

## **Advisory Memorandum**

**To:** The U.S. Commission on Civil Rights

**From:** The Ohio Advisory Committee to the U.S. Commission on Civil Rights

**Date:** May, 2018

**Subject:** Voting Rights in Ohio

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On January 17, 2018, the Ohio Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) elected to undertake a study of voting rights in the state. Specifically, in support of the Commission's 2018 Statutory Enforcement Report on voting rights in the United States, the Committee sought to review related testimony received during a Committee briefing in 2006 to: (1) determine the extent to which voting rights concerns raised in 2006 remained challenges in Ohio in 2018; and (2) identify any new voting rights concerns that may have surfaced in Ohio since that time. As part of its review, the Committee held additional briefings on March 2, 2018 and March 9, 2018. Panelists who had presented to the Committee in 2006 on the topic of voting rights were invited to return to update their testimony. Additional panelists currently involved in voting administration and advocacy were also invited to participate.<sup>1</sup>

The following advisory memorandum results from a review of the testimony provided to the Committee in 2006, combined with the additional testimony obtained in 2018. It begins with a brief background of the issue to be considered by the Committee. It then identifies primary findings as they emerged from this testimony. Finally, it makes recommendations for addressing related civil rights concerns. This memorandum focuses on the right of all eligible U.S. Citizens to participate in free and fair elections, to vote, and to have their vote counted. While other important topics may have surfaced throughout the Committee's inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion. This memorandum and the recommendations included within it were adopted by a majority of the Committee on May 24, 2018.

### **Background**

The right to vote is one of the most fundamental components of democracy—so important, that the U.S. Constitution includes four amendments protecting it.<sup>2</sup> Established under the Civil Rights Act of 1957, as part of its core mandate, the U.S. Commission on Civil Rights is directed to “[i]nvestigate formal allegations that citizens are being deprived of their right to vote and have

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<sup>1</sup> Please see Appendix for meeting agendas and complete list of speakers.

<sup>2</sup> U.S. Const. amend. XV, XIX, XXIV, XXVI. *Note:* Amendment XV guarantees the right to vote shall not be abridged or denied on the basis of “race, color, or previous condition of servitude”; Amendment XIX guarantees that the right to vote will not be abridged or denied “on account of sex”; Amendment XXIV guarantees that the right to vote will not be abridged or denied “by any reason of failure to pay poll tax or other tax”; Amendment XXVI guarantees the right to vote will not be abridged or denied on account of age for all citizens 18 years or older.

that vote counted by reason of their color, race, religion, or national origin.”<sup>3</sup> Throughout its history, the Commission and its Advisory Committees have released numerous reports on the state of voting rights in the U.S.<sup>4</sup>

The Committee notes that the Commission is presently conducting a study of voting rights in the United States nationally, in fulfillment of its 2018 statutory enforcement report to be submitted to Congress and the President. As part of this study, the Commission has requested that its advisory committees consider undertaking studies on voting rights in their respective jurisdictions. In this context, the Ohio Advisory Committee submits this memorandum to the Commission regarding the present state of voting rights in Ohio.

### **Overview of Testimony**

In considering this study the Committee sought balanced and diverse input from involved stakeholders representing all relevant perspectives. During each of the 2006 and the 2018 hearings, the Committee invited testimony from academic experts, county voting officials, state level elected officials representing both major political parties, and community advocates.<sup>5</sup> All invited parties who were unable to attend personally were offered the opportunity to send a delegate, or to submit a written statement offering their perspective on the civil rights concerns in question. During the 2006 hearings, the Committee was able to achieve reasonably diverse and inclusive participation from each of the aforementioned parties. During the Committee’s 2018 revisiting of the topic, however, despite numerous outreach attempts, no representative from the office of the Ohio Secretary of State chose to participate, and the Committee was unable to secure Republican representation from the current Ohio Legislature. The Committee acknowledges these limitations in the perspectives that follow.

### **Findings**

In keeping with their duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,<sup>6</sup> the Ohio Advisory Committee submits the following findings and recommendations to the Commission regarding voting rights in Ohio. These findings and recommendations are intended to highlight the most salient civil rights themes as they emerged from the Committee’s inquiry. In recognition of the Commission’s continued study of this topic, in lieu of providing a detailed discussion of each finding presented, the Committee offers a general outline of themes, along with appropriate

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<sup>3</sup> Voting, *1961 Comm’n on Civil Rights Rep.*, Foreword, p. xv, <http://www.law.umaryland.edu/marshall/usccr/documents/cr11961bk1.pdf> (last accessed July 21, 2016).

<sup>4</sup> See *Historical Publications of the United States Commission on Civil Rights*, Univ. of Md. Francis King Carey School of Law: Thurgood Marshall Law Library, [http://www.law.umaryland.edu/marshall/usccr/subilist\\_index.html](http://www.law.umaryland.edu/marshall/usccr/subilist_index.html) (last accessed July 21, 2016).

<sup>5</sup> The complete agenda and minutes from this meeting can be found in Appendix B.

<sup>6</sup> 45 C.F.R. § 703.2 (2018).

additional resources, as topics of reference for the Commission’s 2018 statutory enforcement report. The complete meeting transcripts are included in Appendix A for further reference.

The following findings result directly from the testimony received, and reflect the views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify due to their professional experience, academic credentials, subject expertise, and firsthand knowledge of the topics at hand.

1. Voter discrimination can be thought of in two separate but related and equally important categories: voter denial, and vote dilution.
  - a. Voter denial includes practices that impede eligible voters from casting their vote or from having their votes counted, such as strict voter ID requirements and limits on early and absentee voting.<sup>7</sup>
  - b. Vote dilution refers to practices that may weaken the strength of some groups’ votes, “particularly groups that are defined along lines of race or ethnicity,”<sup>8</sup> such as gerrymandering.
2. Voting is regarded as a fundamental right and has been acknowledged as such by the U.S. Supreme Court since the 19<sup>th</sup> century.<sup>9</sup>
  - a. Based on the standard set forth by *Crawford v. Marion County Election Board*,<sup>10</sup> if voting regulations burden voting rights, the court may consider the severity of the burden, the number of people affected, and the potential for disparate impact.<sup>11</sup> The state then must justify the burden by demonstrating that it serves an important regulatory interest.<sup>12</sup>
  - b. Section 2 of the Voting Rights Act, as amended in 1982, allows a claim to be made of race discrimination based on a result that is discriminatory, regardless of intent.<sup>13</sup>

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<sup>7</sup> See Daniel Tokaji, *Testimony Before the Ohio Advisory Committee to the U.S. Commission on Civil Rights*, Mar. 2, 2018, Transcript, p. 3 lines 10-15; p. 4 lines 14-26. Available at: <https://www.facadatabase.gov/committee/meetingdocuments.aspx?flr=155584&cid=268>. (Hereafter cited as *2018 Transcript I*). Note: after October 2018, transcripts will be available under the historical documents of the Committee, <https://facadatabase.gov/committee/histories.aspx?cid=268&fy=2018>. Also available at Appendix E.

<sup>8</sup> Tokaji Testimony, *2018 Transcript I*, pp. 3 lines 16-23, 4 lines 14-20.

<sup>9</sup> Tokaji Testimony, *2018 Transcript I*, p. 3 lines 20-31; Kerstin Sjoberg-Witt Testimony, *2018 Transcript I*, p. 13 lines 21-28.

<sup>10</sup> 553 U.S. 181 (2008).

<sup>11</sup> Tokaji Testimony, *2018 Transcript I*, p. 5 lines 10-31, pp. 25 line 35-26 line 16 (citing *Crawford v. Marion County Election Board*, 553 U.S.).

<sup>12</sup> Ibid.

<sup>13</sup> Voting Rights Act, Section 2, 42 U.S.C. § 1973; see also Tokaji Testimony, *2018 Transcript I*, p. 5 lines 27-39.

3. Voting practices and requirements in the United States vary widely from state to state.<sup>14</sup>
- a. Variance in election law results in confusion and misinformation.<sup>15</sup> For example, differences in voter ID laws between states may leave voters confused as to what is required in Ohio.<sup>16</sup> Individuals with felonies on their record are permitted to vote immediately upon completion of their sentence in Ohio, but not in other states.<sup>17</sup> This may lead many such individuals to be unaware of their right to vote, and may disproportionately impact people of color.<sup>18</sup>
  - b. There has been a significant increase in election related litigation in the United States since 2000.<sup>19</sup> Litigation and resulting frequent changes in voting laws may contribute to voter and poll worker confusion regarding voting requirements.<sup>20</sup> Changes are particularly damaging when rules are modified shortly before an election.<sup>21</sup> The Ohio Secretary of State's Office has reportedly not allocated any funding to voter education to make voters aware of the changes in 2018.<sup>22</sup> "Community groups and nonprofit organizations have had to stand in the gap to provide voters with information about the mechanics of how, where, and when to vote."<sup>23</sup>

#### 4. Poll worker training

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<sup>14</sup> Tokaji Testimony, *2018 Transcript I*, p. 21 lines 11-35.

<sup>15</sup> Kathleen Clyde, *Testimony Before the Ohio Advisory Committee to the U.S. Commission on Civil Rights*, March 9, 2018, Transcript p. 14 lines 9-15 (Hereafter cited as *2018 Transcript II*). Available at: <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155585&cid=268>. Note: after October 2018, transcripts will be available under the historical documents of the Committee, <https://facadatabase.gov/committee/histories.aspx?cid=268&fy=2018>. Also available at Appendix E. See also: Camille Wimbish, Director, Ohio Voter Rights Coalition, *Written Statement for the Ohio Advisory Committee to the U.S. Commission on Civil Rights*, March 1, 2018, at 2. (Hereafter cited as Wimbish Statement). Available at Appendix F(a).

<sup>16</sup> Clyde Testimony, *2018 Transcript II*, p. 14 lines 9-15.

<sup>17</sup> Wimbish Statement at 3.

<sup>18</sup> Catherine Turcer Testimony, *2018 Transcript I*, p. 12 lines 6-12; Clyde Testimony, *2018 Transcript II*, p. 14 lines 9-15.

<sup>19</sup> Tokaji Testimony, *2018 Transcript I*, p. 4 line 27 - p. 7 line 2; Clyde Testimony, *March 9, 2018 Transcript*, p. 8 line 13 - p. 9 line 2; Paul Moke, *Testimony Before the Ohio Advisory Committee to the U.S. Commission on Civil Rights*, meeting, Columbus, OH, Mar. 16-17, 2006, Transcript, p. 25 lines 1-5. (Hereafter cited as *2006 Transcript*) p. 23. Available at Appendix B.

<sup>20</sup> Such concern is ongoing. See, e.g., Tokaji Testimony, *2006 Transcript*, p. 19 lines 7-23 (discussing the state's voter ID requirements) Wimbish Statement at 2.

<sup>21</sup> Damschroder Testimony, *2006 Transcript*, p. 259 line 8-22.

<sup>22</sup> Turcer Testimony, *2018 Transcript I*, p. 11 lines 6-12, p. 23 lines 22-33 Gresham Testimony, *2006 Transcript*, p. 77, lines 16-21.

<sup>23</sup> Wimbish Statement at 2.

- a. State law requires poll workers to be trained every three years, and voting location managers to be trained before every federal primary election.<sup>24</sup> However, some counties implement additional training for poll workers.<sup>25</sup>
- b. Franklin County trains poll workers before every election.<sup>26</sup> Franklin County also allows its poll workers to practice their roles the weekend before an election, and to be trained in specialized roles, to avoid an overload of information during the trainings.<sup>27</sup>
- c. In 2006, the Secretary of State's Office testified that funding was available for poll worker training, though only 14 counties had utilized those funds.<sup>28</sup> The Secretary's office did not provide updated testimony in 2018.

## 5. Voters with Disabilities

- a. Individuals with disabilities, particularly those who may reside in institutional settings, are often unaware of their voting rights.<sup>29</sup> Increased education is needed.<sup>30</sup>
- b. The Committee heard testimony about individuals who are hospitalized outside of their county having difficulty getting access to absentee ballots to which they are entitled.<sup>31</sup>
- c. Ohio has a number of provisions such as curbside voting, accessible voting machines, and allowances for personal assistance that improve the accessibility of most polling locations.<sup>32</sup> Poll worker and voter education remain the most important factors in making sure these accommodations are properly implemented.<sup>33</sup> One panelist recommended establishing a disability liaison at each polling location rather than training every poll worker, because the amount of information conveyed to poll workers can be overwhelming.<sup>34</sup>

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<sup>24</sup> Ohio Rev. Code § 3501.27(B).

<sup>25</sup> Leonard Testimony, *2018 Transcript II*, p. 5 lines 9-16.

<sup>26</sup> Leonard Testimony, *2018 Transcript II*, p. 5 lines 9-23, 33-42.

<sup>27</sup> Ibid.

<sup>28</sup> Cassandra Hicks Testimony, *2006 Transcript* at 153.

<sup>29</sup> Sjoberg-Witt Testimony, *2018 Transcript I*, p. 13 lines 12-20; p. 23 lines 34-38.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid. pp. 16 line 27 – p. 17 line 21.

<sup>32</sup> Ibid. p. 17 lines 22-40, p. 15 lines 14-19; Leonard Testimony, *2018 Transcript II*, p. 6 lines 1-23. *Note:* such provisions indicate a significant improvement; 2006 testimony before the Committee indicated that almost 25% of polling places throughout the state were not accessible to people with disabilities. *See 2006 Transcript*, p. 14 lines 15-21.

<sup>33</sup> Sjoberg-Witt Testimony, *2018 Transcript I*, p. 17 lines 22-40, p. 15 lines 24-34, p. 23 line 38 – p. 24 line 22; Pederson Testimony, *2018 Transcript I*, p. 25 lines 18-22; Willis Testimony, *2006 Transcript*, p. 100.

<sup>34</sup> Sjoberg-Witt Testimony, *2018 Transcript I*, p. 24 lines 18-22.

- d. In an effort to ensure that all polling places are accessible, some polling locations have been consolidated.<sup>35</sup> This has led to transportation issues as voters must travel longer distances to vote.<sup>36</sup>
  - e. Signature matching as a form of identity verification may present a barrier to individuals with disabilities who either cannot sign their name or whose signature may vary significantly from time to time.<sup>37</sup> Currently there is no accommodation for such individuals outside of designating a power of attorney for voting.<sup>38</sup>
6. Provisional voting in Ohio
- a. Ohio has seen a number of cases regarding the counting of provisional ballots since 2004.<sup>39</sup> One panelist noted that Ohio is one of the top states in the country for the number of provisional ballots and the number of ballots that are thrown out.<sup>40</sup> If provisional ballots are not counted, the voter has no right to challenge that decision.<sup>41</sup> In close races, provisional ballots can have a significant impact on the outcomes of the election.<sup>42</sup>
  - b. Franklin County developed an envelope for provisional ballots that includes a template to indicate to the voter which items must be completed in order to ensure the ballot will be counted.<sup>43</sup> This has resulted in a reduction in the number of ballots being ruled invalid.<sup>44</sup>
  - c. Boards of Elections may make varying efforts to count provisional ballots; however, they are limited by the Secretary of State's Office as to what information they can access in an effort to validate ballots and count them.<sup>45</sup>
  - d. In 2012, one house race was decided by just four votes.<sup>46</sup> In this election, the local Board of Elections threw out votes because of data entry errors affecting provisional ballots, even though voters provided the correct information.<sup>47</sup>

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<sup>35</sup> Sjoberg-Witt Testimony, *2018 Transcript I*, p. 15 lines 20-24.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*, p. 18 lines 1-9.

<sup>38</sup> *Ibid.*

<sup>39</sup> Tokaji Testimony, 2018 Panelist Presentations I, Slide 23. Available at Appendix E; Tokaji Testimony, 2018 *Transcript I*, p. 7 lines 10-26; Clyde Testimony, *2018 Transcript II*, p. 8 lines 8-9.

<sup>40</sup> Clyde Testimony, *2018 Transcript II*, p. 8 lines 32-38; p. 10 lines 17-18.

<sup>41</sup> Gresham Testimony, *2006 Transcript*, p. 78.

<sup>42</sup> *Ibid.*

<sup>43</sup> Leonard Testimony, *2018 Transcript II*, p. 6 lines 34-44.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.* p. 22 lines 18-40.

<sup>46</sup> Clyde Testimony, *2018 Transcript II*, p. 9 lines 5-18.

<sup>47</sup> *Ibid.*

## 7. Early and Absentee Voting

- a. In Ohio, all counties are permitted only one location for early, in person voting, with limited hours, regardless of the county's population.<sup>48</sup> This disproportionately results in long lines for voting in urban, more densely populated counties who must accommodate more voters.<sup>49</sup>
- b. In 2014, Ohio passed a bill (S.B. 205 (2014)) stating that absentee ballot applications may only be mailed by the Secretary of State if the legislature appropriates money to do so.<sup>50</sup>
  - i. This has disproportionately affected urban counties that have traditionally sent out absentee ballot applications as a way to encourage early voting in order to lessen problems with long lines and crowded conditions that do not affect more rural voters.<sup>51</sup>
  - ii. This same bill also instituted "hyper-technical" rules that disqualify ballots for paperwork errors "such as writing a name in legible cursive instead of print, omitting a zip code from an address, or missing a single digit from a social security number."<sup>52</sup>
- c. Limitations on absentee mail-in voting and early voting may also disproportionately affect African American voters<sup>53</sup> and people with disabilities<sup>54</sup> who tend to gravitate toward such alternative voting provisions.
- d. Absentee ballots are tracked and processed at the county level.<sup>55</sup>
  - i. Voter ability to track receipt of their ballot may help to improve voter confidence in early voting.<sup>56</sup>

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<sup>48</sup> See Ohio Rev. Code Ann. § 3501.10(C) seemingly limits early voting to the county clerk's office ("The board of elections may maintain permanent or temporary branch offices at any place within the county, provided that, if the board of elections permits electors to vote at a branch office, electors shall not be permitted to vote at any other branch office or any other office of the board of elections."); See also: Turcer Testimony, *2018 Transcript I*, p. 10 lines 15-21; Clyde Testimony, *2018 Transcript II*, p. 9 lines 21-26.

<sup>49</sup> Turcer Testimony, *2018 Transcript I*, p. 10 lines 15-25; Clyde Testimony, *2018 Transcript II*, p. 9 lines 21-26.

<sup>50</sup> Wimbish Statement at 2.

<sup>51</sup> Turcer Testimony, *2018 Transcript I*, p. 10 lines 26-37; Wimbish Statement at 1.

<sup>52</sup> Wimbish Statement at 2. See also: Clyde Testimony, *2018 Transcript II* p. 18 line 32 – p. 19 line 40.

<sup>53</sup> Clyde Testimony, *2018 Transcript II*, p. 10 lines 8-16.

<sup>54</sup> Pederson Testimony *2018 Transcript I*, p. 24 line 32 — p. 25 line 17.

<sup>55</sup> Leonard Testimony, March 9, 2018 Transcript p. 16 line 28 – p. 17 line 8.

<sup>56</sup> Ibid; Wimbish Statement at 1.

- ii. There is currently no reporting to the Secretary of State's Office on tracking or processing of absentee ballots.<sup>57</sup>
- iii. Some concern was raised that counties may be inconsistent in how they count provisional and absentee ballots.<sup>58</sup>
- e. Ohio introduced no fault absentee/early voting in 2008.<sup>59</sup> Previously, early voting had been available only to those with demonstrated need.<sup>60</sup> Individual counties have made efforts to advertise and educate voters about this opportunity. 40% of voters in Franklin County cast their ballots early in 2016, and the County spent \$245,000 on advertising to announce the opportunity.<sup>61</sup> Aggressive advertising for early and absentee voting has helped to reduce long lines at the polls on Election Day in Franklin County.<sup>62</sup>

## 8. Voter Registration

- a. As of 2017, Ohio allows citizens to register to vote online.<sup>63</sup> While this provision has been lauded as a positive expansion of voter access, it was noted that online registration requires a driver's license or state ID.<sup>64</sup> This requirement excludes eligible voters who may not have a state ID or driver's license such as students temporarily residing in Ohio who have not obtained a state ID, the elderly, Ohioans with disabilities, individuals living in poverty, those who do not drive, and others.<sup>65</sup>
- b. Ohio closes voter registration 30 days before an election, the longest time allowed under federal law.<sup>66</sup> Same day voter registration and automatic voter registration are directly correlated with voter turnout.<sup>67</sup> States with same day registration

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<sup>57</sup> Leonard Testimony, *2018 Transcript II*, p. 16 line 36 – p. 17 line 8.

<sup>58</sup> Clyde Testimony, *2018 Transcript II*, p. 19 lines 20-40.

<sup>59</sup> Clyde Testimony, *2018 Transcript II*, p. 8 lines 11-12.

<sup>60</sup> *Obama for America v. Husted*, 697 F.3d 423 (6th Cir. 2012). The 6<sup>th</sup> Circuit Court invalidated the differential treatment of voters; differential treatment of military and overseas workers from other voters with respect to early voting was not justified. See Tokaji Testimony, *2018 Transcript I*, p. 7 lines 27-39. 2018; Panelist Presentations I, slide 24.

<sup>61</sup> Leonard Testimony, *2018 Transcript II*, p. 4 lines 3-19.

<sup>62</sup> *Ibid*, p. 23 line 34 – p. 24 line 2.

<sup>63</sup> *Ibid*, p. 7 lines 12-18; Turcer Testimony, *2018 Transcript I*, p. 22 lines 14-34; Wimbish Statement at 1.

<sup>64</sup> See requirements at Secretary of State: Register to vote or update your voter registration information: <https://olvr.sos.state.oh.us/> (last accessed June 15, 2018)

<sup>65</sup> Clyde Testimony *2018 Transcript II*, p. 10 lines 1-7.

<sup>66</sup> 52 U.S.C. § 20507(a)(1); See also: Ohio Secretary of State, Register to vote and update your registration: What is the registration deadline? <https://www.sos.state.oh.us/elections/voters/register/#gref> (last accessed June 15, 2018).

<sup>67</sup> Clyde Testimony, March 9, 2018 Transcript, p. 14 lines 22-29.



reportedly have 5-10% higher voter turnout than Ohio.<sup>68</sup> In 2016, Ohio saw its lowest voter turnout as a state since 2000 for a major presidential election.<sup>69</sup>

- c. Ohio previously allowed same day registration and early voting for one week, between 35 and 30 days prior to an election.<sup>70</sup> Once known as “Golden Week” this opportunity has been canceled.<sup>71</sup>
- d. Ohio is currently one of the most aggressive states in purging voter registration rolls.<sup>72</sup>
  - i. If a voter does not participate in a general election, the local Board of Elections is to mail a postcard asking the voter to confirm registration status and address.<sup>73</sup> If the voter does not respond to the postcard, or vote in the next two election cycles, the voter’s registration is canceled with no further notice.<sup>74</sup>
  - ii. If a citizen attempts to vote after his or her voter registration has been canceled, he or she is given a provisional ballot.<sup>75</sup> The provisional ballot is *not* counted for the present election cycle; however, the envelope containing the provisional ballot, if completed properly, can double as a voter registration form, re-registering the voter for the *next* election cycle.<sup>76</sup>
  - iii. Ohio has canceled the voter registration of more than two million voters since 2011 for failure to vote in two consecutive elections.<sup>77</sup> Litigation challenging this process as a violation of the National Voter Registration Act is currently pending before the U.S. Supreme Court.<sup>78</sup>
  - iv. Canceling voter registration of those who have not voted in at least two election cycles may disproportionately impact African American voters and voters from urban areas,<sup>79</sup> as well as others living in poverty, those without a permanent home, and individuals with disabilities, “who may

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<sup>68</sup> Ibid.

<sup>69</sup> Ibid. p. 9 lines 32-34.

<sup>70</sup> Ohio Rev. Code Ann. §§ 3509.01, 3511.10.

<sup>71</sup> Tokaji Testimony, *2018 Transcript I*, p. 21 lines 22-26; p. 7 lines 27-39; Wimbish Statement at 1-2.

<sup>72</sup> Turcer Testimony, *2018 Transcript I*, p. 9 line 36 – p. 10 line 15; Wimbish Statement at 1.

<sup>73</sup> Clyde Testimony, *2018 Transcript II*, p. 12 lines 3-23; Turcer Testimony, *2018 Transcript I*, p. 19 line 28 – p. 20 line 9; Wimbish Statement at 1.

<sup>74</sup> Ibid.

<sup>75</sup> Clyde Testimony, *2018 Transcript II*, p. 13 lines 8-14.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid. p. 9 lines 35-42, p. 10 line 13.

<sup>78</sup> Ibid, p. 9 lines 35-42; Tokaji Testimony, *2018 Transcript I*, p. 7 line 40 – p. 8 line 11; Wimbish Statement at 1.

<sup>79</sup> Turcer Testimony, *2018 Transcript I*, p. 9 line 36 – p. 10 line 15.

find it difficult to vote and perhaps only vote in presidential elections as a result.”<sup>80</sup>

- v. Infrequent voters are moved to an “inactive” list prior to their registration being canceled.<sup>81</sup> In 2016, 13% of registered voters (approximately 1 million people) were deemed “inactive.”<sup>82</sup> These voters did not receive information from the Secretary of State’s Office about vote by mail, in contrast to “active” registered voters,<sup>83</sup> raising concerns about equal treatment. There was also concern that voters flagged as “inactive” were disproportionately black voters.<sup>84</sup>
  - vi. Funding available for new voting machines is proposed to be based on the number of registered voters.<sup>85</sup> Large cancellations of voter registration may impact the funding available in the most affected counties.<sup>86</sup>
  - vii. Some panelists indicated that choosing not to vote is an exercise of First Amendment rights to free speech, and should be protected as such.<sup>87</sup>
- e. It is important for the Secretary of State to maintain accurate voter rolls.<sup>88</sup>
    - i. Advocates and legal experts have noted vehicle registration changes, death records, and change of address notifications are more reliable indicators of a voter’s continued eligibility than failure to vote in two consecutive elections.<sup>89</sup>
    - ii. In 2016 Ohio joined the Electronic Resource Information Center, an interstate data sharing service sponsored by the Pew Center, which reportedly may improve the accuracy of voter rolls.<sup>90</sup>
  - f. Ohio maintains a state wide voter database so that if a voter moves from one county to another, both counties are notified.<sup>91</sup> The voter is removed from the

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<sup>80</sup> Sjoberg-Witt Testimony, *2018 Transcript I*, p. 18 lines 19-28.

<sup>81</sup> Turcer Testimony, *2018 Transcript I*, p. 11 lines 39-41.

<sup>82</sup> Turcer Testimony, *2018 Transcript I*, pp. 11 line 39 – p. 12 line 5; Clyde Testimony, *2018 Transcript II*, pp. 9 lines 27-34; Wimbish Statement at 2.

<sup>83</sup> Ibid.

<sup>84</sup> Clyde Testimony, *2018 Transcript II*, p. 9 lines 27-34.

<sup>85</sup> Clyde Testimony, *2018 Transcript II*, p. 10 lines 18-24.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid; p. 13 line 35-p. 14 line 3; Turcer Testimony, *2018 Transcript I*, p. 9 line 36 – p. 10 line 15.

<sup>88</sup> Leonard Testimony, *2018 Transcript II*, p. 12 lines 25-36.

<sup>89</sup> Ibid; Tokaji Testimony, *2018 Transcript I*, p. 20 lines 11-39.

<sup>90</sup> Wimbish Statement at 1.

<sup>91</sup> Leonard Testimony, *2018 Transcript II*, pp. 17 line 18 – p. 18 line 10.

rolls in their old county and added to the roll in their new county.<sup>92</sup> There is no such tracking system available at the national level.<sup>93</sup>

## 9. Voting Administration

- a. Ohio permits a number of forms of voter identification, including utility bills, government checks, and pay stubs.<sup>94</sup> This is less strict than many other states and helps to facilitate voter access.<sup>95</sup>
- b. Voting machines in Ohio are aging, and funding for new machines is currently not in the state's capital budget.<sup>96</sup> Without state funding, wealthier counties with the funding to updates or replace their machines will have an advantage over counties with fewer resources.<sup>97</sup>
- c. Franklin County has addressed previous concerns about long lines and voting machine shortages by expanding the number of machines from 2,800 in 2004 to 4,735 in 2018.<sup>98</sup> These machines also include a voter-verifiable paper trail.<sup>99</sup>
- d. In addition to increasing the number of voting machines to address problems with long lines, some counties have moved from a precinct based voting system to a location based voting system, allowing voters to report to any location in their precinct.<sup>100</sup>
- e. The use of electronic poll books, allowing voters to sign in at any table (rather than requiring them to sign in at the table corresponding to their last name), has also helped to reduce lines at polling sites.<sup>101</sup>
- f. While the integrated use of technology has largely been well received as a positive solution to several voting challenges, a tension exists in balancing the use

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<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> See Ohio Secretary of State, Elections and Voting, Identification Requirements:

<https://www.sos.state.oh.us/elections/voters/id-requirements/#gref> (last accessed June 15, 2018).

<sup>95</sup> Turcer Testimony, *2018 Transcript I*, p. 9 lines 1-10; Sjoberg-Witt Testimony, *2018 Transcript I*, p. 18 lines 15-16; Wimbish Statement at 1. See also: National Conference of State Legislatures, Voter Identification Requirements | Voter ID Laws, available at: <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> (last accessed May 17, 2018).

<sup>96</sup> Turcer Testimony, *2018 Transcript I*, pp. 10 line 38 – p. 11 line 5.

<sup>97</sup> Ibid.

<sup>98</sup> Leonard Testimony, *2018 Transcript II*, p. 3 lines 16-29.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid, pp. 3 line 26 – p. 4 line 2, p. 23 lines 31-34.

<sup>101</sup> Ibid, pp. 4 lines 20-29, p. 23 lines 33-34, p. 24 lines 3-14.

of such technology with security concerns, economic limitations,<sup>102</sup> and public education.<sup>103</sup>

## 10. Districting

- a. Panelists expressed concern about gerrymandering in Ohio. In the current redistricting plan, the state's 11<sup>th</sup> congressional district is 80% Democratic and 52% African American.<sup>104</sup> One panelist suggested that, "Race was almost certainly the predominant factor in drawing this district and its boundaries almost certainly could not be defended as necessary under the Voting Rights Act."<sup>105</sup>
- b. Ohio will place a bipartisan measure on the ballot in the spring of 2018 that would reform the process for drawing the state's congressional districts.<sup>106</sup>

## 11. Election security

- a. Testimony indicated that there is little evidence of voter fraud generally, and noncitizens voting in U.S. elections specifically.<sup>107</sup>
- b. It is difficult to impose proof-of-citizenship requirements related to voting because "we don't have a national system for determining with precision who is and is not a citizen."<sup>108</sup> Courts have historically not supported laws that treat natural born and naturalized citizens differently for the purposes of voting.<sup>109</sup>
- c. At least two panelists noted significant risk of foreign nationals and foreign powers interfering with U.S. elections generally and in Ohio specifically.<sup>110</sup>
- d. One panelist recommended hiring a dedicated cyber security director at the Secretary of State's office, advised by a bipartisan council of security experts,

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<sup>102</sup> Clyde Testimony, *2018 Transcript II*, p. 16 lines 9-16; Moke Testimony, *2006 Transcript*, pp. 27-28; Turcer Testimony, *2006 Transcript*, p. 38.

<sup>103</sup> Moke Testimony, *2006 Transcript*, pp. 27-29; Jeff Jacobson Testimony, *2006 Transcript*, pp. 166-168.

<sup>104</sup> Tokaji Testimony, *2018 Transcript I*, p. 8 lines 12-34.

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*, p. 21 lines 27-35. *Note: this ballot measure was passed by Ohio voters in May of 2018. See: Wilson, Reid, Ohio voters pass redistricting reform initiative. The Hill*, May 8, 2018. Available at: <http://thehill.com/homenews/state-watch/386839-ohio-voters-pass-redistricting-reform-initiative> (last accessed June 15, 2018).

<sup>107</sup> Dan Tokaji, Associate Dean for Faculty, Charles W. Ebersold & Florence Whitcomb Ebersold Professor of Constitutional Law, The Ohio State University, Moritz College of Law, Written Statement for the Ohio Advisory Board to the U.S. Commission on Civil Rights, May 14, 2018, pp. 1-4. (Hereafter cited as *Tokaji Statement*). Available at Appendix F.

<sup>108</sup> Tokaji Testimony, *2018 Transcript I*, p. 27 lines 16-29.

<sup>109</sup> *Ibid.* lines 4-16 (discussing *Boustani v. Blackwell*, 460 F. Supp.2d 822 (N.D. Ohio 2006)). *See also:* Tokaji Testimony, *2006 Transcript*, pp. 20-21.

<sup>110</sup> Tokaji Testimony, *2018 Transcript I*, pp. 26 line 34 – p. 27 line 3; Clyde Testimony, *2018 Transcript II*, pp. 10 lines 25-30, p. 15 lines 37-42.

election officials, and voter advocates. However, recent cuts at the Secretary of State's office may make hiring such a position difficult.<sup>111</sup>

- e. Electronic voting machines in Ohio contain a paper trail for auditing purposes.<sup>112</sup> However, one panelist noted that poll workers do not always show the paper trail to voters for verification.<sup>113</sup> Paper ballots were noted as more secure and more economical than electronic.<sup>114</sup>
- f. While audits currently exist to ensure that vote tabulation is accurate in Ohio, these audits are not required under state law.<sup>115</sup> Random, external audits, not conducted by the Secretary of State or a nonpartisan office, are important to ensure fair and reliable outcomes, and to increase public confidence so that citizens will vote.<sup>116</sup>
- g. Voting security and equipment maintenance is currently the responsibility of the administering county.
  - i. In Franklin County security measures include not connecting voting machines to the internet; locking machines and sealing them with tamper evident seals; and holding live ballots under double lock and key at the Board of Elections.<sup>117</sup>
  - ii. Voter registration information is sent to the Secretary of State over the internet and could potentially be susceptible to cyber-attack.<sup>118</sup> In Franklin County, the Board of Elections maintains duplicate records.<sup>119</sup> The county also collaborates with the Department of Homeland Security for cyber security efforts.<sup>120</sup>

## 12. Voter Intimidation

- a. The Committee heard testimony that in 2012 intimidating billboards warning of jail time and large fines for voting offenses were predominantly placed in African American neighborhoods.<sup>121</sup>

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<sup>111</sup> Clyde Testimony, *2018 Transcript II*, p. 16 lines 1-8.

<sup>112</sup> Turcer Testimony, *2018 Transcript I*, p. 9 lines 24-35.

<sup>113</sup> *Ibid*, p. 11 lines 29-36.

<sup>114</sup> Clyde Testimony, *2018 Transcript II*, p. 16 lines 9-16.

<sup>115</sup> *Ibid*, p. 16 lines 17-21.

<sup>116</sup> Turcer Testimony, *2006 Transcript*, p. 39.

<sup>117</sup> Leonard Testimony, *2018 Transcript II*, p. 15 lines 10-36.

<sup>118</sup> *Ibid*.

<sup>119</sup> *Ibid*.

<sup>120</sup> *Ibid*.

<sup>121</sup> Clyde Testimony, *2018 Transcript II*, p. 9 lines 3-5; Clyde 2018 Testimony, Panelist Presentations II, Slide 11. Available at Appendix E.

- b. In 2016, there were reports of men riding around in pickup trucks at the polls threatening voters in Summit County Ohio.<sup>122</sup> One panelist noted that harassment at the polls is prohibited under state and federal law; however, “harassment” is not defined.<sup>123</sup>

### 13. Language Access

- a. Section 203 of the Voting Rights Act requires that certain jurisdictions<sup>124</sup> provide all election materials that are available in English in the applicable minority language as well. This includes registration or voting notices, forms, instructions, assistance, ballots, and other materials.<sup>125</sup>
- b. Currently there are no jurisdictions covered under Section 203 in Ohio.<sup>126</sup> However, the Committee heard testimony that Franklin County may be nearing the federal threshold for coverage in Spanish and Somali in some precincts, and should be preparing multilingual voting materials accordingly.<sup>127</sup>
- c. The Franklin County Board of Elections has one Somali employee who is able to assist Somali voters.<sup>128</sup>

14. Partisanship: The Committee heard significant testimony about the detrimental effect of partisan infighting in the U.S. election system and voter participation.<sup>129</sup> Negative campaign ads and partisan infighting discourage voters from participating.<sup>130</sup>

### **Recommendations**

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports

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<sup>122</sup> Clyde Testimony, *2018 Transcript II*, p. 9 lines 19-22.

<sup>123</sup> Rosenfeld Testimony, *2006 Transcript*, p. 87.

<sup>124</sup> Jurisdictions under Section 203 include where the number of U.S. citizens of voting age is a single language group is more than 10,000; or, is more than 5% of all voting age citizens; or, On an Indian reservation, exceeds 5% of all reservation residents; and the illiteracy rate of the group is higher than the national illiteracy rate. Voting Rights Act, Section 203, 52 U.S.C. § 10503. *See also*: The United States Department of Justice, Civil Rights Division. *About Language Minority Voting Rights*, “Section 203 Coverage Formula.” Available at: <https://www.justice.gov/crt/about-language-minority-voting-rights> (last accessed May 17, 2018). (Hereafter cited as *About Language Minority Voting Rights*).

<sup>125</sup> *About Language Minority Voting Rights*, “Legal Requirements.”

<sup>126</sup> *About Language Minority Voting Rights*, “Covered Jurisdictions.”

<sup>127</sup> Leonard Testimony, *2018 Transcript II*, p. 18 lines 15-26.

<sup>128</sup> *Ibid*, p. 7 lines 1-11.

<sup>129</sup> Moke Testimony, *2006 Transcript*, p. 33; Clyde Testimony, March 9, 2018 Transcript, p. 11 lines 14-20.

<sup>130</sup> Clyde Testimony, *2018 Transcript II*, p. 14 lines 16-21; Leonard Testimony, *2018 Meeting Transcript II*, p. 14 lines 31-42.

of the Commission to the President and the Congress.<sup>131</sup> In keeping with these responsibilities, and in light of the testimony heard on this topic, the Ohio Advisory Committee submits the following recommendations to the Commission. The Committee recommends that the U.S. Commission on Civil Rights consider these findings and recommendations in their 2018 Statutory Enforcement Report to Congress and the President.

1. As part of their 2018 statutory enforcement report on voting rights, the U.S. Commission on Civil Rights should:
  - a. Review available data regarding the (in)frequency of voter fraud generally and noncitizen voting specifically, and promote and disseminate accurate information about the (in)frequency of these crimes.
2. The U.S. Commission on Civil Rights should issue the following formal recommendations to the Ohio Governor and Legislature:
  - a. Remove current requirements and prohibit future requirements resulting in the discarding of otherwise legitimate provisional and absentee ballots for trivial errors such as writing legibly in cursive rather than in print, omitting a zip code from an otherwise complete address, or missing a digit in a social security number.
  - b. Expand opportunities for early and absentee voting, including on weekends and evenings; resist efforts to curtail early voting especially for partisan or racial advantage; and establish early voting centers on the basis of population served, rather than limiting centers to one per county.
  - c. Revisit state legislation prohibiting harassment and voter intimidation at the polls; ensure appropriate enforcement to protect voters and clarify definitions of prohibited behaviors.
  - d. In collaboration with the disability rights community, establish an alternative identification verification option for individuals with disabilities who are unable to produce matching signature verification.
3. The U.S. Commission on Civil Rights should issue the following formal recommendations to the Ohio Office of the Secretary of State:
  - a. Increase public awareness and education campaigns for voters, particularly in the areas of ID requirements, early and absentee voting opportunities, and any areas of recent election law change.

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<sup>131</sup> 45 C.F.R. § 703.2 (2018).

- b. In conjunction with local advocates and the disability rights community, conduct an assessment of the voting process in Ohio to ensure: (1) all aspects are accessible; and (2) effective training is provided to all election officials and poll workers about the rights of people with disabilities and how to provide an accessible voting experience. Where possible, a disability liaison should be assigned to each polling location.
  - c. Encourage jurisdictions that have a substantial non-English speaking population to begin expanding multilingual voting materials and supports, even if they do not yet meet the federal threshold for required language accessibility.
  - d. Prohibit the discarding of otherwise legitimate ballots for trivial errors such as writing legibly in cursive rather than in print, omitting a zip code from an otherwise complete address, or missing a digit in a social security number; and issue and enforce consistent guidelines such that all counties apply the same standards in verifying and counting ballots.
  - e. Hire a dedicated cyber security director advised by a bipartisan council of security experts, election officials, and voter advocates to address concerns regarding foreign interference with electronic voting records.
  - f. Train poll workers to encourage voters using electronic polling machines to verify their ballots on the corresponding paper trail.
  - g. Allow Boards of Elections the broadest leeway possible to verify and count absentee and provisional ballots; and refrain from restricting applicable verification sources.
  - h. Take steps to ensure voting officials and their staffs remain nonpartisan in their approach to voting rights and voting administration.
4. The U.S. Commission on Civil Rights should issue the following formal recommendation to the Ohio Department of Rehabilitation and Correction:
- a. Provide universal and systemic notification of the right to vote to people with felony convictions upon their release from prison.
5. The U.S. Commission on Civil Rights should make all other recommendations and requests of the appropriate public officials to address and correct the findings in this memorandum to ensure voter enfranchisement.



## **Appendix**

- A. 2006 Hearing Agenda
- B. 2006 Transcript
- C. 2018 Hearing Agendas
- D. 2018 Invited Speakers
- E. 2018 Hearing Record
  - a. Transcript I: March 02, 2018
  - b. Panelist Presentations I: March 02, 2018
  - c. Transcript II: March 09, 2018
  - d. Panelist Presentations II: March 02, 2018
- F. Written Testimony
  - a. Wimbish, Ohio Voter Rights Coalition
  - b. Disability Rights Ohio
  - c. Tokaji, Voter Fraud Response, May 14, 2018

FOR FURTHER INFORMATION CONTACT:

David Mussatt, Civil Rights Analyst  
U.S. Commission on Civil Rights  
Midwestern Regional Office  
55 W. Monroe St., Suite 410  
Chicago, IL 60603

(312) 353-8311

**CIVIL RIGHTS COMMITTEE TO ASSESS VOTING RIGHTS PROGRESS**

"Ohio's Preparedness for the 2006 Elections"

FOR IMMEDIATE RELEASE

The Ohio Advisory Committee to the United States Commission on Civil Rights will convene a **briefing on Thursday, March 16, 2006, from 1:15 p.m. to 5:15 p.m. and on Friday, March 17, 2006, from 9:30 a.m. to 1:00 p.m.**, at the Ohio Civil Rights Commission, 1111 E. Broad St., Columbus, OH. The purpose is to find facts and assess the current state of voting access in the state.

In light of recent federal and state legislation, including the Help America Vote Act and Ohio House Bill 3, the Ohio Advisory Committee voted to hear testimony from experts about how these statutes will improve voter access, and the manner in which the statutes have been or will be implemented. The Committee also expects to hear testimony regarding other aspects of voting access in Ohio. Panelists include State Sen. Jeff Jacobson, Franklin County Board of Elections Director Matthew Damschroder, Common Cause Ohio Executive Director Sam Gresham, and Moritz College of Law Professor Daniel Tokaji. A full agenda is attached.

The Chairman of the Ohio Advisory Committee, Lynwood Battle of Cincinnati, will introduce the presenters and moderate the panels. Members of the Ohio Advisory Committee include former U.S. Attorney Sharon Zealey, Ohio Civil Rights Commission Chairman Aaron Wheeler, and Toledo College of Law Professor David Harris. A full list of members is attached. All members will engage the presenters in a question and answer session at the end of each panel. In addition, an open session is scheduled at the end of each day of testimony: 4:45 p.m. on Thursday and 12:30 p.m. on Friday.

As directed by Congress, the U.S. Commission on Civil Rights has established committees in the 50 U.S. states and the District of Columbia, comprised of volunteer citizens who advise the Commission on state-level civil rights issues.

## **AGENDA**

### **“Ohio’s Preparedness for the 2006 Elections”**

**OHIO ADVISORY COMMITTEE  
TO THE  
UNITED STATES COMMISSION ON CIVIL RIGHTS**

**THURSDAY, MARCH 16 – FRIDAY, MARCH 17, 2006  
OHIO CIVIL RIGHTS COMMISSION  
1111 E. BROAD ST.  
COLUMBUS, OH 43205**

#### **Thursday, March 16**

- |                     |  |
|---------------------|--|
| <b>Introduction</b> | 1:15 p.m. to 1:30 p.m.<br>Lynwood Battle, Chairman   |
| <b>Panel 1</b>      | 1:30 p.m. to 3:00 p.m.<br>Daniel Tokaji, Moritz College of Law<br>Paul Moke, Wilmington College<br>Catherine Turcer, Ohio Citizen Action |
| <b>Panel 2</b>      | 3:15 p.m. to 4:45 p.m.<br>Samuel Gresham, Common Cause<br>Peg Rosenfield, League of Women Voters<br>Sue Willis, AXIS                     |
| <b>Open Session</b> | 4:45 p.m. to 5:15 p.m.   |

#### **Friday, March 17**

- |                     |  |
|---------------------|--|
| <b>Panel 3</b>      | 9:30 a.m. to 10:45 a.m.<br>Cassandra Hicks, Office of the Secretary of State<br>Jeff Jacobson, State Senator<br>Aaron Ockerman, State Street Consultants                                   |
| <b>Panel 4</b>      | 11:00 a.m. to 12:15 p.m.<br>Michael Vu, Cuyahoga County Board of Elections<br>Matthew Damschroder, Franklin County Board of Elections<br>Keith Cunningham, Allen County Board of Elections |
| <b>Open Session</b> | 12:30 p.m. to 1:00 p.m.  |

## **Ohio Advisory Committee to the U.S. Commission on Civil Rights**

**Lynwood L. Battle, Jr., *Chairperson***  
Cincinnati

**Cassandra A. Bledsoe**  
Cleveland

**Diane E. Citrino**  
Solon

**Dilip D. Doshi**  
Westerville

**Lee Esprit**  
Xenia

**James L. Francis**  
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Toledo

**Jad A. Humeidan**  
Westerville

**Mildred P. Martinez**  
Parma

**Sandra M. Morckel**  
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**Virginia C. Ortega**  
Toledo

**John Perez**  
Powell

**Roberta B. Presley**  
Shaker Heights

**Altagracia Ramos**  
Beavercreek

**David W. Reid**  
Dayton

**Thomas C. Rogers**  
Beavercreek

**Aaron Wheeler, Sr.**  
Columbus

**Sharon J. Zealey**  
Cincinnati

1                   BEFORE THE UNITED STATES COMMISSION ON CIVIL RIGHTS  
2                                   OHIO ADVISORY COMMITTEE

3   \* \* \*

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6                   "OHIO'S PREPAREDNESS FOR THE 2006 ELECTIONS"

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12                                   Ohio Civil Rights Commission  
13                                       1111 East Broad Street  
14                                       Columbus, Ohio 43205  
15                                       March 16, 2006

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27                                       (614) 221-4034

1 OHIO ADVISORY COMMITTEE

2 \* \* \*

3 Lynwood L. Battle, Jr., Chairperson

4 Aaron Wheeler, Sr.

5 Altagracia Ramos

6 Roberta B. Presley

7 James Francis

8 Thomas C. Rogers

9 Sharon Zealey

10 Dilip Doshi

11 Cassandra Bledsoe

12 Jad Humeidan

13 Diane Citrino

14

15 \* \* \*

16

17 David Mussatt, Civil Rights Analyst

18 Carolyn Allen, Administrative Assistant

19

20 \* \* \*

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1 THURSDAY AFTERNOON SESSION,  
2 MARCH 16, 2006.

3 - - -  
4 P R O C E E D I N G S  
5 - - -

6 CHAIRMAN BATTLE: I have a brief opening  
7 statement just to convene us officially, and then we'll go right  
8 into our first introduction to our panel.

9 This meeting of the Ohio Advisory Committee for  
10 the U.S. Commission on Civil Rights shall come to order.

11 For the benefit of those of you in the audience I  
12 won't introduce myself and my colleagues, because you just heard  
13 that as we went around, those of you who came in, so I won't  
14 repeat that.

