

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. DANA SKAGGS, ET AL,

Case No.: 08-2206

RELATORS,
VS.

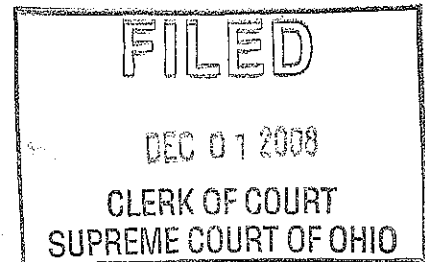
JENNIFER L. BRUNNER, OHIO
SECRETARY OF STATE, ET AL,

RESPONDENTS,

AND

OHIO DEMOCRATIC PARTY,

INTERVENOR-
RESPONDENT



MERIT BRIEF OF OHIO DEMOCRATIC PARTY

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MERIT BRIEF OF OHIO DEMOCRATIC PARTY

STATEMENT OF THE CASE AND FACTS

The Ohio Democratic Party (“ODP”) hereby adopts the statement of the case and facts from Respondent Secretary of State’s brief.

ARGUMENT

I. OHIO LAW, AS ENACTED BY THE OHIO GENERAL ASSEMBLY, PLAINLY DOES NOT IN ALL CASES REQUIRE A PROVISIONAL VOTER TO SIGN THE AFFIRMATION STATEMENT IN ORDER FOR THE VOTER’S PROVISIONAL BALLOT TO BE COUNTED

The present case challenges as in correct the advice of the Ohio Secretary of State to the Franklin County Board of Elections that 1) a provisional ballot that has the voter’s signature, but not the voter’s name, written in the provisional voter affirmation (“PVA”) portion of the provisional ballot envelope may be counted, 2) a provisional ballot that has the voter’s name, but not the voter’s signature, in the PBA portion of the provisional ballot envelope may be counted, and 3) a provisional ballot that has the voter’s signature and/or name on the provisional ballot envelope, but not in spaces provided in the PBA, may be counted.¹ In each instance, the Secretary’s advice is conditioned on the board being able to determine that the voter is a qualified elector entitled to vote in the election, that the voter has provided a form of identification required by Ohio law and the voter has cast his ballot in the correct precinct.

¹ The provisional voter affirmation form at issue is set forth in R.C. §3505.182 and is not to be confused with a second affirmation (Form 10-T) required by R.C. §3505.18(A)(4) of provisional voters who do not have (own) any form of identification acceptable for voting and do not have a social security number.

In addressing whether Relators are able to demonstrate that the Secretary has a clear legal duty to give different advice than she has given, a significant amount of time and analysis may be devoted to considering, under R.C. §§3505.18, 3505.181 and 3505.182, exactly what a voter is required to do in casting a provisional ballot, what a polling place official is required to do in the process, what constitutes poll worker error and what is the effect of such error on the eligibility of a provisional ballot to be counted. However, Intervenor-Respondent, ODP, respectfully submits that there is another analytical approach to deciding whether there is a clear legal duty upon the Secretary to change her interpretation of the law; an approach that relies on the statutory language that directly governs when a provisional ballot shall be counted and applies this Court's previously enunciated rule that when the law is unclear as to how to apply its provisions in a given situation, then it must be interpreted in favor of the voter. The relevant statutory provision is R. C. 3505.183(B)(1), which provides:

To determine whether a provisional ballot is valid and entitled to be counted, the board shall examine its records and determine whether the individual who cast the provisional ballot is registered and eligible to vote in the applicable election. The board shall examine the information contained in the written affirmation executed by the individual who cast the provisional ballot under division (B)(2) of section 3505.181 of the Revised Code. If the individual declines to execute such an affirmation, the individual's name, written by either the individual or the election official at the direction of the individual, shall be included in a written affirmation in order for the provisional ballot to be eligible to be counted; otherwise, the following information shall be included in the written affirmation in order for the provisional ballot to be eligible to be counted: (a) The individual's name and signature; (b) A statement that the individual is a registered voter in the jurisdiction in which the provisional ballot is being voted; (c) A statement that the individual is eligible to vote in the election in which the provisional ballot is being voted.

The above governs the counting of all provisional ballots cast under R.C. §3505.181(B)(2), which includes all of the circumstances that entitle a person to cast a

provisional ballot. It is clear from the above that the law provides for provisional ballots to be counted both when the voter has “executed” the affirmation and when the voter has “declined” to execute the affirmation. Indeed, the above paragraph deals first with counting provisional ballots where the voter has declined to execute the affirmation and then after the word “otherwise” deals with counting provisional ballots where the individual has not declined to execute the affirmation.

It should be observed that the Ohio law does not limit the reasons that a provisional voter may have for declining to execute the affirmation. There are none specified in the law and the law does not even require a provisional voter to offer a reason.² The law is completely silent as to how a voter declines to execute the affirmation or what constitutes declining to execute. The voter who declines to execute the affirmation is not required to sign a written declination or even check mark a box to so indicate. Apparently, all that a voter need do is indicate verbally in some fashion that he does not wish to execute the affirmation. As a result, the statute has a built in administrative problem for boards of elections: how to distinguish between provisional voters who have declined to execute the affirmation and those who neglected to execute all or part of the affirmation.

The statute provides that when a voter declines to execute the affirmation, the voter’s name is to be written in the affirmation by either the voter or the polling place official. So it seems reasonable to conclude that if there is an affirmation with a provisional ballot that contains the name of the voter, but is not signed, that this falls into the category of provisional ballots where the voter declined to execute the affirmation.

² Thus, any discussion that the right to decline to execute the affirmation is limited to religious objections is not correct.

The presumption must be in favor of counting the ballot. Otherwise, election officials would be requiring more than the law requires given that the law does not require any specific indication of declination. The fact that other parts of the affirmation may be completed, such as the voter's address or the last four digits of the voter's social security number is still a non-execution of the affirmation and does not resolve whether the voter chose to decline to fully execute the affirmation by not signing or neglected to do so.

It is true that there may be a difference between declining to complete the affirmation and neglecting to complete it, but the Ohio law provides no means for distinguishing between the two categories of provisional voters. The one element in common for both groups of voters is that they did not sign the affirmation, *i.e.*, they did not execute the affirmation. There is no place prescribed on any part of the PBA for the voter or election official to specifically write the name of a voter who declines to execute the affirmation as opposed to a voter who began completing the affirmation by filling in his name, but then neglected to sign his name. Indeed, in both instances the voter's name would be placed in the same space at the beginning of the affirmation, which is the only space provided on the Franklin County PBA form for filling in the voter's name.

With no way of distinguishing between the provisional voters who declined to execute the affirmation as opposed to those who neglected to do so, it is not even possible to apply a different outcome in determining the eligibility of these ballots to be counted.³

³ Secretary of State instructions for poll workers provide that poll workers should note when a voter declines to execute the provisional ballot affirmation, but there is no specific place for making such notation on the affirmation statement or anywhere else. It is also not a statutory requirement or administrative regulation, and there is the possibility that a poll worker may neglect to make a notation. Finally, as will be discussed herein, the counting of one group of ballots with a non-executed affirmation and not counting another group of ballots for the very same reason raises serious constitutional concerns.

They are either all counted or none of them are counted. The problem with the latter choice is that it goes against the mandate of the statute, not to mention the constitutional and federal statutory rights discussed *infra*, that the ballots of those voters who declined to execute the affirmation shall be counted. Therefore, the only logical thing to do is to treat them the same based on their common characteristic, the absence of the voter's signature and construe this as an indication of a voter declining for whatever reason to execute the affirmation. This treatment would be in accord with the Court's long held position that there is a duty on the courts to liberally construe election laws in favor of the right to vote. *State ex rel Colvin v. Brunner* (2008), 2008-Ohio-5041; *Wilson v. Kennedy* (1949), 151 Ohio St. 485, 493.

Before moving to the next point, it should also be understood that all provisional voters, including those who have not declined to execute the affirmation, still sign the poll book. Indeed, there is a special page in the back of the poll book where the voter signs before being issued a provisional ballot and the poll worker also records the unique ballot stub number of the provisional ballot given to the voter. What this means is that election officials actually have the signature of the person voting in order to compare it to the signature on the registration card to insure that the person is the same person and is registered in the precinct where he cast his provisional ballot. This should dispel the overwrought exhortations by Relators that signing the affirmation is the only protection against voter fraud.

It should also be noted that R.C. 3505.183(B)(1) provides that the board of elections is to examine all of its records to determine if a provisional voter is eligible to vote. Thus, only those provisional voters who are determined to be duly registered and

qualified as to age, residence and citizenship will have their ballots counted in the election.

