s Voting Rights Project and a representative of Election Protection, the nation’s largest non-partisan, not for profit coalition to protect voters’ rights and report on the health of our electoral system. I want to thank the Coalition on Homelessness and Housing in Ohio for its leadership and dedication to electoral reform in Ohio and for inviting me here today. My remarks are the result of a collaboration of national organizations - including the Lawyers' Committee, People for the American Way Foundation, the National Voting Rights Institute, and Common Cause – committed to advocating for meaningful election reform in state legislature across the country. In 2004, the Election Protection Program, led by the Lawyers' Committee and the People for the American Way Foundation, in conjunction with the National Coalition on Black Civic Participation, the NAACP, the League of Women Voters and over 120 other national and state organizations, sent over 25,000 volunteers across the country – including over 8,000 legal volunteers – to monitor polling places, educate voters on their rights and answer a national voter protection hotline that received over 200,000 calls from all 50 states, the District of Columbia, Puerto Rico, and American service men and women stationed as far away as Japan.

In Ohio alone, Election Protection had seven legal command centers, staffed by hundreds of volunteer attorneys and law students. The 1-866 OUR VOTE hotline received over 20,000 calls from Ohioans who either needed assistance to effectively cast their ballot or who were prevented from voting. In Cleveland, Cincinnati, Toledo, Columbus, Youngstown, Akron and Dayton Election Protection volunteers responded to many more problems at the polls on Election Day. These calls and the reports from thousands of voters Election Protection Volunteers helped at Ohio polls paint a picture of a statewide election administration riddled with systemic failures that compromised Ohioans’ fundamental rights to cast a meaningful ballot.

The Election Protection Coalition has created the nation’s largest voting incident database, the Election Incident Reporting System - chronicling the failures of the electoral process in Ohio and

across the nation. To date, there have been nearly 43,000 incidents entered into the database nationwide and nearly 4,200 incidents entered for Ohio alone.

Through an assessment of incident reports from Ohio, six significant problems were identified: voter registration problems, problems with provisional balloting, problems with the absentee balloting system, voting machine problems, and an insufficient distribution of Election Day resources. These problems, both alone and in combination, caused long lines and unnecessary delays. Delays at the polls disproportionately impacted poor and minority voters who have inflexible employment and child care responsibilities.

Voters from across the state complained that their names did not show up on registration lists despite having registered by the registration deadline. In many places, voters never received their voting cards or information on where their polling place is. In numerous counties registered voters who had regularly voted for years (and, in some cases, for decades), found when they arrived at their polling place that they had been erroneously purged from the voting rolls. Others found that they were listed as being felons ineligible to vote when, in fact, they were eligible to vote. One organization, the Greater Cleveland Voter Registration Coalition, estimated that, in Cuyahoga County alone, more than 10,000 people likely were disenfranchised in November 2004 due to processing delays and failures.

Many times these voters complained that they were turned away from the polls. Despite the Help America Vote Act's mandate that all voters have the opportunity to cast a provisional ballot if they are not on the voter registration rolls, it seemed many poll workers in Ohio and across the country did not understand the provisional ballot system. Even when voters were offered a provisional ballot, many of these ballots were not counted because of arbitrary, overly restrictive counting procedures, including the requirement that a voter cast a ballot in her correct precinct. As I just mentioned, many validly registered voters did not receive their registration confirmations and, therefore, never knew where they were supposed to vote. In Ohio this led to thousands of ballots from validly registered voters being thrown out because under resourced election officials never told many of the voters in their jurisdictions where to cast a ballot on Election Day.

Ohio voters that tried to vote by absentee ballot also faced substantial hurdles. Hundreds of affected voters registered complaints that (1) despite timely (and, often, repeated) requests, no absentee ballot was received, (2) despite timely requests, the absentee ballot was received on or so near to election day that it was impossible to timely return the ballot to the board of elections, and (3) voters who never requested nor received an absentee ballot were listed as having requested such a ballot, and precluded from voting on election day. In Ohio, the problem was amplified when Secretary of State, J. Kenneth Blackwell inexplicably directed election officials to refuse provisional ballots to voters who requested an absentee ballot, even if they never received the absentee ballot and had no other option but to vote in person.. Election Protection immediately filed litigation allowing these Ohioans to cast provisional ballots on Election Day. Despite this victory,

we were unable to help the thousands of absentee voters who, because of disability, distance or other obstacle, could not get to the polls.