15 Also present with us today are David Mussatt,  
16 Civil Rights Analyst from the Midwestern Regional Office in  
17 Chicago. And Carolyn Allen, who is the administrative  
18 assistant.

19 Not with us is the director of the Midwestern  
20 Regional Office, Connie Davis, who sends her regrets. And also  
21 is very tuned into what we do all the time and with her constant  
22 support.

23 I'd like to also express my appreciation on  
24 behalf of the Advisory Committee to Michael Payton, the



1       Executive Director of the Ohio Civil Rights Commission.

2                   And our friend and fellow committee member,  
3       Pastor Aaron Wheeler, who chairs the Commission.

4                   We greatly appreciate, as always, their  
5       willingness to host this meeting and admire the hard work that  
6       they continue to do themselves, and also their staff in  
7       coordinating the meeting logistics with our logistical staff,  
8       our regional staff.

9                   We're here today to conduct for the purposes of  
10      gathering -- conduct a briefing for the purpose of gathering  
11      information on voting access in Ohio.

12                  And in addition to studying voting issues in the  
13      state, the jurisdiction of this committee also includes  
14      discrimination or the denial of equal protection of the laws  
15      because of race, color, religion, age, sex, disability or  
16      national origin, or in the administration of justice.

17                  Information that relates to the topic of the  
18      meeting will be especially helpful to this Advisory Committee.

19                  Proceedings of this meeting, which are being  
20      recorded by a public stenographer, Cheryl Edwards, will be sent  
21      to the Commission for its advice and consideration.

22                  And the Advisory Committee may also decide to  
23      investigate this subject further and issue a report at a later  
24      date on the topic.

1                   At the outset I want to remind every one present  
2                   of the ground rules. This is a public meeting open to the media  
3                   and the general public.

4                   We have a very full schedule of people who will  
5                   be making presentations within a very limited time that we have  
6                   available.

7                   The time allotted for each presentation must be  
8                   rather strictly adhered to. This will include a presentation by  
9                   each participant, followed by questions from committee members.

10                  And to accommodate those persons who have not  
11                  been invited, but wish to make statements, we've scheduled an  
12                  open period today at 4:45, and tomorrow at 12:30.

13                  Anyone wishing to make a statement during the  
14                  period should contact David Mussatt for that scheduling.

15                  Written statements may be submitted to committee  
16                  members or staff here today, or by mail to the U.S. Commission  
17                  on Civil Rights at 55 West Monroe Street, Suite 410, Chicago,  
18                  Illinois.

19                  And the record of this meeting will close on  
20                  April 1st.

21                  Though some of the statements made today may be  
22                  controversial, we want to ensure that all invited guests do not  
23                  defame or degrade any person or any organization.

24                  In order to ensure that all aspects of the issues

1       are presented, knowledgeable persons with a wide variety of  
2       experience and view points have been invited to share  
3       information with us.

4                   Any person or any organization that feels that he  
5       -- that they have been defamed or degraded by statements made in  
6       these proceedings should contact our staff during the meeting  
7       so that we can provide a chance for public response.

8                   Alternately, such persons or organizations can  
9       file written statements for inclusion in the proceedings.

10                  I urge all persons making presentations to be  
11       judicious in their statements. The Advisory Committee does  
12       appreciate the willingness of all participants to share their  
13       views and experiences with this committee.

14                  And with that we will move to our guests and  
15       panelists.

16                  Panel No. 1, beginning with Daniel Tokaji from  
17       the Moritz College of Law. Followed by Paul Moke, from  
18       Wilmington College. And last, Catherine Turcer, of the Ohio  
19       Citizens Action.

20                  Mr. Tokaji.

21                  MR. TOKAJI: Mr. Chairman, thank you very  
22       much for having me today. And thanks to all the members of the  
23       committee for having me here today.

24                  My name is Dan Tokaji. I'm an Assistant

1 Professor of Law at the Ohio State University's Moritz College  
2 of Law. I am also the Associate Director of Elections Law, at  
3 the Moritz Program at the law school.

4 My main goal today, because I know you're going  
5 to be hearing a lot of speakers, and I know that there are a  
6 whole lot of issues pertaining to voting rights in Ohio to  
7 discuss today.

8 My main goal is to try to provide some kind of  
9 structure by which you can take in information and analyze these  
10 issues around the various problems that have emerged in Ohio's  
11 past elections, especially the 2004 elections. As well as those  
12 that we can expect to arise in the future, particularly as the  
13 result of some significant changes in both federal law and state  
14 law.

15 What I'd like to start by doing is going through  
16 a list of issues that emerged, and in fact that resulted in  
17 litigation during the 2004 election.

18 Next to talk about some of the changes in federal  
19 law that will be coming into play as a result of deadlines in  
20 Help America Vote Act that Ohio will be required to meet in  
21 these elections season, the 2006 election season.

22 And, finally, to talk a bit about something that  
23 I'm sure is likely to be a focus of attention for several of the  
24 speakers today, the new changes to state law which have just

1 recently been enacted by the Ohio legislature, as a part of Bill  
2 Sub H.B. 3, which makes quite a number of changes, some of which  
3 I'll address in my remarks today.

4 In providing this information, and I will discuss  
5 a lot of problems that I think have serious voting rights  
6 implications in past elections. I want to do my best to  
7 highlight those problems without being an alarmist.

8 I think these are problems that require serious  
9 attention. I'm very concerned especially about some of the  
10 aspects of H.B. 3 that I think are likely to cause problems for  
11 voters, as well as for poll workers and election officials in  
12 its first implementation this coming year.

13 And I think what we all need to do is sit down  
14 and think intelligently, carefully about these issues and what  
15 we can do to make things better, including what we can do for  
16 the voters about some of the new issues and obstacles, frankly,  
17 that are likely to arise in the upcoming election.

18 Let me start by giving an overview of the major  
19 issues of contention when it comes to voting rights that emerged  
20 in the 2004 election.

21 And I break these down into seven major  
22 categories. In each of these categories we did see litigation  
23 before, during, and in some cases after the 2004 election.

24 I'm going to give a very brief overview here. I

1 brought with me some copies of something I've written on the  
2 subject, which will give a more detailed explanation of these  
3 issues, I'd be happy to make these available to the commission  
4 and any members of the commission who would like one.

5 So seven issues that emerged in the 2004  
6 election: The first and the one that of course received the  
7 greatest attention in the wake of the 2000 election was voting  
8 machines, voting technology.

9 Approximately 70 percent of Ohio's voters used  
10 pre-scored punch card voting machines in the 2000 election.  
11 This is the same kind of hanging chad device that resulted in so  
12 many problems in Florida in 2000.

13 Social science evidence since then has  
14 demonstrated that this type of technology results in more lost  
15 votes, so-called residual votes, under votes and over votes than  
16 other kinds of voting machines.

17 It has an especially negative impact on people of  
18 lower education levels, and tends to have a greater impact on --  
19 a greater negative impact that is on people of color.

20 All in all, in the 2004 election, as I mentioned,  
21 the vast majority, 70 percent or so of Ohio citizens were still  
22 using this kind of technology, even though many other states  
23 have made the transition to more reliable voting equipment.

24 My estimate is somewhere in the neighborhood of

1       40- to 55,000 votes were lost as a result of the use of this.  
2       Not enough by itself to have affected the result of the  
3       election, given the approximately 119,000 vote margin, as  
4       between Bush and Kerry in the State of Ohio.

5               But it can easily be seen how in a closer  
6       election, as was the case in Florida four years ago, this could  
7       have been determinative.

8               Now, we're right now in the midst of a transition  
9       to newer voting technology. And there have been a great deal of  
10      concerns raised about that new voting technology, especially  
11      electronic voting machines.

12              Where this is -- this is one of the areas I'll  
13      talk a bit about later, where HAVA made significant changes to  
14      which the State of Ohio has to adapt.

15              Second issue, registration. We had a lot of  
16      controversy about registration forms, what forms would and  
17      wouldn't be accepted in the 2004 election.

18              The one that probably got the most attention was  
19      an initial decision by the Secretary of State's office to refuse  
20      to accept forms that were on paper weight less than 80 pounds,  
21      very heavy stock paper weight, something like the cover -- the  
22      cover of this booklet I have in front of me, as opposed to the  
23      ordinary paper that we use.

24              That decision ultimately was rescinded

1       fortunately, in my opinion, but is not clear whether there were  
2       registration forms that were denied as a result of that, and  
3       thus people who were not allowed to vote.

4                       Also issues in the election, which I won't  
5       discuss in detail here, had to do with the treatment of  
6       registration forms, which were incompletely filled, either  
7       because a particular box was not checked off, or because Social  
8       Security numbers or driver's license numbers weren't -- weren't  
9       included.

10                      Third issue, and this was a big one, provisional  
11       voting. The most controversial issue, and here as in many other  
12       states, was probably the Secretary of State's decision to reject  
13       provisional ballots entirely if they were not cast in the  
14       correct precincts.

15                      There was -- there was litigation on this subject  
16       in which the Secretary of State's office ultimately prevailed.  
17       Federal Court of the Sixth Circuit concluding that the state was  
18       not required to accept provisional ballots that were cast in the  
19       so-called wrong precinct.

20                      And there were a number of provisional ballots  
21       not counted. I'm not sure that we have a precise number for  
22       this, but we do know there were quite a few that were not  
23       counted as a result of people mistakenly going to the wrong  
24       precinct and casting a provisional ballot there.



1                   The fourth issue, ID requirement. This is an  
2                   area in which there's actually been a change in law since 2004.  
3                   But in 2004 for the first time the Help America Vote Act's ID  
4                   requirements were in place, applicable to first time voters, who  
5                   registered by mail on or after January 1st, 2003.

6                   There were issues regarding what to do with votes  
7                   cast by people who don't have the proper ID at the polling place  
8                   in this election.

9                   As well as with what kinds of identification will  
10                  be considered acceptable for those voters who were affected by  
11                  this requirement.

12                  The fifth issue, challenges to voter elevator  
13                  eligibility. There were two kinds of challenges that were at  
14                  issue in the 2004 election, pre-election challenges and Election  
15                  Day challenges.

16                  As for the pre-Election Day challenges there were  
17                  some 35,000 voters who were challenged by the Republican Party  
18                  prior to the election that was subsequently narrowed to 23,000,  
19                  but under the somewhat cumbersome procedures then required by  
20                  Ohio election law, these folks would have been required to  
21                  attend mass hearings to assess their eligibility. That was  
22                  enjoined by a Federal court.

23                  There was also litigation regarding Election Day  
24                  challenges, where party representatives have the ability to

1 challenge voters' qualifications on that day.

2 I won't go through the long detailed story, but  
3 there were actually four court orders issued against Ohio's  
4 Election Day challenge procedures, all four of which were  
5 ultimately reversed on appeal.

6 Sixth issue, polling place operations. In some  
7 places, especially right here in Franklin County, as well as  
8 Knox County, we had extremely long lines at the polling place on  
9 Election Day, some voters waited three or four hours, or in Knox  
10 County even more to cast their vote.

11 I think there are a lot of complicated reasons  
12 for it, but I hope we can prove that those kinds of lines are  
13 simply unacceptable in a democracy that is advanced, or is  
14 supposed to be advanced.

15 Another issue regarding polling place operations,  
16 disability access. According to an Election Day survey  
17 conducted for the Election Assistance Commission, only about 76  
18 percent of polling places were physically accessible to people  
19 with disabilities, and I think that's probably a high end  
20 estimate, which means that there were at least 1500 that were  
21 not.

22 I'd also note that in that survey data was not  
23 even reported back by the state on accessible voting technology  
24 for visually impaired people. But I suspect it would be a very

1 low number if data had been reported back by the state insofar  
2 as access to blind voters goes.

3 The seventh and final issue is recounts and  
4 contests. Now, fortunately the margin was wide enough there was  
5 not a recount requested by the losing presidential candidate,  
6 but there might have been some serious issues having to do with  
7 recounts along the lines of those we saw in Florida's 2000  
8 election, as well as the contests, including a question as to  
9 whether the entire process could have been completed by the so  
10 called Safe Harbor Day, the date by which all litigation and  
11 controversies over elections are required to be completed as a  
12 result of -- under federal law, in order for that state's  
13 electorates to be counted according to the voters' intent.

14 Now, having outlined those seven issues I also  
15 want to move now to some of the changes, and they are very  
16 significant that are required by federal and state law.

17 We've got three big deadlines that are upon us  
18 now in 2006 as a result of the Help America Vote Act.

19 The first deadline has to do with the replacement  
20 of punch card and lever voting machines. As I mentioned 70  
21 percent of voters in 2004 used punch card machines,  
22 approximately 70 percent.

23 New technology has to be in place in all of those  
24 jurisdictions by the 2006 election. That's because Ohio was one

1 of the 30 states that accepted money under Title I of the Help  
2 America Vote Act, which the state obligated itself to replace  
3 that technology.

4 The second requirement that comes into play,  
5 which is under the Help America Vote Act is the Disability  
6 Access requirement.

7 As of this election season, the 2006 election  
8 season, there must be at least one unit at each polling place  
9 that is accessible to people with disabilities, including  
10 visually impaired voters.

11 And those voting machines have to ensure privacy  
12 and independence for disabled voters. I'm hopeful, but not  
13 certain that that requirement will be complied with in this  
14 election.

15 One of the complicating issues has been the  
16 state's requirement that electronic voting machines generate  
17 voter verifiable paper audit trails. I know that's been a very  
18 controversial issue, it's one that I try to avoid today.

19 But that requirement has -- has -- let me put it  
20 as neutrally as I can, created some challenges in terms of  
21 complying with HAVA's disability access requirement in Ohio as  
22 well as many other states.

23 The third big requirement that comes into play,  
24 this may be the least noticed one, but I think it's probably

1 the most significant one.

2 The statewide voter registration data base, this  
3 is a requirement of HAVA to come into play this year in all  
4 states. Every state has to have a statewide registration list  
5 that's accessible by election officials in all of the counties.

6 A lot of attention over the past six years has  
7 been given to voting machines, but a study by Cal Tech and MIT  
8 actually found registration issues were probably a bigger source  
9 of lost votes in the 2000 election, than were voting machines.

10 So the idea behind this requirement of HAVA's  
11 statewide data base requirement is to improve our list. I have  
12 to say that I'm very worried that at least in the short term  
13 this requirement may have the opposite effect.

14 That there are going to be some problems and some  
15 voters in particular who go to the polling place on Election Day  
16 in 2006 and find their names aren't on the list due to glitches  
17 in the statewide registration data base.

18 Now, there are some -- one of my big pet peeves,  
19 I have to say, about Ohio's election system, since I've been  
20 studying it over the past three or four years, has been the lack  
21 of publicly available information or the lack of transparency  
22 into the election system and statewide registration data bases,  
23 and exactly how much progress the state and local government's  
24 are making in this area.

1                   And it's been one of the areas in which I -- I  
2           think frankly there's been a lack of transparency. I do think  
3           the Secretary of State's office, to its credit, has made some  
4           improvements in this area recently.

5                   They've improved their web site, which for many  
6           people is a portal into seeing how they can conduct their  
7           operations. But I will have to say -- I realize I'm reaching  
8           the end of my time, but I'll cut it short.

9                   MS. TURCER: Go ahead.

10                  MR. TOKAJI: Okay. There is some  
11           information that's now available on the Secretary of State's web  
12           site about the implementation of a statewide registration data  
13           base, but I frankly just have not been able to find out enough  
14           about what the state has been doing to make an informed  
15           judgement about how well the state's statewide registration data  
16           base is going to work in 2006. And I hope that this is  
17           something that this committee is able to do some inquiry into.

18                  Finally let me talk a bit about H.B. 3. This is  
19           the state law that was enacted just this year, we'll be making  
20           major changes to the state's election system.

21                  I think there are some positive things in the  
22           bill. There are also some things that I think are going to  
23           cause some serious difficulties for voters, as well as for poll  
24           workers and election officials.

1                   You're going to be hearing more about this I'm  
2                   quite confident from other speakers, so I'm not going to talk  
3                   about all aspects of this 400 some page bill.

4                   I want to focus on three areas that are areas of  
5                   particular concern to me, and then I'd encourage this committee  
6                   to consider looking into.

7                   One of them is the ID requirement that's newly  
8                   enacted as part of this bill. Under this requirement, in order  
9                   to cast a regular ballot, voters must show either state issued  
10                  photo ID, a photo military ID, or some sort of documents with  
11                  the voters name and current address, such as utility bill, or  
12                  government document showing the voter's name and current  
13                  address.

14                  If -- if you don't have one of those documents  
15                  you can cast a provisional ballot, if you either provide the  
16                  last four digits of your Social Security number, or sign an  
17                  affidavit saying that you don't have any of these documents, or  
18                  don't have any of these things.

19                  I think there is -- the provisions regarding the  
20                  circumstances under which provisional ballots get counted are  
21                  extremely complicated.

22                  I'm a lawyer who specializes in this area and I'm  
23                  hard pressed to understand the details of this bill. I frankly  
24                  shutter to think -- that may be too strong a phrase, but I'm

1 quite concerned about what's going to happen.

2 This has to get implemented by poll workers and  
3 elections officials, are they going to understand the details of  
4 this law, are we going to see inconsistencies across counties as  
5 to how provisional ballots get counted.

6 I think one thing that I'd be quite confident of  
7 is that we're going to see a whole lot more provisional ballots  
8 cast in 2006 and subsequent Ohio elections.

9 More people under this bill are going to be  
10 channeled into the provisional ballot pathway, as opposed to  
11 casting regular ballots.

12 When you have more provisional ballots, what that  
13 means is there are going to be more things for parties to fight  
14 over, there's going to be more risk of inconsistencies as  
15 between counties.

16 And there is less likelihood that the results of  
17 elections will be actually finally determined on election night.  
18 In other words, it's quite likely that we're going to see Bush  
19 versus Gore type controversies spilling past Election Day,  
20 because of the increased number of provisional ballots.

21 A second major challenge -- change, has to do  
22 with challenges to voter eligibility. I think there is a good  
23 change here, which is the elimination of partisan -- that is  
24 party appointed challengers, but challenges by poll workers or



1 election judges as they are sometimes called are still allowed.

2 One provision I'm especially worried about is one  
3 that allows for voters whose eligibility is challenged on the  
4 grounds of citizenship to be required to produce naturalization  
5 papers if they are naturalized citizens.

6 Imagine a 75 year old grandmother immigrated from  
7 China many years ago who has voted successfully for many years  
8 being asked to show her naturalization papers at the polling  
9 place.

10 Some of these voters may have lost or misplaced  
11 naturalization papers. They do have some time after the  
12 election within which they can bring them in.

13 But I'm very worried that this is going to  
14 provide a recipe for racial and ethnic profiling at the polling  
15 place.

16 Third big change has to do with recounts and  
17 contests with post election procedures. The law raises the fee  
18 for recounts from 10 to \$15 per precinct.

19 I personally think that that's a reasonable  
20 change given that the amount had been kept to \$10 for quite  
21 sometime. I realize there may be differences of opinion on that  
22 issue, but I think that's a reasonable change.

23 I am worried about the elimination of contests  
24 for federal elections. Under H.B. 3 a contest can no longer be

1 brought if one disagrees with the election results.

2 For example, because one thinks that fraudulent  
3 or unregistered voters have cast ballots in this election, or if  
4 there were some other kind of cheating or malfeasance. We saw  
5 this for example in Washington, highly contested Washington  
6 gubernatorial race where a number of voters were alleged to have  
7 cast votes who were not in fact eligible.

8 There are no longer any state contest provisions  
9 for federal elections, that is United States House or U.S.  
10 Senate or presidential elections.

11 Now, what the law says is that, well, the federal  
12 provisions regarding contests for control, problem is there  
13 aren't any, at least there aren't any that allow for a judicial  
14 resolution of contests. I suppose one could go directly to  
15 Congress in a contested house or Senate race.

16 But I'm very concerned that this is going to  
17 lessen rather than increase the reliability of election results,  
18 and therefore public confidence in elections.

19 I've said plenty, and I appreciate your taking  
20 the time to listen to me.

21 I want to close by summarizing what I think the  
22 big issues to look out for in 2006 are, changes in voting  
23 technology; statewide voter registration data base; the  
24 implementation of the ID requirement; challenges to voter

1 eligibility; and elimination of contests in federal elections.

2 These are all issues that could have serious  
3 voting rights implications. And I'm pleased that this committee  
4 is here taking testimony on these and other issues. Thank you  
5 so much for having me.

6 CHAIRMAN BATTLE: Mr. Moke.

7 MR. MOKE: Thank you, Mr. Chairman, and  
8 members of the committee.

9 My name is Paul Moke, I'm a Professor of Social  
10 and Political Studies at Wilmington College in Wilmington,  
11 Ohio.

12 Wilmington is a small college associated with the  
13 Society of France, which is Quakers. I'm the author of two  
14 published articles on voting rights in Ohio.

15 And have joined Dan Tokaji in litigation  
16 involving punch card ballots in Ohio on behalf of the American  
17 Civil Liberties Union, and that legal action, which is known as  
18 Stewart versus Blackwell, is currently on appeal in the Sixth  
19 Circuit in Cincinnati.

20 This afternoon I'd like to briefly examine three  
21 aspects of voting reforms in Ohio that may prove problematic in  
22 the coming months.

23 And the three aspects that I want to look at in a  
24 little bit of detail with you involved first, voting technology.

1       Second, the racial gap in lost votes. And, third, the  
2       implications of these two problems for democracy in Ohio more  
3       generally.

4               Before I launch into these three issues I want to  
5       put all three into some broader context.

6               First, Ohio is a battle ground state. And it did  
7       not emerge as a battleground politically just in the 2004  
8       presidential election.

9               In fact, since the Civil War, only one  
10       presidential candidate has one the White House without winning  
11       Ohio.

12              And to the benefit of those who aren't historians  
13       that one person was John F. Kennedy in 1960.

14              So to the voters of this state, to the candidates  
15       themselves, and to an anxious nation, maintaining the fairness  
16       of elections in Ohio is of the utmost importance.

17              But elections in Ohio may be headed for a stormy  
18       future, and the dynamics of this storm aren't hard to  
19       understand.

20              First, nearly every county in Ohio will be using  
21       new voting technology in 2006.

22              Second, every voter in the November election will  
23       be subject to a new set of more restrictive requirements for  
24       voting that arise out of the House Bill 3 reforms.

1                   And, third, the differences in voting outcomes  
2     between the two parties have been so narrow in high profile  
3     contests in recent years in Ohio that the margin of victory may  
4     be within the so-called margin of litigation, prompting the  
5     parties to take these issues to court.

6                   Taken together these dynamics are putting great  
7     responsibilities on the shoulders of poll workers and local  
8     election officials.

9                   These officials are going to need to educate  
10    voters about how to use the new equipment. And there is a  
11    definite learning curve both for the officials, for the poll  
12    workers, and for the voters about how to use the new equipment.

13                  Poll workers are going to have to be trained in  
14    how to set up the equipment; how to run it at the polls; and  
15    additionally on top of that they are going to have to implement  
16    the 400 pages of new reforms that's under House Bill 3.

17                  Among those, as Dan indicated, are the new voter  
18    ID requirements, and new rules concerning provisional ballots.  
19    And let me just take a minute to amplify briefly on what Dan had  
20    to say about those two issues.

21                  First, with respect to voter ID, we need to be  
22    clear that the voter ID concerns not just the identity of the  
23    would be voter, but it also includes a current address  
24    requirement.

1                   And that current address needs to square with the  
2                   information in the registration material, such that if a voter  
3                   moves within a precinct and still goes to the proper precinct to  
4                   vote, but uses an ID that has the old address, that voter will  
5                   not comply with the new rule.

6                   Second, as to provisional ballots, one of the big  
7                   and hotly disputed issues in the 2004 election in court  
8                   concerned the question of what is the definition of the word  
9                   jurisdiction in the federal Help America Vote Act as it applies  
10                  to Ohio.

11                  Specifically, the question was the voter has to  
12                  vote in the proper jurisdiction, but what does that mean? Does  
13                  it mean the State of Ohio? Does it mean the county? Does it  
14                  mean the precinct?

15                  In House Bill 3, the General Assembly defined the  
16                  word "jurisdiction" in the most narrow way it could have.  
17                  Meaning that the voter has to vote in the proper precinct, or he  
18                  or she will be casting an invalid vote.

19                  So the polling workers are going to have to  
20                  implement these somewhat specific and complex rules at the  
21                  polling place.

22                  Now, these reforms are requiring a lot of new  
23                  work for poll workers at precisely the time when well trained  
24                  and capable poll workers are becoming increasingly difficult to

1 find.

2 The penalty for non-compliance with these rules  
3 for would be voters is utter disenfranchisement. And as others  
4 have argued for people of color, for the disabled, for the  
5 elderly, and for the poor, these costs may be particularly  
6 severe.

7 Now, with respect to voting technology, as Dan  
8 has indicated, for the past 15 years voters in Ohio have used  
9 three primary voting systems. The punch card system, which was  
10 the predominant system. The optical scan system, which works  
11 like an SAT exam, where you darken what you want in the way of  
12 your choice. And the first generation of the electronic touch  
13 system, which were used here in Franklin County.

14 The Secretary of State has publicly acknowledged  
15 that these three systems have very different error rates. Some  
16 systems were more prone to over-voting than others.

17 And the difference was that those systems gave  
18 voters a warning when they were making mistakes and gave them a  
19 chance to fix what was wrong with the ballot.

20 Whereas, other systems like the punch card system  
21 did not have that capacity.

22 And so the punch card system gave rise to  
23 approximately three times more over votes than under votes than  
24 the other systems did.

1                   To its credit Ohio, like other states in the  
2                   country, are using federal money to replace these antiquated  
3                   systems.

4                   But according to the latest information available  
5                   on the Secretary of State's website, there are eight counties in  
6                   Ohio that are falling behind in terms of the implementation of  
7                   this new equipment.

8                   These eight counties have been referred to as  
9                   staging counties by the Secretary, meaning I suspect that there  
10                  should have been a process of getting us up to speed, and they  
11                  are behind everyone else.

12                 The three counties are Allen, which is the Lima  
13                 area; Franklin; Hamilton; Licking, Madison, Mahoning over in  
14                 Youngstown; Summit; and Williams County up in the northwest  
15                 corner of Ohio.

16                 And these eight counties include some of the most  
17                 populous areas of the state.

18                 At this juncture we don't know if those counties  
19                 are going to have their systems up and running fully by the  
20                 primary on May the 2nd, but we do know to the extent that they  
21                 are behind that makes it more difficult for them to do the  
22                 public education function that needs to take place prior to the  
23                 primary.

24                 The second issue that I want to address with you



1 concerns the racial gap in lost votes, the title of my most  
2 recent paper.

3 Voters experience difficulties with the election  
4 process, and statistically persons of color are more likely to  
5 encounter problems with registration, problems with voter  
6 identification, problems with the use of voting technology, and  
7 problems with the overall voting process. And this is what  
8 political scientists have referred to as the racial gap in lost  
9 votes.

10 In my study of the 2000 Presidential election  
11 here in Ohio, I zeroed in on three counties; Hamilton,  
12 Montgomery and Summit, and compared over vote rates for inner  
13 city precincts that were predominantly black with other  
14 precincts that were predominantly white.

15 And the data showed unequivocally that there were  
16 seven to nine times more over votes cast in the inner city  
17 precincts of those three Ohio cities than in the largely white  
18 precincts.

19 And these problems are not merely historical  
20 remnants. According to a survey that was just released by the  
21 Elections Assistance Commission, the Federal EAC, following the  
22 2004 election there were substantial disparities based on race,  
23 language and class, across a broad array of nuts and bolts  
24 aspects of elections.

1                   Specifically, the Elections Assistance Commission  
2           study showed that jurisdictions that had low levels of education  
3           and income, had higher levels of inactive voting -- voter  
4           registration, lower levels of voter turnout, higher numbers of  
5           provisional ballots cast, higher levels of over votes, higher  
6           levels of under votes.

7                   And most importantly for me, lower levels of  
8           voting poll workers per polling place in these areas, compared  
9           to other parts of the state.

10                   So the very people who are most likely to  
11           encounter the most problems at the polling place are voting in  
12           places where they don't have the assistance they need. And that  
13           is troubling.

14                   These finds highlight the importance of local  
15           officials in the elections process. And it underscores for me  
16           the need to reform our voting system so that each one of the  
17           precincts, each of the over 11,000 precincts in this state is  
18           similarly situated with respect to trained poll workers and  
19           competent people to help voters vote.

20                   Finally, let me just address a few comments with  
21           respect to the third issue, which concerns how do we get a  
22           neutral process for elections administration in Ohio, and what  
23           does this mean for democracy.

24                   In an influential book entitled Democracy and

1 Distrust, the late Professor John Hart Ely, was former dean of  
2 Stanford Law School, discussed the constitutional problem of  
3 conflict between in-groups and out-groups when it comes to  
4 political participation.

5 And the problem as Ely saw it was that when the  
6 political party that's in control makes rules for elections that  
7 systematically benefit its own side, then courts have a  
8 responsibility to step in and use the power of judicial review  
9 to create an even playing field.

10 And since the beginning of our Republic the  
11 political parties have played games with political processes  
12 and set up the process to benefit themselves.

13 Think back to American history in terms of the  
14 Jackson era and the spoil system, or even the erection of Jim  
15 Crow laws in the south, again motivated by groups that were  
16 trying to structure the process in their favor.

17 This may be an inevitable part of the human  
18 condition, but as the struggles in the last 15 years say over  
19 the motor voter law or partisan gerrymandering or even House Bill  
20 3 show democracy itself may become the loser.

21 Let's take a look just briefly at the motor voter  
22 bill from the early '90s and compare it with House Bill 3.  
23 Both of these laws were passed in circumstances of great  
24 partisan conflict.

1                   It was virtually all Republicans voting one way  
2                   and all Democrats voting the other way, both in the U.S.  
3                   Congress and the Ohio General Assembly.

4                   The goal of the motor voter bill was to minimize  
5                   barriers to political participation and enfranchise millions of  
6                   Americans, largely lower class people and people of color who  
7                   weren't registered.

8                   And although it facilitated greater levels of  
9                   registration on the part of these groups, the bill was largely  
10                  disappointing in the sense that it didn't lead to large numbers  
11                  of new actual voters at the polling place.

12                  But in the case of H.B. 3 the goal was to  
13                  minimize voting fraud and achieve finality in the voting  
14                  process, in ways that Dan has explained to us.

15                  But in research by the Ohio League of Women  
16                  Voters shows that the predicate for House Bill 3, which was  
17                  avoiding fraud in the voting process, is simply not there.

18                  Out of the over nine million votes cast in the  
19                  2002 and 2004 elections in Ohio collectively, in only four  
20                  cases, that's four cases out of over nine million, did the local  
21                  board of elections and county prosecutors decide to bring legal  
22                  actions for voter fraud, four cases out of nine million.

23                  It's difficult to avoid the conclusion, any  
24                  other conclusion than that the underlying motivation for House

1 Bill 3 was vote suppression, and in that sense I find it  
2 troubling.

3 It's similar to what's going on with partisan  
4 gerramandering in Ohio and elsewhere in the country where  
5 legislators are choosing their own constituents, rather than  
6 vice-versa.

7 In conclusion, let me just say that one of the  
8 central teachings of American political history is that today's  
9 in-group, tomorrow will become an out-group.

10 And it's in the long term best interest of  
11 political parties to strike compromises on this issue, to  
12 maintain fairness and impartiality when it comes to voting, but  
13 when the party cannot or will not do this, then it's incumbent  
14 upon the court to step in as referees of the political process  
15 to guaranteeing neutrality and fairness.

16 And it's in that sense that this Advisory  
17 Committee and the U.S. Commission on Civil Rights have an  
18 important role to play in fact finding and investigation.

19 I thank you.

20 CHAIRMAN BATTLE: Thank you. Ms. Turcer.

21 MS. TURCER: Hello everybody, I'm Catherine  
22 Turcer, I'm with a group called Ohio Citizens Action.

23 And I suspect that like many voters I thought  
24 about election administration, you know, two times a year when

1       it came time to go to the Primary poll and when it came time for  
2       the General Election.

3                       I didn't think a lot about it before Election  
4       2000, I was really focused on money and politics and campaign  
5       finance reform.

6                       And when I thought about civil liberties in this  
7       context I was really thinking about redistricting and the  
8       stacking of districts.

9                       And I thought about the color of money and, you  
10      know, meaning if the white wealthy are the biggest contributors  
11      what does this mean for social policy.

12                      But the chad provided a wonderful opportunity,  
13      and, you know, it was an opportunity to say, well, wait a  
14      second, we voters really need to start thinking, are these  
15      systems accountable, does my vote count. Do the votes of my  
16      neighbors count and what do we actually need to do to improve  
17      the system.

18                      What are the responsibilities of the Secretary of  
19      State? What are the responsibilities of poll workers? What are  
20      my responsibilities as a voter?

21                      So if we think about the past few years this has  
22      been a wonderful opportunity for a whole conversation for the  
23      entire country and for Ohio to think about, well, what's going  
24      on and how do we re-energize the system.

1                   I see this kind of conversation that we're having  
2           today as a beginning of re-energizing. Now, so far we've heard  
3           some really depressing facts and we do need to prepare for  
4           Election 2006 and think about what's happened in this public  
5           conversation.

6                   And I'd really like to take a minute to talk  
7           about kind of what has happened for the public in this process.

8                   During the implementation of the Help America  
9           Vote Act I was invited by the Ohio Secretary of State to serve  
10          on the Help America Vote Act State Planning Commission.

11                  The State Planning Commission's goal was much  
12          like your goal, you -- you get together and listen to testimony  
13          about what possible problems are, how we should actually -- how  
14          should the state actually implement HAVA. What about how should  
15          money be extended? What are the resources that voters need?  
16          What about voter education?

17                  Once again very exciting, right?

18                  But unfortunately what happened is that it became  
19          an area for people to explain what their issues were. For  
20          example, the League of Women Voters came and they really talked  
21          about the need for better voter education, better polling  
22          education.

23                  They talked a lot about the need for appropriate  
24          auditing. So to make sure that the voting apparatus was

1       actually right, and proper auditing systems.

2                       We had wonderful disability advocates that  
3       addressed what is -- most of us are able-bodied, what is it like  
4       to not be able to get into your polling location.

5                       How long has ADA been around, you know, American  
6       Disabilities Act has been around forever, you know. What the  
7       heck is going on that people still can't get in to actually  
8       vote.

9                       And so this was a wonderful opportunity to talk  
10      about what is going on.

11                      However, what happened is, you know, we convened  
12      for a few times, we heard the testimony, but it really didn't  
13      become as much as you might expect part of the plan.

14                      And as the Help America Vote plan evolved the  
15      public did not continue with this process. There was not -- the  
16      State Planning Commission did not continue.

17                      So I think as we think about policy development  
18      we need to think about where is the public left out of this.  
19      If we go back, think about House Bill 3, for example, no one  
20      came and testified in favor of voter identification.

21                      No one came and said, hey, you know, I want to  
22      see naturalization papers, if somebody looks a little like they  
23      might not actually be a citizen. So we need to really bring  
24      this back to voters and really assess what's going on.



1                   And one of the things as we think about social  
2     policies and policies that are happening in the State of Ohio,  
3     we need to think about the legislative process.

4                   Of course this is just one area, but we need to  
5     think about the way the bills are just ran through. Now, I'll  
6     take for example something that's a little outside of this, but  
7     for example yesterday there was an open records bill, something  
8     that most of us care a lot about, good open accountable  
9     government.

10                  And in this particular case the bill was voted  
11     out of committee, little side bars here and there, voters -- the  
12     people in the room could actually see what the amendments were,  
13     but we couldn't look at the gestalt, where we couldn't look at  
14     the whole bill as a package before the committee voted on it,  
15     and it was on the house floor that afternoon.

16                  This is also what happened with House Bill 3,  
17     where, yes, there was a long period that House Bill 3, the first  
18     version was available.

19                  But all of the amendments were really discussed  
20     in a private context. In the context that were inside the  
21     legislative rooms away from public hearings.

22                  And so as we think about improving the system,  
23     and I suspect we'll be making legislative changes in the  
24     upcoming years, we need to think about more open government.

1                   And I encourage processes like this where we're  
2           having a conversation about how the public gets left out of  
3           this.

4                   And also encourage our legislators across the  
5           country to slow the train down. Take time to really hear what  
6           people think and what voters are concerned about.

7                   I also think that we need to think about the  
8           other thing that happened in House Bill 3, which is not  
9           something that either of these gentlemen addressed, was it  
10          actually -- House Bill 3 removed a provision for systematic  
11          random audits of the computerized voting systems.

12                  Now, okay, think about this, how many of you have  
13          gone to your computer and you're sitting there and you're typing  
14          away and all of a sudden, oh, yeah, it didn't quite work or it's  
15          gone, you pushed the wrong button, something went -- computers  
16          are inherently buggy they just are.

17                  You want them -- you know you want them to be  
18          reliable, but garbage in, garbage out. So there is that whole  
19          issue.

20                  We need to have an appropriate auditing system.  
21          It's good that it's actually part of the law and not a Secretary  
22          of State directive, as the Secretary of State of course is an  
23          elected official who should be accountable to the voters of  
24          course, but is a partisan official as well.

1                   So, you know, it's one of those things that  
2           happened so if we think about the physical barriers to voting,  
3           for example, now we need to go beginning in November, since they  
4           didn't highlight this, beginning in November 2006 we're going to  
5           need to go in with some way to prove who we are, which is an  
6           obstacle for the poor, for the elderly.

7                   And seems like most of us sitting at this table,  
8           of course we have a driver's license in our wallet or purse,  
9           it's somehow hard to imagine that there are folks that don't  
10          have a way to prove they are who they are.

11                  But we are special, you know, we are -- we are  
12          privileged and it's easy to forget that.

13                  Those are physical barriers. But we need to  
14          remember the psychological barrier, which is a barrier, what if  
15          my vote just does not count, and does not count because they  
16          removed appropriate auditing.

17                  And so as we examine the policies that have been  
18          established and we think about Election 2006, we need to really  
19          encourage voter education.

20                  For example, bring information to the, you know,  
21          the very, you know, everybody we know, we need to let you know  
22          as many -- as many ways as we possibly can in the upcoming year,  
23          bring information so you can prove who you are.

24                  And then we need to let them know which specific

1       IDs work, because of course you can't use a birth certificate,  
2       who here would have assumed a birth certificate.

3                   I mean something that -- what about a passport,  
4       that does not work either. But there are specific ones that  
5       they want and specific ones that don't work. So we need to make  
6       sure we educate the public as best we can.

7                   We also need to think about poll worker  
8       education. And -- and also we need -- voters will be receiving  
9       in the mail part of House Bill 3, including information advising  
10      them of their polling location, where their precinct is actually  
11      located.

12                  And also -- and also encourages them, you know,  
13      if you know there are any problems it gives a phone number and  
14      website and that kind of thing.

15                  But we need to remember as we think about access  
16      most of us have a home computer. Most of us have internet  
17      access.

18                  Once again we have to think about the digital  
19      divide. And so we need to think about how we are informing  
20      people and have it not just be electronic.

21                  We need to find ways to actually get out to the  
22      citizenry and really let them know what to expect during 2006,  
23      which is possibly longer lines, because I need to prove who you  
24      are, possibly longer lines because I need to show you how the

1 machine works.

2 And then finally longer lines because you want to  
3 be absolutely sure that you are at the right location, or your  
4 vote will not count. And thank you.

5 CHAIRMAN BATTLE: Thank you, Ms. Turcer.  
6 And thank all of you.

7 I'm sure that the committee members will have  
8 some questions and I appreciate your testimony.

9 And with that, Tom Rogers.

10 MR. ROGERS: I have a question concerning  
11 voter ID.

12 Did any studies determine most people with  
13 driver's licenses renew their driver's license every four years,  
14 if they have a change of address, make it then.

15 What percentage of the people move, you'll have  
16 these people coming in, these are the privileged people, and  
17 what kind of clamoring do you expect, I expect them to say, hey,  
18 I can't vote, because I just moved.

19 MR. TOKAJI: I do want to clarify one point  
20 mentioned in Professor Moke's and my testimony.

21 For driver's licenses this provision was actually  
22 changed at the 11th hour in the bill in a favorable direction.

23 For driver's licenses voters may cast a regular  
24 ballot even if it has an old address, so long as it's a current

1       and valid driver's license.

2                       Now, military ID it's got to have the current  
3       address. And if it's documentary identification, for example,  
4       utility bill, bank statement, government check, but it's got to  
5       have your current address.

6                       I'm not a big fan of H.B. 3 as you can probably  
7       tell by my testimony, but this is one aspect of it that was  
8       improved for the better at the last minute before it was  
9       passed.

10                      MR. ROGERS: Is car registration considered?

11                      MR. TOKAJI: Car registration is not among  
12       the list of documentary identification. Let me just double --  
13       let me take that back, it says other government document. So  
14       that's not specifically mentioned, but it might be considered by  
15       officials and other government documents that might be  
16       considered acceptable.

17                      MS. TURCER: The one thing that I would say  
18       is that I suspect it may be confusing to poll workers that you  
19       would accept the ID, but the address would be incorrect.

20                      Now, one of the reasons that was changed at the  
21       last minute had to do with the fact that the DMV does not  
22       require you, if you move you're supposed to inform them that  
23       you've moved, but you can keep the same ID just as -- even if an  
24       address is wrong for four years.

1                   So that was highlighted to the legislature. And  
2                   so they said, well, then okay, you know, that's fine as long as  
3                   it's you and the address isn't correct.

4                   But you can see a poll worker thinking this is  
5                   very peculiar, right. So what I worry about is equal protection  
6                   kind of thing where one county does one thing, and one precinct  
7                   does it one way, another one does it a different way.

8                   CHAIRMAN BATTLE: Others? Yes, Ms. Ramos.

9                   MS. RAMOS: In this question about ID, you  
10                  mentioned that the military would have an address, did you say  
11                  that?

12                 MR. TOKAJI: That's the requirement of the  
13                 law that it has to be military identification that shows the  
14                 voters' name and current address.

15                 MS. RAMOS: The military does not show it,  
16                 that's why I find it curious when you say that.

17                 MS. TURCER: No. Actually -- I actually  
18                 highlighted it.

19                 MS. RAMOS: My other question is I  
20                 understand what you say about assistance in the polls. I was on  
21                 the Board of Elections in the '04 election, some of the things  
22                 you talked about did not happen or happened very rarely, so I  
23                 kind of get concerned.

24                 You don't have poll workers. Right now people

1       are looking for poll workers for May, you can't find them. Part  
2       of that falls with as citizens we are not volunteering to do  
3       that.

4                       We're talking about motivation of voters, because  
5       you do have training classes, you have training classes for  
6       presiding judges and poll workers.

7                       Does not do you any good if you don't have poll  
8       workers. What do you motivate them with, higher salary? They  
9       are not exactly high paid for 12 hours by the time you divide it  
10      up. I don't want to get up at 7:00 in the morning and work till  
11      7:00 at night for what they are getting.

12                      Part of this is the motivation of the citizens.  
13      I was very interested in what you said, you did the motor voter,  
14      it didn't have an impact on the voters themselves.

15                      Again they did it because it was sort of put on  
16      them, but the responsibilities comes back to some of this and I  
17      don't know how you do that, because obviously some of them  
18      weren't paying attention to what happened with the house bill --  
19      nobody showed up, they didn't show up for other things.

20                      Somehow we have to get a little further than  
21      that, because what you're talking about are mechanics of the  
22      voting system.

23                      And, yeah, there's a lot of problems with it.  
24      The chad system, it just amazes me, because we went through in



1       Green County, and we had very few, we never had problems with  
2       it.

3                   I really trust it more than the electronic, we  
4       can count them precinct by precinct. You can almost see where  
5       the changes are.

6                   You can come down to a precinct and find out what  
7       the mistake was. Without verifiable electronic voting all you  
8       do is count the same votes over, and that scares me, that scared  
9       me from the very beginning.

10                  There is nothing as a recount in electronic  
11       unless you have a verifiable paper trail, all you're doing is  
12       counting the exact same thing again.

13                  MR. TOKAJI: Well, you've got a verifiable  
14       paper trail in Ohio for better or for worse.

15                  I completely agree with your points regarding  
16       poll workers, I mean it's a huge problem, not just in Ohio,  
17       especially urban areas, but throughout the country we just don't  
18       have enough qualified poll workers.

19                  And one of the things I'm really worried about  
20       with H.B. 3 is it's going to make life a lot more difficult for  
21       poll workers.

22                  What's going to be the unintended consequence of  
23       that, these poll workers who are a scarce resource already, are  
24       likely to get driven away, because the job is going to become

1 more complicated, more difficult for them.

2 So I don't have any good -- great suggestions. I  
3 think one thing we could consider is an Election Day holiday,  
4 which would free up more human resources for people to volunteer  
5 at the polls.

6 A lot of the poll workers that we see are retired  
7 people, and thank goodness they are willing to do this. But if  
8 we were able to get another larger pool through an Election Day  
9 holiday that might get us a more qualified pool, but more  
10 additional qualified workers.

11 MR. MOKE: I think many of your points are  
12 well taken and I agree with them. I note that in both the case  
13 of the federal HAVA legislation and House Bill 3, buried in the  
14 details of both are provisions calling for in one case more  
15 college students to get involved, in motivating them financially  
16 to serve as poll workers.

17 And the other case, even high school students.  
18 H.B. 3 talks about people 17 and older being able to serve as  
19 poll workers.

20 With respect to one of your other points, just  
21 briefly about the punch cards, this is a copy of what the ballot  
22 will look like in those counties that have optical scan systems  
23 with the E&S model, those are quite numerous in Ohio.

24 And I don't know if you can see too well, but

1       it's asking you to darken in your preference. Like on the SAT  
2       exam. But if voters say do an "x" instead of darkening in or if  
3       they circle instead of darkening in, that can lead to some  
4       issues.

5                     The other issue that can arise is a stray mark  
6       over here on the corner, you notice that this is the code, and  
7       this stray mark over here where the computer is reading the code  
8       can also lead to the ballot coming back out of the reader.

9                     And so the good news is the ballot will come out  
10      of the reader and the voter will be told there is a mistake  
11      here. But again poll worker assistance comes into play here,  
12      helping them understand exactly what the instructions are and  
13      what to do.

14                    CHAIRMAN BATTLE: Yes, Ms. Zealey.

15                    MS. ZEALEY: I have a couple of questions of  
16      the two professors.

17                    With your familiarity with House Bill 3, what  
18      notice requirements are there that voters receive notice of  
19      their exact polling place prior to the election, that there will  
20      be new technology used, and how they might educate themselves on  
21      how to use it, and what types of identification are okay and  
22      which will not be allowed?

23                    MS. TURCER: There -- there is a requirement  
24      for even numbered, you know, even numbered general elections

1       that so would not apply for this primary or next primary or the  
2       following -- following general election.

3                   But the voters be sent a card giving their  
4       precinct information and giving the, you know, website,  
5       precinct information, polling location. Also what congressional  
6       district you're in, what legislative races, so that you would  
7       know what district you were in.

8                   It does not -- it did not include something that  
9       said what the exact things you have to bring to the polls, so  
10      that is an issue.

11                   MR. TOKAJI: They fortunately took  
12      Catherine's advice on that one. There were a lot of last  
13      minutes changes to the bill.

14                   You have to pardon me if it sometimes takes us a  
15      little while to look up the specific provisions, so we can  
16      provide accurate information.

17                   Catherine is right on the rest, the notice which  
18      is to be provided in 60 days, and this is just for federal  
19      elections, just so it will just be 2006, just 2008, includes the  
20      day of the election, location of the polling place, and a  
21      reminder of the identification requirement. So I think that  
22      provision is a good one.

23                   MS. ZEALEY: And the reminder of the  
24      identification requirement will specify what types of ID are

1       approved?

2                               MR. TOKAJI:   Correct.

3                               MS. ZEALEY:   Okay.

4                               MR. TOKAJI:   This is section 3501.19 of the  
5       Ohio Revised Code.

6                               MR. MOKE:   One other answer to your question  
7       concerns the issue of educating voters concerning the election  
8       technology, in several of the counties near where I live, I've  
9       been in conversation with voting officials and they are focusing  
10      primarily on the primary, in terms of voting education efforts.

