

On April 23, 2009, the Joint Working Group of Election Advocates released a joint statement on proposed election reform. On July 6, 2009, the Policy division of the Secretary of State's office met with representatives from the LWV-Ohio to discuss, in detail, the issues raised in that report. As a follow-up to that meeting, please find below a point-by-point review of the recommendations made by the Joint Working Group of Election Advocates, as well as relevant elections enhancements bill language.

Because the working group received recommendations from the Advancement Project as well, we have included those items not previously covered at the end of this memo.

## **JOINT WORKING GROUP OF ELECTION ADVOCATES – REVIEW**

### **Rejection of Provisional Ballots due to Poll Worker Error**

1. *Amend the Ohio Revised Code to define the meaning of poll worker error and to clarify those provisional ballots should not be rejected based upon poll worker error.*

Rather than focus on the almost impossible task of defining and, more importantly, enforcing the definition of, poll worker error, the elections enhancement bill focuses on clear processes and safeguards for provisional balloting. For example, poll workers must review the provisional ballot affirmation *prior* to the individual receiving a provisional ballot. The poll worker must also complete an affirmation.

Relevant language in the elections enhancements bill:

(4) The election official shall review the affirmation to determine if the voter's portion of the affirmation has been completed. If the election official finds that the voter's portion of the affirmation has been completed, the election official shall provide the individual with a provisional ballot. If the election official finds that the voter's portion of the affirmation has not been completed, the official shall direct the individual to properly complete the affirmation. If the individual refuses to complete the affirmation, the election official shall do all of the following:

- (a) Write the individual's name on the affirmation in the space for the individual's name;
- (b) Indicate on the affirmation form that the individual refused to complete the affirmation;
- (c) Notify the individual that the provisional ballot will only be counted if the individual signs the affirmation;
- (d) Provide the individual with a provisional ballot.

2. *Legislation should require the statewide use of standardized, simplified provisional ballot forms.*

The elections enhancements bill achieves this goal.

Relevant language in the elections enhancements bill:

The secretary of state shall prescribe the form and content of provisional ballot envelopes. The provisional ballot envelopes prescribed under this division shall include

the affirmation required by section 3505.182 of the Revised Code. The provisional ballot envelopes used by each board of elections in conducting provisional voting within a county shall conform to the form and content prescribed by the secretary of state under this division.

3. *Poll workers should affirmatively record actions they take on matters that may lead to the rejection of a provisional ballot.*

The elections enhancements bill achieves this goal. Please see below the new provisional ballot affirmation statement in the bill.

Relevant language in the elections enhancements bill:

"Provisional Voter's Affirmation  
STATE OF OHIO

**TO BE COMPLETED BY PROVISIONAL BALLOT VOTER**

**Voter's Provisional Ballot Affirmation**

*Please review the following statement and sign. Your provisional ballot will be counted only if you sign this affirmation.*

"I solemnly swear or affirm that I am a registered voter in the county where I am offering to vote this ballot and that I am eligible to vote in the election in which I am voting this ballot. I understand that if the board of elections determines that I am not registered or eligible to vote in this election, or if the board of elections determines that I have already voted in this election, my provisional ballot will not be counted. I hereby declare, under penalty of election falsification, that the above statements are true and correct to the best of my knowledge and belief."

SIGNATURE OF VOTER (required):.....

PRINT FIRST AND LAST NAME:.....

ADDRESS: .....

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

**OPTIONAL VOTER REGISTRATION OR UPDATE**

*The following optional information may be helpful for the board of elections in processing your provisional ballot. However, none of the following information may be the only reason for invalidating your provisional ballot.*

Name: .....

Address: .....

Date of birth: .....

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Ohio driver's license number: .....  
Last four digits of your Social Security Number .....  
Are you a United States citizen? YES/NO (circle one)  
Will you be at least eighteen years of age on or before the next general election?  
YES/NO (circle one)

For identification purposes, you may attach a copy of either a current and valid photo identification or a copy of any two current and valid items that list your name and that are from a nonprofit organization, an institution, a business, or a government entity.

**TO BE COMPLETED BY ELECTION OFFICIAL AFTER VOTER RETURNS BALLOT**

The following must be completed by the election official assisting the voter with the provisional ballot.

REASON THE VOTER RECEIVED A PROVISIONAL BALLOT (check one):  
.... Previously requested an absent voter's ballot or a regular ballot  
.... Name does not appear in the pollbook or poll list  
.... Did not present valid identification

The Provisional Ballot Voter's Affirmation printed above was subscribed and affirmed before me this ..... day of ..... (Month), ..... (Year).