Next are the provisional ballots that contain a voter's signature in the affirmation, but not separately the voter's name. Assuming that the signature is legible, it clearly is also the voter's name and this fulfills the statutory requirement of R.C. 3505.183(B)(1) that "otherwise the following information shall be included in the provisional voter affirmation . . . (a) the voter's name and signature. R. C. 3505.183 does not specifically or even necessarily require that a provisional voter both print and sign his or her name."⁴

II. OHIO REVISED CODE SECTIONS 3505.181 & 3505.182 REQUIRE POLLING PLACE OFFICIALS TO VERIFY THAT A PROVISIONAL VOTER HAS FULLY EXECUTED THE WRITTEN AFFIRMATION BEFORE PERMITTING THAT VOTER TO CAST A PROVISIONAL BALLOT UNLESS THE VOTER HAS DECLINED TO EXECUTE THE AFFIRMATION

Read separately and together, Ohio Revised Code Sections 3505.181 and 3505.182 require poll workers to confirm and verify that the provisional voter has both executed and signed the written affirmation on the PBA. Only after the poll worker verifies that the voter has executed and signed the affirmation can he or she lawfully permit the voter to cast a provisional ballot.

Specifically, R.C. §3505.181(B)(2) provides that if a voter is eligible to cast a provisional ballot, that "individual *shall be permitted to cast a provisional ballot* at that polling place *upon the execution of a written affirmation* by the individual *before an election official* at the polling place" (Emphasis added).

⁴ As will be discussed *infra*, the contents of the affirmation form are set forth in R. C. 3505.182, which expressly requires only substantial compliance.

The content of the written affirmation is prescribed by R.C. 3505.182, which provides that it “shall be substantially as follows” and has spaces for the voter’s printed name and signature. The affirmation is to be completed by the voter and witnessed by a polling place official. Specifically, the poll worker must sign a statement that reads: “The Provisional Ballot Affirmation printed above was subscribed and affirmed before me this . . . day of . . . (Month), . . . (Year) . . .”

The Poll Worker Manual and the Poll Worker Quick Reference Guide published by the Secretary of State for use by poll workers both provide:

3. The voter should be asked to complete the statement on the envelope;
4. The poll worker must check to make sure the voter’s envelope is completed;
5. The poll worker must completely fill out the back of the envelope and sign the front of the envelope.
6. The completed envelope should be double-checked by a second poll worker;

The provisional voter envelope (Form 12-R) prescribed by the Secretary of State has a signature line immediately below the signature and date line for the voter, that is designated “Signature of Witnessing Election Official” followed by a place for the polling place official to date his/her signature. This is in addition to the certification by the polling place official on the back of the envelope that “The Provisional Ballot Affirmation of [Print Voter’s Name] was subscribed and affirmed before me this [date],” which must also be signed by the poll worker.

Ohio law mandates poll worker training in accordance with materials prepared by the Ohio Secretary of State. R. C. 3501.27(B) provides that

Each board shall establish a program as prescribed by the secretary of state for the instruction of election officers in the rules, procedures, and laws relating to elections. In each program, the board shall use training

materials prepared by the secretary of state and may use additional materials prepared by or on behalf of the board.

The Secretary also has general power to “issue instructions by directives and advisories to members of the boards as to the proper methods of conducting elections” and “prepare rules and instructions for the conduct of elections.” R. C. 3501.05(B) and (C).

After questions arose at the Franklin County Board of Elections regarding whether a provisional ballot affirmation that did not include both the name and the signature of the voter could be counted, the Secretary of State’s office advised the Board that if it is otherwise possible from the Board’s records to establish the identity and eligibility of the voter to vote in the election, then the absence on the provisional ballot affirmation of the voter’s printed name or signature is not fatal.

This guidance is required by the United States District Court’s October 27, 2008 Order in *Northeast Ohio Coalition for the Home, et al v. Jennifer L. Brunner, Secretary of State*, Case No. C2-06-896 (S. D. OH), that provisional ballots may not be rejected for any reason attributable to poll worker error. Except in the circumstance where the voter expressly declined to sign the affirmation statement, in which event the ballot must be counted, a missing printed name or signature is reasonably attributable to poll worker error. As stated above, R.C. 3505.181 requires the voter to execute the affirmation statement before a poll worker *before being permitted* to cast a provisional ballot. R.C. 3505.182 further requires the poll worker to sign a statement that the voter affirmation was signed and affirmed before the official. If the voter failed to print or sign his name, then he did not “execute” or “subscribe” the affirmation before a poll worker.

In such an instance, the poll worker may have made two errors. The first error was to sign the required statement that verified that “[t]he Provisional Ballot Affirmation printed above was *subscribed* and affirmed before me” R.C. §3505.182 (emphasis added). *The word “subscribed” means “to sign one’s name to a document.”* Webster’s II New Revised Dictionary (Rev. Ed.). If the poll worker verified that the voter had signed his name—and he did not—then the poll worker clearly erred by signing the verification statement. Based on this error alone, all ballots that lack a voter’s signature must be counted, because the poll worker clearly erred by signing the verification statement.

The second error made by the poll worker was to give the voter a provisional ballot. The statute provides that voters are only permitted to cast a provisional ballot if they have executed the affirmation statement. R.C. §3505.181(B)(2) (“The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place”). If the voter did not execute the written affirmation—which requires both a printed name and signature—then he or she *should not have been permitted* to cast a provisional ballot. This error pertains to all ballots that lack a printed name, signature, or both, and requires that those ballots be counted.

Interestingly, the Franklin County Board of Elections chose to vary the Secretary of State’s prescribed PBA form in two significant respects that likely leads to a greater number of provisional voters neglecting to print their names and sign the affirmation. The Franklin County form eliminated the line for the poll worker to sign below the voter’s signature as a witness and it eliminated the space for the poll worker to fill in the voter’s

name in the poll worker's certification portion of the PBA. These omissions in the Franklin County form eliminate a protection for voters who did not sign the form or who did not themselves print their name on the form. If that voter had cast his vote in a county that used the Secretary of State's Form 12-B, then the poll worker would have had to witness the voter's signature and would have printed the voter's name on the PBA. As a result, provisional voters in Franklin County are subjected to different and unequal standards—and are more likely to have their vote be discarded—than voters in other counties.

III. OHIO LAW DOES NOT REQUIRE THE VOTER TO INCLUDE BOTH HIS PRINTED NAME AND HIS SIGNATURE ON THE WRITTEN AFFIRMATION FOR THE BALLOT TO BE COUNTED

Relators insist that Ohio law requires both a printed name and a signature on a PBA. However, R.C. 3505.183, governing the counting of provisional ballots, provides only that the written affirmation must contain “the individual's name and signature” to be counted. That is not the same as “the individual's *printed* name and signature.” A person's signature is a written representation of his name. While it is true that some signatures are more legible than others, that does not prevent a person's signature from being his name.

Moreover, R.C. 3505.182, sets forth the contents for the affirmation, provides that, “The form of the written affirmation shall be printed upon the face of the provisional ballot envelope and shall be **substantially** as follows.” (Emphasis added). In *State ex rel Myles v. Brunner*, 2008-Ohio-5097, this Court recently affirmed that “Absolute compliance with every technicality should not be required in order to constitute substantial compliance, unless such complete and absolute conformance to each technical

requirement of the printed form serves a public interest and a public purpose.” (Emphasis added). R. C. 3505.182, which sets forth the content for the affirmation provides that the form “shall be substantially as follows.” This permits application of the rule of substantial compliance both with respect to the content of the form and the completion of the form.

Where the voter has signed the PBA and his signature is legible so that his name can be determined, this constitutes substantial compliance even if he has not also printed his name in the PBA.

For these reasons, Ohio law does not require rejection of a provisional ballot where the voter has signed the PBA, but not also printed his name if it possible to identify the voter from his signature.

IV. REJECTION OF PROVISIONAL BALLOTS WHERE THE VOTER NEGLECTED, AS OPPOSED TO DECLINED, TO SIGN THE PBA WOULD VIOLATE THE FIRST AMENDMENT, EQUAL PROTECTION AND DUE PROCESS RIGHTS OF SUCH VOTERS

As shown Section I of this brief, the Ohio law does not require that the PBA to be executed if a voter chooses not to do so for any reason or no reason at all. However, R. C. 3505.183(B)(2) then divides provisional voters into two groups. One group’s votes will be counted and the other’s will not. The state’s stated reason for treating the two groups differently with respect to the most fundamental right of all is that one group declined to execute the affirmation and the other group did not. Other than this, the two groups are identically situated. There is no constitutional legitimacy to the distinction drawn by the state.