11                              They have shopping malls, stores.   And I was  
12      probing them a little bit concerning the fall, exactly what  
13      kinds of voter education outreach efforts were planned for the  
14      fall election.

15                              And at least at this point it appears that the  
16      focus is going to be more on the primary, and less on the fall  
17      election, which troubles me because we're looking at turnout  
18      rates 35, 30 percent in the primary.   And far higher rates,  
19      maybe 60, 65 percent in the fall.

20                              So you're dealing with kind of a group of people  
21      who won't participate in the primary, but will be voting for the  
22      first time on the new equipment in November.   And I think we  
23      need some outreach for that group, too.

24                              MS. ZEALEY:   I have another question, just

1       one quick question.

2                   It seems as though the allocation of voting  
3       machines and the allocation of the numbered poll workers is  
4       really key, because if you could saturate every polling place  
5       with those two things you wouldn't have any lines.

6                   How is that going to be supervised, is there any  
7       plan, and is that plan public so that if it's insufficient to  
8       provide sufficient protection for voters that it can be  
9       challenged prior to 2006 elections?

10                   MR. TOKAJI: This was obviously a huge  
11       problem, especially here in Franklin County during the 2004  
12       election, in which we had actually a couple of problems.

13                   One, we didn't have enough voting machines here,  
14       period. And those that we had weren't allocated in the most  
15       fair and effective possible way.

16                   Now, part of the difficulty -- the inherent  
17       difficulty here is predicting how many voters will turn up to  
18       each polling place.

19                   And I don't envy the job that boards of elections  
20       and directors of elections has to do. I believe you'll have Mr.  
21       Damschroder testifying tomorrow. I'm sure that's one of the  
22       questions that you can direct to him.

23                   Broadly speaking to answer your question, it's  
24       done on a localized basis. We have boards of elections with

1       equal numbers of Republicans and Democrats on them. And I think  
2       the idea behind that is a sound one.

3                   The two parties can keep an eye on each other to  
4       make sure that the allocation of voting machines and poll  
5       workers among precincts are fair.

6                   Getting back to the point I made to my initial  
7       testimony, and one to your questions properly keys into  
8       transparency is key that these decisions be made public so that  
9       voters who are concerned that the allocation of either people or  
10      machines isn't right, have a chance to raise those concerns, and  
11      for those concerns to be remediated in advance of the election.

12                   MS. ZEALEY: Thank you.

13                   CHAIRMAN BATTLE: Ms. Bledsoe, followed up  
14      by Mr. Francis.

15                   MS. BLEDSOE: My question is for the  
16      disability requirement.

17                   You're saying that there should be one unit of  
18      accessibility, what does that look like, apart from  
19      accessibility to the location, what should the unit look like?

20                   MR. TOKAJI: I think you're quite right to  
21      point out the fact that there's really two distinct kinds of  
22      disability access issues when we're talking about the voting  
23      process.

24                   The first is the physical access to the polling

1 place itself, which means among other things having ramps and  
2 adequate pathways for people in wheel chairs or other assisted  
3 devices.

4 The second really has more to do with other types  
5 of disabilities, such as visual impairment, manual dexterity  
6 impairments, in some cases cognitive impairments that may limit  
7 people's reading ability.

8 What's most important and what HAVA quite clearly  
9 requires there be at least one unit that has an audio  
10 component for people visually impaired or have cognitive  
11 impairments that hinder their abilities to read, so those people  
12 can vote privately and independently without assistance at the  
13 polling place.

14 And most contemporary direct or core electronic  
15 voting machines have that capacity. There are also some that  
16 have the capacity to provide certain kinds of assistive devices  
17 for people with manual dexterity limitations, so-called zip and  
18 puff tubes that allow people to vote in that manner.

19 I don't know when it would be a good thing to  
20 inquire into. I'm more optimistic about having the  
21 accommodation for people with visual and cognitive impairments,  
22 that is audio capacity, than I am with manual dexterity  
23 impairments.

24 I've not been able to find a whole lot of good



1 information about what's going on in Ohio. I think that's a  
2 good thing to inquire into with election officials who will be  
3 testifying tomorrow.

4 MR. MOKE: I wanted to add just one other  
5 response to Sharon's earlier question, if I may.

6 I reside in a rural county in Ohio, but last week  
7 I went through several hours of training concerning the new  
8 equipment, and I thought I would share with you just briefly how  
9 our county is planning to implement the machines in terms of  
10 precincts.

11 They are taking the old punch card machine, the  
12 stand, and gutting it, but keeping the same stand and that will  
13 have like privacy shields.

14 And so the voter will take the ballot, fill it  
15 out there, and then go to the reader, and there will be one  
16 reader per precinct.

17 So in the past there would have been maybe five  
18 photomatic voting machines in the precincts. Now there's just  
19 going to be one reader. So there will be a line at the reader.

20 And then once a ballot is kicked back by the  
21 machine due to say an over vote, then the voter is going to have  
22 to return back to the first station with the new ballot to  
23 correct it and then go to the end of the line.

24 It is my understanding that there is a formula

1       for the allocation of the voting machines, but again I think  
2       Dan's answer is correct, you should probably ask that of the  
3       officials testifying here tomorrow exactly what that formula is.

4                   CHAIRMAN BATTLE: Mr. Francis.

5                   MR. FRANCIS: I think I have more of a  
6       statement than question.

7                   I voted Tuesday in the City of Dayton, we had  
8       income tax renewal and we voted on these new machines.  
9       Fortunately for us it was an extremely, extremely low turnout  
10      for this vote.

11                  But as I entered the polling station every person  
12      entering the station, a poll worker had to get up and go with  
13      that person to the new machines to show them how to work it.

14                  Now, can you imagine what's going to happen in  
15      these primaries and whatnot when you've got hundreds of people  
16      waiting to get in at the same time, and everyone of them having  
17      to have instructions on how to operate these machines?

18                  They are going to be lined out the door, I  
19      guarantee you, unless some training is done, you know, with  
20      citizens in various areas, it has to be done.

21                  CHAIRMAN BATTLE: Comments, panelists?

22                  MR. TOKAJI: Yeah, I think that's a great  
23      point and it happens any time you implement new voting equipment  
24      you've got to have voter education along with it.

1                   In places in the past that have made the  
2           transition, where it's been most successful and best received by  
3           the public have been those that did exactly the kind of public  
4           education you suggested.

5                   For example, having stations at shopping malls  
6           and where people -- places where people regularly go where they  
7           can see the new machine, where it's not completely unfamiliar  
8           when they go to the polls for the first time. Good point.

9                   MR. MOKE: I agree, you're making a very  
10          good and strong point. And just wanted to add that under the  
11          original state of Ohio HAVA plan, in the budget there were  
12          monies allocated for public education on the new machines.

13                  And I think it would be a good question to ask of  
14          Ohio officials tomorrow exactly how much money is there for that  
15          process.

16                  I can tell you in my own county just the other  
17          day I got a call from the director of our board of elections  
18          asking if I knew a college student who could help the Board of  
19          Elections staff because they are so overwhelmed getting ready  
20          for this primary, and going around to the shopping centers with  
21          the equipment in the next month to demonstrate how to use it.  
22          So I'm in the process of organizing that.

23                  But I think it just kind of raises the question  
24          about resources for that purpose, both now and especially in the

1 fall.

2 CHAIRMAN BATTLE: Reverend Wheeler, followed  
3 by Ms. Citrino.

4 MR. WHEELER: First of all, for the record I  
5 was on the Secretary of State's committee along with Ms. Turcer,  
6 HAVA committee, so I just want that to be reflected in the  
7 record.

8 And, secondly, we have a lot of homeless people  
9 in this state, my concern is how do you handle that situation  
10 when they are homeless?

11 And then No. 2, in that same vain we have many  
12 migrant workers, how do you address those issues in the state?

13 MS. TURCER: It is a significant problem.  
14 One of the things that they do allow is the use of an address,  
15 let's say you have the Faith Shelter, I'll just give a name,  
16 that is the place that -- what is home, home is where you return  
17 to.

18 So if that is a place that you intend to return,  
19 the problem is how can I put this, so that you can come up with  
20 an address as a homeless person if you're willing to use one of  
21 -- whether it's a social services, or homeless shelter so that  
22 those are options for somebody who is homeless.

23 It does provide a problem of course, because what  
24 happens, remember when we were talking about the reminding

1 people that, hey, this is your polling location, bring these  
2 IDs, these are your districts.

3 Well, what happens is if that card for example  
4 goes to a location and let's say the Faith Mission is like,  
5 well, we don't know this person, or the postman gets tired of  
6 delivering a hundred of these things, or whatever, it somehow  
7 gets lost in the shuffle, then that homeless person is left with  
8 doing a provisional ballot.

9 Then you also have the issue then the next thing  
10 is what about the homeless person, is that person likely to have  
11 ID, you get to that issue. And I think that we all know the  
12 homeless person is unlikely to have ID.

13 MR. TOKAJI: I have very little to add to  
14 that. Under the law someone should be able to cast a regular  
15 ballot if they provide for example a government check with the  
16 address to which they are registered, like the example of the  
17 Faith Shelter.

18 Now, there are going to be a lot of homeless  
19 people who are not going to have that. And those people are  
20 going to end up casting provisional ballots, which they can do  
21 in either one of two ways, either providing the last four digits  
22 of their Social Security number. If they don't have a Social  
23 Security number by signing an affidavit saying that they are who  
24 they said they are.

1 I think one of the big things to watch is the  
2 procedures for determining whether and how those provisional  
3 ballots get counted.

4 And this is one of the areas of the law that I  
5 find as I mentioned in my earlier testimony extraordinarily  
6 confusing.

7 I'm sure even the most conscientious election  
8 officials will find it confusing as well, and I think it's  
9 something we all have to keep an eye on in this and subsequent  
10 elections.

11 CHAIRMAN BATTLE: Ms. Citrino.

12 MS. CITRINO: When you mentioned the  
13 Disability Act, you said there were two components with what the  
14 voting booth itself was going to look like. The other part was  
15 actually getting into the building.

16 And given that so many buildings are not  
17 accessible, including courthouses and older buildings such as  
18 elementary schools, which have been polling places, what is  
19 being done about having the building itself be suitable as a  
20 polling place?

21 MR. TOKAJI: One of my colleagues who is a  
22 disability rights expert with Cloker (spelled phonetically)  
23 actually wrote a comment on precisely this question several  
24 months ago.

1                   Ohio has to its credit made some funds available  
2           to -- to improve the accessibility of polling places through  
3           such things as ramps to go over stairs.

4                   Her calculation, however, as I mentioned earlier  
5           we've got about at least 1500 polling places in the state that  
6           are not accessible to -- to people with mobility impairments and  
7           other physical impairments.

8                   Her calculation was the amount of money -- and I  
9           can't remember the number off the top of my head, I can  
10          certainly get it for you afterwards, was not nearly going to be  
11          sufficient to meet those needs.

12                   MS. CITRINO:   So are we violating the Help  
13          America Vote Act?

14                   MR. TOKAJI:   We're violating -- actually  
15          we're violating the ADA.   And there's an access to handicap  
16          document that even predated the ADA, and Section 504 of the  
17          Rehabilitation Act that requires accessibility by federally  
18          funded entities.

19                   So I would say with considerable confidence that  
20          there are many counties in the state not presently complying  
21          with ADA.

22                   MS. CITRINO:   Is there monetary remedies to  
23          people who are denied access to vote because they are not able  
24          to enter the polling place?

1                   MR. TOKAJI: I believe the answer to that  
2                   question is, yes, under Title II of the Americans with  
3                   Disability Act, someone could go into -- I know they can get  
4                   injunctive relief and attorneys fees. And I believe that one  
5                   could also pursue a monetary remedy, but I'd have to check that  
6                   to make sure.

7                   MS. CITRINO: Is there any state remedy?

8                   MR. TOKAJI: I can't answer that question  
9                   off the top of my head.

10                  MR. TOKAJI: There may be some state law  
11                  that parallels the ADA and would provide similar remedies. I  
12                  don't know off the top of my head, that's a good question.

13                  CHAIRMAN BATTLE: Yes, Ms. Ramos.

14                  MS. RAMOS: You talked several times about  
15                  provisional voting and I know that you seem -- it seemed like  
16                  there was a problem with that.

17                  Provisional voting, is it not until they can  
18                  verify the information because you call, I know the board of  
19                  elections takes those and calls to make sure the address is  
20                  right, the person is there.

21                  I'm sure it's not the best way to do it, but it  
22                  does allow the person to vote, they are not denied the right to  
23                  vote and they confirm it. I feel there is something on that,  
24                  tell me why.



1                   MR. TOKAJI: Let me be clear, I think that  
2           certainly provisional ballots are better than no ballots at all,  
3           all right.

4                   That if the idea behind provisional ballots --  
5           and Paul touched on this in his testimony, is recommended by the  
6           Carter Ford Commission, which convened in 2001 to study the  
7           problems that emerged in Florida and other states.

8                   And what the Carter Ford Commission noticed is,  
9           hey, there's a lot of people's names who don't appear on  
10          registration lists.

11                  Where that's the case we ought to allow those  
12          people to cast a provisional ballot and then we can subsequently  
13          verify they are registered, I totally agree with that, I think  
14          it was a good change in the law.

15                  I wish that Congress, touching on the point that  
16          Professor Moke mentioned, had been clear about provisional  
17          ballots being counted even if cast in the wrong precincts, but  
18          that was a good change in the law.

19                  My problem with H.B. 3, and I'd be concerned  
20          about H.B. 3, is that it channels a lot of folks who had  
21          previously cast regular ballots into the provisional ballot  
22          pathway, in particular those who don't have the proper forms of  
23          identification when they appear at the polling place, or certain  
24          voters who are challenged, right.

1                   So provisional ballots are certainly better than  
2           no ballot at all. They are not as good as what is a regular  
3           ballot.

4                   And what's going to happen once H.B. 3 is  
5           implemented is a lot of people who in past years would have cast  
6           regular ballots are now going to be casting provisional ballots.  
7           It's uncertain how many of those ballots at the end of the day  
8           will actually be counted.

9                   What is certain is that by channeling people from  
10          the regular ballot pathway into the provisional ballot pathway  
11          is going to mean that the results of elections is going to be  
12          less certain, and that the margin of litigation will be wider  
13          and that we can -- we're facing the prospect of more contested  
14          elections afterwards, because more people are being channeled  
15          from the regular ballot pathway into the provisional ballot  
16          pathway.

17                   MS. RAMOS: And I guess that's where I guess  
18          I'm not quite certain, because you only have ten days to verify,  
19          I believe ten days in which to verify provisional ballots.

20                   So even if they are routed that way, and what  
21          you're saying -- doesn't the board of elections have to keep  
22          track of those and they have to account for those?

23                   So I'm trying to see where you think that they  
24          are going to be not counted I guess.

1 MR. TOKAJI: Well, a lot in every election  
2 are not counted.

3 MS. RAMOS: That's because they are not  
4 verifiable.

5 MR. TOKAJI: -- Or because --

6 MS. RAMOS: -- That was the second part to  
7 this, as long as the boards of elections can confirm, will that  
8 statewide data base serve as that, too, so that if you vote  
9 somewhere different within counties that they can also verify  
10 for purpose of casting a ballot, provisional ballot?

11 MR. TOKAJI: If it functions properly the  
12 statewide registration data base will deal with some of these  
13 problems, that is the first category that I mentioned, right.

14 People who appear at the polling place finds that  
15 their names for whatever reason aren't on the list, hopefully it  
16 will make it easier in the long run to track those people down.

17 But for a lot of other voters, particularly those  
18 who don't have ID, that's not germane to the problem at hand.

19 MS. TURCER: One of the reasons I worry  
20 about provisional ballots had to do with the committee hearings  
21 on House Bill 3.

22 One of the things that was asked of the Secretary  
23 of State's Office was, all right, we know how many provisional  
24 ballots were cast, and we know how many were certified as

1       appropriately cast ballots, so that they counted, if you want to  
2       call it that.

3                       What were the reasons? What were the reasons  
4       that the rest of them were in fact not, you know, found to be  
5       valid?

6                       And this is material that was never provided to  
7       the committee by the Secretary of State's office. And it was  
8       requested repeatedly.

9                       Now, we can only assume that, you know, we can  
10       all make different assumptions, but it definitely worries me  
11       that at least some of the counties didn't review the provisional  
12       ballots, other than to go, yea, yea, nay, nay.

13                      There was not the thoughtfulness that we'd be  
14       able to say we didn't accept this one because the address was  
15       not right, we didn't accept this one, because we just never  
16       received a voter registration, we don't know.

17                      MR. MOKE: One of their -- one other aspect  
18       of your question concerns the issue of which provisional ballots  
19       are going to count, and which will not count.

20                      And part of the fault here, if there is fault to  
21       be found lies in HAVA. Because the language -- the original  
22       language in HAVA was pretty vague concerning that part of the  
23       law.

24                      And if you look back, as Dan was saying, to the

1 original Ford Carter Commission back in 2002, what they were  
2 saying was, well, we ought to allow a voter to cast a  
3 provisional ballot if he or she is not in the right precinct,  
4 but the ballot they get would count with respect to say  
5 statewide issues, or federal issues, not local school board  
6 issues that would be precinct specific.

7 But Ohio in H.B. 3 has rejected that approach and  
8 has instead said that you have to vote in the proper precinct,  
9 otherwise the entire ballot, including federal issues isn't  
10 going to be counted.

11 MS. TURCER: And I think we need to remember  
12 that there are multiple precincts at the same polling location.

13 CHAIRMAN BATTLE: Mr. Doshi.

14 MR. DOSHI: The question is related to the  
15 identification, you said you require valid and current driver's  
16 license, one of the options you have in the driver's license is  
17 opting out a Social Security number.

18 And the reason is I ask that, I had opted not to  
19 put my Social Security number on my current and valid driver's  
20 license when up for renewal.

21 Well, they would not accept any other kind of  
22 identification other than a Social Security card. I had to  
23 literally go back, I told them I give my United States passport  
24 to prove I'm a citizen.

1                   It will not do, you have -- you have to get the  
2           Social Security card. I hold current driver's license, all I'm  
3           asking you, to renew it they said nothing they can do, go to the  
4           Social Security office, get the Social Security form filled out  
5           by the officer there, bring the paper, we'll accept that.

6                   I don't know if this kind of suggestion, would it  
7           be acceptable or would we still have the same problem?

8                   MR. TOKAJI: I mean I'll tell you what  
9           should happen and what I'm worried about in terms of what will  
10          happen.

11                  What should happen is that if you've got a  
12          current and valid identification, including a driver's license,  
13          even if it's a driver's license that does not have your Social  
14          Security number on it you should be allowed to cast your regular  
15          ballot.

16                  I'm concerned that that proviso won't be applied  
17          as written, or that it will be applied disparately, different  
18          voters will be treated differently at the polling place.

19                  We of course in this country have a long history  
20          of facially neutral requirements being applied disparately, and  
21          discriminatorily toward certain groups of voters, especially  
22          based on race or ethnicities.

23                  MR. DOSHI: I may have to fill out more  
24          papers.

1 MR. TOKAJI: Well, come see me if that  
2 happens.

3 CHAIRMAN BATTLE: Mr. Humeidan.

4 MR. HUMEIDAN: I have a couple of  
5 questions, the first in line with what was just asked.

6 If you mentioned that somebody's citizenship was  
7 challenged, they have to prove that they are a naturalized  
8 citizen, what if somebody's citizenship is challenged, but they  
9 are not a naturalized citizen, they were a U.S. born citizen,  
10 they have an accent and they look a little different, what would  
11 they have to do in that case?

12 MR. TOKAJI: Here's the series of questions  
13 that's been provided, if someone is challenged on the grounds  
14 that you are not a citizen: Are you a citizen of the United  
15 States? Second, are you a native or naturalized citizen?  
16 Third, where were you born? Fourth, what official documentation  
17 do you possess to prove your citizenship, please provide that  
18 documentation.

19 Now, what the provision provides is that if  
20 someone said, at least as I understand it, if someone is saying  
21 they are a native born citizen, my interpretation of this  
22 provision is that they are obligated to take that person's word  
23 for it.

24 But if you say they are a naturalized citizen

1       then you've got to provide that documentation. Of course as I  
2       mentioned in response to the last question, what the law says is  
3       one thing, how it's applied is quite another.

4                   And I'm really worried about this provision in  
5       particular being applied on a discriminatory basis. I also  
6       think there may have been constitutional issues surrounding  
7       disparate treatment of native born, as opposed to naturalized  
8       citizens.

9                   MR. HUMEIDAN: Is there a standard system  
10      that is used or is it at the discretion of the poll workers?

11                  And in line with that is there -- House Bill 3  
12      seems like its standardizing some of the election issues  
13      statewide, is there any money allocated to training the poll  
14      workers to make sure that the training is standardized across  
15      the state and all of these new laws and regulations are enforced  
16      deeply across the state, rather than being treated differently  
17      in every county?

18                  MR. TOKAJI: I'll let Catherine take the  
19      question about funding. I'll take the first part of your  
20      question saying that this is one of the issues.

21                  There is a great deal of discretion on the part  
22      of election judges. As I read in the statutes, a caveat as to  
23      who may challenge.

24                  Once a challenge is made I think the discretions



1 are limited as to what they can and can't require. But at the  
2 front end there is a lot of discretion.

3 One can very easily see this discretion being  
4 used in a discriminatory way, and in a way that intimidates or  
5 is meant to intimidate certain classes of voters, especially  
6 racial and ethnic minorities.

7 MS. TURCER: And I was going to say much  
8 like you were talking about, there is traditional poll worker  
9 training. There is additional monies made available due to HAVA  
10 because of the new voting apparatus.

11 And in fact tomorrow morning I would spend some  
12 time asking representatives of the Secretary of State's office  
13 about how that money is actually being expended and giving  
14 examples, and asking more specific kinds of questions about what  
15 are the directives the Secretary of State is actually giving to  
16 make sure that each of the counties administer all of this in  
17 the same way, so there is equal protection across the state.

18 So I would use that as an opportunity to ask them  
19 how they are actually going to implement it.

20 MR. DOSHI: For the disability I'm very  
21 concerned. There are 1500 polling places that don't meet the  
22 requirements.

23 On the other hand how many -- do we have the  
24 statistics as to the number of disabled bodies registered in the

1 State of Ohio?

2 MR. TOKAJI: I don't have that information.  
3 I think there is somebody on the next panel who will be able to  
4 provide you with that information.

5 MS. TURCER: Sue will. Sue is from AXIS, is  
6 on the next panel, she'll talk about disability issues.

7 I think it's an important thing to think about,  
8 especially as the population is aging our mobility questions are  
9 going to get bigger and bigger.

10 CHAIRMAN BATTLE: We really appreciate your  
11 thoughtful testimony from all of you this afternoon, you  
12 certainly helped frame a very important issue for all of us.  
13 And on behalf of the committee we do thank you.

14 MR. TOKAJI: Thank you for having us.

15 CHAIRMAN BATTLE: We're going to take a 15  
16 minute break and we'll reconvene at 3:20.

17 (Off the record at 3:05 p.m.)

18 (Back on the record at 3:22 p.m.)

19 CHAIRMAN BATTLE: We'd like to thank our  
20 next panelists for being with us today. We have, Mr. Gresham,  
21 Sam Gresham from Common Cause. Peg Rosenfeld from League of  
22 Women Voters. And Sue Willis from AXIS.

23 And we'll begin with Mr. Gresham.

24 MR. GRESHAM: My name is Samuel Gresham,

1       and I am Acting Executive Director for Common Cause-Ohio.

2                   Common Cause is a nonpartisan, nonprofit advocacy  
3       organization founded in 1970 by John Gardner, as a vehicle for  
4       citizens to make their voices heard in the political process and  
5       to hold elected leaders accountable to the public interest.

6                   Our mission is to strengthen public participation  
7       and faith in the institution of government; to ensure that  
8       government and the political processes serve the general  
9       interests, rather than special interests; to curb the excessive  
10      influence of money on government, decisions and elections; to  
11      promote fair elections and high ethical standards for government  
12      officials; and to protect the civil rights and civil liberties  
13      of all persons.

14                  Now, with nearly 300,000 members and supporters  
15      and 38 state organizations, Common Cause remains committed to  
16      honest open and accountable government, as well as encouraging  
17      citizen participation in democracy.

18                  In Ohio Common Cause has served for more than 30  
19      years of working to make government operate better and to be  
20      held accountable to the citizens of Ohio.

21                  On behalf of our more than 10,000 members and  
22      supporters in Ohio, I would like to thank you for this  
23      opportunity to share some of our concerns about the electoral  
24      processes and the systems in Ohio.

1                   Some Ohioans have come to think of their voting  
2           like the proverbial Forrest Gump, a box of chocolates, you never  
3           know what you're gonna get.

4                   This fall Ohioans will see even more changes; new  
5           voting machines coming on line; absentee voting available to  
6           everyone; the requirements were resulting from House Bill 3, and  
7           the continuing implementation of HAVA.

8                   These changes will be implemented in a difficult  
9           environment with regards to trust in the political process.

10                  I'm going to talk about the legislative aspect.  
11          I know some of the presenters this morning dealt on big picture  
12          issues. I'm going to deal with the specifics of the  
13          implementation and potential effect of the legislation.

14                  There are two primary bills I'm going to talk  
15          about, that is H.B. 34, which passed October 19th, '05. And the  
16          second piece I'm going to talk about, which is H.B. 3, which was  
17          passed on January 26th, '06.

18                  I want to start with House Bill 3, and talk about  
19          the no fault absentee component of that and some of the problems  
20          that may arise as to no fault absentee component.

21                  If you remember a few years ago there had to be a  
22          rational reason why you got an absentee ballot, some sort of  
23          circumstance prevents you to vote.

24                  That's no longer true. As a result of that

1       activists and community strategists and politicians will change  
2       their approach to how they deliver to the polls.

3                   If you understand now under H.B. 234 we have 35  
4       days in which a person can vote. And they can vote by going to  
5       the board of elections, or getting an absentee ballot through  
6       the mail.

7                   They can actually go down to the board of  
8       elections and they can do it. Now, 60 to 90 days out they will  
9       actually be able to vote. And a few days after that we've been  
10      told five days after -- I mean registered, and five days  
11      processing, they will be able to vote.

12                  So within that 35 day period they may be able to  
13      register and vote. Now, from an activist's standpoint that  
14      changes the whole approach to how we deliver people to the  
15      polls.

16                  Now, what happened with that, that's a great  
17      advantage and we appreciate that. But then we come back in  
18      House Bill 3, and the boards of elections were asking for  
19      satellite offices. They wanted satellite offices, because they  
20      were anticipating if we have H.B. 234, we have absentee ballots,  
21      there will be people coming in.

22                  Unfortunately in H.B. 3 they did provide but for  
23      one satellite office. So that says Cuyahoga County can only  
24      have one office.

1                   In Franklin County Matt Damschroder told us, he's  
2           the Executive Director of the Board of Elections, they want to  
3           open up six satellite offices, which would have facilitated over  
4           that 35 day period, possibility of more people voting.

5                   Under the current rules on H.B. 3 we won't be  
6           able to do that, they can have only one satellite office.

7                   Now, I want to dwell on that for a little bit,  
8           because I think most of the 527's on both sides of the aisles  
9           will see this as a tremendous opportunity to get the idea of  
10          people who are hard to get in and vote and register.

11                  I think in that 90 day period you'll see before  
12          the election a lot of activity, and they're going to be taking a  
13          lot of people in.

14                  Had they prevailed in adding satellite offices we  
15          would have had less of what we consider congestion or less  
16          problems with people executing their vote.

17                  I think you're going to see long lines at the  
18          boards of elections, specifically in the small communities.  
19          You're going to see long lines within that 35 day period.  
20          People coming in early trying to get their voting done.

21                  The next subject I want to go to is on House Bill  
22          3, but you've had enough discussion on that, and that was on the  
23          identification. I'm sure everybody who has spoken before you  
24          talked about identification.

1                   But I want to come at identification from a  
2                   different perspective. And the different perspective I'm  
3                   concerned about is the poll worker.

4                   Now, you have asked the poll worker to change his  
5                   or her role. They were simply people who were processing people  
6                   in through the election process, you know, basically if the  
7                   signature matched.

8                   Now they are now compliance officers. They will  
9                   have to determine which piece of evidence that that person  
10                  brought in is in compliance with the standards for voting in the  
11                  State of Ohio.

12                  That in itself will create a set of dynamics that  
13                  we never experienced before in the city and across this state.

14                  People may not be as accurately or as much  
15                  informed about the new process and procedures on identification.  
16                  So we anticipate -- which I talked to earlier that we anticipate  
17                  that you will see some boards of elections with long lines.

18                  I think you will also see the increased  
19                  utilization of long lines as a result of dealing with the issue  
20                  of do you have the proper identification.

21                  Now, there are scenarios that will fall outside  
22                  of that. But I don't want to dwell on what it does to elderly  
23                  people who live in assisted living.

24                  I'm thinking about primarily those people who are

1 sitting there and have to make that decision. I have a young  
2 man I used to go to the poll with, and I know Wee-Wee is going  
3 to have a problem, because when Wee-Wee comes he does not know  
4 that he has to have these new requirements and he's going to  
5 make a fuss in the polling place about the credibility of his  
6 information. And I think you're going to see that in more  
7 places than you believe.

8 The other aspect I want to talk about is the  
9 return of processing the voter registration application.

10 There's a new rule that says if I send the  
11 application out to you and it bounces back, and its  
12 undeliverable your registration is flagged. And when you come  
13 in there is a bit more scrutiny that you will now have to have.

14 Well, that's going to complex things, because  
15 people are going to assume that they are registered to vote.  
16 And if the cards come back there's no way that they know that  
17 they've been flagged. So there is going to be a complexity in  
18 that issue.

19 Now, to compound that even more under H.B. 3 we  
20 went from four notifications of elections and qualifications of  
21 elections down to three.

22 Now, I want you to think, we're introducing new  
23 rules, and that you have absentee ballots, a no fault voter.

24 Now we have new requirements that people can vote that have to



1       have these ID requirements.

2                       We now have reduced the number of notifications  
3       they will get from four to three. So if you just take those  
4       three things alone, there is going to be less knowledge known  
5       about the process than anything else.

6                       Now, we anticipate from Common Cause that the  
7       Governor's race is going to be a highly contested race in  
8       November of 2006. It will not be won by a landslide, it will be  
9       a close election.

10                      These three variables that I just talked to you  
11       about will play into that election now. The 35 days no fault  
12       absentee ballot, the fact is now that people working in the  
13       polling place have to now become compliance workers with regard  
14       to the evidence that we have, and now we reduced the  
15       notification.

16                      Now, there is one other thing that didn't happen  
17       was an allocation of resources to these boards of elections to  
18       educate people about the new requirements that are going to  
19       happen.

20                      We lobbied for those things, but it did not  
21       happen, it was not in the offering.

22                      The next subject I'd like to talk about is  
23       provisional ballots. Provisional ballots will now increase  
24       exponentially, because of the identification requirements and

1 the types of things you will have to do.

2 Fortunately in some communities it will not be a  
3 separate ballot, it will be on the electronic machine.

4 But our concerns about the provisional ballot  
5 really falls in three areas. One, the rationale and that we're  
6 going to see more, but your ballot is held in a no man's land  
7 limbo for ten days until they decide whether it's a legitimate  
8 ballot or not.

9 And then further than that if they decide it's  
10 not a legitimate ballot, you don't have the requirements, you  
11 have no right to challenge, you can't come in and challenge.

12 So in essence if I go out to the polling place  
13 and I go in and I have to end up with a provisional ballot,  
14 there is a ten day window there that I don't know whether my  
15 ballot counted or not.

16 And by exponentially increasing the number, the  
17 effect will be the delay, the count on the actual election  
18 results.

19 If you have a close election, and you have 15, 20  
20 percent of the outstanding ballots are provisional that could  
21 have a significant effect on that outcome of that election.

22 Because of these new rules that we have now we  
23 expect an exponential increase in the number of ballots.

24 Now, may not be a big thing to you when I say

1       this, recounts and the aspect of recounts within the Democratic  
2       process, that is I as a potential candidate believe that I have  
3       an opportunity to run for office, and then the election comes up  
4       to be close.

5                       And what it costs me under House Bill 3, we  
6       increase the cost from \$50 per precinct -- I mean from \$10 per  
7       precinct to \$50 per count.

8                       So now as a candidate that's a five time -- five  
9       fold increase in the cost, if I have a recount now that I have  
10      to pay, we don't think that's fair and we think it was too  
11      large, but again it will affect the Democratic process in the  
12      State of Ohio.

13                      Now, there is a series of offenses that have now  
14      been raised in their criminality in the affect that it has on  
15      the person.

16                      Offenses concerning the declaration of candidacy  
17      and the petition and declaration and attempt to be a write-in.  
18      And nominating petitions and other petitions increasing from a  
19      misdemeanor first degree to a felony -- to a fifth degree  
20      penalty for knowingly, directly and indirectly engaging in  
21      certain offenses concerning any declaration of candidacy,  
22      petition declaration of intent to be a write-in candidate,  
23      nominating petitions and other petitions for the purpose of  
24      being a candidate.

1                   Now, if you don't follow those procedurally let's  
2     take for an example in southern Ohio there was a gentleman that  
3     didn't get enough signatures to get on the ballot and run for  
4     Strictland's seat.

5                   Now, under this law, what does that mean, if he  
6     you know, that the issues associated with that we're  
7     criminalizing.

8                   Further interference with an election has moved  
9     from a misdemeanor to a fifth degree. Campaigning near the  
10    voting place is now no longer a misdemeanor.

11                  Now, the one that interests me the most is the  
12    signature and circulation. And I think my analogy of Forrest  
13    Gump, chalked full of nuts, this is a great example of it, it  
14    says requires a person seeking to propose a state law,  
15    constitutional amendments by initial petition that referred to  
16    voting by any law and any item by a referendum to obtain the  
17    signatures of a thousand people.

18                  Before it was only a hundred, before submitting a  
19    proposal for constitutional amendment. In a measure to be  
20    referred to with the summary, require a voter signature in the  
21    initiative petition to be the original ink, provide that only  
22    the initiative petition containing a voter's original, prohibits  
23    persons from circulating any initiative petition, unless this  
24    person is a resident of Ohio. That wasn't true before.

1 Prohibits a person from signing initiative or referendum, unless  
2 the person is a registered elector.

3 That means they have to be registered to vote in  
4 the State of Ohio. For homeless people who may have done some  
5 of that work prior, it would be difficult for them now to do  
6 this work.

7 Then it sets up a whole series of rules, and I'll  
8 paraphrase them, I won't read them for you. It says if you are  
9 given a petition and you don't turn that petition in within the  
10 first time frame you have a warning against you.

11 If you do it three more times it moves up. It  
12 creates a whole new range of law associated with registration  
13 and petition drives. It drives up the potential penalty for it.

14 Now, you say to yourself what's the net effect?  
15 The net effect is it puts a chill over people who now want to  
16 get involved with the petition process.

17 It puts a chill on people who want to do --  
18 circulate petitions for people for the candidates of office,  
19 because of the new legal requirements.

20 I mean if you don't get the petition back into a  
21 certain source within 24 days that's a clock that's ticking  
22 that's associated with you.

23 I'm sure someone talked about the process of what  
24 it does to have to go for training, and if you are a for profit

1       entity you have to register and now you have to go for training.  
2       I think that has a chilling effect.

3                   It's interesting if you look at the culture of  
4       people who are associated with the political process in our  
5       country, particularly those who are at the grass roots level,  
6       they do it because they believe in the process.

7                   They do it because they want to fundamentally  
8       make changes. I think the difficulty that these new sets of  
9       legislation, it will deter good people, because of now the  
10      criminality aspect of what we've done to the law.

11                  I don't know if I would let my sons or my  
12      daughter go do this type of activity now, and naively they make  
13      a mistake, naively they do something wrong, but now it has  
14      escalated within the context of how they can be penalized for  
15      that.

16                  It says to me I don't know if my father is going  
17      to let my mother work at the polling place next year, because  
18      there is going to be so much pressure on her to work, she's a  
19      volunteer, because of all these new rules.

20                  Now, I'd like to close by thanking you for this  
21      opportunity and leave you with remarks of one of our great  
22      citizens, Groucho Marx.

23                  Groucho Marx says politics is the art of looking  
24      for trouble, finding it everywhere, diagnosing it incorrectly,

1       and applying the wrong remedies.

2                   I think House Bill 3 is a good example of what  
3       Mr. Marx was talking about. We didn't find the right animal and  
4       when we did we put six legs on it, and it's running around in  
5       our country now and people are shocked about what it will do to  
6       them, and to the electoral process.

7                   Now, I offered a little levity there, but I think  
8       you need to understand how people see the State of Ohio at a  
9       long distance lens.

10                  I was in North Carolina, I was in Washington,  
11       D.C., I was in Baltimore, they think we are the most scandalous  
12       criminal corrupt state in the union. I mean we're the new  
13       Florida.

14                  And I think in the context of the politics that  
15       we are involved with and the rule-making in the State of Ohio I  
16       hope I've shed a little light on some of the complexities and  
17       some of the potential problems.

18                  Now, I'll close. This is not new to the people  
19       who made the legislation. We stayed up late at night, all of  
20       the people on this panel, all of the people back here trying to  
21       convince them in individual meetings, grabbing them in the halls  
22       during lobby days, but they still persisted in that approach in  
23       putting this legislation together.

24                  We have more than a hundred years of experience

1 of people who are involved in our organizations, and we believe  
2 Ohio this fall, this November, will be on the plate of the  
3 center of America, and we hope that these rules don't disappoint  
4 us. We hope that these rules don't embarrass us. We hope that  
5 these rules don't make us look bad.

6 But our projection, if we do not modify them or  
7 do something we are going to look exceedingly bad.

8 Thank you very much.

9 CHAIRMAN BATTLE: Thank you. Ms.  
10 Rosenfeld.

11 MS. ROSENFELD: It's been pointed out that  
12 some of people can't hear us, hard to believe with Sam.

13 It may strike you that some of us are a little  
14 obsessed with House Bill 3, and you're right. I've spent the  
15 last year and-a-half of my life on this bill trying to get it  
16 modified and when we couldn't get it modified and when we  
17 couldn't get it amended trying to get it defeated, and you can  
18 see how successful we were.

19 I just want you to see what we're talking about.  
20 This is the bill, and this is printed on two sides. So this is  
21 what we're talking about.

22 While it was going through the legislature, it  
23 started out as a 27 page bill. Then it went to 625 pages. Then  
24 it went to 603. Then it went to 400. Every hearing was a new



1 bill, and we ended up with this.

2 You have a copy of my notes on this, this is a  
3 ten page guide I did that just to tell what's happened with this  
4 bill, it's enormous and that's why we are all so obsessed.

5 I just -- some of this you've heard. Let me --  
6 this is one I don't think people talked about, I expect Sue  
7 will, about the new requirement, attorney-in-fact, which I have  
8 to say I'm not an attorney, I had never heard of this before.

9 We've always had the provision that people who  
10 need assistance in voting can have the help of the person of  
11 their choice, so long as it's not a candidate, employer, union  
12 official, or poll workers, and you could have assistance.

13 Well, this is saying that -- I don't know what kind  
14 of disability, if you can't sign your own name, that you get an  
15 attorney-in-fact.

16 And the process for doing this is just I think  
17 unbelievably complicated. So they made it more difficult for  
18 people with disabilities to be able to vote.

19 It's been mentioned that you can no longer go to  
20 state courts if you think there is fraud in an election, you  
21 have to go to Federal court.

22 But the state is the one who defines what's  
23 fraud, but we can't go to state court if we see something  
24 happening out there.

1                   Restrictions on petitions as Sam mentioned,  
2           there are all sorts of things just making it harder to use  
3           elections to make things happen the way they should.

4                   Write-in candidates -- candidate write-ins,  
5           because they become adamant at the last minute. So for a long  
6           time you could just write in someone's name. I was once written  
7           in as mayor, well, they stopped counting those.

8                   And I can understand, they were having to count  
9           Mickey Mouse and Donald Duck, Peg Rosenfeld.

10                  So they said you had to turn in something saying  
11           you intended to be a write-in candidate ahead of time, fine, you  
12           had to do that ten days before the election.

13                  Well, now they made it longer, now it's up to 62  
14           days before the election, which pretty much means we're not  
15           going to have a lot of write-ins, which was the intent.

16                  Ex-felons can't circulate petitions. You have to  
17           be a registered Ohioan to circulate petitions. You can only put  
18           one proposal per petition, so you can't have like we had last  
19           fall with the Ron amendments.

20                  And then again you have this -- you have to have  
21           this attorney-in-fact for somebody with a disability to sign a  
22           petition.

23                  Restrictions on voting, and then we get into this  
24           documentary stuff for citizenship. One that I've talked about,

1       my father was in the Air Force, so this came to my mind, if you  
2       were born in Wies Baden, Germany because your father was in the  
3       Air Force, you are a native born American citizen, but you have  
4       no documentation to prove you're a U.S. citizen. You just don't  
5       have it.

6                       But when they ask you for those questions and  
7       they ask where were you born you're going to say Germany. And  
8       they are going to say, well, where is your naturalization, well.

9                       Satellite voting and ballot on demand are  
10      restricted. As Sam talked about the ballot on demand could be  
11      very important if you need to print ballots, because voting  
12      machines break down or something, if you can print ballots on  
13      demand at a precinct no, you can only do it now with  
14      restrictions. You have to be able to number them consecutively,  
15      and they've really made it impossible.

16                      Harassment at the polls is prohibited, but it  
17      isn't defined. That seems to me to kind of open everything up.

18                      Jurisdiction is the precinct not the county. I  
19      maintain to this day the National Voter Registration Act, the  
20      Motor Voter Act defined it as county, and that was what we  
21      should be using. We lost that one.

22                      This ID, required for everyone at every election,  
23      including absentee voting. So think about that, if you're -- if  
24      you want to vote by absentee, I immediately think about when my

1 mother was living, who was 95, and who didn't have an Ohio  
2 driver's license, didn't have a bank account, didn't have a  
3 utility bill, she was in a nursing home, I paid all of those  
4 things with her, so she didn't have any of these forms of  
5 identification.

6 Now, she could have used the last four digits of  
7 her Social Security number, but she couldn't go to the Board of  
8 Elections with additional ID to have proof who she was, I think  
9 she would have been disenfranchised.

10 And if you are home bound and you don't have a  
11 driver's license, and you have to make a copy of one of these  
12 other things, I don't know about you, but I don't think too many  
13 home bound people have a xerox machine in the basement.

14 So they are home bound, they have to go out of  
15 the house to go get a copy of their utility bill in order to be  
16 able to vote by absentee ballot. That they need to do, because  
17 they can't get out.

18 Provisional ballots, we've gone through. Do you  
19 know there are three different forms that are going to have to  
20 be filled out for each provisional ballot? Don't you want to be  
21 in line behind the provisional ballot person while the poll  
22 worker helps them fill out the forms.

23 Okay. Restrictions on voter registration, if you  
24 are paid to do voter registration, we did get them to modify it

1       a little bit, you can now continue to send them to the Secretary  
2       of State or to any board.

3                   But you have to take this training program and  
4       you have to send a copy of the affirmation that you did the  
5       training. That form has to accompany any voter registrations  
6       that you send into a board of elections. I don't know what  
7       happens if you don't do that.

8                   Whether they refuse to take the registrations or  
9       whether they arrest you or -- I don't know, but it's a felony if  
10      you don't do this.

11                  And, oh, paid -- because I asked about this, paid  
12      for doing registrations includes if you are a bank teller, and  
13      you have a stack of voter registration forms on the counter, and  
14      so say in the month of September anybody who comes in to cash a  
15      check or something, you say would you like a voter registration  
16      form, you are assisting in registration. You must have taken  
17      the training and filled out all of this stuff or it's a fifth  
18      degree felony.

19                  If you say, sure, I'll mail it in for you, you  
20      are assisting in registration. And if you're paid, and paid  
21      does not mean that this is your full-time job, it means you work  
22      at a college and you're helping freshmen register to vote, well,  
23      because the college pays you and part of your, you know, sort of  
24      on the side is helping registration, you're being paid to

1 register.

2 I know it does not make any sense at all, but I  
3 specifically asked the sponsor about that.

4 Ex-felons may not register voters. An ex-felon  
5 in Ohio can register to vote, but you may not be a fully  
6 participating person, you may not register voters, you may not  
7 circulate petitions.

8 And then let's just run through the things that  
9 are not in this bill.

10 There is nothing in here about poll worker  
11 training. There is not really anything serious about voter  
12 information requirements. There is a requirement that the  
13 Secretary do something.

14 Voting machine security, there is nothing in  
15 here. There is nothing in this bill that's been pointed out  
16 earlier about a random hand count to make sure that the machines  
17 are recording votes accurately.

18 Recounts and -- there are deadlines put in the  
19 bill for when a recount must be completed or when a challenge  
20 must be addressed, but there's nothing in the bill about how you  
21 meet that deadline.

22 It just says must be done by this date. But it  
23 doesn't give you any, you know, back from that, how you get --  
24 if you're not done by that date you're done, period, even if you

1 haven't finished everything you should have done.

2 It isn't specified in the law that the voter  
3 verified paper audit trail is the official count when you  
4 compare.

5 There is nothing in the bill to safeguard against  
6 people inadvertently or however being deleted from the voter  
7 registration list.

8 Study in Cleveland, some people very laboriously  
9 went through and found people disappeared off the polling lists  
10 between September and November, and I think they were  
11 inadvertent.

12 It's very easy if you've got a long list to just  
13 hit the wrong button. But these folks are disenfranchised.  
14 There is nothing in this bill to provide some mechanism for  
15 preventing that.

16 There is nothing in it on accessibility of any  
17 kind. And there is no enforcement. Other than that it's just a  
18 peachy king bill.

19 As I say, if you wonder why we're obsessed maybe  
20 this gives you some idea of the bad things that this bill is  
21 going to -- so my answer to are we going to be ready for the  
22 post '06 elections, the answer is no.

23 CHAIRMAN BATTLE: Thank you. Ms. Willis.

24 MS. WILLIS: Good afternoon. I would first

1       like to tell you all that I direct the AXIS, A-X-I-S, Center for  
2       Public Awareness of People with Disabilities within the State of  
3       Ohio. We are a federally funded project awarded out of the  
4       Developmental Disability Council.

5                   I've had this project for 15 years and travel  
6       across the state to meet with all kinds of disability groups,  
7       not any one population.

8                   So the things I am going to talk about this  
9       afternoon all apply across the board, whether blind, deaf, have  
10      a mobility impairment.

11                  And I also work with many of the large disability  
12      organizations, Governors Council, Independent Living Center, UCP  
13      and the like.

14                  So believe me voting has been one of our major  
15      discussion points over the last several years. I'm going to try  
16      and tell you what we feel are important about those things.

17                  I'm not going to talk a whole lot about House  
18      Bill 3, I think that's pretty well been covered.

19                  We believe that people with disabilities, a lot  
20      of them in general don't realize, don't understand, are never  
21      informed that voting is their right, just as it is every other  
22      citizen.

23                  Because many folks live in group homes or are  
24      sheltered in some way they don't always get the awareness that



1 the typical population gets.

2 So one of our priorities in the last couple of  
3 years at least has been to let people know about their rights to  
4 vote, no matter their disability.

5 Even a lot of people say, well, if you don't have  
6 the right kind of cognitive ability or mental capacity, you  
7 can't vote, and that is not true. So we're trying to get the  
8 word out and get people registered.

9 I will say that this little kink here about  
10 offering registrations is going to really hurt us, because we  
11 try and put registration forms at every Jobs and Family Service  
12 office, every county Board of MRDD, all of your BBR offices.

13 And as people come in we sincerely ask them are  
14 you registered to vote. We need to find out what this is going  
15 to do to us and our people who are asking us questions.

16 We've also asked them to not just ask once, but  
17 to repeatedly do that kind of questioning, so that if people  
18 moved, if they've changed their name and they don't understand  
19 the process that they are kept up to date on being registered to  
20 vote.