Many voters who made it to the polls did not have much faith in the ballots they cast. Systemic failures included the breakdown of electronic voting machines in Ohio. Reports ranged from mis-calibrated machines which selected a different candidate than the voter intended to choose; to machines counting backwards; to computers eliminating votes; and of course, the well publicized precinct that gave President Bush 4,258 votes when only 638 ballots were cast.

In Ohio and throughout the country, acts of voter intimidation and suppression aimed at minority communities were rampant throughout the election period and became even more pervasive on Election Day. “Dirty Tricks” flyers were distributed in predominantly minority neighborhoods across the country. These malicious flyers misidentified polling places and threatened voters with legal repercussions for casting a ballot. In Franklin County, for example, Election Protection received fliers telling voters that they could cast a ballot on November 3.

Others took advantage of the current challenger provisions in Ohio law in an attempt to intimidate voters. We commend Mr. DeWine for addressing this counterproductive practice in H.B. 3; we recommend that those provisions are strengthened. Just days before the November 2004 election, thousands of registered voters were sent letters from local election officials informing them that their right to vote could be taken away in a hearing with no meaningful notice or right to be heard. Although a federal court eventually stepped in to stop this massive violation of due process and voting rights, the resulting confusion and doubt among the threatened voters could not be undone.

The problem of disenfranchisement in Ohio seems to be the result of two mutually destructive factors. First, election officials and election administration are terribly under resourced. Effective election reform must start by providing the dedicated civil servants who administer elections with the tools they need to do their job effectively. Second, the system is far too decentralized. It is impossible to conceive of an election system that is efficient and responsive state wide when machines and other elements of election administration vary from county to county.

Disenfranchisement in Ohio

Ohio’s voting system lacks basic administration, adequate funding, minimal protections, and uniform standards necessary to ensure the meaningful and equal exercise of the right to vote. The likelihood of disenfranchisement that a voter faces varies tremendously depending on where a voter lives within Ohio – *i.e.* county to county, precinct to precinct, and even ward to ward. Ohio’s voting system does not promote orderly and equitable elections, but instead creates and permits chaos and confusion. The foreseeable result is massive disenfranchisement and dilution of the vote – and the loss of confidence in the system that, in turn, further disenfranchises by discouraging residents to register or vote.

The failures of Ohio's voting system are severe, chronic, and persistent. In the November 2004 election alone, it has been estimated that the most basic failure to provide sufficient numbers of voting machines – to say nothing of the reliability of the machines – may have disenfranchised tens of thousands of Ohio voters and that the cumulative effects of myriad deficiencies adversely impacted hundreds of thousands of voters.^a

These fundamental failings of Ohio's voting system are not new. The history of disenfranchisement in this state shows that, despite some questionable decision making on the part of individual government officials, the problem with Ohio's electoral system is bigger than any individual office holder. Instead, Ohioans are forced to vote on an antiquated, under resourced system. Ohio's electoral procedures are inadequate to provide consistently reliable and well run elections, or to handle important elections in which there is high voter interest. Despite isolated successes, Ohioans face the unacceptable possibility that their vote will not count or that they will not be able to cast a ballot in the first place.

The Unfortunate Legacy of Ohio Election Administration

Although the systemic failings of Ohio's voting system took center stage in the November 2004 election (both because of the visible results of those failures – *e.g.* hours long lines and polls closing after midnight – and because the failures in the November 2004 election were more thoroughly documented than in prior elections), the events of November 2004 were not an anomaly, but rather a predictable result of longstanding inadequacies in Ohio's voting system that have disenfranchised and/or severely burdened countless Ohio voters over the years.

As in the most recent general election, past elections in Ohio have fallen victim to an ineffective and insufficient electoral process which arises from more basic, underlying failures by Ohio to plan, coordinate, direct, and fund a voting system sufficient to reasonably protect the rights of Ohio voters. Among the most glaring examples are:

- In Franklin County, thousands of legitimate votes were counted for the wrong candidates in November 1998 because the electronic voting machines were programmed using the wrong ballot format.
- In the November 2000 election, 3,556 votes in Cuyahoga County were processed twice, causing a computer to throw them out. In another Cuyahoga County precinct, 317 votes went undiscovered and uncounted until after the election.
- In the Cincinnati area during the 2000 election, thousands of voters arrived at their regular polling place only to find that it was no longer a polling place, or no longer theirs. Franklin County experienced similar problems.

^a Michael Powell and Peter Slevin, "Several Factors Contributed to 'Lost' Voters in Ohio", *Washington Post*, December 15, 2004, A1.