By providing that any provisional voter without limitation may decline to execute the affirmation and still have their ballot counted, the state has forfeited any argument

that the requirement of an executed affirmation by persons who neglected or forgot to execute it is necessary to protect the integrity of the election. There is no state interest in treating persons who declined to execute the affirmation differently than those who neglected to do so. Penalizing voters for the sake of penalizing them or because they were not knowledgeable about the process to actually decline to execute the affirmation are not valid state interests.

An option to decline to execute the affirmation may be proper if rewritten by the state legislature to serve some specific purpose, but currently there is no limitation in statute or rule. Perhaps it was legislative oversight and maybe it was not. In either case, it is not the Court's role to rewrite the statute. See, *State ex rel Canales-Flores v. Lucas Cty. Bd. of Elections*, 108 Ohio St. 3d 129, 2005-Ohio-5642.

The right to vote is a fundamental right. *Yick Wo v. Hopkins*, 118 U. S. 356, 370 (1886); *Harper v. Va. State Bd. of Elections*, 383 U. S. 663,670 (1966). The right to vote includes the right have one's vote counted on equal terms with others. *Bush v. Gore*, 531 U. S. 98, 104 (2000); *Reynolds v. Sims*, 377 U. S. 533, 567-568 (1964). As recently set forth by the United States Supreme Court:

The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another.

Bush, at 105-105.

The *Bush* case involved differing standards being applied in deciding whether to count ballots during the 2000 Presidential election recount in the State of Florida. The instant case is directly analogous, because here Relators seek to

apply different standards in deciding to count provisional ballots. They would count those where a voter declined to execute the PBA by not signing it, yet not count all other provisional ballots of eligible voters who did not sign the PBA. This is epitome of unequal treatment in the application of election rules as to whether to count a ballot. The vitality and reach of the Bush v. Gore standard was recognized as recently as five days ago in a decision by the U. S. Sixth Circuit Court of Appeals. In *League of Women Voters of Ohio, et al v. Jennifer Brunner, et al*, Case Nos. 06 -3335/3483/3621 (Decided 11/26/08), the Court reversed a dismissal by the district court of an action bringing a broad based challenge to various aspects of the conduct of elections in Ohio.

In *League of Women Voters of Ohio*, the Court also ruled, at page 13, that the complaint states a claim of a violation of substantive due process in its allegations that non-uniform rules result in disenfranchisement dilution of a person's right to vote based on arbitrary criteria. The same is true in the present case. The rejection of a provisional ballot where a voter did not sign the affirmation, when other provisional voters are not required to sign, amounts to arbitrary treatment. Clearly, the required signature serves no compelling government interest and/or is not narrowly tailored to serve a compelling governmental interest.

There is yet another First Amendment, equal protection and due process concern having to do with the fact that Franklin County uses a different PBA form other counties, including Madison and Union Counties – parts of which are in the 15th Congressional District. The Franklin County form may actually result in

more PBA's being submitted without the voter's signature for reasons previously discussed.

One could also argue that there is a procedural due process problem with the Ohio law and PBA forms in that there is no notice to provisional that they may decline to execute the affirmation or how to decline without jeopardizing the counting of their ballot. There is the real possibility that provisional ballots where the voter declined to sign would get tossed out with ones where a voter neglected to sign because of there not being a method to accurately distinguish between the two. Relators' position is that all provisional ballots without signed PBAs should not be counted.

V. REJECTION OF PROVISIONAL BALLOTS WHERE THE VOTER NEGLECTED, AS OPPOSED TO DECLINED, TO SIGN THE PBA WOULD VIOLATE THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 1971

The Civil Rights Act of 1964, 42 U.S.C. § 1971(a), provides

(2) No person acting under color of law shall –

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals in the same county, parish, or similar political subdivision who have been found by state officials to be qualified to vote;

(B) 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;

Given what has been set forth in the record and in the briefs in this case, it is abundantly clear that the different treatment of the two groups of provisional voters who

did not execute an affirmation by not signing the PBA violates paragraph (A) above of the Civil Rights Act of 1964. Further, the fact that the Ohio law allows any provisional voter to decline to execute the affirmation, demonstrates that the omission to do so by voters who did not *per se* decline to execute it is not a material omission. Thus, not counting the provisional ballots on this basis would violate paragraph (B) above of the Act.

VI. REJECTION OF PROVISIONAL BALLOTS WHERE THE VOTER NEGLECTED, AS OPPOSED TO DECLINED, TO SIGN THE PBA WOULD VIOLATE THE HELP AMERICA VOTE ACT OF 2002, 42 U.S.C. SECTION 15482(a)(2) and (4)

Similar to the Ohio statute, the Help America Vote Act of 2002 (“HAVA”), 42 U.S. C. Section 15482(a)(2) provides that an “individual shall be permitted to cast a provisional ballot . . . upon the execution of a written affirmation by the individual before an election official at the polling place . . .” Subsection (4) then provides that the ballot shall be counted if “that individual is eligible under State law to vote.”

The preceding provisions apply with respect to the 2008 general election and establish a minimum that a state may require as a condition of casting a provisional ballot. The state, however, may require less, which Ohio has chosen to do by providing that any provisional voter may decline to execute the affirmation. Further, where the affirmation is not completed due to poll worker error, HAVA arguably require that the ballot be counted if the “individual is eligible under State law to vote.” This is because under HAVA the voter is permitted to cast a provisional ballot “the execution of a written affirmation by the individual before an election official at the polling place.” Therefore, if the election official permits the individual to cast the ballot without executing the affirmation, this is poll worker error.

The purpose of HAVA was to provide a fail safe protection for eligible voters who for one reason or another experience a problem with their voter registration record on election day. The remedy is for the voter to cast the provisional ballot and the election authorities to research the problem in the days immediately following the election. If the eligibility of the voter is confirmed, then the ballot is counted. The provisional ballot thus preserves the voting rights of eligible voters. It would be incongruent with this purpose to hold that an eligible voter may not have his or her provisional ballot counted because he did not sign the affirmation when an election official gave him the ballot to vote and cast in the election. The situation is the same as when a polling place official allows a voter to cast a regular ballot on paper or machine without having the voter sign the poll book. The law provides that election officials shall allow an individual to vote only after the voter signs the poll book and the official compares the signature with the voter's registration. R. C. 3505.18(B). However, as a result of poll worker error, poll workers sometimes permit an individual to vote without first signing the poll book and as a result the number of regular ballots cast is more than the number of signatures in the poll book. It is not the proper procedure, but errors happen. The point is that the ballot is still counted, as should be a provisional ballot issued by a poll worker without the voter signing the affirmation. Indeed, in the case of the provisional voter, it is still possible to verify the person's identity by comparing the provisional voter's signature in the back of the poll book with the voter's registration, something that is not possible for the individual who cast a regular ballot without signing the poll book.

The Poll Worker Manual and Poll Worker Quick Reference Guide prescribed by the Secretary of State provide that

1. The "Provisional Voters Only" section in the back of the Poll Book must be completed and signed;

2. The poll worker must record the stub number(s) when the ballot is given to the voter;

The Provisional Voter flow chart provided by the Franklin County Board of Elections instructs poll workers not to issue an authority to vote (ATV) if the voter has not signed the poll book.

VII. AN ORIGINAL ACTION IN THIS COURT MUST COMPLY WITH THE MANDATORY AFFIDAVIT REQUIREMENTS OF RULE X(4)(B)

The Court should dismiss this original action because Relators' Complaint fails to comply with the mandatory affidavit requirements of Rule X(4)(B) of the Supreme Court Rules of Practice, which provides that:

All complaints *shall* contain a specific statement of facts upon which the claim for relief is based, shall be supported by an affidavit of the relator or counsel specifying the details of the claim, and may be accompanied by a memorandum in support of the writ. The affidavit required by this division shall [1] be made on personal knowledge, [2] setting forth facts admissible in evidence, [3] and showing affirmatively that the affiant is competent to testify to all matters stated in the affidavit. All relief sought, including the issuance of an alternative writ, shall be set forth in the complaint. (Underscores added).

The Complaint filed by Relators is not supported by an affidavit by either of the two Relators or by any of the counsel for Relators. Curiously there is an affidavit by Mathew Damschroder, the Deputy Director of the Franklin County Board of Elections, one of the parties against whom Relators filed their Complaint. It appears that the Damschroder affidavit is in support of the Motion for a TRO that Relators filed. In any case, it is not an affidavit of Relators or their legal counsel.