21 I think one of the problems probably in not  
22 making people with disabilities aware is they become so  
23 encumbered with their daily living skills, whether it be going  
24 to the grocery, or finding the right home, accessibility issues,

1 we often forget to build them into the community and do what  
2 everybody else does, so it might take a little more time and  
3 effort, but we feel it's valuable.

4 I heard someone question earlier about the  
5 numbers of people with disabilities in Ohio who vote. It's a  
6 very, very -- at least at this day and time, it's very difficult  
7 to judge.

8 We know that there are over two million people  
9 with disabilities, adults in the State of Ohio. However, when  
10 you register or when you go to the polls you are not asked to  
11 check off do you have a disability.

12 So the only way we've been able to count numbers  
13 is through our organizations, and informally ask how many of  
14 your people have registered to vote.

15 And we're coming up with only about 30 percent,  
16 it's very low. 30 percent of those people get to the polls, or  
17 are even registered and may not get to the polls.

18 So we need to as a constituency work on getting  
19 those people to the polls.

20 We know that a lot of things that the typical  
21 population does become more of a burden for people with  
22 disabilities, even getting to the poll.

23 Transportation is an issue across the board with  
24 these people with disabilities. So we need to start looking at

1 everything that disenfranchises a voter is doubly important to a  
2 person with a disability.

3 Takes me twice as long, and I have my own van  
4 with a lift, I don't have to rely on a driver and someone to  
5 take me in and out.

6 So I'm just saying that we need to make the  
7 process as easy for people with disabilities as it is for  
8 everyone else who walks through the doors.

9 And of course we touched upon this before, but  
10 accessibility issues, and I'm speaking right now of physical  
11 access are extreme.

12 I have to tell you my experience with the  
13 SOS Office, Secretary of State's office, in that three or four  
14 years ago we were working with some very good people at the  
15 office making headway perhaps on how to improve the process, get  
16 things squared away in terms of accessibility.

17 But as each of those people began to get in tune  
18 with what the disability community needed, they moved them up to  
19 another position and we got another person.

20 We have been through I don't know how many people  
21 now. And I will tell you that we are very disappointed,  
22 aggravated, whatever, at them not listening to this large  
23 population of what we feel are entitled voters.

24 Very recently, in fact I think it was late last

1 summer, the Secretary of State finally appointed an ADA  
2 coordinator.

3 ADA started in 1990, we should have had an ADA  
4 coordinator for all of that time. So we just got one. And he  
5 appointed a group of five or six people to work with this ADA  
6 coordinator to figure out these disability issues. He just  
7 left it in their hands.

8 I will tell you that it has been extremely hard  
9 to get any information out of that group, to get any numbers out  
10 of that group.

11 I went to their meeting last week, only three of  
12 them were even there. I don't feel that we are really being  
13 listened to and our problems being addressed.

14 I asked about HAVA money for making places  
15 accessible. Because I know we've got limited funds, I can't  
16 tell you exactly what that was. And I was told that we have in  
17 Ohio 11,000 polling sites, not precincts, but actual places.

18 Now, if we have 11,000 and we know a massive  
19 number of them were not accessible, we should have been using  
20 that money, but when I asked have we used up all of our money  
21 yet, he said, oh, no, we have a lot of money left over.

22 Now, what are we doing with that money, we need  
23 to be fixing those places.

24 I do know that this little committee sent to

1 every county board of elections a booklet. They took a document  
2 designed by the Department of Justice, people who wrote a lot of  
3 the ADA and the Department of Justice created, it's on the  
4 website specifically for accessibility of polling places.

5 Well, this little group thought it was too long  
6 and too cumbersome, so they decided to shorten it, make it  
7 smaller type.

8 They took out things like restrooms, in other  
9 words they took a federal document, which we all should be  
10 following it, and kind of made it into their own document.

11 And they sent that to every county board to do  
12 their own assessment. You take this document and you tell us  
13 what's wrong.

14 Well, I can tell you from experience that many  
15 things can be misjudged in reading things like that, you know,  
16 someone might judge a doorway, and I mean measure it and say  
17 this one is 36, someone else might say it's close. So we'll say  
18 it's close and it passes.

19 I'm not assured that even those counties who did  
20 receive the document are making their places accessible. To get  
21 any funds at all they turn back a grant request to the SOS  
22 office, and they have agreed to only give money to temporary  
23 changes.

24 Like if there is a step in a building they will

1       buy a portable ramp, they don't want to put money into a  
2       building that they don't really own.

3                   Now, if they are public buildings they should  
4       have been right to begin with based on ADA. If they are  
5       private buildings and there are other things wrong, I think we  
6       need to be looking for a different location.

7                   Someone mentioned this morning we still have 1500  
8       that aren't right. I can't tell you that that's an accurate  
9       number, but from people that I talk to that does not surprise  
10      me. Many, many things can make a place accessible.

11                  And while I'm on it we'll talk about the new  
12      equipment a little.

13                  The Debolt equipment and the ES&S equipment are  
14      accessible units that people with disabilities can use, probably  
15      any of the units that are out of sight, you don't need to go to  
16      one special unit.

17                  The optical scan equipment however needs a unit  
18      that is accessible. So I don't know how counties are setting  
19      those up or what they are using as their accessible units.

20                  If any of you have ever tried to fill in those  
21      little circles you know that for many people with disabilities  
22      that's an impossibility, they still have that concern because  
23      absentee ballots are going to be little tiny circles.

24                  I'm not sure we're going to be able to accomplish

1       that.    But anyway the concern about having an ADA unit in every  
2       site is taken care of because of the new equipment.

3               The only concern would be if a person needs an  
4       adaptation from what we're calling them, accommodations to that  
5       piece of equipment, such as the little thing you blow in, almost  
6       anyone who's blind, deaf, physical mobilities, et cetera, could  
7       use the equipment.

8               But if it is someone who totally wants to vote on  
9       his or her own, go in there and vote on his own, and the only  
10      way he can make a mark or push a button is through a blow tube,  
11      according to law, that is a reasonable accommodation and the  
12      polling site should have that available.

13              We know that is not going to happen this go  
14      round.

15              How would they know ahead of time, all that stuff  
16      has not been worked out.   But we do need to look at the people  
17      who do come in to vote, are any of them asking for anything  
18      beyond what is on-site, and make plans in the future to take  
19      care of those individuals.

20              I want to mention a little bit about the  
21      attorney-in-fact provision that is written in the House Bill 3.

22

23              We have looked and looked and looked at that  
24      language, because we talked and talked our heads off and didn't

1 get anywhere.

2 In fact I sat with Senator Coglein the day before  
3 it passed, the way we are reading it currently the  
4 attorney-in-fact is meant to be an alternate, it does not have  
5 to be the only way a person could sign.

6 So if a person comes in to put their signature in  
7 the book, and let's say they have been used to using a stamp or  
8 making their mark or having their assistant sign for them, if  
9 those are things they do in their typical lifetime, day to day  
10 living, those are their legal ways of signing, those are  
11 accepted.

12 But we're afraid that the poll workers are going  
13 to read attorney-in-fact in the document and they are going to  
14 point fingers at those people and say if you don't have your  
15 attorney-in-fact you cannot vote.

16 Ohio Legal Rights Service works a lot with the  
17 disability community, they have read this language, had their  
18 attorneys read it and read it.

19 They are saying that is an option only, and if  
20 there are any cases brought forth they'll be glad to take them  
21 to court, but we're hoping that doesn't happen.

22 That does bring to mind, though, we are very  
23 concerned about poll worker training. And I've heard it brought  
24 up before, if we can get more of that 30 percent, more than the



1       30 percent of people with disabilities to the polls, will the  
2       poll workers be able to work with them efficiently and  
3       effectively in a respectful manner, get them through the voting  
4       process. We don't think they are getting any training in those  
5       efforts.

6                       Once again the little group told me that they  
7       were all given, I don't know if they were given or they bought  
8       it, there is a 45 minute video that was produced for people with  
9       disabilities in the work place.

10                      And they said, well, every county has one, all of  
11       the people have to look at it, you have to know what's in it and  
12       then we do further training.

13                      I've talked with people in Franklin County and  
14       nobody has ever seen that video. And I don't think that between  
15       now and voting day they are going to get to look at that video.  
16       And it's simply a stepping stone. It's not all of the things  
17       you would need for interactive.

18                      So what does a poll worker do who's never had to  
19       experience someone coming up who is nonverbal, how to act, how  
20       do you react and handle that person.

21                      And before I think, we've had low numbers and we  
22       could probably work it out. But if we're going to go out there  
23       and make an effort to get more people voting, we already have  
24       lines of people with the new equipment and all of these other

1 things, how are those people going to be taken care of.

2 And I don't want to use the excuse, well, let  
3 them vote absentee. I don't buy that one. I want to vote like  
4 everyone else votes. It's almost fun to go to the polls and see  
5 your neighbors and talk about this and that.

6 So poll worker training, and again we have HAVA  
7 money to be doing that, and we just don't think it's getting  
8 done.

9 Some of the things that we have concerns about  
10 are not really in law, but we from time to time term them best  
11 practices. To me it's almost the logical things that you do.

12 And I know I'll probably use 2004 as a prime  
13 example, because we lived through that one and it was long and  
14 laborious.

15 But our lines here at least in Franklin County  
16 were extensively long, we had no accommodations for people with  
17 disabilities to be standing there for two hours.

18 It would have been a simple thing in my mind to  
19 have some folding chairs available, a park bench, whatever.  
20 You cannot take a person -- even a person who does not have a  
21 significant disability sometimes and make them stand for those  
22 periods of time. I think we need to be looking at simple  
23 accommodations.

24 I, for one, it was pouring down raining that day

1       if some of you remember, I could not be in that line in the  
2       pouring down rain outside in this power wheel chair, it's just  
3       not a good thing to do. So I went home and came back twice  
4       until the line shortened.

5                   Is there not some way we could take -- we do this  
6       at other movies and we take numbers, and we know when to come  
7       back. Is there some process we could put in place.

8                   Many people with disabilities who got there and  
9       couldn't be in line for one reason or another could not come  
10      back as I could, they didn't have a driver or whatever.

11                  So we lost people who had to go home, people who  
12      had to take their medications because there was not a drinking  
13      fountain around or people with diabetes who had to eat a snack,  
14      but if they left their spot in line you might as well go to the  
15      back again.

16                  I think best practice would have us look at some  
17      easier solutions to accommodating people. And I think this will  
18      probably go across the board to a lot of audiences, not just  
19      people with disabilities.

20                  Many of our other issues have been brought up  
21      before, I want to make one more mention, though, of the ID  
22      requirements.

23                  Remember that across the board people with  
24      disabilities have the low incomes and do not have a typical ID

1 or whatever in their pocket.

2 I've heard it said, well, everybody is going to  
3 need one of those, just go get one. Well, even \$5 to some  
4 people on SSDI or other minimum wage, they just don't have it.

5 We have to make sure that ahead of time people  
6 know what they can bring with them and I don't see that  
7 happening. The information about what to do before they arrive  
8 at the polls I don't think is out there.

9 So I thank you for your attention.

10 CHAIRMAN BATTLE: Thank you, panelists.  
11 Questions, committee? Yes, Tom.

12 MR. ROGERS: I can envision a poll worker  
13 getting over taken with his power, and my concern is how are you  
14 going to protect the poll worker, somebody will become irate and  
15 say I can't do this.

16 MR. GRESHAM: Do you know at the Senate  
17 hearing I said that. I said you are putting these people at  
18 risk. If they don't know the new requirements there are going  
19 to be some incidents.

20 I can say to you we're going to monitor H.B. 3  
21 and where we find examples like that there is going to be a lot  
22 of litigation if this thing blows up, not only from good  
23 government perspective, but from individuals.

24 MR. ROGERS: Are you going to provide police

1       officers at each poll?

2                       MR. GRESHAM: I don't think so.

3                       MS. ROSENFELD: One thing I suspect will  
4       help this fall is the election protection program that was put  
5       in place for the 2004 election.

6                       A lot of volunteers, both lay people and  
7       attorneys who had people out at polling places to help voters,  
8       ended up helping poll workers.

9                       Because they -- some of them were better trained  
10       and knew what the rules were, and in fact my guess is at least  
11       for this election the election protection people would probably  
12       be the people who short of calling the cops, would step in and  
13       help the poll workers, know what the rules are, and B, kind of  
14       quiet things down. But, yeah, I think we could have some  
15       serious problems.

16                      CHAIRMAN BATTLE: Yes, Ms. Presley.

17                      MS. PRESLEY: I'm still hung up on this  
18       absentee voter ID and how in the world would that play out.

19                      I don't understand how will they want you to fill  
20       out the form and send along a copy of your ID?

21                      Now, and I'm not speaking for everyone, but with  
22       a person with a disability, if they were trying to send in  
23       absentee, well, that means you're going to have to go out  
24       somehow and get a copy, put it in, it just makes things that

1 much harder.

2 While they took off the restriction they don't  
3 have to say why they need it or that they have a disability,  
4 they still made it twice as hard to get the documentation to  
5 prove who they are.

6 MS. ROSENFELD: It was -- it's House Bill  
7 234, and it was put in. It started off as a nice little bill,  
8 which we initially supported to allow 17 year olds to work at  
9 the polls, which I think was an excellent idea and did get  
10 affected and will be in effect.

11 But at the last minute they amended this quite  
12 deliberately to offset the Ron Amendment that was on the ballot  
13 last fall, to allow no excuse absentee voting.

14 But they put the ID requirement on I'm sure  
15 because they knew they were going to put an ID requirement into  
16 House Bill 3.

17 And so if they were going to have -- you would  
18 have to show ID to vote in person, they didn't want to let you  
19 vote absentee without ID or everybody would be voting absentee.

20 And they -- I don't think they -- they either  
21 don't think through the implications from this stuff, or they  
22 don't care.

23 MR. GRESHAM: I would support that they  
24 don't think through, but enough of us told them that we thought

1       that these things would happen.

2                       We think 30 percent of seniors will be  
3 disenfranchised as a result of this requirement. They are not  
4 going to be able to vote and it's going to deter them from  
5 voting and they won't vote, because it's going to become more  
6 complex.

7                       But I want to let you know there is going to be a  
8 lot of litigation, there is going to be a lot of people in court  
9 if this thing blows up the way it plays out the way it will.

10                      There will be a lot of people in court. This  
11 group, a couple other groups, the lawyers, if it plays out it  
12 becomes more complex than what we had in 2004 and 2002, and we  
13 end up having riots at polling places.

14                      I mean people go berserk. I hope that does not  
15 happen. I know some communities where there are polling places  
16 that will happen, because they didn't know that you needed an  
17 ID, they didn't know the litany of things you could have as an  
18 option to this.

19                      And they are going to say you have to vote  
20 provisionally, and that man will say I never had to vote  
21 provisionally, what does that mean.

22                      Again, we come back to the poll worker is sitting  
23 there having to deal with this, they will get more abuse, I can  
24 tell you that now.

1 CHAIRMAN BATTLE: Yes, Mr Doshi.

2 MR. DOSHI: One thing that seems like you  
3 may need to consider is the language. I'm sure there are  
4 citizens in this city that are not English speaking. I wonder  
5 if there is any provisions for ballots for them?

6 MS. ROSENFELD: No. Ohio does not have --  
7 we have no precincts with a sufficient number of anyone that we  
8 have that we come under the alternative language rights for  
9 federal law.

10 MS. WILLIS: But I will say that the  
11 equipment that we purchased can be adapted to other languages if  
12 the need for that is proven and it's a relatively simple  
13 process, so when you go in you tell what language and they key  
14 it in.

15 MS. ROSENFELD: Yeah, once it's set up.  
16 But Ohio does not meet any of the language requirements at this  
17 point.

18 MR. GRESHAM: Let me add to that. In the  
19 Voting Rights Act one of the issues in controversy now is  
20 Section 203. There is a provision that we have to, that's the  
21 part that needs to be renewed next year, we have to have those  
22 bilingual portions.

23 In meeting with some of the constitutional people  
24 Steve Chavet (spelled phonetically), Cincinnati Chair of the



1       Constitutional Committee, House of Congress, they are not sure  
2       they are going to allocate dollars to make those types of things  
3       happen, where you can have multiple languages.

4                   It's not -- as Peg points out, it's not a big  
5       issue here, but in Texas, California, Florida, it's a big issue.

6                   MR. DOSHI:   There are a lot of Somalians  
7       here.

8                   MS. ROSENFELD:  They are not citizens yet,  
9       that's the difference.

10                  MR. DOSHI:   2008?

11                  MR. GRESHAM:  2008, yes.

12                  MS. ROSENFELD:  I think it's five percent  
13       within -- within the county or within the precinct.  I'm not  
14       sure, but we haven't hit the five percent.

15                  MR. GRESHAM:  Threshold.

16                  MS. ROSENFELD:  Threshold in any county.  
17       The closest we were coming was maybe Lorain County was Spanish  
18       speaking people.

19                  But we have not hit the threshold, and I have to  
20       tell you in all honesty election officials are not going to do  
21       it until required by law.

22                  MR. DOSHI:   If it's less than five percent  
23       than the general population they don't have to do anything?

24                  MS. ROSENFELD:  No.  Now, some places may do

1       it voluntarily, particularly maybe put out some voter  
2       information in alternative languages.

3                       But I don't think they are going to put the  
4       ballots in any other language until they have to.

5                       MR. DOSHI:  If it's that simple,  
6       translation, and the machines are capable of doing it?

7                       MS. WILLIS:  If the county boards are saying  
8       their money is so tight, which they've all been saying they  
9       don't even have a person to go do it.  But it is true that the  
10      equipment, and when they looked at the equipment they purchased  
11      that it could be adapted.

12                      MS. ROSENFELD:  The electronic screen.

13                      MR. GRESHAM:  Can I add one more point I  
14      don't think we thought about, and I think it's important in this  
15      period of democracy, electronic machines are great marvels, they  
16      do wonderful things, it costs a lot to maintain, okay.  They  
17      cost a lot to maintain.

18                      Montgomery County got a bill for \$119,000 from  
19      the person doing their machines just for annual maintenance  
20      service.

21                      Now, I want you to think, you go down to Hocking  
22      County, you go down to Darke County, you go down to Allen County  
23      and you say you've got a \$119,000 bill to maintain these  
24      machines, these people don't have the money.

1                   Now, fundamentally there is a disconnect. The  
2                   disconnect is elections are county managed, but they are  
3                   statewide and federal in focus.

4                   The most important election is the presidential  
5                   election, but they don't give them any money. If the county  
6                   commissioners don't come up with their money or state, HAVA is  
7                   the first pot of money they've had in a while --

8                   MS. ROSENFELD: -- Ever.

9                   MR. GRESHAM: Ever. Fundamentally it's a  
10                  disconnect. It's not seen as a national issue. It's seen as a  
11                  county issue.

12                  And when the dominoes roll they say, well, the  
13                  county commissioners can decide what they want to do, but  
14                  they've got a chicken here that's going to come home to roost.

15                  They have all of this technology, and if 50  
16                  percent of their machines go down what's going to happen? Who  
17                  can afford to pay for this?

18                  MS. ROSENFELD: Have any of you read in the  
19                  Dispatch, and I don't know whether it's been in other papers  
20                  around the state, Fairfield County has already said they need a  
21                  50 percent increase in their personnel in the office.

22                  Now, this only means four people, but they only  
23                  have eight, and they want four new people. And they need -- I  
24                  forget how many tens of thousands of dollars for support for

1       their new machines. And the county commissioners say, no, we  
2       don't have it.

3                       And so I mean it's hitting right now. They need  
4       the support and they are getting these contracts, and they are  
5       -- they say we don't have the money, well, get it from your  
6       county commissioners. Well, where do you get it out of.

7                       MS. WILLIS: And I don't remember ever  
8       hearing when we heard all of these pitches from these companies  
9       selling equipment about how expensive their service contracts  
10      would be.

11                      So now we have counties like Fairfield who say  
12      we'll go out and hire our own repair technicians, but my  
13      question is we fought so hard to have secured equipment, and  
14      people working on equipment that knew what they were doing, if  
15      we go out and start hiring our own maintenance folks what does  
16      that do to the security of these pieces of equipment.

17                      MR. DOSHI: The worry is they will not be  
18      heard.

19                      CHAIRMAN BATTLE: Ms. Ramos.

20                      MS. RAMOS: We've been hearing about all of  
21      the shortcomings of this bill, give me some idea, some solutions  
22      or something, recommendations you think could happen.

23                      It seems like all we hear is what its  
24      shortcomings are.

1                   And I want to clarify the military born overseas,  
2           you made a comment about them coming back, my understanding is  
3           those children born overseas have to apply when they are 18.

4                   MS. ROSENFELD: No, no. If a parent was a  
5           U.S. citizen they are U.S. citizens.

6                   MS. RAMOS: There is certain documentation  
7           they have to go through.

8                   MS. ROSENFELD: They would have a birth  
9           certificate.

10                  MS. RAMOS: At 18 they have to apply for  
11          certain -- Tom may know.

12                  MR. ROGERS: People I know born overseas and  
13          come back when they turn 18, they have a choice which country  
14          they want to be a citizen of.

15                  MS. ROSENFELD: I have two children, not  
16          anymore, who are dual citizens. My daughter lives in Canada,  
17          her children are American citizens, they have American passports  
18          and they are Canadian citizens.

19                  Now, to get a passport for them, she had to go  
20          take their birth certificates and actually had to take them to  
21          get their passports.

22                  MS. RAMOS: You do have to declare it at 18.

23                  MS. ROSENFELD: They are dual citizens for  
24          life. They changed the law in the mid '90s. I think it was to

1       allow dual citizens, because that was the law. I remember a  
2       college friend of mine who had to choose her citizenship when  
3       she became of age.

4                       MS. RAMOS: Anyway, like I said I just  
5       wonder what kinds of recommendations that you had. I heard she  
6       definitely -- Ms. Willis say she didn't like absentee ballots.

7                       I think for a lot of disabled that couldn't get  
8       around that would be -- excuse me, I've got allergies, I'm  
9       having a hard time. So there has got to be another way.

10                      Now, trying to make each place accommodating, I  
11       think is kind of different because we forget about some of the,  
12       I guess, restrictions we have, you know. Polling places are  
13       also subject to who wants to have polling places.

14                      So sometimes that is a problem and I think one of  
15       our people here mentioned that the building can be old, but you  
16       have to go out and look for some of those, and the schools don't  
17       always want you in there, some churches don't want you in there,  
18       and you have to find places, because you can't own the buildings  
19       and have a place.

20                      MS. ROSENFELD: If it's a public building  
21       they have to allow it, public buildings by law have to allow you  
22       to have a polling place in there, which is schools.

23                      MR. GRESHAM: Libraries.

24                      MS. RAMOS: That's what I'm saying, give me

1       some recommendations to some of the things you see as barriers,  
2       some recommendations of what could be done to overcome some of  
3       these shortcomings.

4                       MR. GRESHAM: I'll start with the  
5       handicapped issue. House bill 312 that's making its way through  
6       the process now that will put more teeth into the question you  
7       just raised. We're debating that now and people are working on  
8       it.

9                       HAVA still has some requirements saying you have  
10      to have accommodations, you have to do that. So somewhere  
11      between the reality of being on the ground in a town and the  
12      rules that's where we got to stand, we can't say otherwise.

13                      Now, let me go to some of the other things. I  
14      want you to go back, in the other system you went to register to  
15      vote you had an ID or some documentation, you were on the rolls,  
16      you signed your signature. When you got to the election place  
17      all you had to do was sign your signature.

18                      There could be some contests, you know, everybody  
19      does not sign their signature generally the same way. You got  
20      your piece of paper, you went over to the voting machine and  
21      voted, you walked out of the door.

22                      Now, the best way to call it is it's becoming  
23      seemingly complex, and the dynamics of that is now what the  
24      police call a compressed 30 seconds, within that compressed 30

1       seconds a whole lot of things could go wrong, because now people  
2       will behave in certain ways.

3               So my solution to you quite clearly if you look  
4       at all of the things they put in place, I have to ask the  
5       fundamental question, do you want people to vote. And do you  
6       want them to vote in large numbers.

7               And when you do that analysis and extract that  
8       out backwards, based on what you have now, based on what has  
9       been legislated in House Bill 234 and House Bill 3, the  
10      fundamental question you have to ask, and we've asked this  
11      question, do you want it?

12              And you wouldn't want to know the answer that we  
13      got, you don't. You don't want to know what they said to us  
14      when we asked that question.

15              So there are things you can do. But now poll  
16      worker money, No. 1 on my list, training for poll workers.  
17      Second thing is even with the new rules let everybody know, put  
18      it on television, put it on radio, put in the newspaper.

19              You know 90 days out nobody should be surprised  
20      that within that 35 day window you have to register to vote.  
21      They should not be surprised about any of the requirements.  
22      It's an educational program.

23              Now, what we've decided to do as a good  
24      government organization, is to put educational programs



1       together, because if the government won't do it we have to do  
2       it. We have to find ways.

3                   As the League of Women Voters, as AXIS, as Common  
4       Cause, to put educational programs in these communities, so  
5       people, particularly poor people, particularly disenfranchised  
6       people, they are the least ones to get it.

7                   You have to put those educational programs in  
8       place. If I can do two things, give poll workers, give Franklin  
9       County, give Cuyahoga County money to train their poll workers,  
10      I won't change the rules. And give them marketing and media  
11      money, those are two things I would ask, because I can't change  
12      the law.

13                   MS. ZEALEY: Would you also include as part  
14      of your recommendation to increase the number of poll workers at  
15      the location where there's been high turnout in the past?

16                   MR. GRESHAM: Yes. Mr. Rogers, you may have  
17      been joking, certain places I think you better put police  
18      officers, you may have situations out there that may potentially  
19      blow up.

20                   MS. ZEALEY: Ms. Rosenfeld, my father is in  
21      the precise situation that your mother was prior to her demise,  
22      and I fear that as someone who is both elderly and disabled,  
23      he's wheelchair bound, that he will not be able to vote unless  
24      we obtain the state identification.

1                   He was denied the right to vote in Alabama as a  
2     graduate student many, many years ago, he's 93 now, by a  
3     literacy test, they asked a question what is meant by in fee  
4     tail --

5                   MR. GRESHAM:  -- What is that?

6                   MS. ZEALEY:  It's a very legalistic archaic  
7     real estate term.

8                   MR. GRESHAM:  I've never heard it.  We all  
9     failed that.

10                  MS. ZEALEY:  I've been a lawyer for 21 years  
11     and I've seen it probably three times in my entire career.  But  
12     he was denied the right to vote, and he was born in Georgia  
13     where they didn't issue birth certificates for African Americans  
14     in 1913.

15                  So if he was denied the right to vote in 2006,  
16     it's not so much that I fear for someone else's safety, I fear  
17     he wouldn't survive it, because he would be so enraged that he  
18     might keel over.

19                  And so I want to do what I can to prevent the  
20     situation where senior citizens and disabled persons of Ohio  
21     cannot exercise their right to vote.

22                  So he has no bills, he has -- his driver's  
23     license is expired.  He cannot attach anything that you  
24     mentioned to his absentee ballot, which he's typically filled

1 out in the past.

2 So how do citizens that fall into his category do  
3 anything other than get a state identification, if they can get  
4 that?

5 MS. ROSENFELD: Oh, well, my favorite one,  
6 the alternative is a bank statement. Are you real keen to send  
7 a xeroxed copy of your bank statement to the Board of Elections  
8 with your name, address, how much money you have in the bank and  
9 name of the bank and the account number. Anything else you'd  
10 like to have?

11 MS. ZEALEY: I guarantee you my father would  
12 never do that.

13 MS. ROSENFELD: I hope not. This bill has  
14 been very bad for my blood pressure.

15 MS. WILLIS: We're not sure what other items  
16 people can take. It's probably going to take people trying to  
17 do this proffering that they can't do it, in order to show  
18 people this isn't right.

19 Because I think there are more of those people  
20 out there than they recognize. There are a lot of people who  
21 just don't have like your father appropriate documentation.

22 MS. ROSENFELD: They can use the last four  
23 digits of their Social Security number, but then it's up to the  
24 Board as the earlier panel was saying, the Board of Elections

1       then decides whether this matches with their voter registration,  
2       whether the Social Security number is on their voter  
3       registration.

4                   Mine isn't, I've been registered in the same  
5       place for 40 years, no way I'd give them my Social Security  
6       number.

7                   Would you ask your father if he wouldn't mind  
8       being a test case.

9                   MS. ZEALEY: I know a good lawyer, too.

10                  CHAIRMAN BATTLE: Mr. Wheeler.

11                  MR. WHEELER: Mr. Chairman, thank you. You  
12       know, seems like just yesterday that people were being knocked  
13       down the stairs for the right to vote, and I can think of  
14       Reverend Fred Selsbrook right out of Cincinnati, so many sad  
15       cases, and here we are back in 2006 talking about the right to  
16       vote.

17                  My concern at this time is those that are  
18       disabled. The -- I heard 1500 polling places, 1500. Now,  
19       that's just a guess I understand, estimate of where people might  
20       not be afforded the opportunity to go in and have the greatest  
21       right that they have as a citizen of this nation, is the right  
22       to vote.

23                  Is there somebody that comes out monthly with  
24       some kind of chart or something that says we have done 50 more,

1       we have 1450 more to go. Who's doing that? And if not, why  
2       not.

3                       So that all of these people will have an entre'  
4       to vote, then we may as well be back in Alabama holding people  
5       out, because they had no way in, because they do not have  
6       accessibility.

7                       MS. WILLIS: What I've been told, and I get  
8       told very little by that little group at the Secretary's office,  
9       is that every county board of elections took the checklist which  
10      our state made up, not the federal checklist, to their sites and  
11      measured and judged and sent back an approved list of their  
12      sites.

13                      With ones that needed help they put down requests  
14      for funding to fix them, temporary fixes. My concern is did  
15      they do it right, is anybody checking up on it?

16                      If they use something temporary -- this was the  
17      great case, I had a friend last year who went to a school to  
18      vote, she got there and big step at the door.

19                      She got back home and called the Legal Rights  
20      Office who contacted the school, oh, we have a ramp but it's  
21      down in the basement, nobody put it out today.

22                      Now, I mean, these are just not logical thinking  
23      people. So how do we know that they are doing it right, I'm not  
24      sure that they are.

1                   And if they need more things done, why aren't we  
2                   using that HAVA money that is sitting in a pot that was  
3                   specifically addressed to be used for accessibility.

4                   MR. WHEELER: Mr. Chairman, if I may, to the  
5                   committee here, I think that's one thing that I would like to  
6                   see on the agenda is where are we at with the 1500 places that  
7                   the disabled are not to go, do not have entrance into.

8                   That we might really look at that as apart of a  
9                   new civil rights, because it's keeping people out. And I think  
10                  that somebody should be reporting that to the public, because  
11                  everybody deserves a right to vote.

12                  And if it's within their county I think it's a  
13                  county responsibility and state responsibility and a federal  
14                  responsibility to afford people that greatest right of all.

15                  So I wish that would be one concern that we would  
16                  look at the disabled.

17                  MS. RAMOS: I have one question. I want to  
18                  address this, I know that the new machines most all of them are  
19                  portable.

20                  And my understanding was when they were getting  
21                  the machines they would be able to be taken out, that's the  
22                  reality of it was you could carry it out to the curb and let  
23                  people vote, so you have not run into whether they've done that  
24                  or not?

1 MS. WILLIS: I asked about that last week.  
2 While that was a big selling point, in reality the Debolt  
3 machines can't be taken to the car.

4 The ES&S machines could be if they just took one  
5 and just left it as the only machine, I mean it couldn't be used  
6 in the room, it would have to be used strictly to take out to  
7 the cars.

8 So I asked the committee how many places in Ohio  
9 do you think were really going to do curb side voting, because  
10 you can't get in. He told me six in the entire state, he told  
11 me six. I just --

12 MS. RAMOS: Six machines?

13 MS. WILLIS: Six places, six voting places,  
14 that is all he knew about.

15 MR. GRESHAM: There are 11,000 voting  
16 places.

17 MS. WILLIS: That's all he knew about.  
18 Because I was also asking if I need curb side voting how do I  
19 get someone's attention to bring me a machine, or how do I go  
20 about doing that.

21 And he said, well, we're going to put in little  
22 door bells. Now, I don't know where they are going to put these  
23 little door bells that I can reach from my car, but that was one  
24 of the answers, so that we don't have to move our equipment

1       around, because our equipment, we'll have people lined up  
2       waiting to use it, we'll just bring out an optical scan to your  
3       car, that's the way we'll have to do it.

4                       MS. ROSENFELD:   They don't have optical  
5       scans?

6                       MS. RAMOS:   Electronic machine supposedly,  
7       they were going to be able to pick them up and --

8                       MS. WILLIS:   -- That's what we were told.

9                       MS. ROSENFELD:   -- go look at it when you go  
10      to vote --

11                      MS. RAMOS:   -- We used them -- we used them  
12      -- I'm sorry, we used them portably at like the county fairs for  
13      people to try, so I know they were portable, but I just wanted  
14      to know how in reality they were used and maybe there aren't a  
15      lot of counties using them now.

16                      MR. GRESHAM:   You trigger something called  
17      chain of custody, which really becomes a legal problem.   Where  
18      was that machine during the process of voting.

19                      It really becomes a problem.   Now, since you  
20      opened that door electronically the issue of chain of custody  
21      with the cartridges that come in from the electorate out in the  
22      ballot is an issue, but it's going to be a bigger issue in the  
23      future.

24                      And it's going to be a bigger issue in the future



1       because if I can magnetically hit that cartridge with something  
2       that changes the reading on that, I mean by going -- you know  
3       for everything you go into that's good there is an unattended  
4       consequence.

5                   I can tell you stories, CDs, eight tracks, all of  
6       that kind of stuff really is going to be an issue as we get more  
7       technology involved in the process.

8                   You know, people say you can do it retail, you  
9       can do a little retail manipulating on the voting system. But  
10      if you get it in electronic capacity you have wholesale capacity  
11      now of being able to wholesale change a whole lot of numbers,  
12      and in critical places you can do that.

13                  There's advantages to technology, there are  
14      advantages to punch card from the standpoint of voter  
15      confidence.

16                  What all of this does, these impediments, these  
17      newer pieces of equipment tend to reduce the number of people  
18      who want to participate, it's now too much work.

19                  CHAIRMAN BATTLE: Mr. Doshi, I think you  
20      have the final question.

21                  MR. DOSHI: Just that in answering to  
22      Chairman Wheeler was saying for 1500 polling stations that need  
23      to be upgraded, you mentioned there is about 1.4 million  
24      disabled, does that responsibility lie on our shoulders or some

1       shoulders that they be brought into participation in this  
2       voting, whose responsibility is it? There are people who are  
3       eligible to vote, but they are simply not tuned in or plugged in  
4       the system?

5                       That's a huge number, I'm shocked really of that  
6       many disabled people.

7                       MS. ROSENFELD: I do know the National Voter  
8       Registration Act, Motor Voter, which is 10, 12 years old  
9       requires that every agency that provides services to people with  
10      disabilities must also provide voter registration services to  
11      the clients that they serve, and they are not doing it.

12                      MS. WILLIS: No, they are not doing it.  
13      And if often times they may have some registration forms  
14      somewhere in the office, no one knows where they are.

15                      People are typically never asked, are you  
16      registered, that's why we were really wanting to talk to the  
17      agencies, the organizations, but then Peg brought up this.

18                      MS. ROSENFELD: They are exempted from this.

19                      MS. WILLIS: They are exempt, well, people  
20      are going to be afraid if they read that then.

21                      MS. ROSENFELD: They are exempted very  
22      specifically, they are called designated agencies.

23                      MS. WILLIS: I would think and I don't know  
24      how the system works, but even a letter from the Secretary of

1 State's office as a reminder to all of these organizations,  
2 every county board, every agency, they should get a letter  
3 reminding them that this is apart of their duty and it's not  
4 being done.

5 MS. ROSENFELD: And we know it's not done  
6 because they do have to report to the Secretary of State, I  
7 think it's every two years. And he in turn has to report to the  
8 now EAC in Washington, because they report to Congress, the  
9 effect of the law.

10 And one of the things they have to report is how  
11 many registrations they are getting county by county, agency by  
12 agency. And that report shows they are not getting any  
13 registrations from these agencies.

14 MS. WILLIS: And I can't make it strong  
15 enough that for people with disabilities any of these added  
16 activities, be it registration or something else adds that much  
17 more to what they are doing in their lives just to get through  
18 day by day.

19 I'm not making excuses, but I think oftentimes  
20 that people at the agencies, just voting goes on the back  
21 burner, because we got to get these people a job, we've got to  
22 get them health insurance, we've got to get them this and that,  
23 so they don't make it a priority.

24 MR. GRESHAM: I don't think you understood

1       how profound your question was. In its narrow sense you're  
2       talking about one group, but in its broader sense we have a  
3       track record already.

4                   As we introduce technology into the economic  
5       system, as we introduce it in the political system, as we  
6       introduce it into a culture, there are people instantly  
7       disenfranchised, instantly disenfranchised, because they don't  
8       have the capacity to manipulate the systems, they don't  
9       understand them.

10                  Now, hopefully that will diminish as the  
11       population, civil rights generation gets older, some of us are  
12       afraid of computers, and maybe the youth.

13                  But they have a problem, too, they don't have a  
14       high level of concentration. Young people who are technology  
15       oriented don't have a high level of concentration, they don't  
16       want to do anything that takes too long.

17                  The politics of America has hijacked our  
18       democracy, the politics of America. And separate those two,  
19       because democracy has ideas, the politics is where the guts and  
20       this thing, how it really operates.

21                  But the ability to win, the manipulating the  
22       system has made democracy for some people a sham. And for us  
23       ideally as a psyche we're going to have to deal with this,  
24       because we go off to the foreign countries and say, hey, look at

1       us, 29 percent of the people vote, all of these rules people  
2       have to do, those that want to vote.

3                   I think our psyche, our own comfort level of our  
4       own propaganda is going to have to say inside of us we have to  
5       check that.

6                   Now, we made that decision. All of these people  
7       on this side of the table made that decision. We want this  
8       thing to stand for what it really is, and for it to be what it  
9       should be for everybody that's why we're over here. We could be  
10      making money doing all sorts of other things.

11                  The point becomes if you can do one thing begin  
12      to chip away at this naive idea that our democracy is perfect  
13      and it works for everybody at the highest level.

14                  In fact they are making it worse for a whole  
15      group of people. Look at what computers have done to  
16      disenfranchise people, if we introduce that technology into our  
17      democratic process it's doing the same thing to a degree if  
18      we're not conscience. Thank you.

19                  CHAIRMAN BATTLE: We really appreciate your  
20      testimony on the panel, it's been very enlightening, practical  
21      examples and illustrations particularly.

22                  And with that, we will close this portion of our  
23      hearing this afternoon and thank you very much.

24                  David, do we have members of the public?

1 DR. MUSSATT: Yes.

2 CHAIRMAN BATTLE: Give us a minute to  
3 change up then you can come forward.

4 (Brief recess taken.)

5 CHAIRMAN BATTLE: Public session now  
6 convenes.

7 We are back together as a committee. Is this  
8 joint testimony or just one?

9 MR. WRIGHT: I didn't know he was going to  
10 say anything.

11 CHAIRMAN BATTLE: One at a time. If you  
12 would limit your remarks to five minutes each that would be  
13 appreciated. If you would state your full name and spell it for  
14 the record that would be also appreciated.

15 MR. WRIGHT: Stewart Wright, S-T-E-W-A-R-T,  
16 W-R-I-G-H-T. I live here in Columbus. I'm particularly  
17 concerned about the registration process and statewide  
18 registration system, and I wanted to make you aware of some  
19 publications I just downloaded from the internet.

20 Those of you going home tonight might be able to  
21 look them up on the internet. I have one copy of each and maybe  
22 people from out of town I can leave these with them and pass  
23 them around tonight if you don't have anything to do, and then  
24 you'd have some good questions to ask from the Secretary of

1 State's office.

2 This one vote comes from the Brennan Center for  
3 Justice, New York University, in New York.

4 MR. DOSHI: What's the web site?

5 MR. WRIGHT: www.BrennanCenter,  
6 B-R-E-N-N-A-N, C-E-N-T-E-R.o-r-g.

7 And the title of this publication is making the  
8 list and it's just issued, it's copyrighted 2006. And what they  
9 did was they surveyed all 50 Secretary of State offices, and  
10 compiled the information about how they do these, what do you do  
11 with the four digits of the Social Security number, and what do  
12 you do with the driver's license number that we're asking for,  
13 and is specified in HAVA.

14 What they find is that some states are using them  
15 to try to make voting easier, and they say some states are  
16 trying to make voting harder.

17 If you ask which is Ohio, I think they will say  
18 they don't know, because this report from the same place --

19 CHAIRMAN BATTLE: -- Sir, would you pull the  
20 microphone closer and speak into it.

21 MR. WRIGHT: -- Here's a report from the  
22 same place from Ohio, and for a lot of the questions it says we  
23 didn't get a response. And so this would be easy to print out,  
24 it's only four pages.

1                   The last is the voter registration form, so there  
2                   are three pages of information and references, you can go  
3                   elsewhere.

4                   Then the other thing I have is from the U.S.  
5                   Public Policy Committee of the Association for Computing  
6                   Machinery. And the title of that is Statewide Data Base of  
7                   Registered Voters, Study of Accuracy, Privacy, Usability,  
8                   Security and Reliability Issues.

9                   And it I'm afraid does not have numbered pages,  
10                  but it's fewer than ten, I think. And I think they have some  
11                  very good requirements we should ask about. Could I leave these  
12                  with one of you?

13                  CHAIRMAN BATTLE: David.

14                  MR. WRIGHT: Can you circulate to as many as  
15                  possible. I will try to come back tomorrow and will make some  
16                  copies.

17                  DR. MUSSATT: Do you have an electronic  
18                  version if I e-mail you?

19                  MR. WRIGHT: At the bottom is my e-mail  
20                  address.

21                  DR. MUSSATT: We usually communicate  
22                  electronically, I can probably get it that way the best.

23                  MR. WRIGHT: Could I have your e-mail  
24                  address?



1 DR. MUSSATT: Sure.

2 MR. WRIGHT: I think I'm done.

3 CHAIRMAN BATTLE: Thank you, Mr. Wright.

4 Sir.

5 MR. FRY: I'm Phil Fry.

6 CHAIRMAN BATTLE: Spell it for us.

7 MR. FRY: P-H-I-L, Fry, F-R-Y. I'm with a  
8 citizen action group called CASE, Citizens Alliance for Secured  
9 Elections.

10 And I'm not sure what you wanted to be doing with  
11 the information you collect from here. I wanted you to know  
12 that we have -- we contact our members routinely through a Yahoo  
13 group.

14 If there is something that can be done where you  
15 would like activists involved, we can reach a hundred to 200  
16 people pretty quick. And we're not organized in a traditional  
17 way, we're a loose affiliation of activists.

18 That means we're a herd of cats, but a lot of  
19 them are very, very dedicated and they are spread throughout the  
20 state and through other states, and are doing a lot of good work  
21 here and there.

22 So if -- and it's actually four groups in Ohio,  
23 CASE; and a group called J30, up in Cleveland, Ohio; Vigilance,  
24 another one in greater Cleveland, coalition for something, I

1       don't remember the name.

2                   But we want to help, and if through this effort  
3       you come up with something where you can use activists, we want  
4       to help with that.

5                   Second thing I wanted to say was I sent out a  
6       survey question to all of the boards of elections a couple of  
7       weeks ago. I'm keeping it really simple, two questions; what's  
8       your budget?

9                   I see the budgets going up in some counties,  
10       especially with the new equipment, being surprised at some of  
11       these people. And I just wanted to see what was happening.

12                   And the other question I had didn't relate to  
13       that, but it was about they are supposed to be posting the  
14       results of the elections at the precincts. So I was asking them  
15       if they were -- so I've only gotten back about 20 replies about  
16       the budget.

17                   And I've got two or three people in there who  
18       don't have a budget for 2006. And several who don't have a  
19       budget for 2008, or the programming may be a five percent  
20       increase for 2008.

21                   So, in other words, and some may be decreased, I  
22       don't know how they are doing that. But what I can tell you  
23       from this is the counties don't know, they are not analyzing the  
24       system, they don't know what's going to happen, they are not

1       able to plan for it.

2                   And so I think that in addition to all of the  
3       process problems we've talked about, there is a lot of other  
4       infrastructure problems that are right there, and we're not  
5       seeing them yet, but they are going to be there.

6                   The third thing I wanted to say, the last thing,  
7       is a little more complicated, but it has to do with the  
8       mentality of elections.

9                   And it was something that I'd like to get across  
10      to our legislators and Boards of Elections and I think in an  
11      abstract sense they appreciate it, but in a practical sense they  
12      don't.

13                   And before, I've got a master's degree in  
14      physics, I've worked in that area, I've done a lot of analysis  
15      of all kinds of things.

16                   What you do in physics or any kind of thing like  
17      that, you have a situation and you have a new variable you're  
18      throwing into it, you don't know how it's going to affect the  
19      overall picture.

20                   Well, the easiest thing to do is to look at it  
21      and look at it and say look at extremes, look at this end and  
22      look at it from the other end and sometimes you can tell a lot  
23      from that.

24                   Well, if you look at the cost of doing a recount,

1       which was \$10 and went to \$50 a precinct, if you look at that as  
2       the answer, you say what happens if we raise it to \$10,000.

3               Well, nobody would ever do a recount, nobody  
4       could afford it. And that would give elections officials all  
5       kinds of reasons to not worry about things, because there is not  
6       going to be a recount.

7               If you did it the other way, you put it back to  
8       zero and said you can have recount on demand, what would that  
9       do? Well, they looked at me like I'm a nut, but I really  
10      suggested that.

11              Because what that means is boards of elections  
12      could not possibly afford to have a recount, they can't turn  
13      around every time somebody wants a recount and do it.

14              They have to have the process of counting votes  
15      very transparent, very diligent and very open so that everybody  
16      knew exactly what was going on and was comfortable with it.

17              It would have to include an audit process. When  
18      it got done people would say I'm not asking for a recount I  
19      just saw everything that happened, it was all transparent.

20              So I advocate that the recounts should be  
21      doubled, I think it would solve a lot of problems. Nobody is  
22      going to do that. But I still think that's how we need to  
23      think, and that's all I've got.

24              CHAIRMAN BATTLE: Thank you very much for

1       your testimony.

2                       Let me also mention to you that you and the  
3       members of your group can write to us through the Chicago  
4       office, and the record of this meeting will be held open until  
5       April the 1st, so you don't have to limit your testimony to this  
6       time and place, they can add to your testimony and send it to  
7       Chicago.

8                       MR. FRY:   I'll do that.

9                       CHAIRMAN BATTLE:   Thank you very much for  
10      your time.

11                      MR. FRY:   Thank you.

12                      CHAIRMAN BATTLE:   Any other testimony?

13                      (No response.)

14                      CHAIRMAN BATTLE:   We stand adjourned until  
15      tomorrow morning.

16                      (Thereupon the hearing adjourned at 5:08  
17      p.m.)

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1 CERTIFICATE

2 - - -

3 I, Cheryl D. Edwards, Certified Professional  
4 Reporter, and Notary Public in and for the State of Ohio, do  
5 certify that the foregoing is a true and correct transcript of  
the proceedings taken by me in this matter on March 16, 2006,  
and carefully compared with my original stenographic notes.

6 That I am not an attorney for or relative of  
7 either party and have no interest whatsoever in the outcome  
of this litigation.

8 IN WITNESS WHEREOF, I have hereunto set my hand and  
9 official seal of office at Columbus, Ohio, this 31st day of  
March, 2006.