- Also in Franklin County in 2000, registered voters were not allowed to vote because their names had been purged from voting lists, or because the Bureau of Motor vehicles had failed to process their registration cards.
- In the March 2000 primary election, more than a dozen precincts in Cuyahoga County ran out of Republican ballots and were forced to turn registered voters away.
- In the November 2001 election, 29 of Miami County's 82 precincts ran out of ballots. In the same election, none of the 191 Democratic votes were counted in one precinct.
- In Dayton, Franklin, and Cuyahoga counties, voters were denied their right to vote on local levies and issues because the matters were not printed on their ballots.^b

Likewise, the fundamental failure to adequately hire and train election workers has been known in Ohio since at least 1994, when then-Secretary of State (now Governor) Taft learned that election officials in at least Ohio's three largest counties – Cuyahoga, Franklin, and Hamilton – chronically failed to timely hire and adequately train poll workers. Poll workers in Franklin County testified that they had had no training at all or had not been trained for years. Election officials in Cuyahoga and Hamilton counties said they faced a chronic shortage of poll workers resulting in untrained, first-time workers at polling places, as well as unfilled positions. In 1996 and again in 1998, the same problems persisted because no adequate system or funding was put in place to ensure that enough workers were hired and hired sufficiently early to provide meaningful training – and, in many cases, any training at all. It was reported that, in November 1998, one in five Franklin County poll workers were on the job for the first time because the Board of Elections had failed to set up any reasonable, orderly system of recruitment and had relied instead on haphazard “word of mouth” recruitment by ward committees that left the county more than 200 workers only days before the election.

Recognizing the continued problems with Ohio's electoral system, Secretary of State Blackwell in June 2001, testified of the need for election reform before the Committee on Rules and Administration In Support of Election Reform of the United States Senate, and admitted that “Ohio's elections process has been under-funded for far too long.”

The Lessons of 2004

Although the problem with the electoral system in Ohio are not unique to the 2004 election, unprecedented grassroots and volunteer voter protection and data collection efforts have provided advocates with a detailed picture of the failure of Ohio's election system. Unfortunately, that picture shows that Ohio's electoral structure lacks adequate

² Katherine Ullmer and Jim Bebbington, “Hundreds miss chance to vote on park issue,” *Dayton Daily News* (Nov. 9, 2000); Lornet Turnbull and Kevin Mayhood, “Some voters' patience tried by glitches,” *Columbus Dispatch* (Nov. 8, 2000); Joseph L. Wagner, “Election goof stirs rancor of voters,” *Cleveland Plain Dealer* (Nov. 7, 2001).

oversight, standards, and resources to ensure that the will of Ohioans determines electoral outcomes.

Problems at the Polls

Many Ohioans were disenfranchised by deficient practices and limited resources at the polling place. To begin, even some of the most basic steps to voting – finding the correct polling place and being able to go in – became severe hurdles for many. There were numerous reports of local officials having given inaccurate and inadequate notice to residents of changes in voting precincts and polling places. Thus, for many voters, the first hurdle was simply to find the correct polling place. Due to inadequate training and resources, voters often could not reliably seek assistance from poll workers in finding the correct polling place. This caused many voters to have to travel to two or more different polling places trying to find what the voter registration books indicated as the “correct” precinct, which may or may not actually have been correct based on where the voter was then residing.

Those who did arrive at the correct location often found that they were not open and ready for voting. By law, voters have the right to vote at their designated polling places from 6:30 a.m. to 7:30 p.m. on Election Day. Yet, due to inadequate planning, hiring, communications, and funding, many polling places were not open at 6:30.

Voters also frequently encountered polling places that were open, but that lacked the legally required number of precinct judges, working voting machines, or the necessary materials and supplies for voters to begin voting.

The deficiencies and inequities in Ohio’s voting system were perhaps most apparent in November 2004 in the failure to provide an adequate number of voting machines to reasonably accommodate the expected increase in registered voters and voter turnout. For example, over 102,000 new voters were registered in Franklin County alone. Yet, Franklin County provided hundreds fewer machines than its own analysis showed were needed.^c Similarly, officials in Knox County acknowledged that far greater numbers of voters were expected in November 2004 than in recent prior elections. Yet, county officials supplied the same number of machines as in past elections.

The predictable result of both the failure to provide a sufficient number of machines and the failure to reasonably allocate machines among precincts was that, in many precincts, there was an unreasonably high ratio of voters to available machines. Witnesses, including a presiding judge, poll workers, poll monitors, and voters, reported ratios ranging as high as 200 to 500 voters per machine, perhaps more. At the polling place at Kenyon College in Knox County, it was estimated that more than 1,000 voters cast their ballots on just two machines. Other precincts reached similarly high levels at various points in the day as one or more machines broke down.

