



## *Position Paper*

# **Election Reform and House Bill 260**

**November 2009**

The ACLU of Ohio has been involved in various aspects of protecting voters' rights, from educating the public about their right to vote to defending that right in court. Over the last several election cycles, the ACLU of Ohio has received numerous voter complaints and comments about their experiences. We have evaluated voter feedback and identified a list of recommended improvements, described below. Many of the reforms proposed in HB 260 mirror ACLU areas of concern, and, to the extent that they do, we support those in principle.

### **1. Eliminate inconsistencies and confusion in Ohio election law.**

Ohio election law is riddled with internal inconsistencies and references to out of date voting methods. In large part, this is due to the fact that most changes to Chapter 35 have been done in a patchwork fashion, inserting or removing language in one section without removing or updating references elsewhere. Here are just two examples:

- Although Ohio abandoned punch cards some time ago, references to them still appear in Revised Code Sections 3506.12 (ballot counting stations), 3506.15 (SOS promulgation of rules), 3506.16 (punch card ballots – chads), 3509.01 (absent voter ballot procedures), and 3515.04 (recount procedures).
- Another example is the expansion of no-fault absentee voting to include in-person early voting. While early voting has proven to be a remarkable success, there was resulting confusion about whether to apply Election Day or absentee processes to in-person early voting, such as whether to allow observers or what type of ballot to use.

Many other sections of the code have created a great deal of confusion amongst voters, poll workers, officials, and the public.

- Since its enactment, there has been confusion over what forms of voter identification are acceptable and when they must be shown. For example, is an ID card from a state university an acceptable government issued ID or no? Does an ID have to include a current address? And so on. The ACLU of Ohio receives questions about ID every election cycle and complaints from voters who had acceptable forms of ID rejected by poll workers.
- There has been confusion about when a voter is required to cast a provisional ballot instead of a regular ballot. And if a voter is required to cast a provisional ballot, there is confusion over who is required to verify information with the local BOE afterwards in order to have it counted. Every election, the ACLU of Ohio receives complaints from

people who were wrongly made to cast a provisional ballot or who didn't receive instructions about how to make sure it counted.

These inconsistencies and confusion may lead to the overuse of provisional instead of regular ballots, ballots not being counted, or at the worst voters being turned away or giving up without casting a ballot at all.

Meaningful election law reform requires fixing error-prone aspects of voting and expanding what works. That means cleaning up the code to eliminate out of date references, simplifying areas that have led to confusion, and expanding successful programs like in person early voting. Substitute HB 260 makes several significant strides toward these goals.

## **2. Voter identification requirements should be clear, easy to follow, and ensure all eligible voters are able to cast a ballot.**

The current voter identification rules have proven to be confusing and difficult to manage, as evidenced by litigation and varied enforcement.

The purpose of identification requirements, dating back to signature books, is to verify a voter's identity not their address. A voter's residence is verified at the time of registration. At the time of voting, the goal is to ensure that the person wishing to vote is the person they claim to be and that they are only voting once. That goal can be accomplished by any means that allows poll workers to verify their identity.

Voter identification rules ought to be clear and easy to follow. They should clearly identify what types of documents can be used to verify one's identity. The forms of acceptable identification should include a range of documents to ensure that all eligible voters will be able to present an acceptable form of ID.

Sub-HB 260 makes some good strides in that direction, but we still have some remaining concerns. Many college students, in particular students originally from out of state, have complained about student IDs not being accepted. Including college and university official IDs in the list of acceptable ID in Sub-HB 260 is a very good step to ensure college students are able to vote. However, not all voters have a photo ID. Sub-HB 260 does allow voters without a photo ID to complete an affirmation including their name, signature, date of birth, and either Social Security number or Ohio drivers license number. However, not all voters may have a Social Security number or drivers license. Before limiting the affirmation to those with a Social Security number or state ID number, the General Assembly should verify that doing so would not exclude any eligible voters thereby disenfranchising them. While Sub-HB 260 does make great strides in simplifying the voter ID rules and including many Ohioans, it bears additional review to ensure it does not exclude some otherwise eligible voters who lack a Social Security number or Ohio drivers license.