In the past this Court has not hesitated to dismiss original actions that did not comply with S.Ct.Prac.R. 4(X)(B). See, e.g., *Sekermestrovich v. Akron* (2001), 90 Ohio

St.3d 536, 740 N.E.2d 252; *State ex rel. Shemo v. Mayfield Heights* (2001), 92 Ohio St.3d 324, 750 N.E.2d 167. In fact, Justice Pfeifer warned:

“I would further caution relators, as well as other prospective relators, that future violations of S.Ct.Prac.R.X(4)(B) may be subject to dismissal with prejudice. * * * This case should provide prospective relators with sufficient warning regarding the potential consequences of not *fully complying* with the affidavit requirement of S.Ct.Prac.R. X(4)(B). Much like an umpire giving a pitcher a warning that the next pitch aimed at a batter’s head may lead to his ejection, attorneys are similarly warned here.” (Emphasis sic) Id. at 325, 750 N.E.2d 167 (Pfeifer, J., concurring).

Effective August 1, 2002, S.Ct.Prac.R. X(4)(B)’s provisions regarding the personal knowledge requirement were amended and more dismissals followed. See, e.g., *State ex rel. Evans v. Blackwell*, 111 Ohio St.3d 437, 2006-Ohio-5439, 857 N.E.2d 88; *State ex rel. Hackworth v. Hughes*, 97 Ohio St.3d 110, 2002-Ohio-5334, 776 N.E.2d 1050; *State ex rel. Committee for the Charter Amendment v. City of Bay Village*, 115 Ohio St.3d 400, 2007-Ohio-5380.

Consistent with this Court’s decisions in cases such as *Evans*, *Hackworth*, and *Bay Village*, dismissal is appropriate because, despite the expedited nature of this matter, Relator has failed to seek leave to amend their Petition to correct the Affidavit even though Relator was warned of the defect by Intervenor-Respondent ODP in its Answer filed November 26, 2008 at the same time its Motion To Intervene was filed. (See *Intervenor-Respondent’s Answer*, Paragraph 14).

As this Court has observed, “the fundamental tenant of judicial review in Ohio is that courts should decide cases on their merits.” See *State ex rel. Becker v. Eastlake* (2001), 93 Ohio St.3d 502, 505, 756 N.E.2d 1228. This Court has balanced that value with the “longstanding legal construction [that] S.Ct.Prac.R. X(4)(B) demands dismissal, we will not create an exception to that precedent.” *State ex rel. Committee for the*

Charter Amendment v. City of Bay Village, 115 Ohio St.3d 400, 2007-Ohio-5380, ¶ 14.

Relators' Complaint fails to comply with S.Ct.Prac.R. X(4)(B) and the Court should deny the requested writs and dismiss the action.

VIII. NO EVIDENCE HAS BEEN PRESENTED TO THE COURT THAT RELATORS ARE IN FACT ELECTORS

Given the expedited schedule ordered in this case that requires the parties to simultaneously file their briefs and evidence on December 1, 2008, Intervenor-Respondent ODP makes the present argument based on the everything that has filed in the case prior to December 1, 2008; however, the argument should be considered withdrawn if Relators in fact produce such proof with the filing of their evidence. At this stage, the only evidence is the affidavit of Franklin County Board of Elections Deputy Director Matthew Damschroder filed at the time the Complaint was filed. No where in the affidavit is the status of either Relator as an elector of Franklin County or Ohio addressed.

Status as an elector who cast or will cast a ballot in the election is necessary to standing to institute an action for a writ of mandamus in this Court with respect to an election. The complaint alleges that the Relators are electors who cast ballots at the November 4, 2008 general election and that their votes will be diluted if the requested writs are not granted. However, no evidence has been placed in the record as to their status as electors or that they did in fact cast ballots at the November 4, 2008 general election. *State ex rel Sinay v. Soddors* (1997), 80 Ohio St. 3d 224.

IX. RELATORS CAN NOT SHOW A CLEAR LEGAL DUTY UPON THE SECRETARY OF STATE TO PROVIDE DIFFERENT ADVICE TO THE FRANKLIN COUNTY BOARD OF ELECTIONS


In order to be entitled to a writ of mandamus, Relators must be able to demonstrate that Respondent Brunner has a clear legal duty to provide the relief which they seek. *State ex rel Heffelfinger v. Brunner*, 116 Ohio St. 3d 172, 2007-Ohio-5838. In the present case, Relators seek writs of mandamus ordering the Secretary to correct advice she has given to one board of elections, Franklin County, in answer to specific questions posed to certain staff of the board of elections staff to a members of her staff. This is simply not an appropriate situation for the use of an extraordinary writ.

The present case is not one where a relator is seeking to “correct” formal instructions or interpretations of election law contained in a directive issued by the Secretary to all the county boards pursuant to R. C. 3501.05(B). See, *State ex rel Myles v. Brunner*, 2008-Ohio-5097. The Complaint also does a challenge a tie vote decision of the Secretary. Rather, it solely challenges advice provided by a staff attorney to the staff of the board. While it is true that the staff attorney consulted with the Secretary in rendering the advice, it is still just advice to the board. If mandamus may be used as a remedy every time an elector disagrees with advice given by the Secretary’s office to a board of elections, the Court can surely expect to see a flood of requests for writs in the future. This is not proper use of such writs, nor the role of the Court to be involved in the day to day administration of Ohio’s election system.

CONCLUSION

For all of the above reasons, the Ohio Democratic Party urges that Relators' Complaint be dismissed and that their request for a Writ of Mandamus be denied

Respectfully submitted,


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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Merit Brief of Ohio Democratic Party was served upon all parties in the case via electronic mail and/or facsimile machine this 1st day of December 2008.


Donald J. McTigue

APPENDIX OF CITED STATUTORY SECTIONS

R.C. § 3501.05

3501.05 Duties and powers of secretary of state (later effective date)

The secretary of state shall do all of the following:

- (A) Appoint all members of boards of elections;
- (B) Issue instructions by directives and advisories in accordance with section 3501.053 of the Revised Code to members of the boards as to the proper methods of conducting elections.
- (C) Prepare rules and instructions for the conduct of elections;
- (D) Publish and furnish to the boards from time to time a sufficient number of indexed copies of all election laws then in force;
- (E) Edit and issue all pamphlets concerning proposed laws or amendments required by law to be submitted to the voters;
- (F) Prescribe the form of registration cards, blanks, and records;
- (G) Determine and prescribe the forms of ballots and the forms of all blanks, cards of instructions, pollbooks, tally sheets, certificates of election, and forms and blanks required by law for use by candidates, committees, and boards;
- (H) Prepare the ballot title or statement to be placed on the ballot for any proposed law or amendment to the constitution to be submitted to the voters of the state;
- (I) Except as otherwise provided in section 3519.08 of the Revised Code, certify to the several boards the forms of ballots and names of candidates for state offices, and the form and wording of state referendum questions and issues, as they shall appear on the ballot;
- (J) Except as otherwise provided in division (I)(2)(b) of section 3501.38 of the Revised Code, give final approval to ballot language for any local question or issue approved and transmitted by boards of elections under section 3501.11 of the Revised Code;
- (K) Receive all initiative and referendum petitions on state questions and issues and determine and certify to the sufficiency of those petitions;
- (L) Require such reports from the several boards as are provided by law, or as the secretary of state considers necessary;

(M) Compel the observance by election officers in the several counties of the requirements of the election laws;

(N)(1) Except as otherwise provided in division (N)(2) of this section, investigate the administration of election laws, frauds, and irregularities in elections in any county, and report violations of election laws to the attorney general or prosecuting attorney, or both, for prosecution;

(2) On and after August 24, 1995, report a failure to comply with or a violation of a provision in sections 3517.08 to 3517.13, 3517.17, 3517.18, 3517.20 to 3517.22, 3599.03, or 3599.031 of the Revised Code, whenever the secretary of state has or should have knowledge of a failure to comply with or a violation of a provision in one of those sections, by filing a complaint with the Ohio elections commission under section 3517.153 of the Revised Code;

(O) Make an annual report to the governor containing the results of elections, the cost of elections in the various counties, a tabulation of the votes in the several political subdivisions, and other information and recommendations relative to elections the secretary of state considers desirable;

(P) Prescribe and distribute to boards of elections a list of instructions indicating all legal steps necessary to petition successfully for local option elections under sections 4301.32 to 4301.41, 4303.29, 4305.14, and 4305.15 of the Revised Code;

(Q) Adopt rules pursuant to Chapter 119. of the Revised Code for the removal by boards of elections of ineligible voters from the statewide voter registration database and, if applicable, from the poll list or signature pollbook used in each precinct, which rules shall provide for all of the following:

(1) A process for the removal of voters who have changed residence, which shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 and the National Voter Registration Act of 1993, including a program that uses the national change of address service provided by the United States postal system through its licensees;

(2) A process for the removal of ineligible voters under section 3503.21 of the Revised Code;

(3) A uniform system for marking or removing the name of a voter who is ineligible to vote from the statewide voter registration database and, if applicable, from the poll list or signature pollbook used in each precinct and noting the reason for that mark or removal.