I have notified the voter that the voter MUST/MUST NOT (circle one) provide additional information to the board of elections within 10 days after Election Day for this provisional ballot to be counted.  
(LIST INFORMATION TO BE PROVIDED, if applicable: .....) .....  
..... (Signature of Election Official)"

**Rejection of Provisional Ballots on Technical Grounds**

*1. Amend the statute to clearly reflect that the purpose of provisional ballot verification is to determine that the voter is a qualified elector who is entitled to vote in the election. It must be made explicit that under current law, the provisional voter's only legal obligation is to complete a provisional ballot affirmation statement. All of the extraneous information on the provisional ballot affirmation form may help the board of elections verify the voter's identity and qualifications to vote, but is not required to be completed by the voter.*

The elections enhancements bill achieves this goal. Please see the following relevant language that would govern the processing and counting of provisional ballots.

(B)(1) In determining whether a provisional ballot is valid and entitled to be counted, the board shall examine its registration records and any information for determining ballot validity provided by the provisional voter on the affirmation or provided to the board of elections during the ten days after the day of the election to assist the board in determining the individual's eligibility to vote.

(2) If, in examining a provisional ballot affirmation and additional information the board determines that all of the following apply, the provisional ballot envelope shall be opened, and the ballot shall be placed in a ballot box to be counted:

(a) The individual's signature appears on the affirmation.

(b) The individual is properly registered to vote.

(c) The individual is eligible to cast a ballot for the election in which the individual cast the provisional ballot.

### **Rejection of Provisional Ballots Cast in the Wrong Precinct**

1. *Enact legislation to ensure that provisional ballots cast in the wrong precinct are counted or partially counted for all races in which the voter is eligible to vote. Expand Ohio's statutory definition of "jurisdiction" to encompass the entire "county" in which a person is a legally qualified elector rather than limit jurisdiction to the "precinct" in which a person is a legally qualified elector. This would require changes to [ORC 3505.181](#) and [ORC 3505.183](#).*

The elections enhancement bill achieves this goal, though the changes to the code are more widespread than the above-referenced sections. The bill specifically directs boards to remake any provisional ballot cast by an otherwise eligible voter in the right county but wrong precinct, reflecting those races where the voter had a right to cast a ballot.

### **Rejection of Provisional Ballots Because Voter Is Not Registered**

1. *Implement greater oversight and monitoring of county and statewide database maintenance by the Secretary of State, particularly during database upgrades and duplicate vote elimination.*

The Secretary of State already provides oversight for the merging of duplicate voter records at the county level. Note that records are not "eliminated" in the SWVRD – rather, they are merged, preserving the historic information regarding that voter. See, for example, Directive 2009-102.<sup>1</sup>

2. *Enact legislation requiring the Secretary of State to define a database search method for required use by all boards of elections when confirming the registration status of provisional voters. The method should exceed basic search procedures and allow for the confirmation of a provisional registrant's status despite database variations or errors such as the following:*

- *misspellings and numerical information,*
- *name changes,*
- *reversed names,*
- *inconsistent use of middle initials or suffixes, and*
- *illegible voter information on the provisional ballot form.*

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<sup>1</sup> <http://www.sos.state.oh.us/SOS/elections/Directives/2008%20Directives/2008-102.aspx>

The Secretary of State already prescribes SWVRD functions in two uniform state manuals. It is unclear how many of the suggested search functions could be created (e.g., how would a search function help with illegible voter information, as one cannot search for something one does not know one seeks?).

3. *Amend registration forms to include telephone and email information. Enact legislation requiring boards of elections to take affirmative action contacting voters regarding apparent registration submission errors.*

The elections enhancements bill does require boards of elections to notify voters of an error in their voter registration form and provides an opportunity to correct that error. Corrections must be made by the close of voter registration for that election, in keeping with the requirements of the Ohio constitution. Please see the following language from the bill.

If the board does not accept the application for registration, it shall notify the applicant, by whatever means of contact the applicant has provided on the registration application, of the reasons for rejecting the application and request that the applicant provide whatever information or verification is necessary to complete the application.

The applicant may provide the required information by mail, electronic mail, telephone, or facsimile transmission, through the internet, or in person at the office of the board of elections. If the application is missing a signature, the applicant may provide a signed statement that the applicant submitted the application. A signature provided on a signed statement under this division shall be considered the applicant's signature on the application for the purposes of processing an otherwise valid application for voter registration.

The secretary of state shall prescribe uniform standards for processing additional information by mail, electronic mail, telephone, facsimile transmission, through the internet, or in person at the office of the board of elections under this division.

If the applicant provides the required information, the board shall promptly register the applicant. If the information is provided after the close of voter registration for the next election, the voter shall not be eligible to vote in that election.

