



**LEAGUE OF WOMEN VOTERS®  
OF OHIO**

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To: House State Government and Elections Committee

From: Peg Rosenfield, Elections Specialist, League of Women Voters of Ohio

Date: April 24, 2012

Re: Interested Party Testimony on Substitute SB 295

Chairman Maag, Ranking Member Gerberry, and Members of the House State Government and Elections Committee, thank you for the opportunity present testimony on Substitute Senate Bill 295 on behalf of the League of Women Voters of Ohio.

We have a few concerns about Substitute SB 295 that we wish to bring to the Committee's attention before the bill is put to a vote.

**1. Why rush to repeal a law that is not in effect?**

Given the fact that the provisions of HB 194 are currently stayed until the citizens of Ohio have the opportunity to vote on the referendum in November, it is hard to come up with any compelling reasons to rush to repeal it now. In actuality, whether or not HB 194 is repealed by the Legislature, it will not affect the 2012 election because HB 194 has been stayed until the voters have the opportunity to vote on its possible repeal in November.

The rush to repeal is also troubling when legislators have publicly acknowledged in the press<sup>1</sup> that it is unclear whether or not it is constitutional to repeal a law that is subject to referendum. This uncertainty makes it likely that any repeal legislation could be challenged in court, further adding to the confusion over what laws will or will not go into effect and when.

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<sup>1</sup> See, e.g., "Batchelder On Board With Election Law Repeal Bill Teed Up For Senate Committee Vote," 3/19/2012 Gongwer Report ("Speaker Bill Batchelder (R-Medina), who previously expressed concern that repealing a law during a citizen-initiated referendum might prove unconstitutional, now thinks the House should follow the Senate's lead, according to spokesman Mike Dittoe....Speaker Batchelder still has some lingering constitutional misgivings, he said. 'But that's only because we have no precedent. We don't know what scenario will play out.'").

## **2. Repealing HB 194 without also repealing “technical corrections” made in HB 224 continues the problem of inconsistencies within Chapter 35 of the Revised Code.**

If the General Assembly truly wants to reset and return to pre-HB 194 election law, then corrective legislation must also address the changes made in HB 224.<sup>2</sup> When HB 224 was passed, the legislature accepted a slate of amendments “to make technical corrections to the elections law” to patch holes that were missed during the rush to pass HB 194 three weeks before. Those technical corrections ought to be repealed too, most notably the provisions in RC 3509.03 and 3511.02 that cut off early in person voting at 6pm the Friday before election day.

As Committee Members may recall, when HB 194 was stayed due to the successful referendum petition effort, there was confusion over whether provisions of HB 224 that related back to HB 194 were also stayed by the referendum.

For example, HB 194 sought to shorten the time period for early in person voting, including a change that early in person voting would end at 6pm on the Friday before election day. However, not all sections of the Revised Code pertaining to early voting were changed in HB 194, so the legislature amended those missing sections (RC 3509.03 and 3511.02) in HB 224. When HB 194 was stayed by the referendum, there was some question over whether the changes to early voting were stayed in both HB 194 and HB 224.

In short, the problem became that some sections of the Code were changed by HB 224 to say that early in person voting would end at 6pm the Friday before election day, while other sections of the Code remained unchanged due to the HB 194 referendum so that early voting would continue up until election day. It’s not at all surprising that conflicting laws would lead to confusion.

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<sup>2</sup> The League of Women Voters of Ohio originally raised this concern in testimony presented to the Senate Committee on February 15, 2012.

However, if the underlying goal is both to provide clarity and to facilitate voting, we have an additional repeal to recommend. When Am Sub HB 224 was enacted very rapidly in July 2011 to expedite voting by uniformed service and overseas voters, the Legislature appended several provisions to clean up omissions made in HB 194. One of those provisions that was included eliminated early in-person absentee voting on the weekend before election day. This restriction was not even mentioned in the bill summary and many of us who were following HB 224 closely and supported its original intent, were unaware that this restriction had been inserted in the bill. Therefore, there was no opportunity for us to advise legislators about the pernicious effect these changes would have. The Saturday, Sunday, and Monday before election day are the days of heaviest absentee voting. Eliminating the opportunity for in-person absentee voting not only discourages early turnout, it helps relieve and prevent the kind of long lines on election day that embarrassed Ohio in 2004.

Therefore, we urge repeal of the changes in lines 863 and 864 of Sec. 3509.03(I) in Am Sub HB 224, thereby restoring in-person absentee voting on the three days immediately preceding Election Day. This will not only avoid confusion by retaining the ability of Boards of Election to provide early voting as existed in the past, it will encourage and support voter turnout, which must be a goal of all of us.

On September 28, 2011, the Ohio Attorney General issued Opinion 2011-035<sup>3</sup> to clarify what effect the referendum on HB 194 would have on the effective dates of provisions in HB 194 and provisions in HB 224 that refer back to HB 194. The 13-page opinion delves into a constitutional analysis of the legislative and referendum processes, and it ultimately concluded that some provisions of HB 224 are stayed by the HB 194 referendum while others are not.

The Ohio Secretary of State then issued Advisory 2011-07<sup>4</sup> on October 14, 2011, which lists certain provisions of HB 224 that were stayed by the HB 194 referendum and also includes a list of other provisions that were not stayed.

Passing a straight repeal of provisions that were only in HB 194 without addressing the “technical changes” made in HB 224 continues the inconsistency problem, wherein sections of the voting law conflict with one another.

### **3. Rushing to pass election law without adequate time for review and input leads to mistakes.**

We ought to learn the lesson from the rush to pass HB 194 and HB 224. With both of those bills, important details were missed because the General Assembly was in such a hurry to pass them that they did not give legislators, interested parties, or the public time to review the bills, assess the impact, or find errors. (Precisely the reason the legislature had to make ‘technical corrections’ to HB 194 via HB 224.)

Let’s not make the same mistake a third time, by rushing to pass SB 295 out of the House committee with only one hearing. Legislating in a hurry invites problems, especially when the subject is making changes to election law that is already subject to referendum and when we’re already in the midst of a presidential election year.

### **4. Passing additional election law changes this year will lead to confusion and should be avoided.**

Our understanding is that the legislature currently plans to use SB 295 only to repeal HB 194 and intends to pass replacement legislation separately.

It is important to consider what impact that would have on voters and elections officials. It would mean that the General Assembly would be passing at least four separate election law changes (HB 194 passed June 29, 2011; HB 224 passed July 13, 2011; SB 295, and whatever replacement) in a 12-month stretch (last summer thru this summer).

That’s not how we avoid voter confusion, that’s how we cause it.

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<sup>3</sup> Available online at <http://www.ohioattorneygeneral.gov/getattachment/7e57b6b7-1679-495c-901e-55cdaa7d5f80/2011-035.aspx>

<sup>4</sup> Available online at <http://www.sos.state.oh.us/SOS/Upload/elections/advisories/2011/Adv2011-07.pdf>