(R) Prescribe a general program for registering voters or updating voter registration information, such as name and residence changes, by boards of elections, designated agencies, offices of deputy registrars of motor vehicles, public high schools and

vocational schools, public libraries, and offices of county treasurers consistent with the requirements of section 3503.09 of the Revised Code;

(S) Prescribe a program of distribution of voter registration forms through boards of elections, designated agencies, offices of the registrar and deputy registrars of motor vehicles, public high schools and vocational schools, public libraries, and offices of county treasurers;

(T) To the extent feasible, provide copies, at no cost and upon request, of the voter registration form in post offices in this state;

(U) Adopt rules pursuant to section 111.15 of the Revised Code for the purpose of implementing the program for registering voters through boards of elections, designated agencies, and the offices of the registrar and deputy registrars of motor vehicles consistent with this chapter;

(V) Establish the full-time position of Americans with Disabilities Act coordinator within the office of the secretary of state to do all of the following:

(1) Assist the secretary of state with ensuring that there is equal access to polling places for persons with disabilities;

(2) Assist the secretary of state with ensuring that each voter may cast the voter's ballot in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters;

(3) Advise the secretary of state in the development of standards for the certification of voting machines, marking devices, and automatic tabulating equipment.

(W) Establish and maintain a computerized statewide database of all legally registered voters under section 3503.15 of the Revised Code that complies with the requirements of the "Help America Vote Act of 2002," Pub. L. No. 107-252, 116 Stat. 1666, and provide training in the operation of that system;

(X) Ensure that all directives, advisories, other instructions, or decisions issued or made during or as a result of any conference or teleconference call with a board of elections to discuss the proper methods and procedures for conducting elections, to answer questions regarding elections, or to discuss the interpretation of directives, advisories, or other instructions issued by the secretary of state are posted on a web site of the office of the secretary of state as soon as is practicable after the completion of the conference or teleconference call, but not later than the close of business on the same day as the conference or teleconference call takes place.

(Y) Publish a report on a web site of the office of the secretary of state not later than one month after the completion of the canvass of the election returns for each primary and general election, identifying, by county, the number of absent voter's ballots cast and the

number of those ballots that were counted, and the number of provisional ballots cast and the number of those ballots that were counted, for that election. The secretary of state shall maintain the information on the web site in an archive format for each subsequent election.

(Z) Conduct voter education outlining voter identification, absent voters ballot, provisional ballot, and other voting requirements;

(AA) Establish a procedure by which a registered elector may make available to a board of elections a more recent signature to be used in the poll list or signature pollbook produced by the board of elections of the county in which the elector resides;

(BB) Disseminate information, which may include all or part of the official explanations and arguments, by means of direct mail or other written publication, broadcast, or other means or combination of means, as directed by the Ohio ballot board under division (F) of section 3505.062 of the Revised Code, in order to inform the voters as fully as possible concerning each proposed constitutional amendment, proposed law, or referendum;

(CC) Perform other duties required by law.

Whenever a primary election is held under section 3513.32 of the Revised Code or a special election is held under section 3521.03 of the Revised Code to fill a vacancy in the office of representative to congress, the secretary of state shall establish a deadline, notwithstanding any other deadline required under the Revised Code, by which any or all of the following shall occur: the filing of a declaration of candidacy and petitions or a statement of candidacy and nominating petition together with the applicable filing fee; the filing of protests against the candidacy of any person filing a declaration of candidacy or nominating petition; the filing of a declaration of intent to be a write-in candidate; the filing of campaign finance reports; the preparation of, and the making of corrections or challenges to, precinct voter registration lists; the receipt of applications for absent voter's ballots or armed service absent voter's ballots; the supplying of election materials to precincts by boards of elections; the holding of hearings by boards of elections to consider challenges to the right of a person to appear on a voter registration list; and the scheduling of programs to instruct or reinstruct election officers.

In the performance of the secretary of state's duties as the chief election officer, the secretary of state may administer oaths, issue subpoenas, summon witnesses, compel the production of books, papers, records, and other evidence, and fix the time and place for hearing any matters relating to the administration and enforcement of the election laws.

In any controversy involving or arising out of the adoption of registration or the appropriation of funds for registration, the secretary of state may, through the attorney general, bring an action in the name of the state in the court of common pleas of the county where the cause of action arose or in an adjoining county, to adjudicate the question.

In any action involving the laws in Title XXXV of the Revised Code wherein the interpretation of those laws is in issue in such a manner that the result of the action will affect the lawful duties of the secretary of state or of any board of elections, the secretary of state may, on the secretary of state's motion, be made a party.

The secretary of state may apply to any court that is hearing a case in which the secretary of state is a party, for a change of venue as a substantive right, and the change of venue shall be allowed; and the case removed to the court of common pleas of an adjoining county named in the application or, if there are cases pending in more than one jurisdiction that involve the same or similar issues, the court of common pleas of Franklin county.

Public high schools and vocational schools, public libraries, and the office of a county treasurer shall implement voter registration programs as directed by the secretary of state pursuant to this section.

CREDIT(S)

(2008 H 350, eff. 9-12-08; 2007 H 119, eff. 9-29-07; 2006 H 312, eff. 8-22-06; 2006 H 3, eff. 5-2-06 (See Historical and Statutory Notes); 2004 H 262, eff. 5-7-04; 2001 H 5, eff. 8-28-01; 1995 H 99, eff. 8-22-95; 1995 S 9, eff. 8-24-95; 1994 S 300, eff. 1-1-95; 1980 H 1062, eff. 3-23-81; 1978 H 247; 1969 S 20; 125 v 543; 1953 H 1; GC 4785-7)

UNCODIFIED LAW

2006 H 312, § 3, eff. 8-22-06, reads:

(A) The amendments to sections 3501.05, 3501.38, and 3505.01 and the enactment of section 3519.08 of the Revised Code relating to the withdrawal of statewide initiative and referendum petitions shall be considered to be purely remedial in operation and shall be applied to any statewide initiative or referendum petition for which the Secretary of State has not yet certified a ballot form or wording to the boards of elections regardless of when the statewide initiative or referendum petition was filed with the Secretary of State and regardless of whether the statewide initiative or referendum petition has been verified by the Secretary of State.

(B) The amendments to sections 3501.05 and 3501.38 of the Revised Code relating to the withdrawal of initiative and referendum petitions filed for a municipal corporation, county, township, other political subdivision, or other statutory body exercising governmental authority shall be considered to be purely remedial in operation and shall be applied to any initiative or referendum petition for which the applicable board of elections has not yet given approval to or submitted to the Secretary of State ballot language and for which the Secretary of State has not yet given final approval to ballot

language, regardless of when the initiative or referendum petition was filed and regardless of whether the initiative or referendum petition has been verified.

HISTORICAL AND STATUTORY NOTES

Ed. Note: 2006 H 3, § 9(A). Effective Date Provision:

SECTION 9. (A) Notwithstanding any provision of this act to the contrary, the amendments made to sections 3501.05, 3503.16, 3503.19, 3503.24, 3505.18, 3505.20, 3505.22, 3509.09, 3511.13, and 3513.20 and the provisions enacted in sections 3501.19, 3503.28, 3505.181, 3505.182, and 3505.183 of the Revised Code that permit individuals to cast provisional ballots in an election or that otherwise specify election processes regarding provisional ballots shall take effect June 1, 2006.

Pre-1953 H 1 Amendments: 123 v 380; 113 v 307

R.C. § 3505.18

3505.18 Voting procedure (later effective date)

(A)(1) When an elector appears in a polling place to vote, the elector shall announce to the precinct election officials the elector's full name and current address and provide proof of the elector's identity in the form of a current and valid photo identification, a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, that shows the name and current address of the elector. If the elector provides either a driver's license or a state identification card issued under section 4507.50 of the Revised Code that does not contain the elector's current residence address, the elector shall provide the last four digits of the elector's driver's license number or state identification card number, and the precinct election official shall mark the poll list or signature pollbook to indicate that the elector has provided a driver's license or state identification card number with a former address and record the last four digits of the elector's driver's license number or state identification card number.

(2) If an elector has but is unable to provide to the precinct election officials any of the forms of identification required under division (A)(1) of this section, but has a social security number, the elector may provide the last four digits of the elector's social security number. Upon providing the social security number information, the elector may cast a provisional ballot under section 3505.181 of the Revised Code, the envelope of which ballot shall include that social security number information.