#### **Prohibition of the Release of Certain Provisional Ballot Data, According to Secretary of State Advisory 2008-22.**

1. *Amend Ohio administrative rules to specifically permit access under Ohio's Public Records Act and HAVA to the names, addresses, and phone numbers of all Ohio voters who cast provisional ballots that were counted or rejected and the basis for any rejections.*

As discussed at length in Advisory 2008-22<sup>2</sup>, both Ohio and federal laws restrict access to information about an individual ballot to the person who cast that ballot. Secretary Brunner concludes in her analysis, "The names of provisional voters and the precincts in which they

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<sup>2</sup> <http://www.sos.state.oh.us/SOS/elections/Directives/2008%20Advisories/2008-22.aspx>

voted may be released, but personal information about an individual provisional ballot, including information as to whether the voter's ballot was counted, is exempt from disclosure and must not be released in compliance with the specific provisions of R.C. 3505.181(B)(5)(b) and 42 U.S.C. 15482(a)(5)(B)."

Because both state and federal laws impact the release of this information, amendments to the OAC or ORC would have no impact on the ability of the Secretary of State or county boards of elections to release this confidential information to anyone other than the voter.

## **ADVANCEMENT PROJECT – REVIEW**

### **Election Materials Design**

*1. Advancement Project supports the above recommendations for enhancement of the Election Materials Design and recommends that the provisional ballot envelope maintain the designations on the basis for casting and/or rejecting the provisional ballot. We also recommend that the basis for rejecting absentee ballots be provided on the absentee ballot envelope.*

The elections enhancements bill includes the information suggested for provisional ballots. The Secretary of State's authority to oversee elections would allow the inclusion of the same information for absent voter's ballot ID envelopes – a very good suggestion.

### **Ohio Statewide Voter Registration Database**

*1. Where available, Advancement Project would provide language for the administrative rules that advise boards on accessing and reviewing nonmatches and provide step-by-step procedures to follow when nonmatches are found.*

Administrative rules for both notifying boards of relevant nonmatches and guiding a board's processing of those relevant nonmatches would require approval from JCARR. As a result, the process would be public and deliberative.

### **Voter ID**

*1. Advancement Project has concerns with the recommendation to reduce the current list of acceptable forms of ID, especially since the legislature could adopt an ID requirement that permits use solely of a current government-issued photo ID, as in Indiana. This could be overly burdensome for the voters and may require an expense in order to obtain the ID. In consultation with our partners, we may want to oppose this change, especially since verifying the voter's identity rather than their address can be achieved without this change to voter ID requirements.*

A few key points to rebut in regarding the new voter ID statute being introduced in the elections enhancements bill:

The proposal does not reduce the list of acceptable forms of ID. In fact, it greatly expands what may be used as ID.

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The proposal recognizes that Ohio's current ID law presents unnecessary hardship for poll workers and voters.

The proposal seeks to balance the competing political interests involved in this process (i.e., one side wants strict Indiana ID, the other side wants no ID; neither is politically feasible in Ohio).

Please see the following language from the bill.

(AA) "Photo identification" means a document that meets each of the following requirements:

- (1) It shows the name of the individual to whom it was issued, which shall substantially conform to the name in the poll list or signature pollbook.
- (2) It shows a photograph of the individual to whom it was issued.
- (3) It includes is not expired, if an expiration date that has not passed appears on the document.
- (4) It was issued by the government of the United States or this state.

(BB) "Identification" means either of the following:

- (1) A current and valid photo identification;
- (2) Any two items that meet all of the following criteria:
  - (a) The item lists the elector's name in a manner that substantially conforms to the elector's name in the statewide voter registration database.
  - (b) The item was issued by any of the following sources: 260
    - (i) A nonprofit organization;
    - (ii) An institution;
    - (iii) A business; or
    - (iv) A government entity.
  - (c) The item is current and valid.

(CC) "First-time mail-in registrant" means an individual who submitted a voter registration application by mail, who has not previously voted in a federal election in this state, and who did not include any of the following with the voter registration application:

- (1) The applicant's driver's license number;
- (2) At least the last four digits of the applicant's social security number;
- (3) A copy of a current and valid photo identification that shows the name and address of the applicant; or
- (4) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the applicant.

(DD) "First-time mail-in registrant identification" means a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector.

## Directives, Advisories and Prescribed Forms

1. *Advancement Project encourages the Ohio legislature to codify Secretary of State Directive 2008-79 regarding voter challenges to guarantee that Ohio voters are afforded constitutional due process, i.e., notice and hearing, prior to being removed from the voter rolls.*

The elections enhancements bill brings Ohio's challenge statutes into line with widely accepted legal protections, most importantly due process. In addition, it requires that all challenges be concluded before the day of the election.