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\_\_\_\_\_  
Cheryl D. Edwards,  
Notary Public in and for  
the State of Ohio  
My commission expires 11/05/08

- - -

1                   BEFORE THE UNITED STATES COMMISSION ON CIVIL RIGHTS  
2                                   OHIO ADVISORY COMMITTEE

3   \* \* \*

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5

6                   "OHIO'S PREPAREDNESS FOR THE 2006 ELECTIONS"

7

8   \* \* \*

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11                                   Ohio Civil Rights Commission  
12                                       1111 East Broad Street  
13                                       Columbus, Ohio 43205  
14                                       March 17, 2006

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6 Roberta B. Presley  
7 James Francis  
8 Thomas C. Rogers  
9 Sharon Zealey  
10 Dilip Doshi  
11 Cassandra Bledsoe  
12 Jad Humeidan  
13 Diane Citrino  
14  
15 \* \* \*  
16  
17 David Mussatt, Civil Rights Analyst  
18 Carolyn Allen, Administrative Assistant  
19  
20 \* \* \*  
21  
22  
23  
24



1	AGENDA	
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1 Friday Morning Session,  
2 March 17, 2006.

3 - - -

4 P R O C E E D I N G S

5 - - -

6 CHAIRMAN BATTLE: Good morning, everyone.

7 This meeting of the Ohio Advisory Committee to the U.S.  
8 Commission on Civil Rights will come to order.

9 For the benefit of those of you who are in the  
10 audience I'll introduce myself and my colleagues.

11 First, my name is Lynwood Battle, and I'm from  
12 Cincinnati and am chairperson of the Advisory Committee.

13 Members of the committee who are with me from the  
14 right, and then the names of the members from my right are Tom  
15 Rogers; Roberta Presley; Jad Humeidan; Dilip Doshi; Cassandra  
16 Bledsoe; Aaron Wheeler; Sharon Zealey; Grace Ramos; James  
17 Francis; Diane Citrino.

18 And we are all very happy to be here in Columbus,  
19 Ohio for these hearings.

20 Also with us are David Mussatt, the Civil Rights  
21 Analyst of the Midwestern Region. And Carolyn Allen, the  
22 administrative assistant.

23 And I'd like to also introduce and express  
24 gratitude to G. Michael Payton, the Executive Director of the

1 Ohio Civil Rights Commission, and Pastor Aaron Wheeler, who is  
2 seated to my left, who chairs that commission, for their  
3 hospitality. We appreciate very much their willingness to host  
4 this meeting and admire the hard work that they do and their  
5 staff has done in coordinating the meeting, in particular the  
6 logistics with our regional staff.

7 In addition, we had in attendance yesterday and  
8 again today with us Leonard Hubert, from the senior staff of  
9 Governor Taft. And we certainly appreciate his work and the  
10 fact that he has been with us from gavel to gavel.

11 We are here to conduct a briefing for the purpose  
12 of gathering information on voting access in Ohio. In addition  
13 to studying the voting issues in the state, the jurisdiction of  
14 this committee includes discrimination or denial of equal  
15 protection of the laws because of race, color, religion, sex,  
16 age, disability or national origin, or in the administration of  
17 justice.

18 Information that relates to the topic of this  
19 meeting will be especially helpful to this Advisory Committee.  
20 Proceedings of the meeting, which are being recorded by a public  
21 stenographer, Cheryl Edwards, will be sent to the commission for  
22 its advice and consideration.

23 The advisory committee may also decide to  
24 investigate a subject further and issue a report on the topic.

1                   At the outset I would like to remind everyone of  
2           the ground rules.

3                   This is a public meeting open to the media and  
4           the general public. We have a full schedule of people who will  
5           be making presentations within the limited time we have  
6           available.

7                   The time allotted for each presentation must be  
8           rather strictly adhered to. This will include a presentation by  
9           each participant, followed by questions from committee members.

10                  To accommodate persons who have not been invited,  
11           but wish to make statements, we've scheduled an open period  
12           today beginning at 11:45 -- correction, today at 12:30. Anyone  
13           wishing to make a statement during that period should contact  
14           David Mussatt for that schedule.

15                  Written statements may also be submitted to the  
16           committee members or staff here today, or by mail to the U.S.  
17           Commission on Civil Rights in Chicago, Illinois.

18                  The record of this meeting will close on April  
19           the 1st.

20                  Though some of the statements today may be  
21           controversial, we want to ensure that all invited guests do not  
22           defame or degrade any person or organization.

23                  And in order to ensure that all aspects of the  
24           issues are represented, knowledgeable persons having a wide

1        variety of experience and viewpoints have been invited to share  
2        this information with us.

3                    Any person or any organization who feels that  
4        they have been defamed or degraded by statements made in these  
5        proceedings should contact our staff during this meeting, so  
6        that we may provide a chance for a public response.

7                    Alternately, such persons or organizations can  
8        file written statements for inclusion in the proceedings.

9                    I urge all persons making presentations to be  
10       judicious in their statements. The Advisory Committee does  
11       appreciate the willingness of all participants to share their  
12       views and experiences with this committee.

13                   Our first panel this morning is composed of  
14       Cassandra Hicks, who is from the office of the Secretary of  
15       State, I believe General Counsel. Jeff Jacobson, a state  
16       Senator from Ohio. And Aaron Ockerman, of State Street  
17       Consultants.

18                   So we will begin with Ms. Hicks from the  
19       Secretary of State's office.

20                   MS. HICKS: Thank you very much. Good  
21       morning to everyone, members of the committee and guests.

22                   I'm here as the general counsel for the Ohio  
23       Secretary of State, J. Kenneth Blackwell. And I'm honored to be  
24       here to give you some information regarding Ohio's important

1       role in voter education, voter registration and implementation  
2       of the Help America Vote Act.

3                       I'm going to give you a brief outline of  
4       information and I've provided packets for members of the  
5       committee to view, which contain information on Ohio's current  
6       standards for applying the Help America Vote Act to procedures,  
7       which have to be transitioned in Ohio for compliance by May 2nd,  
8       which is Ohio's first federal election in 2006.

9                       CHAIRMAN BATTLE: Ms. Hicks, if I could  
10       interrupt you for one second, I did forget one thing. For those  
11       of you who will have written statements this morning, if you  
12       would kindly speak directly into the microphone and slowly read  
13       your statement, because it is being recorded for the record, and  
14       would be very helpful to Cheryl if she does not have to go  
15       blazing through the rescitations.

16                      MS. HICKS: Okay. Thank you very much, and  
17       I will make sure Cheryl does not have too difficult a time with  
18       my information.

19                      I'm here representing Secretary of State J.  
20       Kenneth Blackwell, as I indicated, to provide you some  
21       information on where Ohio currently is in implementation of the  
22       Help America Vote Act.

23                      As a result of the challenges faced in the  
24       General Election of 2000, Congress approved and President Bush

1 signed into law on October 29th, 2002, the Help America Vote  
2 Act. The acronym that is used to describe the Act is called  
3 HAVA, for Help America Vote Act.

4 This legislation creates federal funding and  
5 guidelines with the states to replace punch cards and lever  
6 operated voting equipment with electronic machines that would  
7 more accurately reflect the intention of the voter.

8 In addition, HAVA requires that the states  
9 provide for a centralized statewide voter registration data  
10 base, in order to prevent voter fraud, and more easily manage  
11 changes required to keep the voter registration information  
12 current.

13 HAVA also provides grant funding opportunities to  
14 improve accessibility for the disabled at polling locations, and  
15 to increase voter education on a local level.

16 Each of these requirements has a fulfillment  
17 deadline and a penalty associated with it if compliance is not  
18 met. All funds released to the state by the federal government  
19 under HAVA are subject to an annual audit.

20 In addition, the grant funds assessed by Ohio  
21 counties are subject to monitoring by the Ohio Secretary of  
22 State, through an internal audit mechanism.

23 HAVA also establishes guidelines for provisional  
24 voting options used in situations where a voter's name is not on

1 the polling location poll book in the county which they reside.

2 The offering of a provisional ballot to any voter  
3 who requests one ensures that any eligible voter is not denied  
4 the opportunity to vote.

5 However, poll workers are required to inform the  
6 voter if he or she is not in the correct precinct to cast the  
7 provisional ballot. For the provisional ballot to count it must  
8 be cast in the correct precincts where the voter resides.

9 The U.S. Department of Justice has granted the  
10 authority to enforce the provisions of HAVA. And to review and  
11 determine what penalties, if any, will be enforced for a  
12 state's failure to meet HAVA deadlines.

13 At least currently 50 percent of the states were  
14 in compliance with HAVA's schedule as of January 1st, 2006.

15 Compliance requirements are dependent upon the  
16 state's first federal election in 2006. Some of the reasons  
17 that have prevented certain states from getting into compliance  
18 include a lengthy process for determining the vendors who would  
19 supply voting equipment; the time it takes to manufacture large  
20 numbers of voting equipment; possible cumbersome procedural  
21 requirements at the local and county level; and some counties or  
22 states may have not met requirements to receive federal funding;  
23 and because of the expense involved in the transition to  
24 electronic equipment most states are requiring the use of



1 federal funding in order to implement HAVA.

2 The Department of Justice is required to consider  
3 reasons for non-compliance, along with a state's detailed plan  
4 and time line on achieving compliance prior to enforcing any  
5 sanctions against the state for failure to comply with HAVA  
6 deadlines.

7 The Ohio Secretary of State began an  
8 implementation program and time line to meet HAVA designated  
9 goals soon after the Act was passed in 2002.

10 The first step in analyzing the requirements was  
11 to determine how the state could obtain HAVA funding. The  
12 office immediately created teams to work on specific areas, such  
13 as HAVA Funding; determination of equipment suppliers for voting  
14 machines; and also the establishment of the first statewide  
15 voter registration data base, based upon utilization of county  
16 records into a centralized data base accessible by the SOS, or  
17 the Secretary of State's office.

18 Much of that work was completed during the first quarter  
19 2002, and completed finally for determination of HAVA compliance  
20 by review and audit of our office in 2005.

21 The Secretary of State' office uses an RFP  
22 system, or Request For Proposal, in determining what vendors  
23 would be eligible to comply with requirements for selections of  
24 voting equipment.

1                   The State of Ohio submitted its first state plan  
2                   to the 2000 Election Commission by 2003. By the third quarter  
3                   of 2003 RFPs his were being reviewed and narrowed down to a  
4                   group of four contenders for voting machine equipment.

5                   Contracts were initially drafted after the RFP  
6                   process was initially completed. And by early 2004 the  
7                   Secretary of State had three vendors who were committed to  
8                   contractual obligations to provide voting equipment for the  
9                   Secretary of State's office.

10                  In this manner we introduced a process of  
11                  determining how we would have voting equipment included along  
12                  with voter education, poll worker training, election supplies,  
13                  and a voter education program that would be complete before the  
14                  first election in 2006. This was included within the pricing  
15                  structure established for contracts for vendors.

16                  The pricing and services agreement, negotiations  
17                  resulted in the most comprehensive package of voting machine  
18                  services and equipment developed by any state to date, with the  
19                  lowest prices in the nation for DRE, or direct recording  
20                  devices, machines which are normally known as touch screen  
21                  voting devices.

22                  Around this time the legislature was considering  
23                  the option of also having a paper receipt for each voter to have  
24                  a guarantee as to how his vote was recorded electronically by

1 the machine.

2 House Bill 262, which became effective May 7th of  
3 2004, required that Ohio's voting machines would have a voter  
4 verified paper audit trail.

5 And of course the government, we like acronyms,  
6 so we have the acronym for that as VVPAT, Voter Verified Paper  
7 Audit Trail.

8 Another round of negotiations with the vendors  
9 who were supplying voter equipment was necessary in order to  
10 comply with this legislation for the VVPAT.

11 Eventually amendments to the original contract  
12 for voting equipment were completed to include the VVPAT and an  
13 additional piece of equipment utilized as a printer to be  
14 utilized for voting equipment for the 2006 elections.

15 All approved vendors received their certification  
16 for their voting machines and VVPAT devices on both the federal  
17 and state level in 2005.

18 In 2005 as well HAVA funds were released to  
19 purchase the new voting machines. In addition, there was some  
20 separate steps established because of many concerns regarding  
21 the use of electronic voting machines.

22 The Secretary established three separate  
23 procedures to review administrative tasks associated with the  
24 administration of the election, and to mitigate possible voting

1 equipment systems or technology issues arising from the use of  
2 new technology.

3 The procedures were designed to enhance the  
4 ability of election procedures to address particular equipment,  
5 possible malfunctions, and to identify any risk factors, which  
6 could be eliminated or diminished with technical or  
7 administrative action on the part of an election official.

8 An additional system which our office created is  
9 called IV&V, Independent Verification and Validation.

10 This new system was not only to verify election  
11 procedures, but also to verify that the equipment functioned as  
12 warranted by the manufacturer and suppliers of the new machines.

13 The IV&V process began in the summer of 2005, and  
14 is continuing and will be completed prior to the May primary,  
15 2006.

16 This process involves our office contracting with  
17 independent technical consultants not associated with the  
18 equipment or the state to validate the functions of the new  
19 machines.

20 In addition, in 2005 the Secretary of State's  
21 office was able to complete the centralized voter registration  
22 data base in Ohio. Therefore, that component of HAVA  
23 requirement was met by December 9th, 2005.

24 In addition to voting machines and the voter

1 registration data base, county boards of elections also had the  
2 ability to apply for grant funding to the Secretary of State in  
3 order to improve accessibility for voters who are disabled at  
4 polling places.

5 These funds have been available for fiscal years  
6 2003, '04, and '05. The amount of the funds are determined by  
7 the Secretary of Health and Human Services at the federal level.

8 The process included counties providing a plan  
9 for improvement for facilities that were not accessible to the  
10 handicapped. This stipulation that a permanent fix at a private  
11 facility could not be approved as part of the process was  
12 utilized as part of the grant project in the event that a  
13 private facility elected not to be a polling place at some point  
14 in the future.

15 But temporary or semi-permanent fixes can be done  
16 at private facilities. Many of the improvements were temporary  
17 or a portable nature, something that could be used on voting day  
18 and put in storage afterwards by the elections officials.

19 Funds are also available for the boards of  
20 elections to train election officials and poll workers and  
21 volunteers in requirements for accessibility for voting by  
22 individuals with disabilities.

23 At this time 14 counties have utilized funding  
24 available in this program. After 2005 we have had other issues

1 relating to provisional voting, as well as absentee voting.

2 As a result there is now additional legislation  
3 where we have bills in Congress as well trying to amend the  
4 other state's requirements for HAVA to include a VVPAT.

5 At this point at least 39 states have enacted or  
6 have pending legislation on this subject.

7 In Ohio the subject of absentee voting has come  
8 up and again in 2006. As a result we have House Bill 234, which  
9 became effective January 27th, 2006, which has made some  
10 significant changes in the area relative to absentee voting.

11 Electors no longer have to state a reason to vote  
12 absentee. However, there are more stringent requirements in the  
13 application process. There are nine pieces of mandatory  
14 information that are required before the absentee ballot can be  
15 issued.

16 If any of the nine pieces of information are not  
17 within the absentee ballot information, Boards of elections  
18 officials are required to notify the applicant for an absentee  
19 ballot of the missing information.

20 Additionally, new sections in the law allow most  
21 absentee voters to cast a second ballot provisionally in their  
22 precinct polling places on election day.

23 As a result the Board must determine prior to  
24 counting absentee ballots which ballot will be counted, the

1 absentee one, or the provisional one.

2 Because of new procedures affecting absentee  
3 ballots, the Board can defer counting absentee ballots until the  
4 official canvas, and by doing so this will provide them  
5 additional time to determine which absentee ballots are eligible  
6 to be counted.

7 Because of significant election official concerns  
8 on the subject of issuing and counting absentee ballots, as well  
9 as new procedures to cast provisional ballots on election day,  
10 another piece of legislation was amended as well, and created  
11 another bill, amended Substitute House Bill 3, which has some  
12 provisions that are effective in May, and other provisions  
13 effective June 1st, 2006.

14 One example that will affect both elections  
15 forthcoming is the processing and counting valid absentee  
16 ballots prior to the close of the polls, this is now  
17 permissible.

18 Amended Substitute House Bill 3, also addresses a  
19 requirement and definition for photo identification when  
20 appearing at the polls to vote.

21 As you can see, the process of reviewing Ohio's  
22 election and voter registration provisional balloting and  
23 absentee balloting laws may not be done.

24 At this point part of the Secretary of State's

1 responsibility is to notify county officials who must implement  
2 these new changes of these requirements and to assist them with  
3 training poll workers and election officials to ensure that  
4 voters are properly educated on the new laws as they come into  
5 effect.

6 We appreciate the hard work that is done at the  
7 county level by our poll workers, the bipartisan teams of  
8 persons who must work together really throughout the year, and  
9 not just on election day, to make sure that we have fair  
10 impartial and efficient elections in Ohio.

11 The Secretary of State's Office has tried to  
12 provide a guide post to comply with federal requirements, as  
13 well as state requirements. And in addition has as its utmost  
14 obligation, to make sure that elections in Ohio are fair, and  
15 equitable and that voters' votes count.

16 We believe we do an admirable job in this  
17 process, in conjunction with our county officials and are happy  
18 and proud to continue the work of the Secretary of State.

19 Thank you very much.

20 CHAIRMAN BATTLE: Thank you, Ms. Hicks.

21 Next speaker on our panel is State Senator Jeff  
22 Jacobson.

23 SENATOR JACOBSON: Thank you. My name is  
24 Jeff Jacobson, I represent the Dayton area. And at the outset



1 I'm happy to note two of my friends from our community are here,  
2 and I'm glad to have them as part of the Advisory Commission  
3 here today.

4 I've been in the General Assembly for 14 years  
5 and served four of those years as chair of the Elections  
6 Committee of the House.

7 I was also on the elections study committee that  
8 in 2001 recommended against converting from punch cards to DREs.

9 Was also primary instigator and a member of the  
10 Joint Committee on Ballot Security that did adopt if not the  
11 first, one of the first in the nation, a requirement that DREs  
12 contain a paper audit trail.

13 It was a bipartisan effort strongly resisted, it  
14 should be noted by the Secretary of State's office. But we have  
15 generally been happy with the way that it's worked out since  
16 then.

17 I've also served as a member of the Montgomery  
18 County Board of Elections.

19 I would just like to back up and say how did --  
20 to address how did the General Assembly arrive at the point we  
21 did this two year period, and especially this year in adopting  
22 the changes to Ohio law that were adopted in House Bill 3.

23 And I'd like to start out by going back to 2000  
24 when I believe there was unjustifiable and I think manufactured

1       complaints about punch cards. We here in Ohio have had them and  
2       worked with them successfully.

3               In fact, Mr. Francis will remember the very  
4       closely contested election for Dayton Mayor back in '93, where  
5       we actually did go in as both parties, it was a 200 vote margin.

6  
7               We went back, both parties together and reviewed  
8       one precinct where we held it up and looked for hanging chads,  
9       and we found only one change and we did not disagree one time  
10      between the observers from both campaigns.

11              And at the conclusion after looking at that one  
12      precinct the decision was made by those contesting the outcome  
13      of the election that the punch cards had worked and they were  
14      not likely to find significant changes in voting by continuing  
15      the process, and the process was discontinued.

16              We also had a statewide election decided in 1990  
17      by 1,234 votes on punch cards, for nearly all of it without  
18      either side suggesting that in any way our ballots were not  
19      appropriately recording people's views.

20              That is frankly why I resisted and others the  
21      change over to DREs. However, that decision was made in part by  
22      the decisions at the federal level on HAVA.

23              Update and fast forward to the 2004 election, and  
24      there were a lot of pressures on the system. And I think the

1 credit for making the system work so well in Ohio goes to our  
2 bipartisan boards of elections.

3 And to the extent to which you all have not had  
4 direct observation contact with the way boards of elections do  
5 their work, I would tell you that the things that you heard  
6 about how Ohio's election, quote, might have been stolen, are  
7 completely and utterly fictitious, and I think a disgrace to our  
8 national body politic the fact that so much effort has gone into  
9 promoting this myth.

10 And I will say this, they essentially for one  
11 main reason, although I could go on for quite a long time, the  
12 one main reason is the boards of elections have equal numbers of  
13 Democrats and Republicans.

14 What they mostly do is watch each other, perhaps  
15 they don't watch each other when they go to the facilities on  
16 their own, but short of that if one is touching a ballot there  
17 is someone else watching the ballot. If a Republican goes over  
18 in a corner a Democrat wants to know why, if not being assigned  
19 to them directly.

20 It works, it's interesting, it's almost like the  
21 old doctor of mutual destruction, both sides knows the other is  
22 watching, so neither tries.

23 I'm not saying they would try, but even if they  
24 were tempted to try no one tries, because they know they are

1 under a microscope the entire time.

2 And anyone who suggests to you otherwise at a  
3 minimum is insulting the Democrats who work at the Board of  
4 Elections to suggest they would have been party to allowing the  
5 Republicans under their noses to steal an election, and I think  
6 it's a disgrace.

7 And frankly that's why you see no leaders of the  
8 Democratic party joining in the condemnation, because they  
9 appoint through the Secretary of State's office the members of  
10 the Board.

11 And then the members of the Board appoint the  
12 Democrats and Republicans that work there.

13 Despite the positive work of our Boards of  
14 elections they were strained tremendously by very real voter  
15 fraud that happened in Ohio.

16 And while you have heard that there were only  
17 four instances of proven voter fraud of casting ballots, there  
18 were thousands of instances of fraudulent registrations that  
19 were caught by local boards of elections, that were caught by,  
20 you know, turned over by investigators or prosecutors.

21 I could provide you with documentation and  
22 citations to the number of articles that appeared, and there  
23 were unfortunately to say three major actors in that.

24 The first was ACORN, Association of Community

1 Organizations for Reform Now, which submitted blatantly false  
2 registrations in a number of counties, and additionally deprived  
3 500 voters, more than 500 voters of their right to vote in the  
4 2004 election by failing to turn in their cards at all until  
5 after the deadline in October.

6 In addition to that, The Americas Coming Together  
7 was equally implicated in registrations, including among some  
8 1,284 suspicious voter applications in Cuyahoga County, they  
9 registered a Jive Turkey, Sr.

10 There was also a number of instances connected to  
11 the NAACP National Voter Fund. But what's important to say here  
12 is a lot of this was caught.

13 And what you need to ask yourself and what we  
14 need to ask ourselves is, okay, these were caught. Registering  
15 Dick Tracy, George Foreman, Jeffrey Dahmer, Mary Poppins might  
16 be obvious enough that somebody might say, wait a minute, is  
17 this really registration or registering the same person at, you  
18 know, dozens of different addresses has happened, might be  
19 something that appears to be fraudulent and would allow someone  
20 to pull it and look further.

21 Should the fact that the boards were diligent and  
22 caught these kinds of instances and turned them over to  
23 prosecutors cause all of us to say, that's great they got all of  
24 the problem.

1                   Is it possible in government work that we are a  
2           hundred percent fool proof. Change the name from Jeffrey Dahmer  
3           to Jeffrey Jacobson, and one could possibly throw that  
4           registration to each of 88 counties without anybody batting an  
5           eyelash.

6                   And I think that was our fear that not all  
7           registrations that may be fraudulent were done in such an easy  
8           to detect manner.

9                   Now, at this point I would say they aren't all  
10          necessarily attempts to defraud the system. I think frankly the  
11          fact that we pay by the signature, and by the registration card,  
12          we allow that as a method of payment, encourages those who are  
13          incentivized to provide more registration cards, perhaps to do  
14          so without actually contacting real voters to do it. I'm not  
15          saying all do it, but clearly quite a few did.

16                  And they seem to be connected with voter  
17          registration drives that paid by the card or by the signature.  
18          If they had been paid by the hour I would have had no problem,  
19          and I think you could have said, please, work a hundred hours,  
20          here's our expectation of you, and I think here's how much you  
21          make and I think you would have had fewer cards that would have  
22          had problems.

23                  But in any case, we tried to change the law in  
24          that the Secretary of State in his capacity, his group that is

1       trying to put a ballot amendment out, took us to court and  
2       actually succeeded in obtaining a temporary restraining order,  
3       which I think permitted fraud to continue to happen.

4                       I'm disappointed the case is not decided and is  
5       yet pending.

6                       We went forward, though, and in the context of  
7       the bills that we considered, and the suggestion we considered  
8       for election reform had to ask the question, what do you do with  
9       voter registration irregularities.

10                      And frankly you can't ask people to show up once  
11       and prove who they are when they register, so that they can come  
12       back a second time to vote.

13                      Now, sometimes people register at a government  
14       office, you see them right in front of you, other times you  
15       don't.

16                      We didn't want to stop people from having the  
17       opportunity to register in the easiest way possible. But we  
18       wanted to make sure that they were actually real voters, and  
19       that they really were voting one time.

20                      The best way to do that we felt was to require  
21       voter identification.

22                      The idea of voter identification is not ours, it  
23       belongs properly to the members of Congress that in a bipartisan  
24       fashion voted for the Help America Vote Act.

1                   In that bill they required for the first time new  
2           registrants who are voting the first time to show up and provide  
3           identification.

4                   Democrats and Republicans both felt that some  
5           voters should not be able to cast their ballot without first  
6           producing evidence that they are who they claim to be.

7                   That passed in a bipartisan fashion without the  
8           objections that said people will be disenfranchised. So if it's  
9           good enough for some voters the extension to all voters should  
10          not be seen as unprecedented or improper or outrageous as it has  
11          been suggested.

12                  And in fact Ohio's permissible identification  
13          forms goes beyond those provided in the HAVA law for first time  
14          registrants.

15                  HAVA only allows certain kinds of identification,  
16          copies of bank statements, utility bills, government checks, pay  
17          checks.

18                  And we also went further and we allowed that you  
19          could do it, you could provide evidence of your Social Security  
20          number without producing documentary evidence.

21                  So for example if you're someone who knows the  
22          last four digits, or you can look at your card and tell people  
23          the last four digits, but you don't have anything with your  
24          address on it, you can use that number to allow your ballot to



1       be verified and counted.

2                   We believe that our system will survive court  
3       scrutiny. The Georgia one that has been overturned by their --  
4       by a local or district Federal court only allowed picture photo  
5       ID that's it.

6                   They did not allow non photo ID with address or  
7       -- excuse me, government ID with address, but not photos, they  
8       did not allow current utility bills or bank statements or the  
9       like, you know.

10                  Those who get Social Security checks or letters  
11       from Social Security, things like that, all of those things  
12       permissible by us are not permissible in Georgia. We do believe  
13       that ours is better.

14                  We did our best to make it as free and open as  
15       possible, but still to ensure that those who register are real  
16       and those who vote, vote only one time.

17                  Because it is fair to say that someone who votes  
18       twice or votes illegally harms the civil rights of those who  
19       vote correctly and once.

20                  In addition I think it's important to mention  
21       that the Carter Baker Commission headed by Jimmy Carter, former  
22       president, and Jim Baker, former Secretary of State, bipartisan  
23       effort, endorsed the idea of voter identification last year and  
24       provided major impetus as well to our efforts.

1                   In addition to the work we did here, there were a  
2           number of other important things that we did in the context of  
3           House Bill 3. I would be happy to discuss them further if  
4           people have questions, and I'm sure members will.

5                   The one thing I would like to say is a  
6           disappointment that I have, the State provided five million  
7           dollars in appropriations for poll worker training and voter  
8           education, this was provided in 2003, by the decision that we  
9           made -- as part of the decision that we made on adopting paper  
10          trails.

11                  Because of the decision to adopt paper trails it  
12          delayed the implementation of the direct recording electronic  
13          devices.

14                  Meaning that I think originally that the  
15          Secretary of State was hoping to have those available for the  
16          2004 election, but it took until sometime about a year ago  
17          before machines were available and certifiable that would have  
18          allowed the use of direct touch screen voting, and the removal  
19          of the punch card machines.

20                  That's when the money was needed. The money was  
21          needed to educate voters not how to use a punch card, not how to  
22          be happy about their ballots, but how to work with the new  
23          machines.

24                  For example, I have heard that those who have

1       started working on new election equipment in early elections  
2       this year, and you may, some of you may have experienced this,  
3       each time a new voter comes in a member of the polling team,  
4       those working at the poll worker team, will take the individual  
5       over and explain to him how to vote.

6                       That would be a good subject, would have been a  
7       good subject for voter education funds to be used for.

8                       Unfortunately the voter education funds were  
9       spent for the most part in 2004 before we had made any  
10      conversion.

11                      They were spent on commercials that I think were  
12      more designed to promote the candidacy or future candidacy of  
13      our Secretary of State, than they were to educate voters about  
14      anything important to voters.

15                      There was absolutely no call for the spending of  
16      that money in 2004. And I would tell you that if you look at  
17      Ohio's profile, and I have information should you wish it from  
18      the Legislative Service Commission, Ohio spent more than  
19      Pennsylvania on voter ads.

20                      And no other state that is comparable to ours  
21      spent a penny of their HAVA funds that we can tell on television  
22      advertising that was designed, quote unquote, to educate  
23      voters.

24                      Florida, Georgia, Illinois and Michigan -- we

1       have no information returned from Illinois, but Michigan spent  
2       not one penny on this.

3                       Florida did not track the data specifically, but  
4       we are not aware of any. We looked through, done our own  
5       research, and Michigan said they did not use any, Georgia did  
6       not use any.

7                       Even if it were to be used on television  
8       advertising, now when people are faced with new machines and new  
9       rules, it should have been safe for now.

10                      And unfortunately to our disappointment it was  
11       used in the process at that time when there was nothing new  
12       about which voters should have been educated about. That to me  
13       is something that the commission should be aware of.

14                      With that I'm happy to delve into any details the  
15       commission is interested in, and to answer any questions you may  
16       have.

17                      CHAIRMAN BATTLE: Thank you, sir. Mr.  
18       Ockerman.

19                      MR. OCKERMAN: Chairman Battle, and members  
20       of the Ohio Advisory Committee.

21                      My name is Aaron Ockerman, as has been noted, and  
22       I am the legislative agent for the Ohio Association of Election  
23       Officials, or OAE0, which as Senator Jacobson noted, is a  
24       bipartisan organization which represents Ohio's 88 county boards

1 of elections.

2 In my capacity I represent the OAE0 before the  
3 Ohio General Assembly on all legislation affecting elections.  
4 And over the past five years I have lobbied over 50 pieces of  
5 legislation before the Ohio General Assembly, none of them being  
6 more important than House Bill 3 from the 126th General  
7 Assembly.

8 My goal today is to discuss a little bit of the  
9 history of H.B. 3 you've now heard quite a bit about, hopefully  
10 outline some of the more important aspects of the bill, make you  
11 aware of the OAE0's involvement in the legislation, and try to  
12 answer any questions that you may have.

13 I hope you find the information useful as you ask  
14 questions about the conduct of elections here in Ohio.

15 House Bill 3 was introduced on January 24th, 2005  
16 and sponsored by Representative Kevin DeWine, a Republican from  
17 Fairborn, Ohio.

18 It's also worth noting that a companion piece of  
19 legislation, Senate Bill 3, was introduced by Senator Kevin  
20 Coughlin, a Republican from Cuyahoga, Falls on that same day.

21 And has been noted before by other panelists,  
22 House Bill 3 was a relatively small piece of legislation, as  
23 introduced largely geared towards assisting Ohio in changing its  
24 laws to better reflect the Help America Vote Act. And part of

1       it was to help address some problems that arose out of the 2004  
2       election.

3                       But as it was introduced as its been noted, it  
4       was about 22 pages long, it dealt with a couple of areas, the  
5       first was procedures for casting and counting provisional  
6       ballots, which has been a subject for discussion for this  
7       committee.

8                       One thing of importance to note is that it  
9       codified what constitutes a vote for optical scan voting  
10      technology.

11                      And I know yesterday you were all shown an  
12      optical scan ballot and the question was kind of posed what do  
13      you do if someone circles a name, as opposed to filling in the  
14      oval? What do you do if someone puts an "x" or check mark or  
15      writes yes next to a candidate.

16                      House Bill 3 clarified how those votes are to be  
17      handled. For years that was done by the Secretary of State  
18      through directive. The legislature basically codified that, put  
19      into state law the procedures for counting those optical scan  
20      ballots. They did a similar thing several years ago for punch  
21      cards in Ohio.

22                      And we think that was a very positive step in  
23      House Bill 3 to help clarify for the public and election  
24      officials what constitutes a vote on that technology.

1                   It also required election officials to post  
2                   certain information at the polling location, that was also part  
3                   of the Help America Vote Act.

4                   It codified the fact that there would be a  
5                   statewide voter registration data base that has also been  
6                   discussed here.

7                   It codified, as Senator Jacobson noted, the  
8                   requirement that was outlined in HAVA, that first time mail  
9                   registrants provide certain identification when they show up to  
10                  vote.

11                  It updated the amount of money that a county can  
12                  recoup for a non-automatic recount, and I'll get into that a  
13                  little bit later.

14                  And it also defined jurisdiction for purposes of  
15                  Ohio elections as the precinct within which a voter lives, as  
16                  opposed to a county, as has been suggested here as well.

17                  So that was all of the as introduced version of  
18                  House Bill 3.

19                  And although that bill as introduced was not  
20                  without controversy, it certainly would take on quite a bit  
21                  more, add a little meat to the bones as it went through the  
22                  committee process.

23                  By the time the bill left the House Elections  
24                  Committee, it had gone from 22 pages to 374 pages and now

1 included numerous changes to voter registration, the elections  
2 calendar and campaign finance amongst other things.

3 While our association did not support a hundred  
4 percent of these changes, there were several in this version  
5 that I think deserve recognition here as they pertain to access  
6 to the polls.

7 One of the things that was discussed yesterday  
8 was the new requirement that voters receive notification in the  
9 mail telling them about the location of their precincts,  
10 providing them with other information as to the election dates.

11 It did remove challengers from the polling  
12 locations, that was a big problem as has been noted here in Ohio  
13 in 2004.

14 We worked very closely with the General Assembly  
15 to try to have those challengers removed and replaced them with  
16 observers.

17 So now political parties or candidates or folks  
18 interested in election can register with their board of  
19 elections to observe an election at a polling location, but they  
20 no longer have a right to challenge a voter. That was certainly  
21 an issue as I noted that was hot in 2004.

22 Very importantly to our association, it opened up  
23 Ohio's absentee voting law so voters could request an absentee  
24 ballot without having to state a specific reason.



1                   Later on that was incorporated into another  
2     piece of legislation, House Bill 234. The bill increased the  
3     penalties for interfering with voters as they waited in line at  
4     a polling location and prohibited the harassment of folks as  
5     they waited in line. That was something that also came into  
6     play in '04.

7                   It required polling locations to be equipped with  
8     precinct finders to assist voters in finding their correct  
9     precinct as has been noted, because jurisdiction was defined in  
10    a very narrow way.

11                  The General Assembly thought it was important if  
12    someone showed up at the polls and was not on the voter roles  
13    the poll worker could then ask them what's your address and the  
14    voter could provide that poll worker with their address.

15                  The poll worker would then have basically a  
16    street list or a precinct finder where they could find that  
17    person's address and refer them to the correct precinct, so that  
18    we could make sure they were voting in the proper location, so  
19    we could make sure their vote is counted. I thought that was an  
20    important step.

21                  Finally it now required Boards of elections to  
22    conduct a public vote on the allocation of voting machines, so  
23    as to eliminate the appearance of impropriety in the placement  
24    of voting machines.

1 I think it's worth noting as Senator Jacobson  
2 noted, we are a bipartisan organization, it consists of two  
3 Republicans and two Democrats.

4 The legislature basically said when it comes down  
5 to allocating voting machines around your county that is now  
6 going to be a public meeting, take place in a public meeting  
7 with public vote by all four members of the Board of Elections,  
8 so that the public is aware of the distribution of those  
9 machines and there is the elimination of at least the appearance  
10 that one party might have tried to rig the allocation of voting  
11 machines. I thought that was important as well, something we  
12 had supported.

13 And while the bill was substantially different,  
14 obviously it was as introduced, more changes were certainly in  
15 store for it as it made its way through the Senate.

16 And a couple of things I wanted to point out  
17 about the Senate version that were pertaining directly to  
18 access, first one was the creation of an attorney in fact  
19 provision. I think you heard a little bit about that yesterday  
20 afternoon, for handicapped voters who are unable to physically  
21 make their marks or sign their names.

22 I think it's worth noting that I sat in a room  
23 with a lot of disability advocates and talked extensively about  
24 this particular provision, not all of the folks in the disabled

1 community were happy with this, some of them were.

2 There was some discussion and some debate within  
3 that community as to the effectiveness as to this particular  
4 provision.

5 I think it's worth noting the General Assembly  
6 agreed and Senator Coglein in his remarks on the floor of the  
7 Senate noted this is a starting point, it's a tool not available  
8 to this group, the disabled community, prior to House Bill 3.

9 It's now available to them, and it's not perfect,  
10 but it's certainly a starting point and certainly better than  
11 having nothing on the books.

12 I don't know if you got into a discussion  
13 yesterday about the Geauga County situation, but there was a  
14 voter up there who was unable to make their mark or sign their  
15 name, they were not able to have their spouse or designate  
16 someone to sign it for them, so they were effectively barred in  
17 participating in that portion of that Democratic process.

18 What we attempt to do in H.B. 3 is rectify that  
19 and provide the means for them to participate. To that extent  
20 we acknowledge it's not perfect, but it's certainly a start,  
21 something that was not there prior to H.B. 3 and something that  
22 I believe we'll continue to discuss and debate in the General  
23 Assembly.

24 The other important thing to note and I think

1       this was mentioned yesterday, the General Assembly codified a  
2       long standing Secretary of State directive that allows homeless  
3       persons to designate homeless shelters as an official place of  
4       residence for voting purposes, so long as that homeless person  
5       intends to return back to that shelter.

6                       So I think that was a very positive step, it's  
7       been a directive, defacto law in the state. But the General  
8       Assembly took the affirmative step of codifying that particular  
9       provision.

10                      Obviously it also included the new voter  
11       identification requirements that you heard much about, and I'm  
12       sure we'll continue to have discussion about.

13                      With regard to those requirements it should be  
14       noted my association declined to take a position for or against  
15       that provision.

16                      We found upon surveying our membership that  
17       opinions as to the necessity and wisdom of requirement vary  
18       greatly. Some said why did it take them so long to do this, why  
19       are they just now getting around to doing this. And other  
20       people said they must be out of their minds for doing this.

21                      So clearly we had a conflict as to a unified  
22       position. Instead we decided we would offer the senators and  
23       representatives information as to how the provisions would  
24       affect the administration of elections from a more technical

1       standpoint.

2                   And I'm happy to say that the Senate did make  
3       some changes based upon our recommendations, so we are happy  
4       about that.

5                   All in all it's worth noting that the OAE0 was  
6       very supportive of many of the changes incorporated in H.B. 3.  
7       And while the ID requirements drew much of the attention and  
8       debate, elections officials worked quietly to ensure that other  
9       less controversial, more technical issues were addressed in a  
10      satisfactory manner.

11                  And to a large extent we believe that they were,  
12      and we'll let others groups who have more consensus on issues  
13      debate the merits of the ID requirement.

14                  One other bill of note to this committee is House  
15      Bill 312, which is sponsored by Representative Clyde Evans. The  
16      bill would ensure that the availability of handicapped parking  
17      spaces at polling locations, our association reviewed the bill  
18      and offered some suggestions for improvement to better  
19      accomplish the goals of the sponsor.

20                  And I've been told that it might be voted out of  
21      committee as early as next week. Turns out House Elections is  
22      not meeting next week, so probably the week after. But that's  
23      something you should be aware of.

24                  If the committee would indulge me, I'd like to

1 address a couple issues that came up yesterday that I could lend  
2 clarity to.

3 One issue that came up was the new provision in  
4 H.B. 3 that increased from \$10 to \$50 the amount a county can  
5 recoup for recounts. I think Professor Tokaji noted very well  
6 that particular provision had not been updated since 1950, so I  
7 guess we kind of bristle at the suggestion that this is somehow  
8 barring or prohibiting people from requesting a recount.

9 I would say \$50 in 2006 is a good bargain  
10 compared to \$10 in 1957. Those are only non-automatic recounts  
11 in Ohio. If a contest is within a half a percent there is an  
12 automatic recount that takes place that no one is charged for.

13 These are only recounts that fall outside of that  
14 margin, and that are requested by a candidate or a political  
15 party. So I think that's worth noting.

16 I also don't want this committee to be left with  
17 the impression the new direct recording electronic machines are  
18 not audited or checked in any fashion, certainly they are.

19 There is extensive logic and accuracy testing  
20 that is performed on the machines, and later this morning when  
21 Matt Damschroder, the Director of Franklin County Board of  
22 Elections testifies I would encourage you to ask him.

23 They've been using these machines for over ten  
24 years in Franklin County and he can tell you all about the

1       exhaustive and extensive testing that takes place on the  
2       machines and auditing on the machines.

3                   I know that yesterday the statement was made,  
4       well, you should be distrustful of those machines, because we  
5       worked on our home computers, had them crash and lost  
6       information.

7                   I can assure you comparing these voting machines  
8       to your home computers is kind of like comparing an Indy car to  
9       a Yugo, it's just not the same.

10                  And I would certainly encourage you as you delve  
11       into these issues to work with your local boards of elections,  
12       take a good look at these machines and find out exactly what  
13       makes them tick. I think you'll be pretty surprised.

14                  And as Senator Jacobson and Ms. Hicks also noted,  
15       we now have a requirement for a paper trail in Ohio, so that  
16       these machines don't just record your vote electronically, they  
17       also record it on paper.

18                  So there is a way during a recount situation for  
19       us to compare the two to make sure that the votes were tabulated  
20       correctly.

21                  Also worth noting is the fact that in Ohio,  
22       tabulating votes electronically is not a new concept, we've been  
23       doing it for almost 40 years now in Ohio.

24                  When you cast a punch card ballot that is merely

1       the method of casting the ballot, they are counted later on by a  
2       tabulator that electronically scans and reads those punch cards.

3               And the results are given to the election  
4       officials and relayed to the public electronically.

5               So really the only thing that has changed here is  
6       the method by which the ballot is cast. It's now cast  
7       electronically, but it's tabulated electronically in the same  
8       manner it always has been, that's worth noting as well.

9               That's not to say the machines are infallible or  
10      perfect, but it's worth noting they've been exhaustively tested  
11      by secretary of states offices and found to hold up under much  
12      duress.

13              Another issue was the challenge to citizenship  
14      which came up yesterday. I think Mr. Doshi was particularly  
15      interested in that particular concept. Worth noting is that  
16      that particular provision was not originally conceived in House  
17      Bill 3.

18              It's been on the books for a while in Ohio where  
19      a poll worker can challenge based on citizenship, residents or  
20      age of the voter. That's been around for a while now and  
21      elections officials are not aware of any problems that arose  
22      because of that particular provision.

23              If it's something that the General Assembly  
24      thinks needs to be revisited as we explore all of these issues,



1       we are certainly happy to entertain discussions about that. But  
2       if asked you will hear most elections officials say that's not  
3       caused problems at the polling locations in the many years it's  
4       been in place.

5                       The issue of general readiness of elections  
6       officials to take on the challenge of implementing House Bill 3,  
7       of implementing new voting technology, of bringing our elections  
8       in to the 21st century.

9                       I know a lot of questions were asked as to how  
10      ready will our poll workers be, how ready will our Board of  
11      Elections be, it's an excellent, excellent question and I  
12      certainly ask you to probe the members of the next panel as to  
13      readiness.

14                      I will say this, it is challenging, yes, is it  
15      impossible, absolutely not. Many people predicted gloom and  
16      doom and despair of the 2004 election, what will happen here in  
17      Ohio when we were bombarded by huge turnouts and massive  
18      scrutiny and we survived.

19                      It was not a perfect election by any means, but  
20      here's a secret, there are no such things as perfect elections.  
21      They are always a very human endeavor at their heart, no matter  
22      how fancy the technology humans still conduct elections and  
23      humans are infallible and so are elections.

24                      That does not mean we shouldn't strive for

1       perfection, but certainly we withstood the pressure of '04.  
2       People predicted again doom and gloom in the last general  
3       election where half of the counties used new voting technology  
4       for the first time, but the system held up again and we made it  
5       through.

6                     It was not easy, it's never easy to run a good  
7       election, and we certainly welcome the scrutiny, we welcome the  
8       questions, we need to be tested and we need to be tried, we need to  
9       be challenged to perform better.

10                    But I would just ask you as you delve into these  
11       questions to bear in mind that there will always be  
12       imperfections in elections. But the best we can do is strive  
13       for perfection and expect the best of ourselves as election  
14       officials.

15                    And I think if you take a good look at Ohio's  
16       past we have a strong and rich tradition of running good  
17       accurate fair elections in Ohio.

18                    And so we certainly welcome this committee's  
19       work, we hope you can build upon the many, many inquiries that  
20       have been made into Ohio's voting system, particularly since  
21       2000, and we welcome that scrutiny, and we welcome the  
22       opportunity to work with this committee.

23                    So thank you very much, and I'd be happy to  
24       answer any questions from the panel.

1                   CHAIRMAN BATTLE: Thank you very much, Mr.  
2           Ockerman. We're going to be a little bit longer than we  
3           planned. We started late, we'll end up with the members and  
4           panelist to go until 11:00 for the questions. I'm sure we have  
5           some that our members would like to propose.

6                   And who has the first question? Ms. Citrino.

7                   MS. CITRINO: Ms. Hicks, you mentioned that  
8           50 percent of the states were in compliance with HAVA, is Ohio  
9           in compliance at this time?

10                  MS. HICKS: Basically in terms of that date,  
11           that was January 1st, 2006, there actually may be more states in  
12           compliance now.

13                  But Ohio is planning to be in compliance by the  
14           May 2nd election, primarily the only things we are left to do  
15           since we have gotten all of our equipment, we are doing training  
16           now, doing implementation and delivery of equipment for those  
17           locations that have not received equipment.

18                  So in terms of the centralized voter  
19           registration voter data base that was done in December, so we  
20           fully expect to be in compliance by May 2nd.

21                  MS. CITRINO: What about the requirement in  
22           HAVA that disability access be throughout the state? We were  
23           told yesterday that Ohio's only about 76 percent in compliance  
24           with access for people with mobility impairments, and we haven't

1       heard much about training for people.

2                   An example was brought up yesterday of, for  
3       example, a non-verbal voter, what kind of provisions have been  
4       made to make these 1500 places that are not accessible, that's  
5       the estimate we had yesterday, what's the plan by May to have  
6       those be accessible?

7                   And what's the plan for training people how to  
8       deal with someone who presents with a disability when they come  
9       to the polls?

10                   MS. HICKS: I don't think the figure of 1500  
11       is correct, actually. But I would say in terms of what the  
12       process is that our office uses, we have in accordance with law,  
13       we have a disability coordinator that works for the Secretary of  
14       State's office in conjunction with the Board of Elections, there  
15       is information that he provides.

16                   And also we have the ability to go out to  
17       locations and assist with issues regarding permanent or  
18       temporary fixes for disability access.

19                   We have, as we indicated, a grant program  
20       available to the counties for permanent or semi-permanent or  
21       temporary fixes for particular locations.

22                   And we have utilized our field staff that works  
23       with the Secretary of State's office to go out and assist  
24       county officials in that regard if they need assistance.

1                   For the purpose of contacting our office,  
2           we do have the ability to go out, provide information if anyone  
3           has a question regarding a particular polling place, or if an  
4           election official has a question whether or not they should move  
5           to another polling location.

6                   One of the things that we have been advising for  
7           older locations that are permanent, are being considered by the  
8           board officials for being used in this election, we have  
9           basically told them in a lot of locations they need to go to a  
10          more modern newer facility and consider non-traditional  
11          facilities.

12                   Sometimes we begin to use locations and we have  
13          always used them, and many elections officials are concerned  
14          about information that has been communicated to a voter about a  
15          change in a polling place.

16                   But when you consider that an older location  
17          simply may not have, it will be too expensive to change the  
18          location in terms of what modifications are required, even with  
19          our assistance, the county may not have enough money to build a  
20          ramp or to repave a parking lot or to do those types of things.

21                   We have suggested other locations and have  
22          assisted counties in finding other locations for the election.  
23          I don't have an exact figure as to how many locations, but we  
24          get a regular report weekly on inquiries that are being assessed

1 of our coordinator, who does work with the disability community  
2 and elections officials trying to find additional locations.

3 The 1500 figure sounds high to me, I can get back  
4 with the commission in terms of where we are now in March,  
5 relative to the number of inquiries that we have had, and where  
6 our information shows we are on that.

7 MS. CITRINO: What about training for people  
8 when somebody presents with an unusual or a different kind of --  
9 needs assistance, what kind of training is in place for the poll  
10 workers to help people?