^c Michael Powell and Peter Slevin, "Several Factors Contributed to 'Lost' Voters in Ohio", Washington Post, December 15, 2004, A1.

The ratios of voters to machines that existed as of November 2004 far exceeded any reasonable standard. For example, Ohio law assumes that each voter may have up to five minutes to vote. Even taking that as a reasonable estimate of adequate voting time (which, in many cases in November 2004, it was not), that translates into approximately 156 voters per machine in the thirteen hours that polls are scheduled to be open. A more reasonable estimate (indeed, the one mandated by law for many years in Ohio) is 100 voters per machine.

That the allocation of voting machines was woefully insufficient in dozens of precincts is evident from the sheer lengths of the lines. Ohio law assumes that a thirteen-hour polling day is sufficient for all of the voters in a precinct to vote. Yet, in November 2004, thousands of voters waited a full 1/4 to 1/2 of the entire polling day to cast their vote. Indeed, in some cases, voters waited nearly the entire length of a polling day – from ten to twelve hours – before they were able to cast their vote.^d In some precincts, voters were still casting ballots into the early morning hours of November 3. Long lines impose a particular and severe burden on the elderly and disabled, as well as on those with jobs who must return within an allocated amount – generally two hours – or who have young children requiring care.

The severity of the burden on voters posed by excessively long lines cannot be overstated.

The burden imposed by the failure to provide enough machines to accommodate the expected turnout was often exacerbated by local officials and poll workers' failure to adequately and correctly inform voters of "local rules" and processes, which varied substantially from polling place to polling place. In some places, separate lines were set up to check in with poll workers and to vote. In others, the voters in several precincts were voting in the same physical location. Many voters reported that their waiting time to vote was doubled when they waited in one line for hours only to find out that it was the "wrong" line – and had to start all over again.

Even once voters got to the actual voting booth, they often faced broken machines, a lack of basic supplies, and incorrect instructions from poll workers.

Many of these problems require decision makers in Ohio to seriously reconsider the place that election administration occupies in the state's financial priorities. In order to fulfill its constitutional requirements to provide Ohio voters with a meaningful opportunity to participate in the political process, Ohio must provide its counties the necessary resources they need to provide enough election machines, hire enough election professionals and produce enough informational material to make the process responsive. Obviously, this is not happening.

^d *Id.*

Ohio must also provide adequate standards to guide counties in how to implement responsive voting processes. From a rubric for determining an adequate number of voting machines to guiding counties on how to conduct polling place operations in a way that is transparent and efficient, the state must fulfill its constitutional responsibility to provide a system of elections that will respect the rights of its citizens throughout the state and in every county.

Ohio must rethink how to get an adequate number of poll workers to come to the polls on Election Day. Secretary Blackwell himself has stated that there are never enough poll workers to adequately accomplish the job. Just this year, Cuyahoga and Franklin Counties were hundreds of poll workers short just days before the election.^e

And no wonder. State law sets the maximum compensation for a precinct judge at \$95/day; poll workers earn a maximum of just \$85/day. While that may seem woefully inadequate for 13 hours of public service, the law allows counties to pay poll workers even less, as long as they are paid minimum wage. States such as Florida and Pennsylvania pay their poll workers more than \$100 more for their Election Day service.

Poorly Trained Poll Workers

Every election cycle, thousands of dedicated Ohioans give up their Tuesday to help others cast their ballots and exercise the fundamental right to vote. Unfortunately, poll workers across the state are not properly trained. Many Ohio poll workers receive as little as two hours of training every three years; this, despite the constantly changing election administration landscape. The lack of proper training often results in voters in Ohio being disenfranchised.

On Election Day, poll workers are critical to the fair and orderly exercise of the franchise. Adequate hiring, training, and supervision of election and poll workers are, therefore, a necessary prerequisite to a reasonable, equitable system of voting. Yet, in the November 2004 election (as in numerous past elections) voters faced poll workers who were unfamiliar with even the most basic rules for voting, as well as with the machines and processes used to record votes. The evident lack of training of the poll workers in many counties and precincts exacerbated the substantial burdens already facing Ohio voters as a result of other deficiencies in the voting system. As a foreseeable consequence, tens of thousands of voters were either disenfranchised altogether or unreasonably burdened in exercising their right to vote. For example:

- Poll workers unable to correctly read precinct voting rolls erroneously told registered voters that they were not registered and refused to permit the voters to vote;

^e From [electionline Weekly - October 28, 2004](http://electionline.org/index.jsp?page=Newsletter%20Oct%2028%202004). Available at <http://electionline.org/index.jsp?page=Newsletter%20Oct%2028%202004>