Sec. 3503.24. (A) Application for the correction of any precinct registration list or a challenge of the right to vote of any registered elector may be made by any qualified elector of the county at the office of the board of elections not later than twenty days prior to the election. The application or challenges challenge, with the reasons for the application or challenge, shall be filed with the board on a form prescribed by the secretary of state and shall be signed under penalty of election falsification.

(B) A challenge to an elector's right to vote shall be considered by the board of elections only if the elector is being challenged on any of the following grounds:

- (1) That the person is not a resident of the precinct in which the person is registered to vote;
- (2) That the person is not a citizen of the United States;
- (3) That the person is not eighteen years of age or older;
- (4) That the person is not a qualified elector for that election.

Challenges shall be made only if the challenger knows or reasonably believes that the challenged elector is not qualified and entitled to vote.

(C) On receiving an application or challenge filed under this section, the board of elections promptly shall review the board's records. If the board is able to determine that a challenge should be denied solely on the basis of the records maintained by the board, the board immediately shall vote to deny that challenge.

If the board is able to determine that an application for the correction of any precinct registration list should be granted solely on the basis of the records maintained by the board, the board immediately shall vote to grant that application.

Otherwise, the director shall promptly set a time and date for a hearing before the board. The hearing shall be held, and the application or challenge shall be decided, no later than ten days after the board receives the application or challenge. The director shall send written notice to any elector whose right to vote is challenged and to any person whose name is alleged to have been omitted from a registration list. The notice shall inform the person of all of the following:

- (1) That an application for the correction of a precinct registration list or a challenge of the right to vote of the registered elector has been made;

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- (2) The name of the person submitting the application or challenge, as applicable, which shall be accompanied by a copy of the application or challenge form submitted to the board;
- (3) The time, date, and place of the hearing;
- (4) That the elector has a right to appear and testify at the public hearing and present evidence relevant to the challenge or application;
- (6) That the elector has a right to be represented by counsel at the hearing and may cross-examine witnesses;
- (7) That, at the conclusion of the hearing, the cancellation of the voter's registration or correction of the precinct registration list requires a majority vote of the members of the board of elections.

The notice shall be sent by first class mail no later than seven days before the day of any scheduled hearing. The director shall also provide the person who filed the application or challenge with the same written notice. At the request of either party or any member of the board, the board shall issue subpoenas to witnesses to appear and testify before the board at a hearing held under this section. All witnesses shall testify under oath.

(D) The board shall reach a decision on all applications and challenges immediately after hearing. A public vote of three members of the board shall be necessary to uphold a challenge on a person's right to vote or to correct a precinct registration list under this section. In the case of a tie vote or disagreement in the board, the board shall submit the matter and all related materials to the secretary of state in accordance with division (X) of section 3501.11 of the Revised Code.

(E) If the board decides that any such person is not entitled to have the person's name on the registration list, the person's name shall be removed from the list and the person's registration forms canceled. If the board decides that the name of any such person should appear on the registration list, it shall be added to the list, and the person's registration forms placed in the proper registration files. All such corrections and additions shall be made on a copy of the precinct lists, which shall constitute the poll lists, to be furnished to the respective precincts with other election supplies on the day preceding the election, to be used by the election officials in receiving the signatures of voters and in checking against the registration forms.

### **In-Person Early Voting**

*1. Advancement Project recommends that we strategize about our position on elimination of the "golden week" period of early voting. Advancement Project recommends that considerable thought be given to the factors for establishing early voting sites and that recommendations for early voting sites be open for public comment prior to finalizing the sites.*

The elections enhancements bill includes language specifying the process for establishing additional early voting locations and directs the Secretary of State to establish rules to guide the siting process.

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(C) The board of elections may maintain permanent or temporary branch offices at any place within the county.

The board shall not employ more than four such locations for the purpose of allowing voters to cast absent voter's ballots in person at an election.

An affirmative vote of three members of the board is required to establish more than one location at which voters may cast absent voter's ballots in person at an election. In the case of a tie vote or disagreement in the board, the board shall submit the matter to the secretary of state in accordance with division (X) of section 3501.11 of the Revised Code.

If the board votes to establish more than one location at which voters may cast absent voter's ballots in person, the board shall submit to the secretary of state a plan for the location of those voting locations.

(D) The secretary of state shall establish, by rule adopted under Chapter 119. of the Revised Code, the form and content for voting location plans required to be submitted to the secretary of state under division (C) of this section. The rules shall address the equitable distribution of locations at which voters may cast absent voter's ballots in person, including the distribution of those locations with respect to a county's unique geography, population distribution, minority voter access, and ease of voter access to the locations. The rules also shall include provisions to ensure, to the extent practical, that the plans will not result in locations that will unduly favor any political party.