



LEAGUE OF WOMEN VOTERS® OF OHIO

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To: House Policy and Legislative Oversight Committee

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

Date: December 3, 2013

Re: Interested Party Testimony on SB 205

Chairman Dovilla, Ranking Member Gerberry, and Members of the House Policy and Legislative Oversight 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. Unfortunately, these concerns were not adequately addressed by the amendments made in the Senate. We urge you to either fix these serious problems or not pass this bill.

Absentee Application Mailings

- **Not Uniform**

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 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, period, with no preconditions. In fact, many voters this year contacted the League and election officials asking why they did not receive their absentee application, expecting it to be the same as last year.

While the bill sponsor argues that this problem was corrected by amendments, that is not the case. The bill as-introduced required an application to be sent only on even years and if funds were appropriated. The amended bill passed by the Senate changed it from even years to every year, but it left in place the condition that applications would be sent only if funds were appropriated for that purpose by the legislature. Thus the voter has no assurance from year to year that she will receive an application since it will be contingent on funding being

appropriated.. So in reality, Ohio voters may or may not receive an application, in the legislature's sole discretion. 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.

- **Excludes Poll Workers**

SB 205's prohibition on sending unsolicited absentee applications would actually *harm* poll workers and election officials. The current practice in many counties is for BOEs to automatically provide poll workers with an absentee ballot application, because they will be working the polls on election day. The prohibition in SB 205 is so broad that it would prohibit BOEs from providing applications to poll workers or BOE employees, because SB 205 prohibits anyone other than the Secretary from providing unsolicited applications under any circumstances. This overbroad restriction is unreasonable and must be removed.

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 (11th 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. Senator Coley, the bill’s sponsor, has argued this is not needed because there is currently a Secretary of State Directive in place requiring BOEs to contact voters with missing information. That’s not good enough. We all know how easily a Directive can be rescinded or revised. In order to avoid running afoul of federal law, SB 205 should either designate these fields as requested rather than required or else require BOEs to contact voters if fields are incomplete.