11 MS. HICKS: As required by law we have  
12 disability units that are available for certain types of  
13 disabilities. Certainly the vendor equipment does take into  
14 consideration certain types of disabilities.

15 The other person that we used as coordinator can  
16 provide assistance in the event there is a particular question  
17 about a person who is multiply handicapped and there is  
18 something that they have not been aware of at the polling  
19 location about being able to work with that person.

20 They have the ability to contact our office, work  
21 with our disability coordinator and find out other information  
22 associated with the use of the machine or that equipment.

23 MS. CITRINO: Are you talking about that  
24 day?

1 MS. HICKS: No. Prior to. We work with the  
2 boards everyday on these kinds of issues, that's why we have a  
3 disability coordinator.

4 So in terms of particular questions about the use  
5 of the new equipment, if there is a county getting new equipment  
6 realizing some counties have been using equipment since last  
7 year, if there is questions about a particular type of  
8 disability how that person can be made accessible, how the  
9 facility can work to get accessibility into the facility, the  
10 officials who are there have the ability to contact our office  
11 at any time.

12 Or with regard to our particular training program  
13 we have training DVDs, and CDs, information they can get from  
14 our office on use of disability equipment and about disabled  
15 voters.

16 CHAIRMAN BATTLE: Ms. Ramos.

17 MS. RAMOS: I have a couple of questions and  
18 I tell you what, three of them are you can answer as you choose.

19 One is what are we doing about voter education?  
20 Yesterday a lot of the questions were how are you reaching the  
21 people, educating how to vote, what they need to bring on voting  
22 day, if there is certain things they have to bring.

23 So what are the plans to do this, to outreach  
24 into the community?

1                   And then the other one is again following up on  
2           the disability, I understood when the machines were being  
3           purchased that one of the things was you could take the machines  
4           curb side, I guess curb side voting for the disabled, what kind  
5           of procedures do you have in place for that?

6                   I have one other.

7                   MS. HICKS: I'm going to probably offer to  
8           share this with Aaron. But with regard to our responsibilities,  
9           the Secretary of State's Office, we are offering a disability  
10          coordinator at the state level.

11                  However, with regard to particular issues that  
12          come up at a polling location or within the authority of the  
13          board of elections, there are staff members who actually work  
14          with individual issues on a daily basis, because that's what's  
15          done at the local level.

16                  The Secretary of State at the state level can  
17          give guidelines and information, and we provide training  
18          materials to local officials.

19                  The actual day to day breaks in terms of what  
20          needs to be done specifically for a voter, either prior to the  
21          election or on election day, actually happens with the officials  
22          at the polling place and boards of elections in that county.

23                  Specifically, though, we do have information  
24          relative to which we've sent out to counties already on the



1       voting units that can go curb side.

2                       We actually have had -- and I reviewed  
3       information from inquiries at the board level where that asked  
4       for demonstration of these units, we've taken them out to show  
5       them how they can be used in a regular vehicle that is not  
6       disability equipped, how they can be used in a van that had  
7       been motorized, the person is maybe in a wheel chair.

8                       Or if they are not able to get out of the  
9       vehicle, how they can be put inside. The unit weighs I think  
10      between 16 to 14 pounds, and it can be used on a lap or it can  
11      be used on a platform, so the person can't have pressure on  
12      their lap with the unit, they can put it on a platform in order  
13      to use it that way. We provided information to the counties  
14      about those kinds of units.

15                      We have units that are certified, able to be  
16      purchased by the counties.

17                      MS. RAMOS: Is there a requirement that each  
18      county or each precinct -- what are the requirements?

19                      MS. HICKS: The requirements are they have  
20      disability access at the polling location. There are certain  
21      units they can choose from, depends upon the vendor that they  
22      actually select as to what type of equipment may be used at that  
23      polling location.

24                      Some counties have precinct counts, some have

1 DRE, some have touch screen machines.

2 Aaron may also want to offer some information  
3 about what county officials are doing.

4 MR. OCKERMAN: Chairman Battle, and Mrs.  
5 Ramos, thank you very much for that question, I'll defer a lot  
6 to the election officials who are coming in later this morning  
7 as far as specifics.

8 I will tell you generally, though, as far as  
9 voter education is a priority for my folks right now. Because  
10 as I indicated the technology can be fancy and flashy, but if  
11 the voters can't work it, it's not a lot of good.

12 Generally speaking, every county having new  
13 equipment is right now in the process of very aggressively going  
14 around their county and getting in front of every civic  
15 organization that they can, putting up demonstration units at  
16 libraries.

17 They made the county fair rounds last summer and  
18 fall with the new voting technology. I think the goal really is  
19 if we can get a hundred percent of our voters to vote that  
20 machine or see that machine prior to May that would be  
21 spectacular.

22 That won't happen. The goal of every county is  
23 to get out to as many groups, civic organizations, libraries,  
24 public places, malls, as was indicated yesterday and really try

1 to educate those voters about that new technology and how it  
2 works.

3 As far as what's required by law as far as  
4 disability voting goes, I think Ms. Hicks was a hundred percent  
5 correct, the Help America Vote Act and not anything the state  
6 has required, actually requires one handicapped accessible  
7 voting unit per polling location.

8 Which means as was indicated yesterday that's  
9 basically an audio device that voters who cannot see or have  
10 other physical impairments will be able to vote independently  
11 on.

12 And that's the standard that's been held up is  
13 the privacy of that voter, and are they able to privately cast a  
14 ballot.

15 That's the goal that's been on everyone's mind, I  
16 know certainly the Secretary of State since we went down the  
17 road with the vendors and started exploring the technology.

18 MS. RAMOS: So you're saying outreach voter  
19 education is only within the realms of the boards of elections,  
20 how is it being funded? That would be a serious problem, and I  
21 want to know what's happening with funding, too.

22 MS. HICKS: Well, we actually have a  
23 partnership in this area. As I indicated with regard to the  
24 contracts for vendors that sell voting equipment to the State of

1 Ohio, as part of the contractual requirements we incorporated  
2 hours of voter education and training into the contract  
3 requirement for the vendor.

4 So what Aaron was talking about having this  
5 display of equipment at county fairs and shopping malls, having  
6 mobile displays that can go around to churches and schools and  
7 those things, vendors have allowed demo machines to be used in  
8 that regard as part of their responsibility under the contract,  
9 to provide voter education about the machines.

10 There are DVDs and displays about how to use the  
11 voting machine, there are pamphlets about how to use the  
12 machines.

13 But one of the things we were encouraging  
14 counties to do, if at all possible, is to make sure that the  
15 equipment actually touched the voters, potential voters who  
16 could come out so they could see and feel the machine.

17 It's one thing to have a pamphlet, but as Aaron  
18 accurately pointed out, it's another thing to see the machines  
19 you heard about.

20 You can go to the library, we had it at the Ohio  
21 State Fair, all the vendors participated in that local event.  
22 They've been very helpful in providing equipment at those  
23 locations.

24 But the state actually has that as part of the

1 contract for vendors to participate in county fairs, the  
2 counties have gotten grant money to do voter education programs  
3 for voters in their local areas.

4 SENATOR JACOBSON: Two quick comments.  
5 First of all, we're required as part of the spending -- or  
6 excuse me, required as part of the decision in House Bill 3 to  
7 do voter ID, that the county boards notify before the next three  
8 federal elections, meaning November `06, and then in the  
9 Primary, and in November of `08, reminding voters of the ID  
10 choices and the requirements to provide identification.

11 Secondly, as to training and education, of the  
12 HAVA funds we did appropriate five million split equally between  
13 the county boards and the Secretary of State's office.

14 The county boards, I'm not aware of what they've done  
15 with it, whether they used it or how they've used it. And as I  
16 said the bulk of the Secretary of State's money was spent in  
17 `04.

18 CHAIRMAN BATTLE: Ms. Bledsoe.

19 MS. BLEDSOE: Ms. Hicks, so that I can have  
20 clarity, you talked about grant funding, the grant funding,  
21 could you go over what type of funding that was, was that for  
22 public education?

23 And you also said only 14 counties applied for  
24 it. Do you have a list of those 14 counties?

1 MS. HICKS: I certainly can provide a list.  
2 I didn't come prepared with that information today.

3 The grant funding I referred to with regard to  
4 the 14 counties that applied for funding was with regard to  
5 funding for handicapped accessibility or disability locations  
6 that could be permanently or semi-permanently improved for  
7 access for disabled voters.

8 That is a separate funding or separate grant  
9 process from HAVA funding associated with voter education and  
10 education of election officials and poll workers.

11 CHAIRMAN BATTLE: Ms. Zealey.

12 MS. ZEALEY: Thank you, Mr. Chairman. My  
13 question is for Ms. Hicks.

14 With regard to the Secretary of State's office  
15 and constitutional responsibilities, I can think of three major  
16 areas where the local boards of education would look to your  
17 office for answers, and for leadership, training, interpretation  
18 and guidance in voter education.

19 If I want to see the Secretary of State's  
20 blueprint for what's going to happen this year in the May  
21 election and the November election, where can I find that  
22 information?

23 You mentioned for example DVDs available for  
24 disability coordinators at the local level. I'm interested in

1 completing our record to the extent that you're very limited in  
2 the time that you have here today to answer specific questions.

3 I'm interested in getting, if you will, a full  
4 blueprint of what is planned for this year's election. And then  
5 I have a follow-up question, if you will.

6 MS. HICKS: Generally, with regard to the  
7 state's plan for HAVA implementation, if you go to the Secretary  
8 of State's website, we started our first state plan in 2003, and  
9 we have updated it based upon elective changes, such as the  
10 VVPAT requirement and other things that have impacted how we  
11 implement the Help America Vote Act.

12 So the current state plan has information in it  
13 as to the Secretary of State's overall state implementation of  
14 HAVA. So that provides some information for a general overall  
15 background as to what the state is involved in.

16 If you would like specific information I can  
17 provide you particular documentation at a later date if there is  
18 something that specifically you want us to hone in on.

19 MS. ZEALEY: I'm not just thinking about  
20 HAVA, but House Bill 234 and House Bill 3.

21 With regard to training for example, do you have  
22 a training module that's planned for poll workers that you can  
23 share if that's computer based, or if it's in writing, something  
24 of that nature?

1                   Also on voter education, both the timing of when  
2                   it will go out to the voters and what it will contain in terms  
3                   of concrete information.

4                   And then my follow-up question is regarding  
5                   interpretation and guidance on provisional ballots. The two  
6                   questions I think that were profoundly important in 2004's  
7                   election were when would the poll workers give a provisional  
8                   ballot to a voter, and how would that ballot then be determined  
9                   to be counted, that it is in fact a ballot stole?

10                  And if you could address those two issues on  
11                  interpretations and guidance of how that will happen in 2006,  
12                  how does a poll worker determine whether to give someone a  
13                  provisional ballot.

14                  Or even more severe, tell them that's all they  
15                  are entitled to get. And then how is that ballot then  
16                  determined to be valid or not.

17                  And if that is also in writing, I'd like some  
18                  direction to the Secretary of State's interpretations on those  
19                  issues.

20                  MS. HICKS: I think specifically with regard  
21                  to your questions on 2006 processes, one of the benefits of  
22                  having experiences in 2004, we did get a lot of information and  
23                  input in a number of sectors relative to provisional voting,  
24                  other than what was provided in HAVA.



1                   With regard to the new election we've had several  
2           law changes, as Senator Jacobson referenced, which now affects  
3           provisional voting that did not exist in 2004.

4                   The primary way that the Secretary of State gives  
5           information to boards of elections and county officials on  
6           interpretation is through one source is a directive from the  
7           Secretary of State's Office.

8                   Another source are advisory memorandums relative  
9           to new changes that have occurred in law. We have submitted  
10          information informing them of both the changes in 234 and House  
11          Bill 3, and I can provide you copies of that.

12                  It is a guide post, provides them what the law is  
13          now, how it is to be interpreted and when it becomes effective.

14                  It also advises them that there will be future  
15          information forthcoming relative to other components of House  
16          Bill 3, which go into effect at a later date. Those two  
17          documents I can provide you.

18                  Regarding your previous comments relative to  
19          voter education and training, as I indicated before we have a  
20          partnership with the counties with regard to voter education.

21                  We have one component of voter education,  
22          certainly the county officials have other things that they do,  
23          which are not necessarily dictated by the Secretary of State,  
24          and voter education.

1 I can provide you the module of training  
2 information that we provided, which poll workers would get and  
3 election officials are required to provide this information  
4 within a certain number of days prior to the election.

5 So the Secretary of State has, if you will, the  
6 basic model. And then the local boards of election can build on  
7 that if they will, as long as it's consistent with the basic  
8 training.

9 MS. ZEALEY: Correct, correct. Because  
10 there also may be local issues that would appear on the ballot  
11 associated with that particular election, not addressed at our  
12 level.

13 So we provide basic information as to what the  
14 laws are relative to provisional voting or absentee voting, but  
15 how they go into other areas, which are not covered, because  
16 they are not affected in the entire state, they may be only a  
17 local issue, can be added to the training information that we  
18 provide them.

19 CHAIRMAN BATTLE: Mr. Wheeler.

20 MR. WHEELER: Thank you very much, Mr.  
21 Chairman.

22 Yesterday I was very concerned and I still am  
23 today about the disabled. Between today and just go back 40, 50  
24 years ago, people having the right to vote, accessibility, I

1       understand there's approximately 11,000 voting places in the  
2       State of Ohio.

3                   And I heard something a few minutes ago, the  
4       machines can come out to the curb to assist people that are  
5       disabled.

6                   Do we know exactly how many machines we have?  
7       Because apparently what I'm hearing, what I heard yesterday was  
8       just a few for the whole state, and I was hoping I'm wrong.  
9       That we might be able to address that concern.

10                  Does anyone keep up with a report with this, is  
11       there a reporting mechanism from the county or Secretary of  
12       State's office?

13                  MS. HICKS: Specifically with regard to how  
14       many machines there are I don't have an exact number for you.  
15       I can tell you what they are required to be with regard to  
16       disability units.

17                  There is a disability unit required for every  
18       polling location. The number of machines that we currently have  
19       in the state is also now designated to be one machine for every  
20       175 voters.

21                  MR. WHEELER: Can that be certified some  
22       kind of way that's in place, so when people go nobody has to be  
23       turned around, is that certified some kind of way?

24                  MS. HICKS: It is part of documentation that

1 we have provided to the counties, and certainly I can provide  
2 you the information that we have submitted to the county boards  
3 of elections that they are required to follow.

4 MR. WHEELER: Okay.

5 CHAIRMAN BATTLE: And with additional  
6 information that's going to be provided, I'll just repeat the  
7 record of these proceedings will remain open until April the  
8 1st, so if additional information can be provided that would be  
9 appreciated before that time.

10 Other panelists have questions?

11 MR. DOSHI: Much of the things of the  
12 discussion has been about mechanics of voter education and it is  
13 incumbent upon the citizens to be educated and to actually  
14 participate in the process.

15 My concern is to the disabled community again.  
16 Yesterday I learned there are 1.4 million unregistered disabled  
17 American voters in our state.

18 Whose responsibility is it, is it our officials  
19 doing something about getting them to participate? If they are  
20 not participating in the process that means they are not  
21 worrying about that at all in bringing them in the process,  
22 actually what do we do about that? I hope it's not that hard of  
23 a question.

24 SENATOR JACOBSON: First of all, I would

1 state that number must be a flat number, because --

2 MR. DOSHI: It's Ohio.

3 SENATOR JACOBSON: It's not possible, we  
4 only have 11 million citizens. If you take a look at the number  
5 of citizens age to be registered, and those and the number that  
6 are registered, I don't think it's possible to have -- I don't  
7 think it's possible for that to have been -- for that to have  
8 been an accurate Ohio number.

9 There may be a number, a large number of people  
10 in Ohio who have not registered, it's not all because of  
11 disability. I'd be happy to review the information, take a look  
12 at it.

13 What I would say is that the government, the  
14 legislature as well as the federal government has provided a  
15 number of different registration methodologies, including the  
16 requirement that governmental offices that they ask and require  
17 people about the registration status and encourage them to  
18 register to vote.

19 Obviously in America we have the right not to  
20 participate should we chose to do so as well. So no one is  
21 compelled to register. We don't offer benefits only to those  
22 who register to vote or do anything of that sort, because people  
23 have the right to choose to participate or not to.

24 I would -- I have heard the reports that not

1 everyone is enforcing it, in other words that not everyone was  
2 supposed to be asking is asking.

3 But hopefully those are handled by reporting it  
4 to the supervisors and the elected officials that are ultimately  
5 responsible for the operation of those particular government  
6 offices, but I do believe the information is on the books and  
7 the requirements are there that we do outreach in the  
8 appropriate fashion.

9 MS. HICKS: An additional comment I'd like  
10 to make, which really happens not only just in federal  
11 elections, but every election and Aaron is aware of this as  
12 well.

13 We always work with our county officials, because  
14 they will request certain information from us relative to  
15 information that should go out to nursing homes to assist the  
16 care living facilities, to senior centers, to hospitals, et  
17 cetera.

18 And we have encouraged them through  
19 communications with our office, both in writing and orally, we  
20 talk to elections officials on a daily basis, it's important,  
21 and other election officials go out and they go out to community  
22 centers and places where persons are not able to come in and get  
23 information about voter registration.

24 This particularly comes up during the months when

1 voter registration forms are due prior to an election. So if  
2 travel is even involved, associated with a person leaving the  
3 polling location or their place of work in order to go out to a  
4 person who's not able to get information on voter registration  
5 that is encouraged and we have our election officials do that.

6 We have them provide information in community  
7 centers and other locations where persons may not fit the  
8 definition legally of having a disability, but they may have an  
9 inability to get to the information regarding voter  
10 registration.

11 The forms are brought to them so they can get  
12 registered to vote. In addition we have information that we  
13 send out through our field representatives, when we get requests  
14 like this, we do that with the Secretary of State's office to  
15 take voter registration forms out.

16 MR. OCKERMAN: I certainly agree with the  
17 comments made by both panelists. A lot of this falls on local  
18 folks to implement, make sure it's happening.

19 Just as with the case with any other  
20 relationship, there are counties where the county boards of  
21 elections have a very strong relationship with the disability  
22 community, at the local level there are other counties where  
23 it's not as strong, but certainly to the extent as an  
24 association we can encourage our folks to work at the local

1 level that they know in the disabled community.

2 We always do that, we encourage them to  
3 strengthen the relationships to reach an understanding of what  
4 the needs are on both sides, and hopefully work together in a  
5 very strong fashion to accomplish the benefits and goals that  
6 you outlined.

7 CHAIRMAN BATTLE: Ms. Citrino, followed by  
8 Ms. Ramos.

9 MS. CITRINO: Thank you, Chairman Battle.  
10 I have two separate comments.

11 First, a follow up on what Pastor Wheeler said.  
12 We were told yesterday that while each polling location would  
13 have an accessible voting machine there, that that was different  
14 from curb side voting, in that there were only six locations  
15 statewide where curb side voting was going to be made available.

16 So when you provide the information if you could  
17 clarify the difference. We understand they are going to be  
18 accessible machines, but we also want to know about curb side  
19 voting.

20 And, two, Senator Jacobson, you mentioned that  
21 the change was made to require verification in absentee ballots,  
22 you felt that because verification was necessary for first time  
23 voters, that verification really would be acceptable to extend  
24 to all voters.



1                   And a lot of the concern yesterday was about  
2           elderly people in maybe assisted living facilities where they  
3           are not having something with their address on it or utility  
4           bill, they don't have a drivers license.

5                   Could you address what provisions have been made  
6           for people who are in that situation, because there was a  
7           considerable concern that those people would not be stopped from  
8           voting by absentee ballot.

9                   SENATOR JACOBSON: Thank you. First of all,  
10          often what happens to the absentee ballot area with assisted  
11          living or nursing home facilities is the balloting does not take  
12          place by mail, it takes place by poll workers coming out prior  
13          to the election to the facility.

14                  If in fact they hire additional people from the  
15          Board for the -- prior to the elections, and they will go to the  
16          facilities and personally in person get the absentee requests  
17          and then personally come back with the ballot and assist these  
18          individuals in voting.

19                  And so it allows for much, you know, a much  
20          better form of identification to be made by the fact that you  
21          are there at their location and you can personally verify that  
22          they live where they say they do, which is very different.

23                  I would also point out that most people in those  
24          facilities are probably receiving some form of government

1 assistance.

2 They are either receiving Social Security, or  
3 some -- if not Medicare or something of the like, and so they  
4 will be getting communications or some documentation of that,  
5 which would allow them to be assisted.

6 We are certainly not required to make people send  
7 in something that discloses all of their personal information.  
8 But they will have the documentary evidence.

9 But the assumption is in these facilities as it  
10 works now, the owners, managers, the personnel of the facilities  
11 assist their residents with the voting process.

12 That's frankly why this takes place the way it  
13 does, because the owners or the managers of the facilities have  
14 set this up over time with the boards of elections to allow  
15 their residents special access to voting procedures.

16 CHAIRMAN BATTLE: Ms. Ramos.

17 MS. RAMOS: I want to be sure I clarified  
18 the fact of the optical scanning that was brought up yesterday.  
19 I noticed on this map there are many counties in Ohio that use  
20 optical scan.

21 Yesterday there was a concern about x's, you  
22 brought up circles, are those counted? I want to know are they  
23 counted if they have circles, x's or anything else. I want to  
24 be sure to clarify that, and also stray marks, something was

1 brought up also.

2 MR. OCKERMAN: Chairman Battle, and Ms.  
3 Ramos very good and excellent question.

4 There are actually -- for the committee's  
5 information there are many states actually that are actually  
6 considering to meet the requirements of HAVA that the entire  
7 state use optical scan voting technology.

8 I would note that Ohio I think rightly allowed  
9 the counties to make a decision as to which type of voting  
10 equipment they wanted to use.

11 But to the extent that those circles or x's or,  
12 you know, people -- it's funny, I'm not sure Mr. Cunningham is  
13 going to be here unfortunately, but if you ask a county that  
14 uses optical scan equipment how creative their voters can get  
15 when it comes to marking their optical scan ballots, I think  
16 you'll be surprised by some of the marks they get.

17 What the General Assembly did was codify what had  
18 been the common practice through the Secretary of State's  
19 directive for a long time with regard to those particular marks.

20 And in House Bill 3, in that piece of legislation  
21 they actually enumerate which mark constitutes a valid vote. I  
22 think Ms. Rosenfeld can give you more information.

23 We had a number of conversations, she was the  
24 first one that told me that these marks actually go back several

1 Secretary of States, and they worked I assume with their local  
2 boards to try to determine which marks were most commonly made.

3 The only requirement the General Assembly put was  
4 they were made in a consistent fashion. And I think the  
5 important thing there is for purposes of determining the voter's  
6 intent, sometimes we'll get a ballot that are all x's, and there  
7 is a circle.

8 Well, you know what, as an election official how  
9 do we determine what that means. So I think the General  
10 Assembly in giving guidance to counties said that you should  
11 examine the marks that are made, determine whether or not they  
12 meet the criteria set forth in law, and determine whether or not  
13 they were made in a consistent fashion that would allow you to  
14 screen the voter's intent, based on those marks. I hope that  
15 answers your question.

16 MS. RAMOS: Okay.

17 CHAIRMAN BATTLE: Mr. Humeidan, followed by  
18 Ms. Bledsoe.

19 MR. HUMEIDAN: I have a comment and a couple  
20 of quick questions.

21 The first comment is in regard to the statement  
22 that Senator Jacobson made, some of the comments about the voter  
23 registration fraud.

24 I personally during the last elections worked

1 with the NAACP Voter Funds and Americans Coming Together, for  
2 them to reach out into the community of new citizens.

3 I think both of these organizations and other  
4 organizations should be commended for the work they did. I hope  
5 these organizations are given the opportunity to defend  
6 themselves and make comments about -- comments about the  
7 statement that was made.

8 Obviously there was some issues, but I hope that  
9 these organizations again are commended for the work they did.  
10 They did a lot of great work within the immigrant community,  
11 within the community of new citizens.

12 My questions are with regard to the  
13 identification. We're looking at the chart that was given to us  
14 and it says that voters can use their Social Security number,  
15 for the last four digits of the Social Security number.

16 Are we requiring voters or registrations to have  
17 Social Security numbers on them? I know at one time that wasn't  
18 a requirement, it was a form but it was an optional thing. Are  
19 we requiring that now? Is that how it's going to be verified?

20 And the other question is, we've heard some  
21 issues about discrepancies in some of the ways the laws are  
22 implemented on the county level and are the Board of Elections  
23 working together to make sure that all of these issues are  
24 resolved and the same training is being conducted to all poll

1 workers statewide, so all of the rules are implemented the same  
2 way across the state.

3 SENATOR JACOBSON: Before the answer is  
4 given I do need to apologize, I have to go. I'm solely  
5 responsible for picking up a child in 15 minutes, and my wife  
6 will deprive me of all of my civil rights if I fail to show up  
7 up at the appropriate time.

8 So thank you very much and I look forward to  
9 working with you in the future.

10 CHAIRMAN BATTLE: Thank you.

11 MR. OCKERMAN: Chairman Battle, and Mr.  
12 Humeidan, a couple again very good questions.

13 The first on Social Security numbers. That is  
14 not a required form. Under the Help America Vote Act, I believe  
15 we are now required to ask for some kind of identifying number,  
16 which can be either a driver's license number or the last four  
17 numbers of the Social Security number.

18 And then that will be entered into the statewide  
19 voter registration data base, which will help us determine  
20 whether if there is a Jad Humeidan who is registered in Franklin  
21 County, and one registered in Hamilton County. There will be a  
22 differentiator within that data base. But it's not required  
23 that you disclose your full Social Security number on that form.

24

1                   We then under HAVA now have an arrangement  
2           through our Bureau of Motor Vehicles, through the Social  
3           Security Administration where we can have access to those  
4           identifying numbers, that we can then balance against each other  
5           in order to make sure that one voter's profiles matches the  
6           profile with Social Security Administration's. So I think  
7           that's how that particular instance would work.

8                   And did you want to clarify anything else?

9                   MS. HICKS: That's good.

10                  MR. OCKERMAN: Okay. With regard to  
11           statewide standards and how they are being applied locally, this  
12           is something that we always -- it's the beauty and the detriment  
13           of our system, is that despite federal intervention, despite  
14           greater standards from the state elections, fortunately we  
15           believe are still administered at the local level, and we think  
16           that's the real strength of our system here in Ohio.

17                  That local boards of elections are able to  
18           respond to local problems, local circumstances, local instances  
19           and relate directly with their voters, so we think that's a real  
20           strength.

21                  But at the same time as you noted it does give  
22           some flexibility, it does allow them some opportunity to deviate  
23           slightly in their administration of elections.

24                  I would say that I think it's our belief that

1       working with the Secretary of State on these new standards and  
2       directives that they'll be issuing, I think you will find that  
3       as boards of elections go through, and I encourage you to ask  
4       this of the boards this afternoon, you will find that they will  
5       work very hard to adjust their policies and procedures to  
6       reflect those state standards.

7                       And it's my belief that so long as those  
8       policies, those local policies fall under the umbrella of the  
9       directive, which falls under the umbrella of state law, which  
10      could fall under the umbrella of the federal law, I think we are  
11      protected from arguments that counties are disparately applying  
12      the law.

13                     So there will always be a certain amount of  
14      flexibility just by the nature of our system, which again I  
15      think is our strength.

16                     But I would say so long as the counties acting  
17      within the overall structure of those state's standards I think  
18      they are safe, and I think the voters should be secure they have  
19      a fair application of the law.

20                     CHAIRMAN BATTLE:   Final question, Ms.  
21      Bledsoe.

22                     MS. BLEDSOE:   My question goes to ID  
23      requirements and the comments that were made by Senator  
24      Jacobson, when he said that we are now requiring people to send



1 in information that would disclose their personal information.

2 I look at your requirements of a bank statement,  
3 a pay check, to me are disclosing personal information. Had  
4 there been any thought for those persons who may send in a bank  
5 statement or a pay check what will be done to protect the  
6 privacy of those people who will mail theirs in, and how will  
7 those be disposed of and protected for those individuals?

8 In my opinion that is extremely personal. Thank  
9 you.

10 MR. OCKERMAN: I would -- I will defer a  
11 little bit maybe to Cassandra, and defer more to the boards who  
12 come in and talk specifically about how they will handle that  
13 from a legal perspective.

14 The requirement is only that they disclose  
15 certain information, that being a name and address for  
16 verification purposes.

17 So while you may send in a bank statement there  
18 is nothing that stops that person from redacting all of the  
19 other information, other than their name and address.

20 That's really what the General Assembly is  
21 requiring us to gather for identification purposes. So the  
22 citizen should not feel compelled to send in personal  
23 information, other than their name or address.

24 Now, if that information does come into the board

1 of elections I'm not sure how exactly that will be disposed  
2 with. I will again defer to the county boards who are here  
3 later this morning who might be able to answer that question.

4 MS. HICKS: It's unfortunate that Senator  
5 Jacobson left, because as a legislative requirement ID  
6 information is something that was discussed I think  
7 significantly in the legislature.

8 It's not something that the Secretary of State's  
9 office promoted. So you have a legitimate concern that  
10 information could be communicated to an individual at a board of  
11 elections or some other office with the state that was not  
12 really intended to be provided, simply because a person is  
13 trying to comply with the law.

14 I think that's very, very serious. And in terms  
15 of what we can do about that, I think that our directives and  
16 information as we develop the process is to direct the boards  
17 how to handle this, will have to address mitigation and  
18 providing the correct information to citizens that they did not  
19 need to send anything else in, other than a statement that says  
20 National City Bank, it says the address of the bank, looks as  
21 though it's on the bank information, but all of the other  
22 information can be taken out simply with a magic marker or with  
23 some other information or some other device that can mark out  
24 the information that is not critical.

1                   Because verification of name and address is what  
2           the law is. However, I think that you demonstrated one of the  
3           problems with being able to have a good purpose, but actually  
4           once you put the information together it may be overly broad in  
5           terms of its application.

6                   So I think that's going to be something that's  
7           going to be a project for us at the state and local levels to  
8           make sure we put this information in a format where people who  
9           are bombarded with the information do not send us information  
10          that includes Social Security numbers, full numbers, those kinds  
11          of things, or include information on bank accounts, or other  
12          information not required to be sent in for voter registration.

13                   CHAIRMAN BATTLE: We appreciate the time  
14          that our panel has given to this and certainly our members have  
15          had a lot more information and clarified some things.

16                   Ms. Hicks, would you be able to get to us the  
17          information concerning the SOS directive, or directions of the  
18          advisory memo and training module that you mentioned, could you  
19          do that for us next week so that we can have that?

20                   MS. HICKS: Yes, absolutely, you'll have  
21          that prior to your April 1st cut off time.

22                   CHAIRMAN BATTLE: Excellent, excellent.

23                   We'll still be okay, members, time wise. We'll give  
24          ourselves 15 minutes with the indulgence of the next panel and

1 we should be able to adjourn as scheduled at 1:00. Thank you.

2 (Thereupon a brief recess was taken.)

3 CHAIRMAN BATTLE: I'd like to thank the  
4 panel for being with us. The committee is now reconvened.

5 And with us for this panel we have Michael Vu, of  
6 the Cuyahoga Board of Elections; Mr. Matthew Damschroder of the  
7 Franklin County Board of Elections; and a stand in for Mr.  
8 Cunningham, who's unable to be here, who is from the Ohio Honest  
9 Elections Commission, Mr. Cliff Arnebeck.

10 We will begin with Mr. Vu.

11 MR. VU: Thank you, Mr. Chairman and  
12 Committee Members. Thank you for this opportunity to convey the  
13 work of the Cuyahoga County Board of Elections to ensure the  
14 franchise of over one million registered northeast Ohioans.

15 Your request to speak on our preparation for  
16 preparedness for the 2006 elections brings to the surface the  
17 need to become more aware of how recent federal and state  
18 legislation has affected local election officials' ability to  
19 conduct elections, and how we will prepare to meet voters at the  
20 polls.

21 My name is Michael Vu, Director of the Cuyahoga  
22 County Board of Elections.

23 Cuyahoga County is the 15th largest election  
24 district in the United States with a diverse demographic.

1 Cuyahoga County is home to 1.4 million residents. Of those 31  
2 percent of the population is non-white.

3 The median age of county residents is 37.3 years.  
4 19 percent of the population does not have a high school  
5 diploma, and only 15 percent have their bachelor's degree.

6 As part of my testimony I have included the data  
7 the Board of Elections has compiled to be able to address the  
8 state of our county in a more systematic fashion.

9 The demographic information provides some insight  
10 to the overall diversity of Cuyahoga County, as compared to  
11 Montgomery County in Maryland, and Fulton County in Georgia.

12 Let me just discuss Cuyahoga County's work in the  
13 past two years since the 2004 Presidential Election, which will  
14 help convey how we are able to better serve our voters.

15 OUR RECOMMITMENT EFFORTS

16 Since 2004 the Cuyahoga County Board of Elections  
17 has recommitted to its electors that we will improve the  
18 election system to be able to ensure that legal votes will be  
19 counted.

20 What have we done to accomplish this  
21 recommitment?

22 First, the Board of Elections in compliance with  
23 the Help America Vote Act of 2002, passed by Congress, will have  
24 in place electronic voting units, which will make more

1       definitive the voter's intent and allow accessibility for  
2       persons with a disability.

3               Like many jurisdictions across our country, for  
4       the first time in our history, the Cuyahoga County Board of  
5       Elections is able to have redundancy in safeguarding our votes.

6               Beyond complying with the Help America Vote Act,  
7       the introduction of new technology in the voting equipment  
8       environment allows us the capability to serve those who may not  
9       be proficient in the English language by providing the ballot in  
10      their primary language at a relatively cost effective method.

11              Since my arrival to the Cuyahoga County in August  
12      of 2003 from Salt Lake County, Utah, an analysis was conducted  
13      on when Cuyahoga County would fall under Section 203 of the  
14      Voting Rights Act Minority Language Provisions.

15              As in many jurisdictions Cuyahoga County has a  
16      vibrant and dynamic Hispanic population and we are projected to  
17      fall under the Voting Rights Act of 1965's Minority Language  
18      Provision by 2010 to 2013.

19              Our polling locations have been surveyed and  
20      those that require temporary equipment, installations to make  
21      them more accessible on Election Day, in order to be compliant  
22      with HAVA stipulations, have been ordered and will be in place  
23      for the May 2nd Primary Election.

24              In September of 2004 we implemented a new voter

1 registration system, which has allowed the agency to enter a new  
2 era of greater accuracy in processing voter registration cards  
3 and expediting the retrieval process of each voter registration  
4 card.

5 We have scanned over a million voter registration  
6 cards and have attached these images to the voter's electronic  
7 record.

8 This is significant since we are now better able  
9 to manage each voter's record and identify and correct errors  
10 with several key strokes, instead of the traditional and manual  
11 approach of hunting for the proverbial hard copy.

12 This move to a new voter registration management  
13 system protected the franchise of tens of thousands of new  
14 registered voters, including thousands of voters from minority  
15 groups.

16 We were able to create an accurate poll book so  
17 that voters were able to cast a regular ballot, rather than a  
18 provisional ballot.

19 We were also able to cross reference registration  
20 information for voters who cast a provisional ballot quicker and  
21 more accurately.

22 The system also helped quicken the response to  
23 calls from poll workers requesting information regarding a  
24 voter's correct precinct.

1                   As we look to the elections of 2006, the question  
2           beckons, are we prepared? Yes, we are prepared for the Primary  
3           Election and subsequent elections in 2006.

4                   In fact, with the implementation of the touch  
5           screen voting system we have additional ways to ensure a voter's  
6           franchise.

7                   From this point forward the touch screen voting  
8           system will eliminate over voting, which averaged .08 percent,  
9           and .96 percent in Cuyahoga County for general elections in the  
10          years 2001, 2002 and 2003.

11                  However, this over vote range does not accurately  
12          portray what was happening at the precinct level. On the  
13          precinct level the data indicates that several dozen to several  
14          hundred precincts, depending on the election were consistently  
15          higher than the one percent over voting benchmark and have gone  
16          as high as 10.48 percent.

17                  The touch screen system will allow for a review  
18          of the ballot before the ballot is cast. The system will also  
19          alert a voter if a race has been under voted.

20                  This system function replaces the voter education  
21          initiatives dedicated to over voting and under voting and allows  
22          elections officials to dedicate much needed resources to other  
23          areas of concern.

24                  With new technology will allow visually impaired



1 voters access to touch screen voting system with minimum help  
2 and allow them to actually cast a ballot on their own. This  
3 function was not available under the punch card voting system.

4 A voter education and communication plan has been  
5 set where over a million dollars will be expended to ensure  
6 proper training of our 7,000 poll workers, and educating the  
7 million registered voters on the new laws and the voting system.

8 Over the course of 2006 we will complete over a  
9 thousand demonstrations of our new voting system. To date our  
10 countywide voter education campaign has completed over 436  
11 demonstrations. And will complete an additional 250 events  
12 between now and May 2nd, 2006.

13 In the next several weeks we will launch a new  
14 website, which will make it more functional and user friendly  
15 for Cuyahoga voters and other constituencies.

16 Our communication plan will include paid  
17 advertising with our local newspaper, billboards and advertising  
18 on mass transit systems.

19 We have a suite of newly designed brochures and  
20 will be mailing an Official Voter Information Guide, similar to  
21 2004, on how and where to go to vote to every registered voter  
22 in Cuyahoga County.

23 RECENT STATE LEGISLATION

24 Since the 2004 Presidential Election much has

1        occurred in the enacting of legislation that will have a direct  
2        affect on our ability to administratively conduct elections. We  
3        talked about that a little earlier with the prior group.

4                    In 2005 H.B. 234 was passed, which allowed for no  
5        fault absentee voting and placed new requirements on voters to  
6        write the last four digits of their social security number,  
7        driver's license or some form of identification on their initial  
8        application and upon returning their voted ballot.

9                    There are some concerns on how to  
10       administratively handle that when it gets down to the Board of  
11       Elections.

12                   The Board of Elections this past week passed our  
13       policy on how we will handle absentee applications and ballots,  
14       which are missing the new required information.

15                   This includes sending them a letter and  
16       contacting them by phone after the 10th day by phone if  
17       necessary and if the phone is provided.

18                   By examination the Cuyahoga County Board of  
19       Elections believes absentee voting will increase each year. In  
20       the 2004 General Election we saw over 100,000 applications  
21       submitted, which was over a 10 percent increase from the 2000  
22       Presidential Election.

23                   Most recently the Governor signed H.B 3, which  
24       drastically changes the administration of election. Many of

1       these changes were beneficial to complying with federal mandates  
2       and updating antiquated legislation.

3                       However, others became a cause for concern,  
4       including the requirement for voters to show identification  
5       before being issued a ballot.

6       PITFALLS & PRATFALLS

7                       It must be noted that with all the preparations  
8       that comes with conducting an election, there are variables that  
9       are simply out of our control.

10                      The number one issue that will play a significant  
11       role in the success of the 2006 elections will be our poll  
12       workers.

13                      As you may know poll workers are in fact daily  
14       citizens who have been kind enough to volunteer their time to  
15       participate on Election Day. They are not full-time employees  
16       as some may believe.

17                      With the aging population we recognize that a new  
18       population of young and energetic people must be recruited and  
19       work alongside our existing poll workers.

20                      However, a new standard of quality is being  
21       conveyed across the United States to carry out the elections for  
22       2006.

23                      To assist our efforts, Cuyahoga has a very  
24       successful student poll worker program, which now has grown

1 large enough to encompass 10 percent of our poll worker  
2 population.

3 However, we see additional efforts must be made  
4 on a federal and state level to increase the level of support  
5 and awareness on this issue.

6 THE FUTURE OF THE VOTING RIGHTS ACT

7 The residents of Cuyahoga County, in the State of  
8 Ohio, have had their voting franchise protected and expanded  
9 through the Voting Rights Act of 1965.

10 Although Ohio is not a state covered by Section 5  
11 of the Voting Rights Act, the residents of this state have  
12 benefitted from those states that are covered by Section 5 of  
13 the Voting Rights Act.

14 During redistricting of congressional districts  
15 and at the precinct level there is an awareness of which  
16 redistricting plans have violated the Voting Rights Act, such as  
17 at-large districts for federal office.

18 The Voting Rights Act of 1965 has given minority  
19 groups the ability to challenge redistricting plans legally.  
20 The ability to legally challenge a district boundary has in  
21 itself assisted in the franchise of minority groups.

22 Although the specific provisions of the Voting  
23 Rights Act that are set to expire will not occur in 2006, let me  
24 convey the support I have with the renewal of these sections.

1                   To give it a personal touch my family and I have  
2       benefitted from these provisions, as well as millions of United  
3       States citizens.

4                   I encourage you to support these provisions to  
5       assist voters who desire to exercise their franchise in the  
6       polls, but who may need accommodations in doing so.

7                   This concludes my testimony. I would be more  
8       than happy to answer any questions that you may have.

9                   CHAIRMAN BATTLE: Thank you, Mr. Vu. Mr.  
10       Damschroder.

11                  MR. DAMSCHRODER: Good morning, Mr.  
12       Chairman, and ladies and gentlemen of the Committee.

13                  I am Matthew Damschroder and I have held the  
14       position of Director of the Franklin County Board of Elections  
15       since 2003.

16                  The Franklin County Board's elections  
17       administration jurisdiction includes the State's capital and  
18       largest city, Columbus, and has the second highest number of  
19       registered voters in the state.

20                  I am pleased to address the State of Ohio's  
21       preparedness for the 2006 federal, state and local elections  
22       from the perspective of Franklin County.

23                  Since 1992 Franklin County voters have cast their  
24       ballots using the Danaher Electronic 1242 Electromechanical

1       Voting Machine.

2                   This early version of direct recording electronic  
3       or touch screen voting provided many of the voter protections  
4       required by HAVA, and not afforded by other systems, including  
5       the protection of over-voting, which is one of the most frequent  
6       errors found with punch cards and optical scan.

7                   Because of the requirements for audio ballot  
8       capabilities and the certification to 2002 FEC voting machine  
9       systems standards, the Franklin County Board knew immediately  
10      upon HAVA's enactment that its current system would have to be  
11      replaced in time for the first federal election of 2006.

12                  Then in early summer of 2004 the Ohio General  
13      Assembly sent Franklin County's voting system into further  
14      obsolescence when enacting the voter verifiable paper audit  
15      trail for all electronic voting systems beginning in 2006.

16                  It was this voting system, the same one that has  
17      been used since 1992 that was used during the 2004 General  
18      Election.

19                  Despite increases in population and voter  
20      registration, few additional machines have been purchased since  
21      1992.

22                  Both the requirements of HAVA and for the VVPAT  
23      rendered the purchase of additional machines economically  
24      impractical.

1                   It was this shortage of voting machines, a  
2                   shortage of at least 1,000 to 1,500 machines that resulted in  
3                   long lines on November 8th, 2004, when confronted with an  
4                   increase in voter turnout equivalent to almost 25 percent more  
5                   individuals casting ballots at the polls on Election Day,  
6                   compared to the record setting turnout for the Bush v. Gore  
7                   Presidential Election of 2000.

8                   At the risk of rehashing what is past, much of  
9                   what has been said today, and even more about what has been  
10                  written about the long lines of Franklin County, only some of  
11                  this information has been correct and much has been incorrect.

12                 Question: Were there long lines in Franklin  
13                 County? Yes.

14                 Question: Were the long lines the result of  
15                 the county's insufficient inventory of voting  
16                 machines? Yes.

17                 Question: Does the Board bear fault  
18                 in placing just more than 2800 voting  
19                 machines from its 2900 machine inventory in the  
20                 field on Election Day? Yes.

21                 Question: Could the Board have done a  
22                 better job forecasting precinct by precinct  
23                 turnout in order to determine voting machine  
24                 allocation? Yes.

1                   Question: Were the long lines limited to  
2                   minority majority precincts, or historically  
3                   Democrat leaning precincts? No.

4                   In fact, there were long lines in every part of  
5                   the county. My wife waited two hours to vote in our east  
6                   Franklin County suburb of Bexley.

7                   Republican friends of my then deputy director,  
8                   Mike Hackett, waited to vote for three hours in the affluent  
9                   west Franklin County suburb of Upper Arlington.

10                  In fact, the last precinct to close in Franklin  
11                  County was not a minority majority or democrat leaning precinct,  
12                  it was in a Republican leaning northeast Columbus precinct near  
13                  New Albany.

14                  I say this not to downplay the seriousness of  
15                  long lines, but to underscore the fact that voters of all  
16                  demographics experienced long lines on Election Day 2004.

17                  Question: Were voting machine allocation  
18                  decisions based upon partisan intentions to  
19                  disenfranchise African-Americans or Kerry voters?  
20                  No.

21                  In fact, an employee of the Board of Elections  
22                  who is also a member of the County Democrat Controlling  
23                  Committee drew up the allocation plan in, the same manner as he  
24                  had allocated machines for previous elections.



1                   His plan based voting machine allocation on two  
2           factors; the first, predicting turnout based upon the objective  
3           factor of previous voter turnout data.

4                   And the second predicting turnout based upon the  
5           subjective factor of estimating how many inactive voters would  
6           turn out in urban precincts with bloated voter roles, and how  
7           many active voters would turn out in high growth suburban  
8           precincts.

9                   Question: Did I personally hide 1000 voting  
10           machines in my basement and garage? No.

11                   And in fact if you saw my garage I can barely fit  
12           my Honda Accord in it.

13                   Question: Did I abandon my post at the  
14           Board's office at any time on Election Day to  
15           meet with President Bush, Secretary Blackwell and  
16           Karl Rove on Air Force One to receive orders to  
17           implement Plan B? No.

18                   To its credit the Franklin County Board of  
19           Elections has answered these and other questions and charted a  
20           positive course for the future, including our plan for the May  
21           2006 transition to a new direct recording electronic voting  
22           system with voter verifiable paper audit trail, and the  
23           implementation of the identification and other requirements of  
24           H.B. 3 for November.

1                   First we have an increased inventory of voting  
2           machines, we have increased our voting inventory from 2900  
3           machines to 4200 machines for the Primary, and almost 4600  
4           machines for the General Election.

5                   Relative to voting machine education, the  
6           Franklin County Board has established an aggressive schedule of  
7           voting machine demonstrations through direct voter outreach,  
8           dedicating one full time employee to this sole task.

9                   Our motto is that wherever two or more registered  
10          voters are gathered, there we should be.

11                  Even though the new technology is not  
12          dramatically dissimilar from our previous system, we cannot  
13          permit unfamiliarity and inhibitions to become barriers to  
14          voting.

15                  Second, Franklin County has partnered with its  
16          voting system vendor and will soon announce a state of the art  
17          educational web site, including an interactive section fully  
18          simulating the voting experience, including audio ballot  
19          capability for the benefit of all Ohio counties using the same  
20          ES&S electronic voting system.

21                  And finally Franklin County has been the leader  
22          in creating an innovative multi-county collaborative approach to  
23          mass voter education featuring a \$500,000 media campaign  
24          including direct mail, newspaper inserts, radio spots, and

1 television advertisements focusing on familiarizing voters with  
2 their new electronic voting technology in Central Ohio.

3 Relative to poll worker education the Franklin  
4 County Board has partnered with the International Foundation for  
5 Election Systems, and the Pollworker Institute, recipients of a  
6 U.S. Election Assistance Commission grant to study pollworker  
7 education, to establish a model pollworker training program,  
8 that includes the use of written manuals, verbal instructions,  
9 interactive review tools, role playing, hands on demonstration,  
10 and take home videos, including the introduction of an  
11 innovative, pass-fail instructional website planned for  
12 November.

13 To prepare for the new technology the Board has  
14 spent the last two years expanding the pool from which we draw  
15 pollworkers through participation in our Association's  
16 successful lobbying effort to permit public employees to take a  
17 penalty free day from work to serve as a poll worker.

18 And winning statutory authority to use 17 year  
19 old high school students as pollworkers. As well as  
20 establishing our Champions for Democracy Program to recruit poll  
21 workers from the ranks of the county's corporate and civic  
22 communities.

23 It is valuable to note that last fall more than  
24 20 percent of our poll workers were either public employees or

1 champions from the private sector.