- Poll workers in a number of counties unlawfully demanded that every voter present identification before being allowed to vote, even though only certain newly registered voters were legally required to present identification;

Although polling places lacking wheelchair access are required, by law, to provide “curbside” or polling-door voting for those in wheelchairs (Ohio R.C. § 3501.29), disabled voters were frequently denied this right because of poll worker shortage or ignorance of the voter’s rights.^f

Ohio needs to do better. Although poor poll worker training is a problem nationwide, some states, such as New Mexico, are tackling the problem head on. Ohio should learn from this example and dramatically rethink the way it trains poll workers. New Mexico recently enacted a statute requiring the secretary of state to take significant actions to tackle this problem head on. These solutions include:

- Providing instructions for the precinct board, which shall include a brief nontechnical explanation of its duties as required by the New Mexico election code;
- Produce a single training manual containing standard guidelines for the operations and processes of statewide elections, including pre-Election Day activities, Election Day activities and post Election Day activities and county and state canvassing processes;
- Requiring that all New Mexicans who serve in various positions related to elections cannot serve without receiving training in the specific duties of that position and are, therefore, subsequently certified in a uniform state-wide process, by the county clerk;
- Refusing to allow political candidates or relatives of those who are political candidates to participate in administering local elections;
- Conduct “public schools” of instruction for all who are concerned with the conduct of election at multiple times before each election. The schools must contain all major details of the conduct of elections with special emphasis on recent changes to the state’s election code and must be open to all interested people. There must be adequate public notice of the time and location of the school. All those who are responsible for election administration at the polls must attend these schools.

Barriers to the Ballot Box for Voters with Disabilities

In 2004, Ohio voters with disabilities faced disturbing obstacles at the polls, despite federal statutory guarantees that voters with disabilities are provided a meaningful opportunity to participate in the political process.

^f Editorial, “Access for the disabled,” *Cleveland Plain Dealer* A8 (Jan. 22, 2005).

Since at least 1982, Ohio has mandated that polling places be fully accessible to disabled voters or provide “curbside” voting to voters unable to access the polling place.[§] Yet, in November 2004, disabled voters throughout the state reported undue burdens with voting or the inability to vote at all due to inaccessible facilities, a lack of curbside voting, and overall poor poll worker training in and indifference to the rights of disabled voters. For example:

- Disabled voters requested and were refused curbside voting, a procedure ensured to them by Ohio law;
- Blind or otherwise disabled voters were not permitted to be assisted in the voting booth by neighbors or friends;
- Long lines in polling places without seating made it difficult, and in some cases impossible for elderly or disabled voters to vote, because they simply lacked the stamina or physical capacity to wait in line for the period required before voting;
- Some polling places were simply not accessible to disabled voters.

In order to guarantee that all Ohioans, regardless of disability, are able to participate equally in the political process, adequate resources must be devoted to ensure that all polling places are fully accessible. Also, poll workers must be trained in curbside voting, the disability mandates of HAVA, as well as other state and federal statutory requirements.

The Focus of Meaningful Election Reform

In order to guarantee meaningful election reform, it is crucial that the Ohio legislature focuses on the most effective ways to deal with this crisis of democracy. Across the country, partisan activists more concerned with political victories than democratic principles are waging a campaign to distract legislatures from the problems that plague our electoral system with random anecdotes and conjecture. I implore you to look at the facts of disenfranchisement.

House Bill 3

While we appreciate attempts to address the various problems present within the current Ohio electoral system, we are seriously concerned that some of the beneficial provisions in H.B. 3 are outweighed by the additional limitations and barriers placed upon voters by this bill. Additionally, we are concerned that the language of the bill is somewhat confusing and difficult to interpret which could create numerous problems in the implementation of this bill should it become law.

H.B. 3 has a number of valuable proposals that if enacted would increase access to the polls and help maintain the security and integrity of the ballot. First, we are very pleased to see the inclusion of no-excuse absentee ballot provisions. Removing the restrictions on absentee balloting encourages greater participation in the electoral process, especially

[§] Ohio R.C. § 3501.29.

by those otherwise unable to vote, such as low-income workers unable to afford time off from work to vote and voters traveling out of state on Election Day.

Secondly, we also believe the requirements in Section 3503.13 and 3505.81 that the official registration list be posted in a conspicuous area of the polling place for viewing by any person on Election Day; and that voter information be displayed at all polling places are useful requirements.