## **3. Address overuse of provisional ballots while ensuring that they remain a safety net for Election Day problems.**

Provisional ballots were created to be a safety net, a last resort preferable to turning a voter away on Election Day. However, due to confusion over when and why they should be used, provisional ballots have become overused in Ohio.

Provisional ballots are consistently one of the top three complaints the ACLU of Ohio receives around an election. (The other two are confusion over voter ID, which is addressed above, and problems with receiving an absentee ballot, addressed below.) It seems that anytime there is any question - e.g. about a voter being in the correct precinct, being registered, or having the right type of ID - the default is not to resolve the question but to give them a provisional ballot.

Ohio law needs to be simplified as to when and why a person should be given a provisional ballot instead of a regular ballot. And then those reasons need to be communicated clearly to poll workers and voters. Sub-HB 260 offers needed clarity to which voters will be given provisional ballots and how those ballots will be verified and counted. However, it will require monitoring of this change after it is put in effect to ensure that it reduces unnecessary provisional voting while ensuring the safety net is there for those who need it.

#### **4. Establish clear rules for updating the statewide voter registration database, and prohibit cancellation based only on error-prone database mismatches.**

HB 260 amends RC 3503.15 governing the statewide voter registration database (SWVRD). It requires the Secretary of State to enter into an agreement with the Bureau of Motor Vehicles (BMV) to match registration data in the SWVRD against the BMV database for purposes of verifying the accuracy of the former. It also directs the Secretary to create rules to notify the local BOEs of any mismatches in their jurisdiction. Most importantly, HB 260 prohibits using a non-match alone as the basis to disenfranchise voter in any way – i.e., fail to add the voter to the SWVRD, challenge or cancel that person’s voter registration, require the person to vote a provisional ballot, or otherwise fail to provide that person a regular or absentee ballot.

Database matching is an extremely error fraught way to verify the accuracy of the SWVRD. This was in part evidenced by the very high number of mismatches generated for new and updated Ohio registrations in 2008 – roughly 200,000. False mismatches often occur due to misspellings, data entry error, use of a nickname or middle name instead of a given first name, and so on. Thus, voters should not be removed from the registration rolls based solely on a mismatch to error-prone databases.

Throughout the country, the use of matching has resulted in litigation and brought to light the fact that it falsely flags voters - for example, newly naturalized citizens being wrongly flagged as non-citizens based on out of date drivers license records (see the *Morales v. Handel* case), or even mismatched 4 of the 6 members of the Wisconsin election administration board (see <http://elections.state.wi.us/docview.asp?docid=14689&locid=47>). There are very sound reasons against disclosing mismatch information to county boards without clear instruction in the law for what to do with that information.

The ACLU of Ohio strongly urges that the final version of HB 260 include a provision prohibiting the use of a mismatch alone as the basis to deny or cancel a voter’s otherwise eligible

registration or casting a regular ballot, and that it put in place procedures for voters and election officials to correct any mismatches.

**5. Allow voters to correct mistakes or omissions to ensure all eligible Ohioans are able to cast their vote.**

Ohio should adopt laws and policies that maximize every eligible voter's opportunity to register to vote, request and cast a ballot, and have that ballot counted. No one should have that opportunity denied due to a simple clerical error that may be easily identified and corrected.

The General Assembly recognized this in 2008 when it passed Senate Bill 286 to prohibit central counting of optical scan ballots that do not give voters notice of or opportunity to correct over or under votes. SB 286 also clarified that an optical scan ballot with more than the proper number of selections could only be invalidated for that particular office or issue, so that the rest of the votes on that ballot would count.