2 And this May will feature more than 600 high  
3 school students at the polls following a wildly successful first  
4 run with high-schoolers last fall. That's almost one high  
5 school student per precinct.

6 To help build voter confidence in the  
7 electronically recorded election results the board plans on  
8 giving the voter verifiable paper audit trail, meaning by using  
9 it as an auditing tool during the official canvas of votes.

10 We are planning to randomly select the number of  
11 machines that has the highest statistical probability of  
12 uncovering a countywide error and auditing the electronic  
13 results from those machines using the voter verifiable paper  
14 audit trail.

15 In addition, we plan to post to the web the  
16 electronic audit log, including ballot images. This will allow  
17 any one, anywhere to independently audit Franklin County's  
18 election results on their own without having to make public  
19 records requests that are both expensive for the public and time  
20 intensive for the board.

21 Finally Franklin County has partnered with the  
22 Elections Sciences Institute to create a first ever line by line  
23 review of the source code for the voting system that we have  
24 selected.

1                   It's interesting to note that even the federal  
2           government in the certification process in Ohio with Board of  
3           Voting Machine Examiners does not do a line by line review of  
4           the source code.

5                   To assist voters with the identification  
6           requirements of House Bill 3, Franklin County is redesigning its  
7           voter identification card to include detailed information about  
8           the identification required to vote at their precinct, as well  
9           as the information necessary to request a no excuse absentee  
10          ballot.

11                  Additionally, we will expand our multi-county  
12          media campaign into the General Election to include voter  
13          identification requirements.

14                  As required, but not funded by House Bill 3, we  
15          will mail to every registered voter in Franklin County an  
16          informational guide on the voter identification requirements  
17          prior to the November election.

18                  This mailing will also remind the voter of  
19          his/her voting location, provide voting machine instructions,  
20          and may also include a sample ballot.

21                  Each of Ohio's 88 county boards of elections are  
22          ready to meet the challenges of 2006. Many counties  
23          successfully implemented HAVA compliant voting systems in 2005.

24                  The rest of us will do so in May of this year.

1 And we will successfully implement the identification and other  
2 requirements of House Bill 3.

3 Ohio voters can be proud that their county boards  
4 of elections are staffed with elections professionals who are  
5 dedicated and do their job because they care about their  
6 neighbor's right to vote.

7 We are not lazy bureaucrats or country bumpkins.  
8 We are experienced at getting cash blood out of budgetary  
9 turnips and expert builders with worn out tools.

10 While additional funding would be beneficial for  
11 additional voter education, pollworker training, and the  
12 unanticipated increased operating expenses of new voting  
13 systems, the imminent lawsuits, legislative tinkering and  
14 partisan manipulations of the system for political purposes  
15 clearly will not be beneficial.

16 Whether for good or for ill, HAVA and House Bill  
17 3 are law. Making late changes, whether through legislation,  
18 administration directive, or judicial decree, will not assist us  
19 in accomplishing our statutory obligations, much less build  
20 voter confidence.

21 Imagine trying to implement a pre-election  
22 procedural directive after half of your poll workers have been  
23 successfully trained, much less enforce a judicial decision  
24 issued after the polls have opened on Election Day.

1                   We call respectfully call upon the political  
2           stakeholders, whether politicians, political parties or  
3           advocates to join us in our task to educate voters on the new  
4           protections and requirements of HAVA and House Bill 3, instead  
5           of using these same protections and requirements as weapons of  
6           political gain.

7                   Honorable Committee Members, Franklin County and  
8           our fellow Ohio elections officials are prepared for Election  
9           2006.

10                   CHAIRMAN BATTLE: Thank you, Mr.  
11           Damschroder. Mr. Arnebeck.

12                   MR. ARNEBECK: Thank you very much, Mr.  
13           Chairman, and members of the Commission. I appreciate very much  
14           the opportunity to give testimony.

15                   My name is Cliff Arnebeck, I am chairman of a  
16           group called Ohio Honest Elections Campaign. This campaign was  
17           created by a group called the Alliance for Democracy, after the  
18           2004 election, for the purpose of addressing issues of the  
19           integrity of that election, particularly with respect to the  
20           presidential contest. We funded and staffed the lawsuit before  
21           the Ohio Supreme Court contesting the outcome of that election.

22                   In addition, the Alliance for Democracy brought  
23           an action or a motion to intervene in a case that the Ohio  
24           Democratic Party had filed on election day here in Franklin

1 County asking that all possible means be taken to enable people  
2 to vote because of the long lines.

3 The suit also applied to Knox County, which is  
4 where Kenyon College is located, and the lines were even longer,  
5 6, 8, 10 hours long.

6 The judge said this is unacceptable and ordered  
7 both counties to do whatever could be done, including making  
8 paper ballots available.

9 Now, Director Damschroder made a bunch of  
10 statements about Franklin County.

11 One of the things Franklin County had asked the  
12 Secretary of State for permission to do in view of their knowing  
13 that there weren't enough machines before the election, was to  
14 have a paper ballot alternative. The Secretary of State said,  
15 no.

16 On the shortage of machines, was there a  
17 different impact of the shortage of machines in the inner city,  
18 high performance Democratic precincts, than in other precincts,  
19 yes.

20 Indeed there were fewer machines in prior  
21 elections in those precincts, which that was not the case in  
22 Republican oriented precincts.

23 The fact that the precincts that had the worst,  
24 disproportionately worst situation, longer lines were



1       predominantly African-American.

2                       Given our history of discrimination in this  
3       country leads one to say, let's investigate why this happened,  
4       and let's make sure it was not intentional.

5                       Because certainly as Mr. Damschroder said these  
6       things can happen. Simply as an example in the 2000 election Al  
7       Gore had withdrawn from Ohio, he quit.

8                       And that is the -- that is the race, that is the  
9       competitive race that normally will bring out people to vote.

10                      In the 2004 election Kerry was in it to the end,  
11       highly competitive race, people were highly motivated to vote.

12                      It's quite possible that the reason that the Afro  
13       American voters suffered disproportionately long lines is not  
14       that many turned out in the 2000 election, and that was the  
15       basis for predicting turnout in the 2004 election and that's  
16       possible.

17                      But we did not have bipartisan hearings either in  
18       a legislative body or in a court where these questions were  
19       asked, and these matters were decided on an objective basis.

20                      I got involved in the 2000 election on behalf of  
21       the Alliance for Democracy, challenging an illegal \$7 million  
22       attack using corporate money on a Supreme Court justice.

23                      It was illegal, it was extraordinary, it was  
24       intended to affect the outcome of the election. This has been

1       litigated over a period of five years, it's now all done.

2               It's been addressed by the Federal court, the  
3       State court and the Ohio Elections Commission, and they found  
4       that it was illegal, illegal corporate money. It was a  
5       defamatory -- knowingly defamatory attack on this Democratic  
6       justice.

7               The reason I bring this up is first of all, I was  
8       not involved in that as a partisan. The Democratic party did  
9       not litigate. I was involved in litigating on behalf of a  
10      non-partisan 501 (C)(3) organization.

11              The point is that partisan interests will use --  
12      will cross the line. And it was this theory of magic words, a  
13      magic words interpretation of the Constitution, Buckley versus  
14      Veleo that was being used to say we can do this.

15              I think it was a frivolous argument, but it was  
16      done. It was done with the intent of affecting the election.

17              My point for you would be that there is nothing  
18      more important to the preservation of civil rights as we develop  
19      them in this country, than preserving the honesty and integrity  
20      of our court system, and these kinds of attacks by a segment of  
21      the business community on the independence of the courts, is a  
22      very fundamental attack on the civil rights of all Americans.

23              In regard to the 2004 election, I wasn't involved  
24      in the Kerry campaign. I was involved in litigating once again

1       on behalf of the Alliance for Democracy, against the continuing  
2       use of illegal corporate money in the Ohio Supreme Court race.

3               The Chamber of Commerce through its group called  
4       Citizens for a Strong Ohio spent \$3 million in support of the  
5       Republican candidates for the court, 3 of the 4 Republican  
6       candidates for the court.

7               After the election I was advised by the founder  
8       of the Alliance for Democracy, Ronny Dugger, who wrote the  
9       article, landmark article in 1988, New Yorker Magazine, in which  
10      he said with the advent of electronic voting machines we have a  
11      new vulnerability to fraudulent manipulation of voting.

12              And this is sort of a landmark introduction of  
13      this into the main stream media.

14              In his article he points out that there is a  
15      history of this. There is a history of folks being so  
16      passionate about getting their guy elected that fraudulent means  
17      have been used.

18              All right. We talked to -- right after the  
19      election he said he thought that this election had been  
20      manipulated, and we proceeded on a plan, how should we  
21      investigate this.

22              At the same time a guy named Bob Fittrakis, who  
23      was a Professor of Political Science at Columbus State  
24      University, and former international inspector, monitor of

1 elections, began -- initiated some hearings.

2 So we had hearings of folks, two hearings in  
3 Columbus, hearing in Cleveland, a hearing in Cincinnati, where  
4 we took testimony under oath with a court reporter. And I would  
5 like to submit that to you for your consideration.

6 People told their stories, and there are some  
7 rather dramatic stories that were told.

8 A woman in Cleveland stood up and told about the  
9 fact how she had never voted before, she had -- her family had  
10 come from the south, and I believe it was her grandfather had  
11 been lynched because he had voted.

12 And because of that historical thing in her  
13 background she had never voted, she always carried that fear.  
14 And she said she brought with her to this hearing a woman who  
15 had persuaded her that this election is so important you need to  
16 vote.

17 And then she described her voting experience,  
18 which had problems.

19 There were people in Cincinnati who talked about  
20 all kinds of things, corporations releasing employees to go to a  
21 campaign event that got televised.

22 People being paid to vote multiple times.

23 A woman from Warren County where there was a  
24 supposed homeland security alert that closed down or removed the

1       press from monitoring, she said in 2000 there were no signs for  
2       Al Gore for president.

3                       If you were a Democrat, you were laying low  
4       because it was just not a friendly climate. She said in 2004  
5       there were lots of Kerry signs.

6                       She said it was totally unbelievable to her,  
7       based upon just seeing what was going on that Kerry got no more  
8       votes than Gore in 2004, go not more votes than Gore got in 2000  
9       in Warren County, because of the demographic changes that were  
10      occurring there.

11                      In Franklin County the big problem was the long  
12      lines, and it was different between white and black areas. So  
13      there were definite problems.

14                      The lawsuit that we filed challenging the outcome  
15      of the election was not based upon voter suppression, it was  
16      based upon anomalies in the results that were suggestive of the  
17      movement of votes, probably at the county level, the tabulator  
18      level, in a number of counties that were sufficient to have  
19      changed the outcome of the election.

20                      The suit also relied upon the fact that besides  
21      these anomalies there were exit polls that showed that Kerry won  
22      in Ohio substantially, and he won the popular vote nationally.

23                      These polls were not done by amateurs, these  
24      polls were done by Warren Matovsky, who is the originator of

1       exit polling. He's the person that conducts exit polling in  
2       foreign countries where people because of the imperfections of  
3       governmental process are worried about fraudulent manipulation  
4       of elections, and the exit poll is one of the important tools,  
5       to say this was an honest election.

6                   At the same time these questions arose -- oh, in  
7       regard to our exit polls. Perhaps on the assumption that we  
8       have a system that has a high level of integrity and  
9       sophistication, the practice in our exit polls is to adjust the  
10      polls to reflect the actual reported results in the course of  
11      the evening.

12                   So the exit polls that show that Kerry won Ohio  
13      and won nationally the popular vote, were the polls that were in  
14      place and broadcast up to about 12:30 at night on Election Day.

15                   In the morning if you tuned in and looked at the  
16      exit polls you would see the adjusted exit polls. Based upon  
17      the exit poll data, which is just as strong and compelling and  
18      well founded as the exit polls that our government relied upon  
19      to challenge the vote in the Ukraine for president, that is good  
20      data. And that was a key part of our case.

21                   Now, what is the problem with the process that we  
22      have, if there is an issue about the integrity of an election,  
23      as important as president for the United States, what is the  
24      process we go throw to address that.

1                   John Conyers urged the chairman of the Judiciary  
2           Committee, a Republican, Sensenbrenner to hold hearings to  
3           permit the minority and majority to subpoena witnesses and to  
4           gather evidence, so that we could hear from Matt Damschroder, we  
5           could hear from Mr. Vu, we could hear from folks and get to the  
6           facts and feel confident that the apparent problems had a good  
7           explanation and we could be satisfied we are getting the right  
8           results.

9                   The majority would not cooperate. John Conyers  
10          conducted two hearings, one in Washington at which I was  
11          privileged to testify, and another in City Council chambers here  
12          in Columbus.

13                  Took testimony and prepared what's been described  
14          as one of the most important congressional reports in history, a  
15          hundred and some pages describing what went wrong in Ohio.

16                  In addition to excellent work done by the staff  
17          of that minority in the House Judiciary Committee, that report  
18          cites to the Moss versus Bush lawsuit for many of its facts.

19                  It also cites to articles from the free press  
20          which, was publishing internationally on the internet all of the  
21          data we were gathering in these hearings and from other means,  
22          Statistical analysis, anomalies, exit polls, et cetera.

23                  The most frightening thing to me as a lawyer and  
24          a citizen is that we had a certification of such an important

1 office without the chairman of the Republican Party or the  
2 Secretary of State of Ohio, or Karl Rove coming before the  
3 committee and answering questions, you know, was there a  
4 strategy to suppress the votes? Was there some kind of a plan  
5 to -- did you have a contract with somebody to -- you used the  
6 vulnerability of our electronic voting system to change the vote  
7 and affect the outcome.

8 And you can say, well, what's the point of that,  
9 if they did it they lied. The point is that we have a process  
10 of cross examination. We have a process of discovery. And we  
11 have criminal laws that say when you take an oath before a  
12 committee or a court of law and commit perjury you're  
13 compounding whatever offense you've already committed.

14 We didn't have any of that as part of giving this  
15 assurance of integrity to our elections.

16 Senator Jacobson talked about -- I forget the  
17 word he used, but a disgrace in reference to both the litigation  
18 in the 2000 election and the litigation in the 2004 election.

19 With respect to the 2000 election, there is no  
20 question that there was an intentional plan to disenfranchise  
21 African American voters in Florida, knowing that they were  
22 eligible to vote.

23 There was a contract, there was a process. I  
24 believe the Civil Rights Commission investigated this, but there



1       was no prosecution. There was no accountability.

2               Paul Crudman, writing an article about elections  
3       and what happened in Ohio, August 19th, 2005, made the statement  
4       that the significance of Florida was that the political  
5       operatives learned that there was no penalty for cheating.

6               As a consequence in the 2002 election there was  
7       more cheating in Georgia. And in 2004 there was even more  
8       cheating in Ohio.

9               He described Ken Blackwell as a person who made  
10       Katherine Harris look like a wonderful Secretary of State.

11              So we have a serious problem with our elections.  
12       We have a concerted attack upon the civil rights of all  
13       Americans that has not been properly investigated. It's not  
14       been prosecuted where there are clear violations.

15              I'd be happy to answer any questions.

16              CHAIRMAN BATTLE: Members, questions for the  
17       panel? Mr. Doshi.

18              MR. DOSHI: Just to pick up on the last  
19       statement, what happens if -- if there is a violation cited in  
20       this election? What are the remedies to correct any chance of  
21       correcting the election?

22              MR. ARNEBECK: Are you talking about for  
23       2006?

24              MR. DOSHI: Yes.

1                   MR. ARNEBECK: First of all, House Bill 3,  
2           it was excellent testimony, the bill went from 22 pages to 300  
3           pages, those added pages did not come from gentleman like Mr. Vu  
4           or Mr. Damschroder. It didn't come from League of Women Voters,  
5           Ohio Citizen's Action, Common Cause, the various grass roots  
6           organizations that exist to remedy these problems we had in  
7           2000, 2004.

8                   They came from consultants, I assume from  
9           Washington for the Republican Party, who said this is what we  
10          need to permit suppressing votes and rigging votes to the extent  
11          that it's necessary in the next election.

12                  What the bill does among other things is  
13          eliminate the right of Ohio citizens to contest federal  
14          elections.

15                  Here we have a history of impropriety, a history  
16          of apparent fraud in the election process, and certainly a  
17          history of whether intentional or not, significantly different  
18          effects on minority voters than majority voters.

19                  And you're taking away one judicial mechanism for  
20          contesting that, how can that make any sense.

21                  One of the important points that Mr. -- Senator  
22          McCain has made is that if you're talking about reform, it  
23          better be bipartisan, otherwise be suspect. This transition  
24          from 22 pages, not totally uncontroversial.

1                   For example, HAVA says if a person registered to  
2                   vote by mail, and did not provide verification of identity, then  
3                   when they come to vote they must provide that identification of  
4                   identity.

5                   A very limited requirement. The expansion of  
6                   that requirement to require ID from everybody is a way to slow  
7                   down the lines.

8                   And in the hands of partisan people with partisan  
9                   intent, it could be used as an instrument to disproportionately  
10                  slow down and force people into provisional voting, to  
11                  discourage their voting as it may serve a partisan interest.

12                  This bill, House Bill 3, was called publicly a  
13                  voter suppression bill by the League of Women Voters. League of  
14                  Women Voters is not a radical organization, it's not a partisan  
15                  organization. It was passed on a totally partisan basis, not a  
16                  single Democratic voted for it, three Republican votes against  
17                  it.

18                  It's not a reform bill, it's a destructive bill.

19                  Will people like Mr. Vu and Mr. Damschroder be  
20                  able to work with it and make it manageable, hopefully, with  
21                  perhaps the assistance of the courts.

22                  But this civil rights advisory group should be  
23                  making a record of the fact that this is partisan, and it's not  
24                  just Ohio, it's coming right out of Washington.

1                   It's based upon the same filaceous allegations  
2           that were made by Mr. Jacobson here against the NAACP National  
3           Voter Fund, Americans Coming Together, AFL-CIO and ACORN.

4                   These people did a wonderful job of having --  
5           getting people to register to vote for the 2004 election.  
6           These are not fraudulent organizations.

7                   NAACP was founded for the purpose of reducing the  
8           number of lynchings in the south. It has the most imminent  
9           distinguished and conservative record of any organization in  
10          this country, as far as I'm concerned.

11                  And I was privileged to represent them in  
12          defending against a racketeering suit filed by Republicans at  
13          the instance of the Lucas County Republican Party on direction  
14          from political operatives in Washington to file that for  
15          partisan purposes. It's totally hog wash.

16                  CHAIRMAN BATTLE: Reverend Wheeler.

17                  MR. WHEELER: You know I deal with civil  
18          rights each and every day of my life being Chairman of the Ohio  
19          Civil Rights Commission, and you have quite an argument Mr.  
20          Arnebeck.

21                  But my question is, well, first of all both of  
22          the county administrators, I really appreciate your feedback  
23          today from my home county of Cuyahoga, very diversified county,  
24          also Franklin.

1                   And I noticed that you in your presentation, you  
2                   showed New Albany had long lines and Upper Arlington and  
3                   Berwick. You were trying to show that it was uniform in effect,  
4                   all of the problems were all over the county.

5                   And then I'm hearing from what Mr. Arnebeck is  
6                   stating today that it was -- stuff happened that depressed the  
7                   public.

8                   And I'm trying to figure out what's the nexus  
9                   data?

10                  I have to say I'm a preacher in this county, and  
11                  that one may have got by me, I'm trying to understand. And also  
12                  received one of the highest awards from the NAACP, Ben Hooks, my  
13                  good friend, but I'm trying to understand if there is some  
14                  wrong, we want to right it. So help me out with that please.

15                  MR. DAMSCHRODER: An excellent question  
16                  Reverend Wheeler. As I mentioned in my testimony, I don't  
17                  reference those other parts of Franklin County in which there  
18                  were long lines to in any way downplay the negative effect of  
19                  long lines on any registered voter.

20                  But rather to try to dispel the urban myth that  
21                  the only people in Franklin County that had to wait in long  
22                  lines at any time on Election Day were African-Americans or  
23                  Democrats.

24                  There were three issues that our ward has

1 identified -- board has identified as issues that caused long  
2 lines, the general shortage of voting machines, period.

3 We went into the election knowing that, and we  
4 did our best, as Mr. Arnebeck mentioned, by asking the Secretary  
5 of State if there would be an opportunity to put a secondary  
6 voting system into place, and the Secretary of State said no.

7 The other issue was turnout. I mean we had  
8 literally 25 percent more people on Election Day between 6:30 in  
9 the morning and when the polls closed at night, 25 percent more  
10 people at the polls than in 2000. And those 25 percent of the  
11 people were all over the county.

12 But as a result of the Franklin County show for  
13 the first time in almost ages, a Democratic candidate for  
14 president carried the county by 50,000 votes, the turn out was  
15 primary in Democratic precincts.

16 Also the issue that led to the long lines and  
17 that I believe was the cause of what individuals view as the  
18 Board's taking, as Mr. Arnebeck mentioned, taking machines out  
19 of historically Democrat or African American precincts was that  
20 as you know, Reverend Wheeler, Franklin County is a growing  
21 county, and we had 33 -- if I remember the number correctly, 33  
22 more precincts in 2004 than in 2000, but the same number of  
23 voting machines.

24 So those voting machines had to come from

1        somewhere. And so we did our best to -- based upon evaluating  
2        previous turnout, to say this, we have to put machines in Canal  
3        Winchester or the far east, Reynoldsburg, out towards Brice  
4        Road, we had to put machines out there somewhere, they have to  
5        come from somewhere, and there is not -- most of those machines  
6        came from central city Columbus.

7                        But also I think it's important to note it was  
8        not limited to central city Columbus. The City of Westerville  
9        had a net reduction of 30 voting machines total. We tried to be  
10       as equitable as possible using the objective standard of  
11       historic turnout as our guide.

12                      In some cases we got it right, some cases we got  
13       it wrong. And the impact of too few voting machines,  
14       unprecedented turn out caused people to have to wait all over  
15       Franklin County.

16                      MR. VU: If I can respond, Cuyahoga had long  
17       lines, too. They may not have been as systemic as in Franklin  
18       County.

19                      But let me just give you a description of the  
20       number of voting we had. We had over 10,000 voting units on  
21       election day.

22                      Now, we have 1,400 precincts, but we have over a  
23       million registered voters during that 2004 election, and we  
24       still had long lines.

1                   And I went out to some of these locations and I  
2                   knew things were going all right within the building election  
3                   day, but I wanted to know whether Rome was burning out there.

4                   So I went out to some of these facilities, and  
5                   one of the things I noted most was although there were long  
6                   lines, there was just one long line.

7                   Now, there are a number of precincts in a polling  
8                   location, and one of the things I recognized was voter behavior.  
9                   Voter behavior when they get to a polling location is to stand  
10                  in a line.

11                  So when they see a person stand they don't go to  
12                  the other voting precinct tables that may be empty. They go to  
13                  the one they believe they should go, because others are  
14                  congregating around that table, knowing they may potentially be  
15                  in a different line, or different table. That's one of the  
16                  things that I recognized.

17                  The question is how are we prepared since 2004,  
18                  and I think that's what this committee wants to hear is, No. 1,  
19                  for us in Cuyahoga County with the new technology, we now have  
20                  the ability to expand all of the different various electronic  
21                  voting machines to encompass that everyone can use the same  
22                  machine, as opposed to dedicated machines, because we were  
23                  running on a punch card system, for a specific precinct, because  
24                  of Ohio's law and statutory rules on rotational ballots.



1                   That is, Reverend, you cannot vote on the same  
2           voting unit as potentially Chairman Battle, because of the  
3           rotation factor, you belong to different precincts. That's one  
4           significant issue in our preparations in moving forward with  
5           HAVA in using electronic voting devices.

6                   The other issue in Cuyahoga County we face, we  
7           believe we need more devices. We are going to 10,000 punch card  
8           units to only 5,407, a little over 50 percent of what we  
9           currently had. We believe we need another 900 voting machines,  
10          we're working with county commissioners to provide that.

11                  I think it's going to go a long ways in the way  
12          of how we vote as a community. I think we have to simplify it.  
13          And of course House Bill 3, there are some good prohibitions in  
14          there, but there are also some others, and identification is one  
15          of those that I consider as an alarming red flag for us in  
16          future elections.

17                  In 2000 the issue was the swinging chad, the  
18          intent of the voter essentially. And then 2004 is long lines.  
19          This issue of what the next issue is going to be for 2008 or  
20          2006 is not known yet, it remains to be seen, but something will  
21          be coming down the pipe.

22                  It's for local elections officials, as well as  
23          state officials to try to anticipate what those items may be.  
24          No one anticipated that there may be long lines.

1                   We actually anticipated if we were able to  
2           purchase 600 more voting devices prior to the election, Franklin  
3           County was not in that, having that capability, since they had  
4           specific types of voting devices and the Secretary of State  
5           apparently did not have that contingency plan in place, which  
6           all elections officials know Plan B needs to be in place.

7                   CHAIRMAN BATTLE:   Ms. Ramos.

8                   MS. RAMOS:   Some of the implication was that  
9           it was purposely done to disenfranchise certain voters, but on  
10          the boards of elections I do believe -- I believe every county  
11          has two Democrats, two Republicans.

12                   So in Franklin County did the allocation of these  
13          machines not have to go through the Board, and the workers were  
14          doing it, although most of the workers are also split in the  
15          same ratio?

16                   And so the implication would be that the Board  
17          would be purposely doing this.   And I find that, you know, kind  
18          of hard to think that the board purposely approves not  
19          allocating machines properly.

20                   MR. DAMSCHRODER:   Excellent question.   And  
21          in Franklin County, the chairman of our Board of Elections is  
22          also the Chairman of the local county Democratic Party.

23                   And all of our full-time employees are equal  
24          numbers of Republicans and Democrats.

1                   In the prior testimony, House Bill 3, the actual  
2           decision of voting machine allocation was not an issue that was  
3           discussed or decided by the Board members, in terms of  
4           discussion actually taking vote, it was decided at the staff  
5           level.

6                   And as I mentioned in my testimony it was  
7           actually a member of the County Democrat Central Committee that  
8           was in charge of making that allocation.

9                   And again as I mentioned with my answer to  
10          Reverend Wheeler, we just didn't have enough machines and  
11          allocated them as best as we knew how.

12                   CHAIRMAN BATTLE: Ms. Presley.

13                   MS. PRESLEY: Thank you, Mr. Chairman. My  
14          question is for Mr. Vu.

15                   There was an article in the Cleveland Plain  
16          Dealer, indicating that we have a few employees that still are  
17          working for the County Board of Elections who have been  
18          indicted.

19                   And the questioned about why they are still  
20          working, it was indicated that there was a discrepancy in the  
21          decisions that they made.

22                   But I guess I'm still questioning why they are  
23          still working. And what is your take on how we are going to  
24          resolve some of these issues.

1                   Because those people have felony charges and not  
2                   only misdemeanors, but felony charges.

3                   MR. VU: I understand. It can only go so  
4                   far, because of the individuals that are now having these legal  
5                   concerns addressed personally to them.

6                   Why are they working at the Board of Elections,  
7                   continues to work at the Board of Elections, the process that we  
8                   see and the Board members as well as myself have stated for the  
9                   record, for the public to know we have confidence in our staff.

10                  That we have -- that during the time frame of the  
11                  '04 presidential recount that's what the issue is, is that we  
12                  had all met and addressed the same issue.

13                  Now -- and worked through the various procedures,  
14                  we had talked about these procedures, and talked with the staff  
15                  regarding those procedures.

16                  And everyone in the audience that were witness --  
17                  who were witnesses and challengers were present. There is  
18                  nothing at this time that has indicated that these individuals  
19                  have not only followed the processes and procedures that have  
20                  been outlined for the past 23 years, these again, the same  
21                  procedures that we had conducted for the presidential recount,  
22                  were the same processes and procedures that we had conducted for  
23                  the past 23 years, including the week prior to that recount,  
24                  because we had recounts other than the presidential recount that

1       year.

2                       There is nothing that we have seen that I've  
3       heard, that I've touched, that I felt that indicates that these  
4       individuals had done anything wrong than following the  
5       procedures that have been in place.

6                       And that's pretty much the reason why we had  
7       stated for the public we have a hundred percent confidence in  
8       the way they handled themselves during the recount.

9                       CHAIRMAN BATTLE:   Yes, Ms. Zealey.

10                      MS. ZEALEY:   Thank you, Mr. Chairman.  I'm a  
11       lawyer and I love to go to court, especially to trial.  But I  
12       like even more to prevent problems.

13                      And while we have this vast pool of knowledge  
14       here, it seems to me that it's a perfect opportunity for any of  
15       you to make recommendations on how to address the long lines  
16       that we know will be present in 2006, because of the new  
17       technology and the new ID requirements, and any other problems  
18       that are preventing them, what are your recommendations?

19                      MR. DAMSCHRODER:   From Franklin County's  
20       perspective I think that there are a number of proactive things  
21       the Board of Elections can do.

22                      For us beginning with a larger inventory of  
23       voting machines is first.  Franklin County is adding more than  
24       \$2 million of local funds to the state and federal funds in

1       order to procure more machines than the Secretary of State had  
2       initially designated for us.

3               Same thing goes for what Michael is trying to do  
4       in Cuyahoga with his commissioners.

5               For us with our voter education campaign,  
6       television campaign, try to give voters information and tools  
7       they need before election day, so that they remember to bring  
8       that piece of ID with them, train poll workers, et cetera.

9               And funding is a major component of that. That  
10       was mentioned in the previous panel by Aaron Ockerman and Ms.  
11       Hicks of the Secretary of State's Office, of one of the  
12       strengths in Ohio's system is that it's local based.

13              One of the weaknesses of that system is that it's  
14       locally funded. And the same dollars we compete for to run  
15       elections are the same dollars we compete for to pave roads and  
16       fund social services and all the competing interests at the  
17       local level.

18              So from the funding standpoint I think that's a  
19       critical issue, as well to address a couple of the issues that  
20       Michael mentioned.

21              One of the things Franklin County is doing with  
22       the relatively long lines is we are trying to reduce the number  
23       of multiple precincts, the cuing issue Michael raised, when  
24       someone shows up at a church with two precincts they stand in

1 line.

2 When in reality if there were better cuing  
3 options that line would be cut in half immediately by going to  
4 two different tables.

5 So dividing those locations up by more facilities  
6 we are able to solve that cuing issue.

7 There is a number of things that we are doing.  
8 And I think similar to what I said at the end of my testimony, I  
9 think the biggest thing that we can do, whether it's this  
10 committee, boards of elections or organizations politicing is  
11 that the law is what it is, and focus all of our energies on  
12 educating the voters and giving them the tools, instead of  
13 trying to tinker with the rules at the last minute.

14 The thing that will undermine voter confidence  
15 and cause long lines on election day that will be a federal  
16 court that pipes out a decision Monday afternoon saying stop  
17 everything you told your poll workers to do over the last five  
18 weeks and doing something different.

19 That \$500,000 you spent on TV telling the voters  
20 to bring that to the polls, they don't need that, they need  
21 something else, that's what undermines voter confidence and  
22 causes problems on election day.

23 If there's going to be litigation let it be in  
24 June or July, not October.

1                   So my hope would be that we all rally to the  
2                   cause of giving the voters the education and tools that they  
3                   need.

4                   MR. VU: I've always considered election  
5                   reform as happening on a number of levels. Of course there is  
6                   the federal, state and local level.

7                   Local level in being able to control that aspect  
8                   of it. We have tried everything that we can in resources and  
9                   time to better ourselves in the way we conduct elections  
10                  internally at the Board of Elections.

11                  That's one of the reasons we invested \$350,000 to  
12                  scan in every registration card we had in the building, and tie  
13                  it with the electronic record.

14                  That way if you fill out a registration card and  
15                  instead we enter it in incorrectly, we have the ability to bring  
16                  up the registration card and correct it on our end.

17                  The other items I think we have to recognize as  
18                  local elections officials is that we are not the professional in  
19                  everything. Yes, we are professionals in conducting election  
20                  administration. However, we need to recognize we are not the  
21                  experts in the IT field or marketing field.

22                  We need to utilize and be aware that we need to  
23                  utilize the resources we have in our communities. Cuyahoga  
24                  County is working with Case Western University professors of



1       engineering, as well as Cleveland State University engineering,  
2       as well as working with our agencies within Cuyahoga County to  
3       better ourselves and our understanding of what this new  
4       environment that we are going into, whether it be electronic  
5       voting or whether it be House Bill 3 or other aspects of  
6       marketing even, and advertising.

7                       That's one of the reasons why we projected out  
8       years in advance. In fact, 2003 it would probably take at least  
9       a million dollars to educate the public into transition into  
10      implementing Help America Vote Act, namely the new electronic  
11      voting devices.

12                     As well as now absentee application and  
13      identification that they need to bring per House Bill 234, as  
14      well as those requirements in House Bill 3 for voters at the  
15      polling location.

16                     We are doing everything that we can possibly, but  
17      I think the biggest thing is more awareness we can do as local  
18      elections officials to understand the nature of things that we  
19      may not be professionals in.

20                     MR. ARNEBECK: I'd like to suggest that  
21      whatever the commission can do, that is the Civil Rights  
22      Commission, to send a signal that irregularities will be  
23      carefully investigated and prosecuted is a very important part  
24      of correcting the problem, and restoring trust of the American

1 public in our voting system.

2 Do you have subpoena power?

3 CHAIRMAN BATTLE: Not this committee. But  
4 the Commission.

5 MR. ARNEBECK: Civil Rights Commission does.  
6 I would suggest that you recommend in view of the problems and  
7 give them the Conyers report that are evident in Ohio, the  
8 United States Civil Rights Commission convened an investigation  
9 and issued subpoenas and holds hearings to fully explore the  
10 problems.

11 I have confidence that there are people -- the  
12 people will come up with very good explanations for the problem.  
13 And people will be satisfied that it was not intentional.

14 And remedies will develop out of that  
15 investigation no matter what the law is to better enable those  
16 who administer the law to avoid these problems in the future.

17 I don't know how we deal with partisan  
18 government. People who have taken an oath of office to uphold  
19 the Constitution and to serve the public, and who pervert that  
20 power of office, that incredible power of office, to try to  
21 manipulate the laws in government to the disadvantage of the  
22 general public.

23 That's what happened in Ohio. And it's possible,  
24 because we have one party control. And so you don't have

1       bipartisanship.

2                   This House Bill 3 is totally partisan. So I  
3       can't persuade the Republican legislature or the Republican  
4       governor to pass a law that eliminates these ID requirements,  
5       which are not valid, they are not in the public interest.

6                   We have a history, and we've gotten along many,  
7       many years with the signature, it works. And there is no better  
8       system for identifying the person coming to vote, than the  
9       person who's registered.

10                  I personally looked at voting books, and I've  
11       seen whether it's clear someone voted fraudulently, because the  
12       signature bears no relationship to the signature in the book.

13                  So if someone says we want to assure the  
14       identification of the voter, we want to avoid fraud, enforce the  
15       procedure we had in place, it's very easy for a fraud to come up  
16       with phony ID, so this bill does not address voter fraud. It  
17       is a voter suppression bill.

18                  The only remedy that I'm aware of is to go to  
19       court and point out to the court that there is a history here,  
20       there is a partisanship here, and there was no testimony, there  
21       was no evidence to support this requirement, and there is no  
22       requirement in HAVA.

23                  This is a partisan thing, a way to create long  
24       lines or be able to suppress, discourage people from voting.

1 Same thing with the Secretary of State's interpretation of  
2 provisional voting, which has now been carved into statute in  
3 House Bill 3.

4 HAVA does not say your vote will count only if  
5 it's cast in the right precinct. It says it should be counted  
6 if it's cast properly within the jurisdiction. The jurisdiction  
7 is the County Board of Elections in Ohio. So that ought to be  
8 changed.

9 We have been using the election laws in Ohio  
10 through partisan officials. Secretary of State is a Republican,  
11 he was the co-chair of the Bush campaign, he's been using that  
12 office to tilt the process in a partisan way.

13 The court should address that, politically we  
14 should address that. But the commission would do a great  
15 service if it would hold hearings, issue subpoenas, make people  
16 testify under oath.

17 So that when people, if they contemplate lying,  
18 they'll face potential ultimately the sanction of perjury  
19 prosecution.

20 CHAIRMAN BATTLE: Mr. Doshi. And the final  
21 question will be Mr. Humeidan.

22 MR. DOSHI: I'm being a little analytical, I  
23 can't help being an old scientist here.

24 The long lines that are a matter of reading the

1 instructions also, how long it's going to take somebody to read  
2 and interpret and then vote.

3 Are there statistics how long it takes for an  
4 individual on average to cast a vote based on that? But I  
5 believe the number of machines, if we had long lines if I take  
6 ten minutes, he takes 15 minutes, you're going to have long  
7 lines, no matter how many machines you have. The more the  
8 better. We need some statistics that help us understand the  
9 mechanics of it.

10 MR. DAMSCHRODER: Mr. Doshi, you're exactly  
11 correct. And with the new electronic voting systems for the  
12 first time ever we'll actually have meaningful statistics as  
13 part of that system.

14 There is a legal time audit log that takes a time  
15 stamp of all the transactions during the day. So we'll be able  
16 to know, let's say an election where there's low turn out of the  
17 hundred people that voted, these many people voted in the  
18 morning and what time these people voted in the afternoon, etc.,  
19 and how long the average time was for them to vote.

20 The time that it takes to vote is a significant  
21 factor in determining the long lines, and also in making machine  
22 allocation decisions.

23 I did not mention in my testimony, but you may  
24 recall in 2004 the City of Columbus, in addition to the federal

1       races, 12 judicial seats, your state representatives and  
2       everything else, the City of Columbus had ten very lengthy  
3       construction bond issues on the ballot, in addition to Issue 1,  
4       school levies and local options, things like that.

5               Part of what also caused those long lines is  
6       people walked in and knew who they were voting for president,  
7       but got bogged down when they started reading about sewage and  
8       millage and that kind of stuff with the bond issues.

9               So in the future we'll be actually able to use  
10      real data, like the time it takes to vote and determining  
11      machine allocation.

12              The General Assembly however has taken away part  
13      of our discretion in machine allocation as part of House Bill 3,  
14      and said two different things.

15              One is that the minimum number of machines in a  
16      precinct has to be 1 to 175. One machine for everyone 175  
17      actual voters of the most recent gubernatorial election. That  
18      has to be your minimum.

19              And then the minimum countywide has to be 1 to  
20      175 of your current registration. So there will be less  
21      discretion, even though we have better statistics. But there  
22      will be a base line that will be established from previous turn  
23      out.

24                      CHAIRMAN BATTLE: Mr. Humeidan.

1                   MR. HUMEIDAN: I actually have a few  
2       questions, so I'll ask them all and give you a chance to respond  
3       to them.

4                   As far as the long lines, though, I'll let you  
5       know I live in a predominantly Republican precinct, and there  
6       was long lines. I voted and there was about a three hour line.

7                   But I think the net effect on the voters was  
8       somewhat disproportional, because not everybody has the  
9       privilege to take 3 or 5 hours out of their day or take the  
10      whole day off so they can wait in line to vote.

11                  I think even though there was long lines  
12      everywhere throughout Franklin County and other counties, I  
13      think the net effect on the voters was disproportional.

14                  So anticipating long lines because of the new  
15      technology, again is there a Plan B for election day? That's my  
16      first question.

17                  And then my second question is what is Franklin  
18      County and Cuyahoga County doing for trying to get the voters  
19      hands-on the voting machines before election day.

20                  I know that there is a media campaign, there is  
21      different programs, but I think it's different when somebody  
22      gets to touch the machine, gets to use the machine and see it,  
23      than to see it on TV or on a website.

24                  The third question is what is your progress on

1 curb side voting and accommodating disabled voters in both of  
2 your counties?

3 MR. DAMSCHRODER: Great questions. In  
4 terms of Plan B for this election year there is two issues, our  
5 association actively works with the General Assembly to  
6 eliminate the 11 restrictive rules on absentee voting.

7 We believe that there will be a significant  
8 increase in individuals choosing to vote by mail during the 35  
9 days before the election, instead of waiting until election day.  
10 That will help individuals who don't have the flexibility to  
11 take time off work or have some other reasons.

12 So we believe that the no fault and no excuse  
13 absentee voting will help as part of reducing the long lines.

14 In addition as one of the things that we will  
15 have, because Franklin County will be going away from the punch  
16 cards for absentee and provisional voting to optical scan for  
17 absentee voting, we will for the first time have the ability to  
18 print ballots on demand at our office and take them to precincts  
19 that are experiencing -- if they are experiencing long lines or  
20 some kind of machine failure.

21 That was part of what Judge Marbley wanted us to  
22 do in 2004 at 7:35 in the evening, but was largely impractical  
23 because of the kind of paper voting system we had at the time.

24 Now, in Franklin County Plan B will be if there



1 is long lines, machine failures, we'll be able to take ballots  
2 in our office out to those precincts, we'll have voters to vote  
3 more quickly.

4 In terms of the voting machine demonstrations we  
5 have what we view as a pretty aggressive voting machine  
6 demonstration campaign, where we have one full-time person  
7 that's all he's doing every day, every night, taking machines  
8 out into the community.

9 And we have other folks that do it with him when  
10 there is conflicts, those are posted to our website, promoted by  
11 the groups that were attending.

12 We decided instead of setting up shop in a high  
13 traffic area, although that's one solution, we wanted to work  
14 through existing groups to use their PR mechanisms to promote  
15 our presence.

16 In addition to that we also will advertise that  
17 in the local newspapers, not the Columbus Dispatch, but local  
18 suburban community newspapers that are going to be at the  
19 Whetstone Library demonstrating the machines.

20 And then in terms of curbside voting with  
21 Franklin County, with the advent of voter verified paper audit  
22 trail and our vendors solution to that, we will not be able to  
23 provide the electronic voting for curbside voting.

24 I think from talking to Michael, I don't want to

1 steal too much of his thunder, I think they'll use -- in  
2 addition to putting electronic voting in the precincts they'll  
3 use optical scan for curb side voting.

4 Because Franklin County, which is different from  
5 Cuyahoga County, the number of split precincts, of our decision  
6 of going electronic was putting paper in the precincts increases  
7 the likelihood the voter will vote the wrong ballot, and be  
8 disenfranchised.

9 So we are working with the disability community  
10 to try to really -- for those who need curb side voting, to  
11 really encourage them to come to the Board of Elections during  
12 the 35 days prior to the election, or they can receive  
13 additional assistance or use the no fault ballot at home.

14 All of our machines in the precinct are fully ADA  
15 accessible with the ADA value component.

16 MR. VU: As far as Plan B goes, No. 1, we'll  
17 have what's known as an election day technician inside our  
18 polling locations. This will be beyond the two Democrats, two  
19 Republicans for each precinct for poll workers. That election  
20 day technician is slowly to review and direct and greet voters  
21 as they come inside the polling location, get them to the right  
22 precinct.

23 Their responsibility is to also deal with the  
24 voting machines themselves and relate any problems in that case,

1       if there are potentially any supply issues they have.

2                   The Board of Elections in Cuyahoga County breaks  
3       down the county into six zone stations. Each zone station is  
4       essentially a place where all supplies are kept.

5                   We will also have 63 individuals roving around  
6       the county to expedite the process of getting materials to them.

7                   As Director Damschroder has stated we will be  
8       using optical scan, not only as a method for curb side voting,  
9       but as a method for backup measures if things get long that we  
10      can actually turn towards those optical scan ballots.

11                  We also have the ballot on demand should we run  
12      out of the optical scan, as well as utilizing the services of a  
13      printer close to Cuyahoga County.

14                  I know that counties are going to one specific  
15      vendor in Dayton, whereas ours is located right next to Cuyahoga  
16      County.

17                  As far as the voters hands-on, and of course the  
18      whole notion no fault absentee will assist in people voting.

19                  And as I testified we had a hundred thousand  
20      people out of a million registered voters, hundred thousand  
21      people casting and or requesting an absentee ballot.

22                  I don't think during that time frame they'll have  
23      changes that a hundred thousand people had a reason that were  
24      gone from the polling location.

1                   So we see that as increasing and that will  
2           eliminate some of the long lines.

3                   However, we eliminate all of the lines  
4           potentially determining how the contested races are and the  
5           interest in that.

6                   Of course Cuyahoga County, myself, I am for  
7           having early voting. Of course that was a constitutional  
8           amendment, that was posed before voters and the voters cast nay  
9           on the issue.

10                  With regard to hands-on instructions on these  
11           voting machines, again, as I indicated in my testimony we will  
12           be over 650 demonstrations on these events.

13                  We have gone to major area malls in -- I don't  
14           know if you've been to Cleveland recently, but the malls, major  
15           malls that I consider major, of course I'm a recent transplant  
16           from the west, but Tower City; we've been to Beachwood Mall;  
17           we've been to North Olmstead Mall; and Strongsville Mall.

18                  So we have the urban and suburban flavor in all  
19           of these to where we can test these machines out, serves dual  
20           purposes, No. 1, for the voters to have hands-on experience of  
21           the machines and understanding and anticipating if we will have  
22           problems and what those problems may be so we can mitigate them.

23                  We've been to CSU Convocation Center for all the  
24           basketball games demonstrating the devices. We are at 85

1       percent of demonstrating devices at all War Club Meetings,  
2       working with political parties demonstrating these at all senior  
3       centers, as well as hospitals, banks.

4                       Those are the things that we have in place. We  
5       will have a Super Sunday where we will be at Hinan's, which I  
6       don't know if there is a Hinan's in Columbus or not, but grocery  
7       stores.

8                       There is Tops, Giant Eagles, Hinan's, Davis, all  
9       of these types of supermarkets we will be at one day to  
10      demonstrate these devices.

11                      Going back to the malls. We were there for a  
12      full week, from -- starting in Tower City from Wednesday to  
13      Friday, other malls we were there from Friday to Sunday.

14                      We kind of take the same motto as what Director  
15      Damschroder had stated, we will be on every street corner with  
16      these devices to be able to demonstrate them to the public.

17                      Again, part of this we will have our interactive  
18      website so the voters have an ability, if they can't physically  
19      touch the unit, they have an ability to interactively understand  
20      and conceptually understand how it will work. It's all main  
21      stream technology, it's not main stream in the voting system  
22      aspect of it yet.

23                      But we have an aggressive communication and voter  
24      education fund, and we mapped that out. In fact I talked on a

1       daily basis with one of my administrators who addresses  
2       specifically voter education and a communication plan.

3               We have -- we just took on ten individuals,  
4       temporary workers for the Board of Elections whose sole purpose  
5       is for demonstrating the devices.

6               As well as we have a staff of five on top of that  
7       whose sole purpose is for community outreach.

8               CHAIRMAN BATTLE: Thank you, gentlemen. We  
9       really appreciate the time and thoughtfulness that you put into  
10      preparing for this testimony.

11              We will now move into the open session. David,  
12      do we have any members of the public who have signed up?

13              MR. MUSSATT: We have one. Anybody else?  
14      Two.

15              CHAIRMAN BATTLE: So two. We'll give you  
16      time to leave the table and then we'll ask you gentlemen one at  
17      a time to come forward. Thank you again, so much, we appreciate  
18      it.

19              (Off the record at 1:06 p.m.)

20              (Back on the record at 1:12 p.m.)

21              CHAIRMAN BATTLE: We are reconvened. Mr.  
22      Galfan, would you introduce yourself, and you have five minutes.

23              MR. GALFAN: Thank you, Mr. Chairman.

24              My name is Marty Galfan. I'm a staff

1       representative of Congressman Dennis Kucinich, I work in the  
2       Lakewood district office.

3                   And I want to thank you all for being here. I  
4       think it's very important that you're here to hear all of the  
5       things you've heard the last couple days about what's really  
6       going on in Ohio's election process.

7                   The people you heard from, election officials for  
8       instance, they have to answer to the law, H.B. 3, HAVA, and  
9       that's important that they do their best to make sure that  
10      voting is fair here in Ohio and that everything goes as smoothly  
11      as possible.

12                  But you all answer to a higher authority, you  
13      answer to the U.S. Civil Rights Commission. You're part of that  
14      as an advisory committee and also to the Constitution of this  
15      country.