Thirdly, we are gratified to see the inclusion of voter education provisions that require the secretary of state to distribute voter education brochures to all applicants who might potentially conduct voter registration campaigns.

Finally, we are encouraged to see provisions included that would help create greater transparency in the process of allocating voting machines and other resources for polling places. Still, we encourage the inclusion of the language “*uniform and non-discriminatory*” in order to help ensure that all polling places, regardless of their location or the demographics of its assigned voting population will have the necessary resources on Election Day. Furthermore, we recognize that there can be no truly equitable procedure for allocating voting machines and other resources if those resources simply are inadequate to begin with. If a county needs 5000 machines and only has 2500, there is no formula for allocation that will result in a fair election. Finally, we recognize that an allocation of resources based solely on numbers of registered voters may not adequately account for greater needs in precincts that disproportionately serve greater numbers of persons with disabilities, or with limited English proficiency, or with persons who simply may need greater assistance and time in casting a ballot.

However, as indicated earlier, there are numerous other provisions that appear to offset the effectiveness of H.B. 3 and, in fact, seriously compromise the ability of voters to cast a meaningful ballot.

Provisional Ballots

In numerous sections throughout H.B. 3, new standards are established that would relegate potentially thousands of voters to voting by provisional ballot. Since provisional ballots have a greater likelihood of being discounted, as evidenced in the most recent federal election, this could subsequently disenfranchise thousands of properly registered voters.

For instance, Section 3505.181 outlines when a voter will be required to cast a provisional ballot instead of a regular ballot during an election. As we have stated previously, we oppose any requirements that unnecessarily force a properly registered voter, with proper identification, to vote by provisional ballot. In particular, moving within a precinct or within the county should not prevent a voter from voting a regular ballot. The usefulness of the statewide voter registration database it that is should enable election officials to determine whether a voter is properly registered. Consequently, we fail to see the justification for relegating voters who have moved to voting by provisional

ballot. We strongly encourage that this provision be corrected to allow such voters to cast a regular ballot. We also suggest that 3505.181(C)(1) be amended to *require* and not simply *allow* for elections officials to inform the voter of their proper jurisdiction and polling place.

Additionally, section 3501.19 outlines the process by which the board of elections will send all voters a notice by non-forwardable mail identifying the date of the election and their polling place and precinct location. If this notice is returned to the board of elections as undeliverable, the voter's name will be specially marked on the registration list requiring the voter to provide identification before she/he can vote, and then, only allowing the voter to cast a provisional ballot. We strongly oppose this provision.

The fact that a piece of mail is returned is not a reasonable justification to deny a registered voter the opportunity to vote by a regular ballot, especially if the voter provides identification on Election Day. There are numerous reasons why mail could be returned – for example, the notice could have mistakenly have been picked up by a neighbor without the knowledge of the voter, or it could simply have gotten lost in the mail. We do not see any reason why these pre-election notices cannot be treated like the National Change of Address notices that election officials typically send to voters who are believed to have moved out of their jurisdictions. The election officials' record could still indicate that a notice sent to a particular voter was returned, but when the voter appears to vote, s/he can confirm her/his address and vote a regular ballot. The provision as written threatens to penalize properly registered voters because of their failure to respond to a notice that they may have never even received.

Registration

We have reservations about some of the new requirements outlined in Section 3503.14, 3503.29, 3599.11 and other similar sections that attempt to exercise more control over registration drives in order to better monitor the proper collection of applications and to ensure their timely processing. While we support the intent of these provisions to better facilitate the collection of registration applications and prevent fraudulent activity, we are concerned about the overreaching and burdensome aspects of these provisions. These provisions could have a chilling effect upon the activities of organizations that are legitimately trying to increase civic participation and engage historically disenfranchised communities.

For instance, Section 3503.14 would require any person registering people to vote to sign a separate document with each registration application listing her/his name and the name of the employer who is employing them to register applicants. Experience tells us that this requirement presents a problem because of the atmosphere currently existing in poor and underrepresented communities. Because of a history of state sponsored abuse and discrimination, many people in these communities do not trust the government and are hesitant to give the government personal information unless it is absolutely necessary. As a result, these people would likely choose not to be involved in any voter registration activity at all rather than register with the government.

Although we are relieved that Section 3503.14 does indicate that the failure to include any of this personal information would not affect a voter's registration application, we are still concerned that over zealous election officials might attempt to abuse this new requirement as justification for challenging otherwise properly completed registration applications. This could unnecessarily delay the timely processing of registration applications.

