

This imPACT Newsletter provides up to date information to all interested citizens on critical issues that affect our democracy. The newsletter is published and sent once a month to all interested citizens. Should you desire more information or want to become involved in this issue contact the League of Women Voters of Ohio/Educational Fund at 614-469-1505 or leg@lwvohio.org.

Election Law

The League of Women Voters of Ohio has advocated changes to Ohio's election law to address the problem of voters who cast their vote in the wrong precinct but in the correct polling place. This problem arises in polling places with multiple precincts when a poll worker gives a voter who is in the correct polling place the wrong ballot. The majority of races are likely to be the same in the different precincts, but there may be some races or issues that are in one precinct but not another. Current Ohio law requires that under these circumstances the **entire** ballot be invalidated – not just the votes for races or issues in a precinct other than the precinct in which the voter resides. Given that this problem arises in virtually every instance through poll worker error, LWVO believes that this unfairly disenfranchises Ohioans and could easily be addressed by counting the votes for all races and issues for which the voter was entitled to vote. The Cincinnati court race discussed below provides an interesting twist on the issue by bringing in the question of equal protection.

Ohio case may set U.S. voting precedent

Hamilton County counted some bad provisional ballots

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By [Mark Niquette](#)

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There is a legal battle unfolding about whether to count certain ballots in Hamilton County that elections experts say could have ramifications for the entire state and even the nation. The dispute already has produced conflicting rulings from the Ohio Supreme Court and a federal court, and it could require the U.S. Supreme Court to weigh in.

"It's not a high-profile race, but it may create a high-profile precedent," said Edward "Ned" Foley, director of an elections-law center at Ohio State University.

The case involves whether to count certain provisional ballots cast in the Nov. 2 race for Hamilton County Juvenile Court judge, which Republican John Williams won by 23 votes over Democrat Tracie Hunter.

Provisional ballots are cast by voters who move and don't update their registration or whose names don't appear in the poll book when they try to vote. The ballots are held for 10 days while voters' eligibility is determined.

State law says that for ballots to count, they must come from a voter's correct precinct. The Hamilton County Board of Elections decided to count 27 provisional ballots from the wrong

precinct because they were cast at the county elections office and workers mistakenly gave voters the incorrect ballot for their precinct.

The board decided not to count about 150 other ballots cast by voters who went to the correct polling location but apparently were mistakenly directed by poll workers to the wrong table for their precinct and also cast the wrong ballot.

Based on a lawsuit filed by Hunter, U.S. District Court Judge Susan J. Dlott ruled that because the 27 votes cast at the board offices were counted, the 150 ballots from the polling locations also must be counted to ensure that the voters are treated equally, as dictated by the Bush v. Gore case that decided the 2000 presidential election.

But Williams filed a lawsuit with the Ohio Supreme Court, which ruled that state law is clear: If a provisional ballot does not come from a voter's correct precinct, regardless of whether there was poll worker error involved, it can't be counted.

Secretary of State Jon Husted has argued that because of the inconsistent court decisions, Dlott's ruling should be appealed to the 6th U.S. Circuit Court of Appeals to clarify how to proceed.

On Saturday, Husted broke a 2-2 tie of the Hamilton County elections board in favor of an appeal. Yesterday, a three-judge panel of the 6th Circuit issued an order halting all action until the case can be heard. Both sides must file legal briefs by today, and oral arguments are scheduled for Thursday.

Foley said the case could break ground heading into the 2012 presidential election by clarifying for the state, and even the nation, how provisional ballots under these circumstances should be handled.

He said it also is possible that if the full 6th Circuit upholds Dlott's ruling and it continues to conflict with the Ohio Supreme Court, the U.S. Supreme Court might have to settle the matter - and better define the meaning of constitutional equal protection under Bush v Gore, although that would be several steps away.

Husted, a Republican who took office last week, filed a "friend of the court" brief in the case yesterday saying the district court "has set the stage for a constitutional showdown."

"A local dispute over how and when to count provisional ballots in a county judge's race has raised a fundamental governing principle of paramount importance: All voters must have equal access to the ballot and it is up to the states, and the states alone, to protect that franchise through the proper administration of elections within their borders," Husted said in a statement.

Husted has called for the state legislature to clarify the rules for casting and counting provisional ballots to help avoid such controversies, something lawmakers considered but failed to do after the 2008 presidential election.

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