



**LEAGUE OF WOMEN VOTERS® OF OHIO**

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**To: Senate State Government Oversight & Reform Committee**

**From: Carrie Davis, Executive Director, League of Women Voters of Ohio**

**Date: October 23, 2013**

**Re: Interested Party Testimony on SB 205**

Chairman Burke, Ranking Member Smith, and Members of the Senate State Government Oversight & Reform Committee, thank you for the opportunity to present testimony on Senate Bill 205 on behalf of the League of Women Voters of Ohio.

The League has several concerns with SB 205 as introduced. We shared our concerns with Senator Coley, and we hope that amendments will be considered to address these issues.

**Absentee Application Mailings**

SB 205 would prohibit any elected official, other than the Secretary of State, from sending unsolicited absentee ballot applications. In addition, under SB 205, the Secretary of State is only required to send unsolicited applications during even year elections and only if funds are appropriated by the General Assembly for that purpose.

While the sponsor has argued for these changes on the basis of ensuring uniformity, the result is anything but uniform.

From the voter's standpoint, a uniform policy would be to send an absentee application every year. In fact, many voters this year have posed questions to the League and to election officials asking why they haven't received their absentee application yet, expecting it to be the same as last year. But SB 205 doesn't even promise that a voter could expect to receive an application every other year, as that is conditioned on funding being appropriated. So in reality, Ohio voters may or may not receive an application every other year but only if there are funds appropriated. Surely this is not uniform.

The League concurs with the Ohio Association of Election Officials that unsolicited absentee applications should be mailed to all voters every year.

## **Postage for Absentee Applications and Ballots**

SB 205 provides that neither absentee applications nor absentee ballots include prepaid postage.

While in an ideal world absentee applications and ballots would be postage prepaid, at a minimum, voters must be duly informed of the postage necessary for mailing these documents or alternative means of delivery. Ballots, especially longer ballots, may require more than one first class stamp to be delivered. All absentee applications and absentee ballots should be required to prominently display the amount of postage required to ensure delivery. In addition, it would be helpful to inform voters of other means of delivery, such as where they can or cannot drop off absentee ballots. Many voters have expressed confusion about why they may drop off their completed absentee ballot at the Board of Elections but not at their polling place on election day. Including a standard notice about the amount of postage needed and drop-off alternatives would ensure the same procedures are followed statewide while also ensuring voters have needed information to make sure their ballot is delivered.

## **Completion of Absentee Application Forms and Ballot Envelopes**

SB 205 requires that all fields on the absentee ballot must be completed in order for an absentee ballot to be processed and counted.

This provision raises quite a few questions and concerns. What is meant by “complete”? What if a voter uses a shortened version of his name instead of his full legal name? What if the voter accidentally prints her name where she should sign it or signs where she should print? What if there is a typo or spelling error?

The purpose of having these fields on either the absentee application or the absentee ballot envelope is to provide sufficient information for the Board of Elections to determine if the person completing the form matches her voter registration on file. If, for example, a voter places his printed name and signature in the opposite fields, but the Board is able to verify the name and signature match that should not disqualify the voter.

In fact, federal law prohibits disqualifying a voter registration, application, or other voting paperwork for non-material errors.

Section 1971 of the Civil Rights Act provides that:

No person acting under color of law shall ... deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining

whether such individual is qualified under State law to vote in such election.

42 U.S.C. § 1971 (a)(2)(B).

Section 1971 was enacted as part of “a spurt of federal enforcement of voting rights ...” *Florida NAACP v. Browning*, 522 F.3d 1153, 1173 (11<sup>th</sup> Cir. 2008). “[O]ften referred to as ‘the materiality provision,’” Section 1971 “was designed to eliminate practices that could encumber an individual’s ability to register to vote” by prohibiting officials from blocking voters from registering or voting based on trivial clerical errors made on government paperwork. *Friedman v. Snipes*, 345 F. Supp. 2d 1356, 1370-71 (S.D. Fla. 2004)(emphasis omitted). “This was necessary to sweep away such tactics as disqualifying an applicant who failed to list the exact number of months and days in his age,” *Condon v. Reno*, 913 F. Supp. 946, 949-50 (D.S.C. 1995), since “[s]uch trivial information served no purpose other than as a means of inducing voter-generated errors that could be used to justify rejecting applicants,” *Florida NAACP*, 522 F.3d at 1173. So long as the Board of Elections is able to determine that an absentee application or ballot envelope matches the record of an eligible registered voter, that should be sufficient to process such a document.

In addition, the League would recommend going one step further, requiring the Board of Elections to contact any voter whose application or envelope does include a material omission to alert the voter to the error and give them an opportunity to rectify the error or omission.

### **No Assistance for Completing Absentee Application or Envelope**

SB 205 prohibits election officials from assisting a voter in completing an absentee application or absentee ballot envelope unless the voter is blind, disabled, illiterate, or unable to come to the polling location.

This provision sends the message that election officials may not assist voters. Not only is that counter intuitive, it also places unnecessary obstacles between a voter and exercising the right to vote. There are any number of circumstances in which a voter may ask for assistance, from forgetting their reading glasses to having a squirming child in tow to having a question about the proper way to fill out the form. The election official shouldn’t be put in the position of having to interrogate the voter as to whether they need assistance due to a recognized and acceptable reason. Nor should a voter have to justify their request for assistance in order to receive assistance.

We strongly recommend removing this provision and, instead, require election officials to provide reasonable assistance to voters whenever requested. At the very least, if the intent is to prohibit election officials from *filling out the form for the voter* as opposed to *assisting the voter* by, for example, explaining how to fill out the form, then the language of the bill should be clarified to make that distinction.