Furthermore, the requirements in Section 3503.29 and 3599.11 that every person attempting to register voters register with every potential county for which s/he might collect voter registrations and return all registration forms to their correct county under penalty of the law is unnecessary. Again, we appreciate the apparent intent to limit potential voter fraud, and even support other requirements that those participating in voter registration drives satisfy mandatory training as stipulated by the board of elections; however, requiring all registration forms to be returned in the correct county is a bit excessive.

Statewide Voter Registration List

In general, we oppose the definition of jurisdiction in H.B. 3 as the precinct and not the county. Limiting this definition to precinct restricts the ability of eligible voters to cast a meaningful ballot. In light of the fact that – via this bill -- each county will have access to the statewide voter registration database, we see no need to define jurisdiction so narrowly. Presumably, the statewide database would enable election officials to verify the registration of voters and determine their proper county and voting precinct. In a situation where a voter is unable to make it to her/his proper precinct before the polls close, we see no reason to not at least allow for a provisional ballot to be cast and counted for the county, statewide and federal races.

Section 3503.15 requires the secretary of state to establish and maintain a statewide voter registration database that shall be available to each board of elections and to other agencies as authorized by law. This section should be clarified to specify that the secretary of state is required to enter into agreements with the Department of Transportation and the Social Security Administration for the exchange of information so that voter registration applications can be supplemented with information from these agencies. Additionally, we urge the inclusion of other voter registration databases from other agencies such as child services, welfare and WIC programs to be made compatible with the statewide voter registration database so that the information can supplement the registration applications as well.

Challenges

Section 3503.24 requires that any challenges brought against a registered voter by anyone other than an election official be made at least 20 days before the election and resolved within ten days of when the challenge is made. We support the limitation that this section places on the ability of any random voter to challenge the right of another voter

on Election Day. Yet, we are deeply troubled that this provision creates an opportunity for the due process rights of challenged voters to be denied because of a lack of notice of the challenge hearing by the board of elections. We recommend that this provision be amended to require “*actual notice*” to all challenged voters, so that this situation is avoided and the rights of voters are protected.

Additionally, we have serious concerns about the discretion given the board of elections to delay a challenged voter’s hearing until after an election – thus requiring them to vote by provisional ballot on Election Day. The subjective nature of this provision lends itself to potential abuse. We recommend either the inclusion of specific guidelines outlining the parameters by which the board of elections can delay a hearing or simply the removal of this section altogether.

Identification

As required by HAVA, Section 3505.18 lists forms of identification that a voter can use to identify her/himself on Election Day. We would encourage the expansion of this provision to include other forms of identification such as students IDs, WIC cards, ATM cards or other recognized forms of identification listing a person’s name and current address.

Observers

Section 3505.21 details the appointment of observers at precincts and their responsibilities during the election. This section limits the appointment of observers to political parties or other partisan interests. We strongly urge expansion of this section to include non-partisan organizations, especially since they would be impartial observers whose only interest would be in protecting the right of all voters to cast their vote and have it counted.

The Problem of Unnecessary Identification Requirements

Voter identification requirements, such as S.B. 36, will not help the problems of Ohio’s election administration. By contrast, these restrictions make it more difficult for voters to register and exercise their right to vote and significantly increase the chance that eligible, registered voters will be denied the right to vote. The unfortunate result of this trend is that voters and tax-payers are forced to shoulder additional financial burdens that will lead to confusion for voters, poll workers, and election officials.

Unfortunately, Ohio is not alone in its consideration of unhelpful voter identification provisions. Voices across the country are claiming that these regressive measures are necessary because of a perceived rush of ineligible voters flooding polling places across the nation and influencing election results. The truth is that, while we need to know more about how ineligible voters affect the electoral system, it does not play nearly as significant a role in preventing the will of voters to determine electoral successes that antiquated and unresponsive electoral structures do. Advocates of restricting access to

the polling place because of a supposed fear of ineligible voters point to isolated incidents of abuse in the registration system that are viscerally shocking but not representative of any prevalent problem. Moreover, much of the evidence that initially seems to suggest fraudulent activity— like poll books showing more votes than voters – are often explained by a poorly administered system executed by under-trained, under-resourced poll workers and election officials, not by malevolent conspirators.

Even where fraud exists, many of the proposed draconian solutions lead to understandable skepticism and allegations that they merely cater to partisan predilections and not to substantive problem solving. First, proposals such as requiring universal government photo identification at the polls could disenfranchise 10% of the electorate, mostly in minority and traditionally disenfranchised communities. While it is important to ferret out ineligible voters from the system, such a proposal will inevitably disenfranchise a significantly larger number of eligible, legitimate voters than it will fraudulent voters. Second, the evidence of fraud that we have seen – fraudulent voter purges, “stuffing” ballot boxes, and manufacturing votes – tends to be the result of deliberate action on the part of election officials and poll workers, not voters. Identification requirements and restrictions on voter registration organizations will not address this type of fraud at all.