(3) If an elector has but is unable to provide to the precinct election officials any of the forms of identification required under division (A)(1) of this section and if the elector has a social security number but is unable to provide the last four digits of the elector's social security number, the elector may cast a provisional ballot under section 3505.181 of the Revised Code.

(4) If an elector does not have any of the forms of identification required under division (A)(1) of this section and cannot provide the last four digits of the elector's social security number because the elector does not have a social security number, the elector may execute an affirmation under penalty of election falsification that the elector cannot provide the identification required under that division or the last four digits of the elector's social security number for those reasons. Upon signing the affirmation, the elector may cast a provisional ballot under section 3505.181 of the Revised Code. The secretary of state shall prescribe the form of the affirmation, which shall include spaces for all of the following:

(a) The elector's name;

- (b) The elector's address;
- (c) The current date;
- (d) The elector's date of birth;
- (e) The elector's signature.

(5) If an elector does not have any of the forms of identification required under division (A)(1) of this section and cannot provide the last four digits of the elector's social security number because the elector does not have a social security number, and if the elector declines to execute an affirmation under division (A)(4) of this section, the elector may cast a provisional ballot under section 3505.181 of the Revised Code, the envelope of which ballot shall include the elector's name.

(6) If an elector has but declines to provide to the precinct election officials any of the forms of identification required under division (A)(1) of this section or the elector has a social security number but declines to provide to the precinct election officials the last four digits of the elector's social security number, the elector may cast a provisional ballot under section 3505.181 of the Revised Code.

(B) After the elector has announced the elector's full name and current address and provided any of the forms of identification required under division (A)(1) of this section, the elector shall write the elector's name and address at the proper place in the poll list or signature pollbook provided for the purpose, except that if, for any reason, an elector is unable to write the elector's name and current address in the poll list or signature pollbook, the elector may make the elector's mark at the place intended for the elector's name, and a precinct election official shall write the name of the elector at the proper place on the poll list or signature pollbook following the elector's mark. The making of such a mark shall be attested by the precinct election official, who shall evidence the same by signing the precinct election official's name on the poll list or signature pollbook as a witness to the mark. Alternatively, if applicable, an attorney in fact acting pursuant to section 3501.382 of the Revised Code may sign the elector's signature in the poll list or signature pollbook in accordance with that section.

The elector's signature in the poll list or signature pollbook then shall be compared with the elector's signature on the elector's registration form or a digitized signature list as provided for in section 3503.13 of the Revised Code, and if, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the election officials shall enter the date of the election on the registration form or shall record the date by other means prescribed by the secretary of state. The validity of an attorney in fact's signature on behalf of an elector shall be determined in accordance with section 3501.382 of the Revised Code.

If the right of the elector to vote is not then challenged, or, if being challenged, the elector establishes the elector's right to vote, the elector shall be allowed to proceed to use the

voting machine. If voting machines are not being used in that precinct, the judge in charge of ballots shall then detach the next ballots to be issued to the elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call the elector's name and the stub number on each of the ballots. The judge shall enter the stub numbers opposite the signature of the elector in the pollbook. The elector shall then retire to one of the voting compartments to mark the elector's ballots. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted the ballot.

CREDIT(S)

(2008 H 562, eff. 9-23-08; 2006 H 3, eff. 5-2-06 (See Historical and Statutory Notes); 1992 H 182, eff. 4-9-93; 1980 H 1062; 1977 S 125; 125 v 713; 1953 H 1; GC 4785-127)

R.C. § 3505.181

Baldwin's Ohio Revised Code Annotated Currentness

Title XXXV. Elections

Chapter 3505. General and Special Elections--Ballots; Voting (Refs & Annos)

Voting Procedure

3505.181 Provisional ballots (later effective date)

<Note: See also version(s) of this section with earlier effective date(s).>

(A) All of the following individuals shall be permitted to cast a provisional ballot at an election:

(1) An individual who declares that the individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote;

(2) An individual who has a social security number and provides to the election officials the last four digits of the individual's social security number as permitted by division (A)(2) of section 3505.18 of the Revised Code;

(3) An individual who has but is unable to provide to the election officials any of the forms of identification required under division (A)(1) of section 3505.18 of the Revised Code and who has a social security number but is unable to provide the last four digits of the individual's social security number as permitted under division (A)(2) of that section;

(4) An individual who does not have any of the forms of identification required under division (A)(1) of section 3505.18 of the Revised Code, who cannot provide the last four digits of the individual's social security number under division (A)(2) of that section because the individual does not have a social security number, and who has executed an affirmation as permitted under division (A)(4) of that section;

(5) An individual whose name in the poll list or signature pollbook has been marked under section 3509.09 or 3511.13 of the Revised Code as having requested an absent

voter's ballot or an armed service absent voter's ballot for that election and who appears to vote at the polling place;

(6) An individual whose notification of registration has been returned undelivered to the board of elections and whose name in the official registration list and in the poll list or signature pollbook has been marked under division (C)(2) of section 3503.19 of the Revised Code;

(7) An individual who is challenged under section 3505.20 of the Revised Code and the election officials determine that the person is ineligible to vote or are unable to determine the person's eligibility to vote;

(8) An individual whose application or challenge hearing has been postponed until after the day of the election under division (D)(1) of section 3503.24 of the Revised Code;

(9) An individual who changes the individual's name and remains within the precinct, moves from one precinct to another within a county, moves from one precinct to another and changes the individual's name, or moves from one county to another within the state, and completes and signs the required forms and statements under division (B) or (C) of section 3503.16 of the Revised Code;

(10) An individual whose signature, in the opinion of the precinct officers under section 3505.22 of the Revised Code, is not that of the person who signed that name in the registration forms;

(11) An individual who is challenged under section 3513.20 of the Revised Code who refuses to make the statement required under that section, who a majority of the precinct officials find lacks any of the qualifications to make the individual a qualified elector, or who a majority of the precinct officials find is not affiliated with or a member of the political party whose ballot the individual desires to vote;

(12) An individual who does not have any of the forms of identification required under division (A)(1) of section 3505.18 of the Revised Code, who cannot provide the last four digits of the individual's social security number under division (A)(2) of that section because the person does not have a social security number, and who declines to execute an affirmation as permitted under division (A)(4) of that section;

(13) An individual who has but declines to provide to the precinct election officials any of the forms of identification required under division (A)(1) of section 3501.18 of the Revised Code or who has a social security number but declines to provide to the precinct election officials the last four digits of the individual's social security number.

(B) An individual who is eligible to cast a provisional ballot under division (A) of this section shall be permitted to cast a provisional ballot as follows:

(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is both of the following:

(a) A registered voter in the jurisdiction in which the individual desires to vote;

(b) Eligible to vote in that election.

(3) An election official at the polling place shall transmit the ballot cast by the individual, the voter information contained in the written affirmation executed by the individual under division (B)(2) of this section, or the individual's name if the individual declines to execute such an affirmation to an appropriate local election official for verification under division (B)(4) of this section.

(4) If the appropriate local election official to whom the ballot or voter or address information is transmitted under division (B)(3) of this section determines that the individual is eligible to vote, the individual's provisional ballot shall be counted as a vote in that election.

(5)(a) At the time that an individual casts a provisional ballot, the appropriate local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system established under division (B)(5)(b) of this section whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

(b) The appropriate state or local election official shall establish a free access system, in the form of a toll-free telephone number, that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted. The free access system established under this division also shall provide to an individual whose provisional ballot was not counted information explaining how that individual may contact the board of elections to register to vote or to resolve problems with the individual's voter registration.

The appropriate state or local election official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system established under this division. Access to information about an individual ballot shall be restricted to the individual who cast the ballot.

(6) If, at the time that an individual casts a provisional ballot, the individual provides identification in the form of a current and valid photo identification, a military identification, or a copy of a current utility bill, bank statement, government check,

paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, that shows the individual's name and current address, or provides the last four digits of the individual's social security number, or executes an affirmation that the elector does not have any of those forms of identification or the last four digits of the individual's social security number because the individual does not have a social security number, or declines to execute such an affirmation, the appropriate local election official shall record the type of identification provided, the social security number information, the fact that the affirmation was executed, or the fact that the individual declined to execute such an affirmation and include that information with the transmission of the ballot or voter or address information under division (B)(3) of this section. If the individual declines to execute such an affirmation, the appropriate local election official shall record the individual's name and include that information with the transmission of the ballot under division (B)(3) of this section.