That same purpose should be applied to voter registration, absentee ballot request forms, absentee ballot return envelopes, and provisional ballot envelopes. Simple clerical errors or omissions, whether by voters or elections officials, should not disenfranchise anyone. The provisions contained in Substitute HB 260 that instruct elections officials to notify voters of errors and give them an opportunity to remedy them in-person, by phone, mail, electronic or other means are a positive step.

**6. Expand early voting options.**

The 2008 and 2009 election cycles showed that voters want and will use more early voting options. Both mail-in absentee voting and in-person early voting have proven to be hugely popular. Ohio should build on this recent success and continue to expand early voting programs.

Ohioans turned out in record numbers to vote early – either in person or by mail – in the 2008 election. Early voting helped to alleviate long lines at the polls and allow those who may not have had an opportunity to stand in line on Election Day to cast their vote early. Officials must look at new ways to expand its use. In some counties in 2008, one quarter to one third of all registered voters cast their ballots early using mail in ballots or in person at their local Board of Elections. Some counties, such as Franklin County, offered locations separate from the Board of Elections office where people could vote. Satellite locations such as this could help expand voters' access to ballots because of improved parking, larger space to accommodate more voters, closer proximity to neighborhoods and greater accessibility for disabled and elderly voters. Additionally, voting early allows election officials to troubleshoot possible problems in time to allow voters to cast a regular ballot instead of a provisional ballot.

In person early voting is a successful program that should be grown. Counties should be given the option to have additional early voting centers. In selecting locations, counties should do so in ways that are fair and equitable. Wherever possible, early voting locations should be located along public transportation routes. Early voting locations should be distributed so as to serve all segments of the community.

Given the high voter demand and success of in person early voting and mail-in absentee voting, the General Assembly should refrain from reducing the time period for early voting. Absentee voting was expanded to be no-fault and to allow in person early voting so as to give voters *more* opportunities to vote, not *less*. While it is good that Sub-HB 260 synchronizes the start of domestic mail in absentee and in person early voting (to 28 days) so as to avoid confusion, it still shortens the overall time period for early voting from current law (35 days). It would be a shame to move backward and shorten voters' opportunity to cast a ballot.

Sub-HB 260 makes a number of changes to increase voters' ability to request and cast a mail in absentee ballot. Among the positive changes are allowing a voter to request absentee ballots for an entire year, allowing an absentee ballot request to be made by a variety of methods including electronic communication, and allowing voters to correct deficiencies on absentee ballot request forms and ballot return envelopes. One of the ACLU of Ohio's most frequent complaints is from people who requested but never received an absentee ballot. For many voters who are homebound or out of state, that effectively disenfranchises them. While Sub-HB 260 makes many positive strides in improving access to absentee voting, it is imperative that increased access to absentee ballots includes assurances that requested ballots are delivered in a timely fashion.

### **Other recommendations**

- **Provide scanners at all polling places where voters may cast a paper ballot.** Counties that vote exclusively on paper ballots are required by Ohio law to provide scanners for voters to check their ballots for errors. Counties that vote primarily on touchscreens, but offer a paper ballot alternative, in practice have not been required to provide scanners for paper ballot voters to check their ballots. The ACLU of Ohio believes this violates the letter and spirit of the law and must be clarified for future elections.
- **Establish clear rules for purging voters from the statewide voter registration database.** Numerous voters across the state in 2008 reported being wrongly removed from the list of registered voters. In many instances, these were voters who had voted before at the same precinct, sometimes even in the primary earlier this year, only to find that their names did not appear on the rolls on election day. It is our hope that the clarity provided in Sub-HB 260 regarding database matching may alleviate some of these problems, but nonetheless the Secretary of State and county boards of elections must work together to ensure that lawful voters are not inadvertently disenfranchised by database management problems.

In conclusion, Substitute House Bill 260 makes many positive steps to resolve confusion and known problems. However, it will bear watching to see what final form this legislation takes and how it is ultimately implemented.

ACLU of Ohio  
4506 Chester Ave.  
Cleveland, OH 44103  
[contact@acluohio.org](mailto:contact@acluohio.org)  
216/472-2200