Moreover, those claiming concern with “voter fraud” are often restricting its definition to ineligible ballots showing up at the polling place. In order to effectively respond to misconduct in the election system, election fraud should have a much broader definition. It should include conduct of poll workers and election officials and should include deceptive practices and intimidation. Election fraud consists of any conduct that has the effect of restricting access to the ballot. A definition of fraud that is confined to ineligible voters is not only unhelpful, but it has been used as a discriminatory tactic to confine voter fraud to the poor and minority community through suggestions that, because of the precarious financial position of traditionally disenfranchised voters, minorities are more susceptible to temptations to cheat the system for financial or personal gain. This is both unhelpful and offensive.

S.B. 36 is particularly dangerous. First, for the vast majority of Ohioans, photo identification (either a driver’s license or other photo identification) will be required at the polling place. Second, the bill does not provide any meaningful opportunity for citizens who do not have photo identification to cast a ballot. Third, the bill does not provide any way for poor voters to obtain identification. In addition to all of the problems mentioned above, it is likely that, if passed, S.B. 36 will violate Section 2 of the Voting Rights Act as well as the Fourteenth Amendment of the United States Constitution. Such a step, clearly, will be misguided. Instead of restricting access to the polls of traditionally disenfranchised voters, this body should concentrate on broadening access to the polls for all eligible Ohioans.

Restricting the Rights of Ohioans with Felony Convictions

Currently, voters in Ohio who are convicted of a felony cannot vote if they are incarcerated, but can participate in the political process once they are released from prison. Ohio should be applauded for its dedication to an open franchise and a spirit of democracy, but it can do better. Ohioans who have committed felonies and sentenced to time in prison must be engaged in order to be rehabilitated. Civic participation is one of the many ways to begin this process. Ohio has the structure to allow people with felony convictions to begin rehabilitation through political participation, but it should do better by providing registration opportunities and voter educational materials to people with felony convictions when they leave prison. A Prison Reform Advocacy Center (PRAC) survey conducted last August revealed that 21 out of 88 Ohio County Boards of Elections misinformed callers inquiring about the right to vote, mistakenly telling callers that ex-felons could not vote while on probation or parole. Notice of voting rights restoration both before conviction or sentencing and before release from prison, should be required.

Of course, in order to continue to foster a spirit of democracy and a commitment to our constitutional ideals, Ohio should not further restrict the rights of its citizens to go to the polls. Proposals to limit the rights of people who have been convicted of felonies should be rejected. In addition to sending the wrong signal to those on the path to rehabilitation, that type of limit on the rights of voters to cast a ballot goes against the strong tide in the other direction across the country. Alabama, Connecticut, Delaware, Kentucky, Kansas, Maryland, Nebraska, Nevada and New Mexico have all taken positive steps to reduce the burden of disenfranchisement on traditionally disenfranchised voters through loosening restrictions on former felons casting a ballot.

Evidence in states across the country demonstrates that the impact of disenfranchisement statutes is not colorblind. In Florida, a state that permanently disenfranchises people who have been convicted of a felony, nearly 1/3 of African American males are prevented from going to the ballot box, in Alabama, Virginia and Washington State, similar numbers of African American men are disenfranchised. Nationwide, almost 15% of African American men cannot cast a ballot because of laws disenfranchising people with felony convictions. In addition to silencing the voice of hundreds of thousands of rehabilitated minority voters, removing such high numbers of votes from individual communities results in that community having a weaker voice in the civic debate by lessening the political strength of those voters.

We should encourage all of our citizens to take part in the political process because of the constitutional promise that our political representatives will be responsive to the will of those whom they govern. Restricting the rights of minority voters to go to the polls sends a dangerous signal to traditionally disenfranchised voters that they are not wanted in the political process.

Conclusion

Our greatness as a nation rests in our ability to shape the national debate through our voice at the ballot box. Our constitutional democratic promise is only fulfilled when we have confidence in the veracity of our electoral process. While the national political focus is on developing a responsive system of elections half a world away Ohio voters are forced to rely on an outdated and unresponsive infrastructure that supports our electoral system. Citizens across *this* country must be provided the necessary tools to cast an effective and meaningful vote. Substantive, effective election reform can be accomplished and guard against election fraud. A better system can be developed that is more open to eligible voters while keeping those who would like to manipulate the system out.