(7) If an individual casts a provisional ballot pursuant to division (A) (3), (7), (8), (12), or (13) of this section, the election official shall indicate, on the provisional ballot verification statement required under section 3505.182 of the Revised Code, that the individual is required to provide additional information to the board of elections or that an application or challenge hearing has been postponed with respect to the individual, such that additional information is required for the board of elections to determine the eligibility of the individual who cast the provisional ballot.

(8) During the ten days after the day of an election, an individual who casts a provisional ballot pursuant to division (A)(3), (7), (12), or (13) of this section shall appear at the office of the board of elections and provide to the board any additional information necessary to determine the eligibility of the individual who cast the provisional ballot.

(a) For a provisional ballot cast pursuant to division (A)(3), (12), or (13) of this section to be eligible to be counted, the individual who cast that ballot, within ten days after the day of the election, shall do any of the following:

(i) Provide to the board of elections proof of the individual's identity in the form of a current and valid photo identification, a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, that shows the individual's name and current address;

(ii) Provide to the board of elections the last four digits of the individual's social security number;

(iii) In the case of a provisional ballot executed pursuant to division (A)(12) of this section, execute an affirmation as permitted under division (A)(4) of section 3505.18 of the Revised Code.

(b) For a provisional ballot cast pursuant to division (A)(7) of this section to be eligible to be counted, the individual who cast that ballot, within ten days after the day of that election, shall provide to the board of elections any identification or other documentation required to be provided by the applicable challenge questions asked of that individual under section 3505.20 of the Revised Code.

(C)(1) If an individual declares that the individual is eligible to vote in a jurisdiction other than the jurisdiction in which the individual desires to vote, or if, upon review of the precinct voting location guide using the residential street address provided by the individual, an election official at the polling place at which the individual desires to vote determines that the individual is not eligible to vote in that jurisdiction, the election official shall direct the individual to the polling place for the jurisdiction in which the individual appears to be eligible to vote, explain that the individual may cast a provisional ballot at the current location but the ballot will not be counted if it is cast in the wrong precinct, and provide the telephone number of the board of elections in case the individual has additional questions.

(2) If the individual refuses to travel to the polling place for the correct jurisdiction or to the office of the board of elections to cast a ballot, the individual shall be permitted to vote a provisional ballot at that jurisdiction in accordance with division (B) of this section. If any of the following apply, the provisional ballot cast by that individual shall not be opened or counted:

(a) The individual is not properly registered in that jurisdiction.

(b) The individual is not eligible to vote in that election in that jurisdiction.

(c) The individual's eligibility to vote in that jurisdiction in that election cannot be established upon examination of the records on file with the board of elections.

(D) The appropriate local election official shall cause voting information to be publicly posted at each polling place on the day of each election.

(E) As used in this section and sections 3505.182 and 3505.183 of the Revised Code:

(1) "Jurisdiction" means the precinct in which a person is a legally qualified elector.

(2) "Precinct voting location guide" means either of the following:

(a) An electronic or paper record that lists the correct jurisdiction and polling place for either each specific residential street address in the county or the range of residential street addresses located in each neighborhood block in the county;

(b) Any other method that a board of elections creates that allows a precinct election official or any elector who is at a polling place in that county to determine the correct jurisdiction and polling place of any qualified elector who resides in the county.

(3) "Voting information" means all of the following:

(a) A sample version of the ballot that will be used for that election;

(b) Information regarding the date of the election and the hours during which polling places will be open;

(c) Instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;

(d) Instructions for mail-in registrants and first-time voters under applicable federal and state laws;

(e) General information on voting rights under applicable federal and state laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated;

(f) General information on federal and state laws regarding prohibitions against acts of fraud and misrepresentation.

CREDIT(S)

(2008 H 562, eff. 9-23-08; 2006 H 3, eff. 5-2-06 (See Historical and Statutory Notes))

R.C. § 3505.183

(A) When the ballot boxes are delivered to the board of elections from the precincts, the board shall separate the provisional ballot envelopes from the rest of the ballots. Teams of employees of the board consisting of one member of each major political party shall place the sealed provisional ballot envelopes in a secure location within the office of the board. The sealed provisional ballot envelopes shall remain in that secure location until the validity of those ballots is determined under division (B) of this section. While the provisional ballot is stored in that secure location, and prior to the counting of the provisional ballots, if the board receives information regarding the validity of a specific provisional ballot under division (B) of this section, the board may note, on the sealed provisional ballot envelope for that ballot, whether the ballot is valid and entitled to be counted.

(B)(1) To determine whether a provisional ballot is valid and entitled to be counted, the board shall examine its records and determine whether the individual who cast the provisional ballot is registered and eligible to vote in the applicable election. The board shall examine the information contained in the written affirmation executed by the individual who cast the provisional ballot under division (B)(2) of section 3505.181 of the Revised Code. If the individual declines to execute such an affirmation, the individual's name, written by either the individual or the election official at the direction of the individual, shall be included in a written affirmation in order for the provisional ballot to be eligible to be counted; otherwise, the following information shall be included in the written affirmation in order for the provisional ballot to be eligible to be counted:

(a) The individual's name and signature;

(b) A statement that the individual is a registered voter in the jurisdiction in which the provisional ballot is being voted;

(c) A statement that the individual is eligible to vote in the election in which the provisional ballot is being voted.

(2) In addition to the information required to be included in an affirmation under division (B)(1) of this section, in determining whether a provisional ballot is valid and entitled to be counted, the board also shall examine any additional information for determining ballot validity provided by the provisional voter on the affirmation, provided by the provisional voter to an election official under section 3505.182 of the Revised Code, or provided to the board of elections during the ten days after the day of the election under division (B)(8) of section 3505.181 of the Revised Code, to assist the board in determining the individual's eligibility to vote.

(3) If, in examining a provisional ballot affirmation and additional information under divisions (B)(1) and (2) of this section, the board determines that all of the following apply, the provisional ballot envelope shall be opened, and the ballot shall be placed in a ballot box to be counted:

- (a) The individual named on the affirmation is properly registered to vote.
 - (b) The individual named on the affirmation is eligible to cast a ballot in the precinct and for the election in which the individual cast the provisional ballot.
 - (c) The individual provided all of the information required under division (B)(1) of this section in the affirmation that the individual executed at the time the individual cast the provisional ballot.
 - (d) If applicable, the individual provided any additional information required under division (B)(8) of section 3505.181 of the Revised Code within ten days after the day of the election.
 - (e) If applicable, the hearing conducted under division (B) of section 3503.24 of the Revised Code after the day of the election resulted in the individual's inclusion in the official registration list.
- (4)(a) If, in examining a provisional ballot affirmation and additional information under divisions (B)(1) and (2) of this section, the board determines that any of the following applies, the provisional ballot envelope shall not be opened, and the ballot shall not be counted:
- (i) The individual named on the affirmation is not qualified or is not properly registered to vote.
 - (ii) The individual named on the affirmation is not eligible to cast a ballot in the precinct or for the election in which the individual cast the provisional ballot.
 - (iii) The individual did not provide all of the information required under division (B)(1) of this section in the affirmation that the individual executed at the time the individual cast the provisional ballot.
 - (iv) The individual has already cast a ballot for the election in which the individual cast the provisional ballot.
 - (v) If applicable, the individual did not provide any additional information required under division (B)(8) of section 3505.181 of the Revised Code within ten days after the day of the election.
 - (vi) If applicable, the hearing conducted under division (B) of section 3503.24 of the Revised Code after the day of the election did not result in the individual's inclusion in the official registration list.
 - (vii) The individual failed to provide a current and valid photo identification, a military identification, a copy of a current utility bill, bank statement, government check,

paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, with the voter's name and current address, or the last four digits of the individual's social security number or to execute an affirmation under division (A) of section 3505.18 or division (B) of section 3505.181 of the Revised Code.

(b) If, in examining a provisional ballot affirmation and additional information under divisions (B)(1) and (2) of this section, the board is unable to determine either of the following, the provisional ballot envelope shall not be opened, and the ballot shall not be counted:

(i) Whether the individual named on the affirmation is qualified or properly registered to vote;

(ii) Whether the individual named on the affirmation is eligible to cast a ballot in the precinct or for the election in which the individual cast the provisional ballot.

(C)(1) For each provisional ballot rejected under division (B)(4) of this section, the board shall record the name of the provisional voter who cast the ballot, the identification number of the provisional ballot envelope, the names of the election officials who determined the validity of that ballot, the date and time that the determination was made, and the reason that the ballot was not counted.

