



## **LWV Ohio Open Letter to Election Officials on Referring Absentee and Provisional Voters to Prosecutors**

**June 6, 2013**

**FOR IMMEDIATE RELEASE**

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Columbus, OH - Today, the League of Women Voters of Ohio issued the following open letter to Ohio election officials, a full copy of which is available at [www.lwvohio.org](http://www.lwvohio.org):

### **An open letter to Ohio election officials**

Secretary Jon Husted  
Ohio Secretary of State  
180 E. Broad St., 16<sup>th</sup> Floor  
Columbus, Ohio 43215

Karla Herron, President  
Ohio Association of Election Officials  
c/o Delaware County Board of Elections  
2079 U.S. Highway 23 N  
P.O. Box 8006  
Delaware, OH 43015-8006

June 6, 2013

Dear Secretary Husted and President Herron,

The League of Women Voters of Ohio (LWVO) is a nonpartisan organization committed to protecting Ohio citizens' right to vote. We are deeply disturbed by recent actions taken in Hamilton and Franklin Counties, and perhaps others, referring to local prosecutors voters who obeyed the law and sought to exercise their right to vote. The only "wrong" committed by these voters was requesting an absentee ballot and then casting a provisional ballot at the polls on Election Day.

This activity is perfectly legal, and referring these cases to the prosecutor sends a dangerous and chilling message not only to Ohio voters but also to poll workers.

If a voter requests an absentee ballot, there is a mark placed next to the voter's name in the poll book to indicate they requested an absentee ballot. The Ohio Revised Code expressly says that if a voter shows up at the polls on Election Day, and the poll book indicates that the voter requested an absentee ballot, the voter shall be permitted to cast a provisional ballot (see RC 3505.181 and RC 3509.09(B)). It's not optional. Poll workers are trained that they must give voters a provisional ballot. And poll workers in turn instruct these voters to cast a provisional ballot.

Some people may ask why a voter would show up at the polls after requesting an absentee ballot. There are many reasons:

- Voters may not be sure that they mailed their absentee ballot.
- Voters may be concerned that they did not mail it in time.
- Voters may have neglected to include necessary information, such as ID or a signature, with their absentee ballot, or not remember if they included all the necessary information.
- For the November 2012 election, the Secretary of State for the first time sent absentee applications to all registered voters statewide. Since that was new in many counties and certainly new to first-time voters, some voters may have filled out and returned the form, later forgot that they requested an absentee ballot, and then showed up to vote on Election Day as usual.

The reason the law is written the way it is - and why it should remain that way - is so that all these voters can still vote. Whether their ballot was lost, they worried their absentee ballot wasn't sent in time or received by the Board of Elections, etc. all eligible voters should be able to vote. And the procedures set forth in RC 3509.09 ensure that only one vote from that voter will be counted.

Referring to these cases as double voting is misleading and disingenuous. These voters do not get two votes. RC 3509.09 provides a protocol for determining which ballot to count. The Board of Elections reviews provisional and absentee ballot envelopes before they are counted. For voters marked as requesting an absentee ballot, Boards check to see if an absentee ballot was received by the deadline and if the signature on the envelope matches the signature in the poll book (RC 3509.09(C)). If both of those conditions are met, then the absentee ballot is counted and the provisional ballot is not (RC 3509.09(C)). If an absentee was not received by the deadline or the signature does not match, then the provisional ballot is counted (RC 3509.09(C)). Under no circumstances does a voter get to cast two ballots and have both counted. The language in the Revised Code anticipated that voters could fill out both an absentee and a provisional in certain circumstances, and there is no reference to a penalty for doing this.

While the League wholeheartedly agrees that we need to protect the integrity of our voting system and investigate cases where a voter intentionally tries to abuse the system and cast more votes than they are entitled to, that is not what happened here. Voters did what poll workers told them to do, poll workers did what they were instructed to do, and all of them were acting in accordance with the letter of the law.

Referring these cases to local prosecutors - when it is clear to election officials that the activity in question was legal - is wrong. The chilling effects are undeniable. Lawful voters may be fearful

of exercising their legal right to vote knowing that even if they follow the poll worker's instructions, they may still be referred to the prosecutor and face the prospect of a costly and unnecessary legal defense. Poll workers may likewise be very concerned. Poll workers are dedicated people who work long hours for little pay because they believe in our democracy and want to help voters. If poll workers fear that their actions, even their actions following the instructions they receive, could lead to voters names being sent to the prosecutor, these people may conclude that they are put in an untenable position and decide not to work the polls again. Referring these cases to the prosecutor for them to sort out and dismiss is not the answer, because the harm is already done. They never should have been referred in the first place. Doing so wastes government resources and sends a dangerous message to voters and poll workers.

We should be doing everything we can to encourage eligible citizens to vote and serve as poll workers. Referring perfectly legal acts to the prosecutor has exactly the opposite effect.

We therefore urge the Secretary of State, county Boards of Elections, and local prosecutors to reserve legal process for people who may have intentionally violated the law and not for voters who were simply following instructions - indeed instructions which complied exactly with the Ohio Revised Code.

Sincerely,

Nancy G. Brown, LWVO President

Enclosures:

- RC 3505.181
- RC 3509.09

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