(2) Provisional ballots that are rejected under division (B)(4) of this section shall not be counted but shall be preserved in their provisional ballot envelopes unopened until the time provided by section 3505.31 of the Revised Code for the destruction of all other ballots used at the election for which ballots were provided, at which time they shall be destroyed.

(D) Provisional ballots that the board determines are eligible to be counted under division (B)(3) of this section shall be counted in the same manner as provided for other ballots under section 3505.27 of the Revised Code. No provisional ballots shall be counted in a particular county until the board determines the eligibility to be counted of all provisional ballots cast in that county under division (B) of this section for that election. Observers, as provided in section 3505.21 of the Revised Code, may be present at all times that the board is determining the eligibility of provisional ballots to be counted and counting those provisional ballots determined to be eligible. No person shall recklessly disclose the count or any portion of the count of provisional ballots in such a manner as to jeopardize the secrecy of any individual ballot.

(E)(1) Except as otherwise provided in division (E)(2) of this section, nothing in this section shall prevent a board of elections from examining provisional ballot affirmations and additional information under divisions (B)(1) and (2) of this section to determine the eligibility of provisional ballots to be counted during the ten days after the day of an election.

(2) A board of elections shall not examine the provisional ballot affirmation and additional information under divisions (B)(1) and (2) of this section of any provisional ballot for which an election official has indicated under division (B)(7) of section 3505.181 of the Revised Code that additional information is required for the board of elections to determine the eligibility of the individual who cast that provisional ballot until the individual provides any information required under division (B)(8) of section 3505.181 of the Revised Code, until any hearing required to be conducted under section 3503.24 of the Revised Code with regard to the provisional voter is held, or until the eleventh day after the day of the election, whichever is earlier.

CREDIT(S)

(2008 H 562, eff. 9-23-08; 2006 H 3, eff. 5-2-06 (See Historical and Statutory Notes))

42 U.S.C.A. § 1971

§ 1971. Voting rights

(a) Race, color, or previous condition not to affect right to vote; uniform standards for voting qualifications; errors or omissions from papers; literacy tests; agreements between Attorney General and State or local authorities; definitions

(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

(2) No person acting under color of law shall--

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

(B) 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; or

(C) employ any literacy test as a qualification for voting in any election unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to Title III of the Civil Rights Act of 1960 [42 U.S.C.A. § 1974 et seq.]: Provided, however, That the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

(3) For purposes of this subsection--

(A) the term "vote" shall have the same meaning as in subsection (e) of this section;

(B) the phrase "literacy test" includes any test of the ability to read, write, understand, or interpret any matter.

(b) Intimidation, threats, or coercion

No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

(c) Preventive relief; injunction; rebuttable literacy presumption; liability of United States for costs; State as party defendant

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any election. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

(d) Jurisdiction; exhaustion of other remedies

The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

(e) Order qualifying person to vote; application; hearing; voting referees; transmittal of report and order; certificate of qualification; definitions

In any proceeding instituted pursuant to subsection (c) of this section in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a) of this section, the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote.

Notwithstanding any inconsistent provision of State law or the action of any State officer or court, an applicant so declared qualified to vote shall be permitted to vote in any such election. The Attorney General shall cause to be transmitted certified copies of such order to the appropriate election officers. The refusal by any such officer with notice of such order to permit any person so declared qualified to vote to vote at an appropriate election shall constitute contempt of court.

An application for an order pursuant to this subsection shall be heard within ten days, and the execution of any order disposing of such application shall not be stayed if the effect of such stay would be to delay the effectiveness of the order beyond the date of any election at which the applicant would otherwise be enabled to vote.

The court may appoint one or more persons who are qualified voters in the judicial district, to be known as voting referees, who shall subscribe to the oath of office required by section 3331 of Title 5, to serve for such period as the court shall determine, to receive such applications and to take evidence and report to the court findings as to whether or not at any election or elections (1) any such applicant is qualified under State law to vote, and (2) he has since the finding by the court heretofore specified been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. In a proceeding before a voting referee, the applicant shall be heard ex parte at such times and

places as the court shall direct. His statement under oath shall be prima facie evidence as to his age, residence, and his prior efforts to register or otherwise qualify to vote. Where proof of literacy or an understanding of other subjects is required by valid provisions of State law, the answer of the applicant, if written, shall be included in such report to the court; if oral, it shall be taken down stenographically and a transcription included in such report to the court.

Upon receipt of such report, the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within ten days, or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report. Upon the expiration of such period, such order shall be entered unless prior to that time there has been filed with the court and served upon all parties a statement of exceptions to such report. Exceptions as to matters of fact shall be considered only if supported by a duly verified copy of a public record or by affidavit of persons having personal knowledge of such facts or by statements or matters contained in such report; those relating to matters of law shall be supported by an appropriate memorandum of law. The issues of fact and law raised by such exceptions shall be determined by the court or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures prescribed by the court. A hearing as to an issue of fact shall be held only in the event that the proof in support of the exception disclose the existence of a genuine issue of material fact. The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

The court, or at its direction the voting referee, shall issue to each applicant so declared qualified a certificate identifying the holder thereof as a person so qualified.

Any voting referee appointed by the court pursuant to this subsection shall to the extent not inconsistent herewith have all the powers conferred upon a master by rule 53(c) of the Federal Rules of Civil Procedure. The compensation to be allowed to any persons appointed by the court pursuant to this subsection shall be fixed by the court and shall be payable by the United States.

Applications pursuant to this subsection shall be determined expeditiously. In the case of any application filed twenty or more days prior to an election which is undetermined by the time of such election, the court shall issue an order authorizing the applicant to vote provisionally: Provided, however, That such applicant shall be qualified to vote under State law. In the case of an application filed within twenty days prior to an election, the court, in its discretion, may make such an order. In either case the order shall make appropriate provision for the impounding of the applicant's ballot pending determination of the application. The court may take any other action, and may authorize such referee or such other person as it may designate to take any other action, appropriate or necessary to carry out the provisions of this subsection and to enforce its decrees. This subsection shall in no way be construed as a limitation upon the existing powers of the court.

When used in the subsection, the word "vote" includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election; the words "affected area" shall mean any subdivision of the State in which the laws of the State relating to voting are or have been to any extent administered by a person found in the proceeding to have violated subsection (a) of this section; and the words "qualified under State law" shall mean qualified according to the laws, customs, or usages of the State, and shall not, in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) of this section in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist.

(f) Contempt; assignment of counsel; witnesses

Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel.

(g) Three-judge district court: hearing, determination, expedition of action, review by Supreme Court; single-judge district court: hearing, determination, expedition of action

In any proceeding instituted by the United States in any district court of the United States under this section in which the Attorney General requests a finding of a pattern or practice of discrimination pursuant to subsection (e) of this section the Attorney General, at the time he files the complaint, or any defendant in the proceeding, within twenty days after service upon him of the complaint, may file with the clerk of such court a request that a court of three judges be convened to hear and determine the entire case. A copy of the request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In any proceeding brought under subsection (c) of this section to enforce subsection (b) of this section, or in the event neither the Attorney General nor any defendant files a request for a three-judge court in any proceeding authorized by this subsection, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or, in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

CREDIT(S)

(R.S. § 2004; Sept. 9, 1957, Pub.L. 85-315, Pt. IV, § 131, 71 Stat. 637; May 6, 1960, Pub.L. 86-449, Title VI, § 601, 74 Stat. 90; July 2, 1964, Pub.L. 88-352, Title I, § 101, 78 Stat. 241; Aug. 6, 1965, Pub.L. 89-110, § 15, 79 Stat. 445.)

§ 15482. Provisional voting and voting information requirements

(a) Provisional voting requirements

If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is--

(A) a registered voter in the jurisdiction in which the individual desires to vote; and

(B) eligible to vote in that election.

(3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).

(4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.

(5)(A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any

individual who casts a provisional ballot will be able to ascertain under the system established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

(B) The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

States described in section 1973gg-2(b) of this title may meet the requirements of this subsection using voter registration procedures established under applicable State law. The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

(b) Voting information requirements

(1) Public posting on election day

The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.

(2) Voting information defined

In this section, the term “voting information” means--

(A) a sample version of the ballot that will be used for that election;

(B) information regarding the date of the election and the hours during which polling places will be open;

(C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;

(D) instructions for mail-in registrants and first-time voters under section 15483(b) of this title;

(E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

(F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

(c) Voters who vote after the polls close

Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a) of this section. Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.

(d) Effective date for provisional voting and voting information

Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2004.

CREDIT(S)

(Pub.L. 107-252, Title III, § 302, Oct. 29, 2002, 116 Stat. 1706.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2002 Acts. House Report No. 107-329(Part I), see 2002 U.S. Code Cong. and Adm. News, p. 1086.