16                  We have clauses in our Constitution, we have  
17      protections in our Constitution for voters, equal protection  
18      clause.

19                  That's not there for no reason. That's there  
20      because there were a hundred years of our Republic when  
21      African-Americans were enslaved and denied the right to vote.

22                  We have a hundred a years of women being denied  
23      the right to vote. We have close to 200 years of our Republic  
24      when young people were drafted into wars that couldn't vote for

1 the people who sent them to war.

2 There is a history of voter suppression, it's not  
3 just the Constitution was not the only way it was resolved, and  
4 the Constitution didn't solve all of the problems.

5 Since the equal protection clause and the 13th,  
6 14th, and 15th Amendments, poll taxes were charged, literacy  
7 tests were enforced on people to suppress the vote.

8 It's a history that has gone on in this country  
9 since the beginning. And from what you've heard for the last  
10 couple of days there is still voter suppression going on.

11 And it's really up to you to hear that, to digest  
12 it and to communicate it to the Commission, to the U.S. Civil  
13 Rights Commission, because they are there for a reason, they are  
14 there because of our equal protection clause and other laws in  
15 the United States to protect the voters and make sure we have  
16 fair elections.

17 Now, I know you've heard from one of the framers  
18 of H.B. 3, and he told you that there is fraud going on, that  
19 there are people who might be registering to vote under false  
20 names. He mentioned George Foreman for instance.

21 My dad used to bowl with George Foreman, he was a  
22 pretty respectable bowler, but he was no heavy weight champion.  
23 Guy named George Foreman, you know.

24 There are people who have similar names, and I



1 think that it's incumbent on the election boards to make sure  
2 they have 30 days from the deadline of registration until the  
3 election day, and a lot of people register before election day,  
4 election boards have large staffs, probably not large enough,  
5 they'll argue, but they do have large staffs.

6 They also have the county prosecutor at their  
7 disposal. The 88 county prosecutors in Ohio are there to answer  
8 calls from directors of elections boards, that's their job in  
9 part.

10 So if there is fraud going on it should be taken  
11 care of. But I don't think we need to suppress votes, suppress  
12 voters, to inhibit voters, to make it more difficult to vote.

13 I think the direction of our election laws in  
14 this country from the Constitution to the Voting Rights Act to  
15 the other laws that have been passed historically have been to  
16 make voting easier for people.

17 You heard the testimony -- and before H.B. 3,  
18 too, for the last several years during the late elections of the  
19 last few years, things have been happening that make voting  
20 harder for people, and H.B. 3 makes it even harder.

21 I respect the Board of Elections, I know they do  
22 a good job. They are going to do the best they can, but in many  
23 ways their hands are tied.

24 It's important you're here hearing what's going

1       on in Ohio. You have a responsibility to communicate that to  
2       the Civil Rights Commission.

3                   The Civil Rights Commission has an obligation  
4       under the law and Constitution to make sure that votes are not  
5       being suppressed, voters are not being intimidated.

6                   That it's easy for the people of this country,  
7       the citizens of this country to vote, to exercise their  
8       democratic rights.

9                   It shouldn't be hard for them. They shouldn't  
10      have to pay money to make copies to get the vote out. Voting  
11      should be as free as walking and breathing and living their  
12      lives, it should not be made difficult.

13                  We do have excellent county employees who can  
14      check the veracity of registrations, that is their job, they do  
15      it all the time, they do a good job.

16                  The people need to be able to vote in a way that  
17      makes it easier for them, not harder. And so I hope that you  
18      take this all back to the Civil Rights Commission and make sure  
19      this is all heard and digested and they understand what is going  
20      on in Ohio, so that something can be done to make voting easier,  
21      that's the bottom line, we need to make voting easier, not  
22      harder.

23                  Thank you for allowing me to testify, or to  
24      comment I should say.

1                   CHAIRMAN BATTLE: Thank you. Sir.

2                   UNIDENTIFIED SPEAKER: I just want to thank  
3           you for coming. I have copies of my testimony.

4                   CHAIRMAN BATTLE: That's very kind of you,  
5           we've enjoyed it here.

6   - - -

7   (Thereupon the hearing was adjourned at 1:28  
8           p.m.)

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1 CERTIFICATE

2 - - -

3 I, Cheryl D. Edwards, Certified Professional  
4 Reporter, and Notary Public in and for the State of Ohio, do  
5 certify that the foregoing is a true and correct transcript of  
the proceedings taken by me in this matter on March 17, 2006,  
and carefully compared with my original stenographic notes.

6 That I am not an attorney for or relative of  
7 either party and have no interest whatsoever in the outcome  
of this litigation.

8 IN WITNESS WHEREOF, I have hereunto set my hand and  
9 official seal of office at Columbus, Ohio, this 31st day of  
March, 2006.

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\_\_\_\_\_  
Cheryl D. Edwards,  
Notary Public in and for  
the State of Ohio  
My commission expires 11/05/08

- - -

# U.S. COMMISSION ON CIVIL RIGHTS



## Hosted By:

The Ohio Advisory  
Committee to the U.S.  
Commission on Civil  
Rights

## Date:

Friday March 2, 2018

## Time:

11: 30am-1: 00pm EST

## Audio:

- ◆ Dial: 877-741-4240
- ◆ Conference ID: 7829359

## Visual:

Register at—  
[https://cc.readytalk.com/r/  
kyos4gwvgpp5&com](https://cc.readytalk.com/r/kyos4gwvgpp5&com)

## U.S. COMMISSION ON CIVIL RIGHTS

Regional Programs Unit  
55 West Monroe  
Suite 410  
Chicago IL, 60603

Phone: 312-353-8311  
Fax: 312-353-8324  
Online: [www.usccr.gov](http://www.usccr.gov)

## Voting Rights in Ohio (pt. I)

The Ohio Advisory Committee to the United States Commission on Civil Rights is hosting a public, online panel discussion regarding voting rights in the state. The meeting agenda is as follows:

*Opening Remarks (11:30 am)*

*Panelist Presentations (11:35am-12:45pm)*

- *Daniel Tokaji, Associate Dean Ohio State University Moritz College of Law*
- *Catherine Turcer, Executive Director, Common Cause Ohio*
- *Kerstin Sjoberg-Witt, Director of Advocacy, Disability Rights Ohio*

*Open Forum (12:45pm-1:00pm)*

*Adjournment (1:00pm)*

Members of the public will be invited to speak during the open forum period provided. Toll free public access information is listed to the left. This is the first in a two part series on the topic. The second meeting will take place Friday March 9, 2018 from 12:00-1:30pm EST. Please contact the Regional Programs Unit for more information.

This study is in support of the Commission's 2018 Statutory Enforcement Report on voting rights in the United States. The Ohio Committee will issue findings and recommendations in a report to the Commission after all testimony has been received.

# U.S. COMMISSION ON CIVIL RIGHTS



## Voting Rights in Ohio (2nd Session)

### Hosted By:

The Ohio Advisory  
Committee to the U.S.  
Commission on Civil  
Rights

The Ohio Advisory Committee to the United States Commission on Civil Rights is hosting a public, online panel discussion regarding voting rights in the state. The meeting agenda is as follows:

### Date:

Friday March 9, 2018

*Opening Remarks (12:00 pm)*

*Panelist Presentations (12:05 pm – 1:15 pm)*

### Time:

12:00 pm-1:30 pm EST

- Edward Leonard, Director, Franklin County Board of Elections
- Rep. Kathleen Clyde, Ohio House of Representatives
- Senator Frank LaRose, Ohio Senate
- Representative, Office of the Ohio Secretary of State (pending)

### Audio:

- ♦ Dial: 877-718-5095
- ♦ Conference ID: 6801605

*Open Public Comment (1:15 pm – 1:30 pm)*

### Visual:

Register at:  
<https://cc.readytalk.com/r/ray86wto2gj&eom>

*Adjournment (1:30 pm)*

Members of the public will be invited to speak during the open comment period. Toll-free public access information is listed to the left. This is the second in a two part series on the topic. The first meeting took place Friday March 2, 2018 from 11:30 am – 1:30pm EST. Please contact the Regional Programs Unit for more information.

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55 West Monroe  
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*The U.S. Commission on Civil Rights, established by the Civil Rights Act of 1957, is the only independent, bipartisan agency charged with advising the President and Congress on civil rights and reporting annually on federal civil rights enforcement. Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels. The Commission: in our 7th decade, a continuing legacy of influence in civil rights. For information about the Commission, please visit <http://www.usccr.gov> and follow us on [Twitter](#) and [Facebook](#).*

**Ohio Advisory Committee the U.S. Commission on Civil Rights**

**Voting Rights in Ohio, March 2018 Panelist Outreach Report**

- **Panelists March 2, 2018**
  - Daniel Tokaji, Associate Dean, Moritz College of Law, Ohio State University
  - Catherine Turcer, Common Cause Ohio
  - Kerstin Sjoberg-Witt, Disability Rights Ohio
- **Panelists March 9, 2018**
  - Edward Leonard, Director, Franklin County Board of Elections
  - Representative Kathleen Clyde, Ohio House of Representatives (D)
- **Others Invited**
  - Jon Husted, Ohio Secretary of State (no response)
  - Jack Christopher, General Counsel, Office of the Ohio Secretary of State (declined)
  - Matthew Damschroder, Deputy Assistant Secretary of State, Ohio Office of the Secretary of State (declined)
  - Office of the Press Secretary, Ohio Secretary of State (no response)
  - Senator Frank LaRose, Ohio Senate (R) (withdrew)
- **Written Testimony**
  - Daniel Tokaji, Associate Dean, Moritz College of Law, Ohio State University
  - Kerstin Sjoberg-Witt, Disability Rights Ohio
  - Camille Wimbish, Ohio Voter Rights Coalition

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Operator: Thank you for standing by. Good day and welcome to the US Commission on Civil Rights Ohio Advisory Committee conference call. Today's conference is being recorded. At this time, I'd like to turn the call over to Ms. Diane Citrino. Please go ahead, ma'am.

Diane Citrino: Thank you. This meeting of the Ohio Advisory Committee to the US Commission on Civil Rights shall come to order. For the benefit of those in the audience, I'm going to introduce my colleagues and myself. I am Diane Citrino, an attorney working in Cleveland Ohio and the Chair of the Ohio Advisory Committee. Members of the committee on this call are Scott Gerber, Mark Strasser, Edith Thrower and David Tryon. Also present on the call is David [Guerreras 00:00:52], a civil rights analyst for the commission.

The US Commission on Civil Rights is an independent, bi-partisan agency of the federal government charged with studying discrimination, denial of equal protection of the laws or in the administration of justice because of race, color, religion, sex, age, disability or national origin. In each of the 50 states and in the District of Columbia, an advisory committee to the commission has been established and they are made up of responsible people who serve without compensation to advise the commission on relevant information concerning their respective states.

Today, our purpose is to hear testimony regarding voting rights in Ohio. If speaker veer away from this topic to discuss possibly important, but unrelated topics, I'm going to interrupt and ask them to refrain from doing so and to get back on track. I want to repeat what we just heard that this meeting is being recorded and will be transcribed for the public record. I also want to remind everyone that this is a two-part series. This is part one. We will also hear testimony on Friday, March 9th, from 12:00 to 1:30 pm Eastern Standard Time. We hope you will join us for that meeting as well. We are fortunate and thankful to have such a balanced and diverse group of panelists to share with us at both of our meetings.

I also just want to briefly go through the ground rules for today's meeting. This is a public meeting open to the media and general public. We have a very full schedule of people who will be making presentations within a very limited time. The time allotted for each presentation is going to be strictly adhered to. This will include a presentation by each panelist of about 15 minutes. After all the panelists have concluded their statements, the committee members will engage in questions and answers. I will ask our committee members and recognize you and you will ask verbally some questions.

To accommodate people who are not on the agenda, but wish to make statements, we have scheduled one open session today at 12:45. At that time, when indicated by the operator to do so, anyone wishing to make a statement should press \*1 on their phone to request that their line be unmuted. In addition, written statements may be submitted by mail to the US Commission



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1 on Civil Rights at 55 West Monroe Street, Suite 410, Chicago, Illinois, 60603, or  
2 by email to ... I'm going to spell this. mwojnaroski@usccr.gov. You can call 312-  
3 353-8311 for more information or if you missed that email.

4 Some of the statements today may be controversial. We want to make sure that  
5 all the invited guests do not defame or degrade any person or any organization.  
6 Again, as chair, I reserve the privilege to cut short any statements that defame,  
7 degrade or don't pertain to the issue at hand. In order to ensure that all aspects  
8 of the issues are represented, knowledgeable people with a wide variety of  
9 experience and viewpoints have been invited to share information with us.  
10 Anybody who feels defamed or degraded by statements made in these  
11 proceedings may provide a public response during the open comment period.  
12 Alternately, such people can file written statements for inclusion in the  
13 proceedings. The advisory committee appreciates the willingness of all  
14 participants to share their views and experiences with this committee.

15 Finally, again, the rules for the question and answer portion to the panel are as  
16 follows. The committee may ask questions of the entire panel or individual  
17 members of the panel after all the panelists have had the opportunity to  
18 provide their prepared statement. Advisory committee members must be  
19 recognized by the chair before asking any question of the participants. In  
20 addition, because of the large number of numbers and short amount of time,  
21 each committee member will be limited to one question plus a follow up. When  
22 five minutes are left in the session, I will announce that the last question can be  
23 asked.

24 With that, thank you all for being on this call. We're going to start with Daniel  
25 Tokaji, Associate Dean, Ohio State University Moritz College of Law. Dean Tokaji,  
26 please begin. Thank you.

27 Daniel Tokaji: Thank you very much. It's a pleasure and an honor to participate in this hearing  
28 and to share information with all of you and learn from all of you about the  
29 state of voting rights in Ohio. I'm going to trust, unless someone tells me  
30 otherwise, that you're able to see the slide that I'm presenting on the screen.  
31 You should currently see a slide that reads Voting Rights in Ohio with my name,  
32 Daniel P. Tokaji below it.

33 What I'm going to do over the course of my remarks this morning is to provide  
34 an overview of developments focusing especially on what's been going on here  
35 in Ohio in the area of voting rights over the past 12 years or so. It will come as  
36 no surprise to those of you who know me that I have strong opinions on some  
37 of these things, but for the most part in this presentation, at least in my opening  
38 remarks, I'm going to try to keep it descriptive, so talk about what's been  
39 happening in the area of voting rights and in particular to talk about lawsuits  
40 pertaining to the right to vote in the State of Ohio.

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1 Of course, if you want me to offer my normative views on these subjects, I'd be  
2 happy to do so in the question and answer section. Here's the way that I'm  
3 going to break down my remarks today. You should now see a slide that says  
4 Voting Rights in Ohio with three topics under them. First, I'm going to provide  
5 some of the national context for what's been going on starting with a little bit of  
6 history and going into some of the developments in recent years throughout the  
7 country. This is important by way of context because Ohio is a part of and  
8 indeed an important part of an ongoing national conversation about the  
9 meaning, import and enforcement of the right to vote.

10 Next, I want to turn to two different kinds of voting rights claims. First, what are  
11 commonly referred to in the literature, the scholarly literature as vote denial  
12 claims. This is ... I'll describe ... Has to do with a claim that certain practices  
13 impede people from casting a vote or from having their votes counted. I'll talk  
14 about vote denial cases in Ohio, which there have been many over the past 12  
15 years or so.

16 I'll then turn briefly, more briefly, to the subject of vote dilution in Ohio. Vote  
17 dilution refers to practices that don't actually prevent or impede people from  
18 casting a vote, but may weaken the strength of some people, in particular, some  
19 groups' votes, particularly groups that are defined along lines of race or  
20 ethnicity. Let me begin with a bit of context. Whenever we talk about the right  
21 to vote in Ohio or anywhere else, it's important that we recognize at the outset  
22 why it is so important, why it has been regarded as a fundamental right at least  
23 by the Supreme Court since the 19th century.

24 "The political franchise of voting," the court wrote way back in 1886, "is  
25 regarded as a fundamental political right because it is preservative of all rights."  
26 The idea here is that none of our other interests are safe unless we're able to  
27 cast our votes, have them counted and have them weighted in a way that's  
28 equal to those of other citizens. To the extent that we're not able to vote or that  
29 the votes of some citizens or groups of citizens are diluted, we are that much  
30 less citizens because we're not able to protect our interests through the political  
31 process and through our government.

32 The irony of this statement, particularly if you look to the date, is that at the  
33 very time that this sentence was written establishing the right to vote as  
34 fundamental, the voting rights of African Americans throughout the states of  
35 the former Confederacy were being systematically denied through a variety of  
36 now infamous practices, literacy tests and often threats and actual violence  
37 were used to prevent African Americans, especially in the South, from voting.  
38 This is a reminder that all of us should take to heart that the rights that exist in  
39 the books of law on the pages of our statute books or even in Supreme Court  
40 opinions. That's one thing, but the law as it actually is implemented on the  
41 ground is quite another.

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1 In other words, there's often a difference between the law as written and what  
2 is actually happening in the real world that is important for us to keep in mind.  
3 We see in this history ... Of course, I know this is familiar to you, so I'm not going  
4 to waste everyone's time by going through all of it. There have been ebbs and  
5 flows with respect to the right to vote over the years. We had an initial period of  
6 expansion after the Civil War with the 14th and 15th Amendments followed by  
7 its weakening and systematic deprivation of the rights to vote of African  
8 Americans throughout the South followed by the Voting Rights Act.

9 I'll continue the story into the present era, but the big point here is that voting  
10 rights don't necessarily move in a straight line. Sometimes we see periods of  
11 stasis or even regression followed by periods of progress. These are the two  
12 main kinds of voting rights claims in Ohio and around the country that I'm going  
13 to be addressing in my remarks.

14 Historically, vote denial, which is as I mentioned earlier refers to impediments  
15 to voting or having one's vote counted included poll taxes, literacy tests.  
16 Nowadays, some other practices, like voter ID laws, restrictions on early and  
17 absentee voting have been challenged on the grounds that they improperly,  
18 illegally deny the vote. Vote dilution, as I mentioned, refers to practices that  
19 weaken the strength of a political group like at large elections or gerrymandered  
20 districts. This too has been a big concern, especially in recent years.

21 A historical example of vote denial is the poll tax, which the courts struck down  
22 in Harper v. Virginia. Nowadays, we think of the poll tax as a device that was  
23 used to exclude African Americans from voting, which it most certainly was, but  
24 the court's rationale actually didn't depend on racial discrimination, but on the  
25 fact that it excluded people based on their wealth or poverty, which the court  
26 said isn't [inaudible 00:13:59] to the ability to participate in democracy.

27 Moving forward towards the modern era, and this year is the nationwide  
28 picture, what we've seen in the last several years, as this graph by my co-author  
29 ick [Hasten 00:14:14] shows, is a pretty substantial increase in the quantity of  
30 election litigation nationwide going from just around 100 or even less in the  
31 years proceeding 2000 to a lot more, up to 361 in 2004, which of course was a  
32 very big year here in Ohio especially. In the high 200s or low 300s in recent even  
33 numbered years, that is election years.

34 We've seen overall an increase in litigation in the last 18 years or so, which is in  
35 small part due to the Florida 2000 election and to the Bush v. Gore opinion even  
36 though it's not been cited by the Supreme Court in the intervening years. That  
37 decision and the Supreme Court's intervention in that election has I think had a  
38 lot to do with the fact that we've seen a lot more election cases. In Bush v. Gore,  
39 the court relied on the equal protection principle that you see here. "Having  
40 once granted the right to vote on equal terms, the state may not, by later  
41 arbitrary and disparate treatment, value one person's vote over that of  
42 another."

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1 Many of the cases that we've seen in recent years have to do with alleged  
2 violations of this principle of equality. We've also had Congress of course get  
3 into the act most notably through the Help America Vote Act of 2002, which  
4 enacted various reforms to the way that elections are run and managed in the  
5 United States, including improvement to voting technology, a requirement of  
6 state-wide registration with a limited voter identification requirement. Some  
7 states, as I'll discuss, have gone much further, and a requirement that  
8 provisional ballots be available under some circumstances including where  
9 voters appear at the polls and find that their names aren't on the list.

10 In the courts, the most significant case, at least the most significant decision  
11 from the Supreme Court that we've seen in the last several years is the Supreme  
12 Court's decision in Crawford v. Marion County Election Board. That decision  
13 upheld against the [inaudible 00:16:30] equal protection challenge, Indiana's  
14 photo ID law. There was, however, no majority opinion in that case. The justices  
15 were basically divided into three groups, which meant that there was no opinion  
16 for the court. However, most justices in the Crawford case articulated this  
17 standard, which is sometimes referred to as a Anderson Verdict Crawford  
18 Standard, named based on the cases from which it derives.

19 This is basically a form of a balancing standard that lower courts, including those  
20 in the Sixth Circuit, have applied in challenges to a variety of voting practices,  
21 where the court will determine the character and magnitude of the burden on  
22 voting. That includes whether it particularly affects certain groups including  
23 poor people or people of color if there's a severe burden then strict scrutiny  
24 applied. Most of the time courts have found that there's not a severe burden,  
25 but that doesn't mean the state is necessarily off the hook in defending its  
26 restrictions or burdens on voting.

27 The state must still justify the burden by showing that it serves an important  
28 regulatory interest. In addition to these claims under the Constitution, we've  
29 seen in Ohio and other states over the last several years a number of claims  
30 alleging race discrimination and in particular, race discrimination in violation of  
31 Section 2 of the Voting Rights Act.

32 Section 2 of the Voting Rights Act was originally adopted as a part of the original  
33 Voting Rights Act in 1965 in response to the activism of Dr. King, who you see  
34 here among many others. It was amended in 1982. Before 1982, Section 2, like  
35 the 15th Amendment to the United States Constitution was understood to  
36 require intentional race discrimination, Section 2 as amended in 1982 allowed a  
37 claim to be made of race discrimination based upon a result that is  
38 discriminatory. It says that practices that result in the denial or abridgment of  
39 the vote on account of race violates Section 2.

40 As I'll discuss in a few moments, we've seen a lot of cases in recent years under  
41 Section 2 especially since the Supreme Court's decision in Shelby County a few  
42 years ago that effectively stopped the pre-clearance requirements of a different

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1 section of the Voting Rights Act, Section 5. Here's the language from Section 2  
2 that I mentioned earlier. Note that it prohibits practices that result in a denial or  
3 abridgment of the right of any citizen to vote on account of race or color.

4 Sub-section B of Section 2 requires courts to look at the totality of the  
5 circumstances. The effect of this is that we tend to have very contextual  
6 decisions that look a lot at the history of discrimination in voting and other  
7 areas within a particular state as well as the practice's connection to social or  
8 historical circumstances that may result in race based disparities and access to  
9 the vote.

10 I just want to mention a few of the recent cases from other states by way of  
11 providing context for what's been going on in Ohio since after all courts often  
12 look to other courts when they're trying to figure out what the law means and  
13 how it should apply. These are three of the biggest ones in the last few years. In  
14 North Carolina, the 4th circuit enjoined a law imposing various restrictions on  
15 the vote. This was a law that was adopted by that North Carolina legislature  
16 shortly after the Shelby County decision. In addition to imposing voter ID, it  
17 limited opportunities for early voting and same-day registration and imposed  
18 other restrictions.

19 The court in its opinion found that these requirements were targeted with  
20 almost surgical precision at practices, voting opportunities that were used by  
21 African Americans and on that basis, they just struck it down as intentionally  
22 discriminatory. By contrast, in Wisconsin, the 7th Circuit in an opinion by Judge  
23 Easterbrook, upheld a voter ID law that Wisconsin had adopted, although the  
24 [inaudible 00:21:25] Circuit also upheld another lower court ruling in a different  
25 case that made it easier for people to get the required ID.

26 Finally, in Texas, there's ongoing litigation regarding that state's voter  
27 identification law. The district courts and later the 5th Circuit struck down one  
28 version of Texas' voter ID law as being in violation of Section 2 of the Voting  
29 Rights Act, although that litigation is still ongoing. We've also seen, again  
30 focusing on the nationwide perspective, a lot of activity lately on vote dilution  
31 and in particular the revival of so-called racial gerrymandering claims. This is  
32 another area where the nationwide developments have some implications for  
33 Ohio, as I'll discuss later.

34 I'm not going to go through all of these three cases in detail, but in Alabama,  
35 Virginia and in North Carolina, the court has either allowed equal protection  
36 claims to proceed or in the Cooper Case actually struck down districts on the  
37 grounds that they're impermissible racial gerrymanders. The claim in particular  
38 was that African American voters have been packed into districts that race was  
39 the predominant factor and that compliance with the Voting Rights Act didn't  
40 justify these concentrated African American districts. You see here the two  
41 districts that were struck down in the Cooper case of the state of North

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1 Carolina. These by the way are also districts that were subject to racial  
2 gerrymandering challenges way back in the 1990s in the Shaw v. Greenoak case.

3 Now, I want to shift our focus more specifically on what's been going on in Ohio  
4 and we've had of course a lot of litigation over voting practices in Ohio,  
5 particularly in the 2004 election when these and other areas were the subject of  
6 both controversy and litigation. Turning towards the present because I know  
7 this was the subject of a hearing many years ago, we've continued to see  
8 litigation over various topics in Ohio. I want to specifically focus on three of  
9 them.

10 One of them is provision voting, where there have been various cases over the  
11 years, including the Sandusky County Democratic Party case, which upheld  
12 against a challenge under the Help America Vote Act, Ohio's rule against  
13 counting provisional ballots cast in the wrong precinct. However, in a  
14 subsequent case, [inaudible 00:24:30], the 6th Circuit held that it likely violates  
15 the equal protection clause to treat some of those wrong precinct provisional  
16 ballots differently from others.

17 Then in a 2012 decision, the 6th Circuit held that it violates both equal  
18 protection and due process to reject ballots that were cast in the correct  
19 location meaning the correct polling place even if the voter went to the wrong  
20 precinct table within that polling place. The bottom line here is that the court  
21 has been applying that balancing test from Anderson Verdict Crawford that I  
22 mentioned earlier looking very contextually at the burdens imposed by the  
23 practices and balancing that against the state's interest. Most recently, we've  
24 seen litigation over the counting of provisional ballots. The 6th Circuit reversed  
25 the decision of the lower court that had enjoined some of the restrictions on the  
26 counting of provisional ballots in the [inaudible 00:25:41] litigation.

27 Turning to the second area, early and absentee voting, this has also been an  
28 area where there's been a lot of activity over the years. Again, not mentioning  
29 all of these cases, but in Obama For America v. Husted in 2012, the 6th Circuit  
30 invalidated the differential treatment of voters, in particular the differential  
31 treatment of military and overseas voters as opposed to other voters with  
32 respect to in-person absentee voting, as we call it here, what everybody else  
33 calls early voting, finding that that distinction wasn't justified.

34 We've also seen a lot of litigation here in Ohio over the so-called Golden Week,  
35 which was established effectively by statutory amendments back around 2004  
36 and later eliminated by the state legislature. The 6th Circuit had upheld  
37 effectively the elimination of Golden Week although there was a settlement in  
38 another case, NAACP v. Husted, which allowed early voting in weekends prior to  
39 the election.

40 The final case from Ohio that I want to mention under the heading of vote  
41 denial is a case under the National Voter Registration Act, I should mention that



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1 I am counsel for the plaintiffs in this case. This is the law that's commonly  
2 known as Motor Voter, although it has a number of other requirements in  
3 addition to requiring the voter registration opportunity be made available at  
4 motor vehicle, public assistance and disability offices. Among the requirements  
5 is that it limits the circumstances in which voters may be removed from the  
6 roles.

7 The case in which I'm one of the attorneys for plaintiffs and is currently before  
8 the Supreme Court argues that Ohio's practice of initiating the removal process  
9 based solely on a person's failure to vote in the previous two years is a violation  
10 of the NVRA. The Supreme Court heard argument on this case earlier this year  
11 and were expecting a decision by the summer.

12 I'm going to just briefly ... Because I know I'm about out of time ... Going to turn  
13 to the subject of vote dilution. We haven't had any racial gerrymandering  
14 challenges in Ohio yet, but it's certainly conceivable that we could. This is a  
15 current redistricting plan in Ohio, which as you'll note, includes 12 districts from  
16 which Republicans have been elected since they were drawn [inaudible  
17 00:28:20] from which Democrats have been elected. One of those districts, the  
18 11th Congressional District, which is an 80% Democratic district roughly  
19 speaking and about a 52% African American district, at least at the point where  
20 it was drawn, this is a district that I think is quite likely subject to a racial  
21 gerrymandering challenge under the Cooper decision out of North Carolina that  
22 I mentioned earlier. Race was almost certainly the predominant factor in  
23 drawing this district and its boundaries almost certainly could not be defended  
24 as necessary under the Voting Rights Act.

25 For proponents of redistricting requirements, there's a bit of good news here,  
26 which will provide a nice segue, I'm sure, to Catherine's presentation. There will  
27 be a measure appearing on the ballot this spring that would reform the process  
28 for drawing the state's congressional districts. There have been several attempts  
29 at redistricting reform over the years including a 2012 measure that I was  
30 involved in. Back in 2015, the process for drawing state legislative districts and  
31 this May, a measure will appear on the ballot that would reform the process for  
32 drawing the congressional districts, a new process that I suspect would do much  
33 better in terms of preventing vote dilution and other practices that might be  
34 deemed a violation of either the constitutional or statutory right to vote.

35 Sorry if I've gone over, but I will stop there and turn it over to Catherine.

36 Diane Citrino: Thank you Dean Tokaji. This is Diane Citrino, the chair, introducing now our next  
37 presenter, Catherine Turcer. She's the Executive Director of Common Cause  
38 Ohio. Catherine has served on Ohio's Help America Vote Act advisory  
39 committee. Since 2012, she's helped coordinate a non-partisan election  
40 protection program in Ohio, which is done in coordination with the Lawyers  
41 Committee for Civil Rights Under Law. Catherine, please take it away.

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1 Catherine T.: Hi everybody. I'm so pleased to be able to talk to you today about voting in  
2 Ohio. Common Cause has been around since Watergate. We've focused on  
3 being the people's lobby, and we're really committed to accessible elections and  
4 the notion that everyone should be able to have a voice and have open and  
5 accountable government. I thought I'd start out with what are some things that  
6 actually we do fairly well? Ohio has actually bucked the national trend of strict  
7 voter ID. Ohioans can still use a number of different forms of identification  
8 including usual license, that kind of thing.

9 You can also use a utility bill. We also have a period of what we think of as early  
10 in person voting. It's actually in the law called no fault absentee voting, and  
11 approximately one third of Ohioans actually take advantage of this early vote  
12 period. Ohioans can register to vote and update their voter registration. That  
13 started January this year. We have that ability to do that fairly easily, which is  
14 very important. The other thing that I think we should always think about is that  
15 folks who are not incarcerated are permitted to vote. Those are some of the  
16 things that I think Ohio actually does well.

17 When we think of that early voting in person period, that is something that  
18 really came about because citizens were collecting signatures. They put pressure  
19 on the state legislature and the legislature in 2005 instituted this early vote  
20 period. There are a number of different times where the actions of citizens have  
21 made a difference in our ability to vote. I know Dan hit on a number of different  
22 lawsuits. The tail of voting in Ohio often has a lot to do with all of these different  
23 lawsuits.

24 As we think about election administration in Ohio, I also think there's some  
25 things that we actually do fairly well. We do have truly bi-partisan election  
26 administration like Noah's Arc, the Democrats and Republicans vote two by two,  
27 which in fact leads to greater accountability. You don't have a person of one  
28 party examining or doing audits. Everything's two by two. The fact that we have  
29 voter verified paper audit trails on the touchscreens, it enables voters to  
30 confirm their vote and helps people feel more confident.

31 The other thing that's fairly new is that voters are now able to track receipt of  
32 their absentee ballot. If you were going to vote by mail, you can actually see,  
33 "Okay, I put an application in. Now it's on its way. It'll be to me in a few days.  
34 You can see where in the process it is." This has actually helped to improve  
35 voter confidence.

36 I started with what are we doing well and what are the good things? Dan Tokaji  
37 hit on the fact that we have a stricter purging standard in Ohio right now. I  
38 called use it or lose it. We are one of the most aggressive states for purging  
39 voters from the voter roll for not actually going to vote. The Secretary of State,  
40 Jon Husted, has established this practice where they mail a postcard to voters  
41 who haven't voted within a two-year period asking them basically to confirm



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1                   their registration. Voters who fail to respond or vote within the following four-  
2                   year period are removed from the roll.

3                   What does this actually mean? In advance of 2016's election, tens of thousands  
4                   of voters, primarily African Americans from urban areas, were removed from  
5                   the voter roll despite actually still being eligible to vote. As we know, people are  
6                   much more excited about voting when it comes to presidential elections. Not  
7                   choosing to vote can actually be a way to exercise your first amendment rights  
8                   as well. I'm not sure what's going happen. My guess is if you have questions  
9                   about how things are going with the case, we'll find out about that. I'd ask  
10                  questions to Dan about this, but we really have to wonder. The aggressive  
11                  purging, does it actually violate the National Voter Registration Act? Does it  
12                  violate the Help America Vote Act?

13                We will find out, but there were certainly people all over the state who went to  
14                vote that didn't have any sense that it was a use it or lose it kind of situation  
15                that found that in fact they could not cast a vote. One of the things that I see as  
16                problematic when it comes to voting in Ohio is that all the counties are treated  
17                equally, but the voters are not necessarily treated equally. For example, all  
18                counties are permitted to have only one location for early in person voting  
19                hours. They're limited hours. They have basically what you would think of as  
20                business hours and then they extend it just a little bit and there's some  
21                weekend hours that final weekend.

22                Because each county has this kind of situation, what happens is there are very  
23                long lines at urban boards of elections especially on the weekend before  
24                presidential elections because of course a smaller county, a less populace  
25                county just doesn't have the same kind of needs as the more populace counties.

26                The other thing to think about is several urban counties have traditionally set  
27                absentee ballot applications, vote by mail applications to voters every year as a  
28                fairly ... It's a cost effective way. You encourage early voting. Makes it a lot  
29                easier actually on election day, but in 2014, the state legislature passed a bill  
30                and under our new law, absentee ballot applications can only be made by the  
31                Secretary of State if the legislature appropriates the money to do so.

32                This adversely impacts folks in those urban counties because of course they're  
33                more likely to participate in really long lines and to have the problems that you  
34                have with those long lines, where people get discouraged. They make choices  
35                about leaving and they don't have as easy access as the more rural voters. There  
36                are some other challenges that Ohio's facing. I'm going to talk about those very  
37                quickly.

38                Our voting machines are aging. We would like to have new voting machines.  
39                There is in fact a bill that was proposed to help fund new funding apparatus, but  
40                it is not part of the capital budget, which is not the traditional way we do these  
41                things. Basically, you have to pass the capital budget, but you don't actually

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1 have to pass one that just focuses on the voting machines. It can be very helpful  
2 to actually have that in the capital budget. I'm a little worried about whether  
3 this will come to fruition or not, which can have an impact on voters all over. It  
4 can adversely impact some counties over others just because of resources that  
5 the counties are able to bring to bear to purchase those machines.

6 The other thing is because of lawsuits and back and forth and some of the  
7 changes of voting rules over time, we actually do need to have good education  
8 and information coming from the Secretary of State's office. Especially now that  
9 we have this online voter registration, we should be able to have good  
10 education coming from the Secretary of State's office, but last year in the state  
11 operating budget funds, there were zero dollars, no funds were set aside for  
12 voter registration.

13 The other thing to highlight is the electronic poll books, which can make things  
14 move much more smoothly, can also create problems. In Montgomery County  
15 Daton area in 2016, there was a lot of confusion with these new electronic poll  
16 books or e-poll books. It led to these really long lines. The election before,  
17 they'd had a similar problem in Hamilton County, where Cincinnati is. The state  
18 legislature is actually considering reducing the number of poll workers. There's a  
19 tail of voting that has to do with all of the different lawsuits that happen, but  
20 there are on a regular basis truly, truly awful bills proposed that we need as  
21 election advocates to push back on and to be sure that our legislatures are  
22 really thoughtful about any changes they make.

23 One of the recent changes that they made ... [inaudible 00:39:52] about a year  
24 and a half, so not too recent. There was a legislation basically changing it so you  
25 had to have a driver's license from Ohio, which would have adversely impacted  
26 college students and young people. Simple changes that they think about  
27 making can make a difference. Then there are some simple changes that could  
28 actually make voters have more confidence and be invited into voting.

29 One thing that we have and that we mentioned earlier is these voter verify  
30 paper audit trails, which can be really useful for auditing purposes. The voter  
31 can confirm how they voted, make sure that it was cast correctly, identify  
32 problems with the machine and yet poll workers do not actually show this part  
33 of the machine to people who've come to vote. A simple change if ... Obviously,  
34 we're going to these new machines. It could be we'll be doing optical scans, but  
35 it seems like even when we put something good in place and we pass legislation  
36 to address better auditing, some of the simple thing is not included.

37 I realize this impacts all voters, but certainly many of the populace counties  
38 have these optical ... They don't have optical scan machines. They have these  
39 touch screen machines. The other thing to know is infrequent voters are moved  
40 to an inactive list. Before they're actually pulled from the roll, they're moved to  
41 the inactive list.

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1 In 2016, 13% of registered voters were deemed to be inactive. This means that 1  
2 million voters did not receive information about vote by mail, so they were  
3 treated completely differently, where you would think, "Hey, these are voters  
4 who are not participating. We don't really know why, but we want to invite  
5 them into the process, not make it more difficult."

6 We also need to be thinking about much better education for Ohioans so that  
7 they know they can vote even if they have a felony on their record. No state is  
8 truly an island. There are states around us where people who have felonies on  
9 their record are not permitted to cast a ballot. Here in Ohio, if you are not  
10 currently incarcerated, you can actually go and vote. Unfortunately, there's  
11 some misinformation about this that it is a real barrier to people, especially for  
12 those voters of color.

13 I think we've come a long line ... Tripping over my own tongue everybody, sorry.  
14 We've come a long way since the long lines of 2004, but sometimes I worry that  
15 we've gotten just far enough away from it that we start to think about reducing  
16 poll workers and we start to think about making changes that are not in the  
17 voters best interest. As we move forward, I think we need to do this in as  
18 transparent a way as possible. We need to have these kinds of conversations so  
19 that voters understand what information is out there.

20 My biggest ... I'm going to leave you with this. My biggest takeaway that I hope  
21 I'm leaving you with is that we need much better education about voting  
22 coming out of the Secretary of State's office and boards of election. I'd like to  
23 say thank you very much again. I'm going to hand it over. Diane.

24 Diane Citrino: Thank you Catherine. That was a wonderful presentation, very inspiring. I'm  
25 going to now ask our final panelist, Kerstin Sjoberg-Witt, Director of Advocacy  
26 and the Assistant Executive Director at Disability Rights Ohio, to present. She  
27 directs and manages all client advocacy work at Disability Rights Ohio, which  
28 covers a wide range of issues from discrimination to access to services to  
29 investigating abuse and neglect for persons with disabilities. She's also actively  
30 involved in systemic litigation including two class actions pending in Ohio. With  
31 that, I'd like to turn it over to you.

32 Kerstin S-W.: Thank you Diane, and thanks to the committee for having me here today to talk  
33 about voting and what the experiences and issues that Ohioans with disabilities  
34 face when it comes to exercising that fundamental right to vote. Just a little bit  
35 about us as an organization, we are a not for profit. Our mission is to advocate  
36 for the legal and civil and human rights of people with disabilities in Ohio. We're  
37 also what's called the protection advocacy system and the client assistance  
38 program. Those are programs that are designated by the governor. We've been  
39 designated as the protection advocacy system and client assistance program  
40 since their inception in the '80s. We've kept that designation even through a  
41 name and structural change when we moved from Ohio Legal Rights Service,

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1 which is an independent state agency, to our not for profit status in 2012 as  
2 Disability Rights Ohio.

3 We received federal grant dollars to do most our work and some private  
4 foundation dollars as well. Our work, we advocate without cost to our clients on  
5 a wide range of issues as Diane noted earlier. One of those is of course voting  
6 work. One of our federal grants is specific to voting. It was money that was set  
7 aside when the Help America Vote Act was passed and it's the Protection  
8 Advocacy for Voting Assistance, or PAVA, grant. That allows us to dedicate some  
9 of our resources solely to the issue of voting rights. We have other funding that  
10 we can use to also advocate for individuals based on other eligibility criteria, but  
11 we primarily use our PAVA grant for voting related work.

12 I think Catherine pointed out a really important aspect, which is voter  
13 education. That's one of the things we focus on a lot with our PAVA grant. We  
14 do a lot of education outreach to voters with disabilities. We try to go to places  
15 where they are and particularly places where they may have been isolated from  
16 society because it's an institutional setting like a psychiatric hospital. We also  
17 operate a voter hotline and provide individual client advocacy on a as needed  
18 basis. When it's appropriate to do so, we engage in systemic policy advocacy  
19 with the administration or the legislature as appropriate and occasionally  
20 litigation when necessary as well.

21 How do voting rights fit into disability rights? Obviously, the right to vote is a  
22 fundamental. Right to vote should not be taken away and we should not create  
23 barriers that unduly interfere with the ability to exercise that. The Americans  
24 With Disabilities Act, which many of you I'm sure are familiar with, was passed  
25 not just to eliminate discrimination in its normal discriminatory intent form, but  
26 also to remove barriers from participation in society. Its goal was indeed the full  
27 participation of people with disabilities in all areas of society, which obviously  
28 voting is a key aspect of that.

29 There are broad protections already under federal law beyond even the  
30 Americans With Disabilities Act, although voting rights that has been discussed  
31 earlier also do protect the access to the ballot by people with disabilities.  
32 Obviously, implementation practice is not always as smooth as the laws  
33 themselves and some antiquated notions about the capabilities of persons with  
34 disabilities still persist and provide barriers as well.

35 We've focused our work at Disability Rights Ohio on trying to address the voting  
36 barriers that people with disabilities have faced in Ohio, and we've seen a  
37 couple of issues emerge over the last decade that I'd like to touch on. One of  
38 them is stereotypes and the potential for discrimination in our own constitution.  
39 You may have heard recently that there was a modernization committee looking  
40 at our constitution, which was a great idea. We have some antiquated language  
41 in there.

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1 This is one example of some very antiquated and offensive language in our  
2 constitution. It's one of the only outright exclusionary aspects for voter  
3 qualification in the Ohio Constitution. It says that, "No idiot or insane person  
4 shall be entitled to the privileges of an elector." We advocated with the  
5 modernization commission to remove that language from our Ohio  
6 Constitution. We noted that it conflicts with federal laws that protect the right  
7 to vote and pointed out just how [inaudible 00:49:21] the concept of capacity to  
8 vote is.

9 There's been very little case law or research on this issue, but to the extent that  
10 there has been, it's generally found that voting is primarily emotional rather  
11 than rational and to try to identify whether someone has the capacity to vote is  
12 virtually impossible to do and we should not be making presumptions about  
13 someone simply because they have a disability, but they don't have the capacity  
14 to vote.

15 While many of the members of the commission agreed with us, unfortunately  
16 for a variety of other political reasons I'm sure, that change was not made. We  
17 were not successful. Fortunately, even though these antiquated and offensive  
18 terms exist in our constitution, the impact in Ohio law in practice is fairly  
19 minimal to non-existent. There's only one Ohio statute that even addresses this  
20 issue and it allows for probate court judges to adjudicate someone incompetent  
21 for the purposes of voting and it actually even theoretically limited individuals  
22 subject to involuntary hospitalization in a psychiatric hospital.

23 As a general rule, we have never seen a situation where a probate court actually  
24 exercised his authority. However, in recent years, there have been some  
25 changes to application forms that an individual can fill out to ask that a guardian  
26 be appointed for an individual and those new application forms in some courts  
27 ... Not all the probate courts use the same form ... Have a check box about  
28 voting and we have a concern.

29 We've not yet seen it rise to an actual issue, but a concern that someone could  
30 make the argument in the future that if that box is checked and the person  
31 seeking guardianship of someone else thinks that they shouldn't be able to vote,  
32 the fact that they are then later appointed as guardian even if that issue is never  
33 discussed or addressed or evaluated in any manner in the guardianship process,  
34 that they would try to exclude them from the ability to vote. We would argue  
35 that that would be a significant violation of their fundamental right to vote and  
36 of due process. So far, we haven't seen that, and we hope not to, but we do  
37 raise it as an issue to be aware of.

38 Stereotypes and misinformation abound when we go out to speak with  
39 individuals with disabilities and many of them have care providers as well. One  
40 of the most common things we hear is that they don't believe a person can vote  
41 because they have a guardian. That's simply not true. Having a guardian has no

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1 impact on your ability to vote unless you have been adjudicated and competent  
2 for purposes of voting, which I just discussed how that generally never occurs.

3 Other misconceptions out there, if you can't verbally communicate, how can  
4 you understand enough to vote? Again, people with disabilities, some of them  
5 may communicate in a different way. Could be because they're deaf and they  
6 use American Sign Language. It could be because they have another disability  
7 that impacts their verbal communication, but they are quite capable of  
8 reasoning and speaking and understanding and making their wishes known in  
9 other ways if we provide them the capacity to do so through assisted  
10 technology or other methods of communication.

11 Another misconception is if you're blind, how could you independently  
12 complete a ballot? Obviously, there are many forms of technology that can  
13 make that happen independently and presumptions about individuals that are  
14 blind still unfortunately exist. Moving on then to some of the barriers that have  
15 been noted over the years, polling locations, I have to say that Ohio has made  
16 significant progress in having physically acceptable polling locations. Part of the  
17 way they went about doing this was using the Help America Vote Act money in a  
18 positive way. I want to give some credit to the Federal Trade States Office for  
19 doing that over the last decade.

20 Another way that they went about it, which had some negative impact as well,  
21 is actually combining polling locations to ensure that they were using locations  
22 that were already accessible and they didn't have to make temporary  
23 modifications for the election itself. That has unfortunately led to polling  
24 locations being further away and transportation more difficult. Within polling  
25 locations themselves, again, they're generally accessible although because of  
26 the way machines are set up, they are sometimes too close together and hard  
27 to access particularly for people using wheelchairs.

28 This dovetails with the next issue. If poll workers need more information on how  
29 to work with people with disabilities, how to set up a polling location and how  
30 to use the machines effectively, there's not a lot of data on the experience of  
31 the voters with disabilities, but the limited data that's available from some  
32 informal surveying we've done and some work done by Self-Advocates  
33 Becoming Empowered, a group called SABE, they've identified issues with poll  
34 workers and the set up of polling locations.

35 Moving on ... I see I'm starting to run out of time. Voting information and  
36 registration information needs to be accessible to people with disabilities and  
37 until recently the Secretary of State's website was not accessible for individuals  
38 that would use screen access software so generally individuals with a vision  
39 impairment, but it could include individuals that don't use a mouse, for  
40 example, and need to use other types of software in accessing electronic  
41 information on a computer.



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1 We filed a lawsuit on behalf of the National Federation of the Blind. In early  
2 2017, the court ordered the Secretary of State to fix their website to make it  
3 accessible. Recent testing by the National Federation of the Blind shows that  
4 much of the website is now accessible including the new online registration and  
5 the Secretary of State's office is continuing to work to remediate any few  
6 existing problems.

7 Another issue in that same lawsuit was related to ballots in our absentee paper  
8 ballot system. Those paper ballots, the reliance on paper ballots had a  
9 discriminatory impact on people that were blind and that they need electronic  
10 means to complete the ballot.

11 There are electronic ballot marking tools, but the state initially was resistant to  
12 implementing that. We litigated that up to the 6th Circuit and soon after the 6th  
13 Circuit basically set our case to go forward. The Secretary of State decided to fix  
14 the problem and has now ordered all counties to implement an accessible ballot  
15 marking tool by the November election of this year.

16 Another area that is a problem generally, but obviously impacts voting is just the  
17 lack of adequate accessible transportation. Many individuals with disabilities  
18 rely on others for transportation. There's often few public transportation that's  
19 available in many voting areas.

20 As I noted earlier, many people with disabilities have spent at least a short time,  
21 if not a long portion of their life in an institution, thousands of individuals have  
22 spent some portion of their time in institutions. For some, that's long term, like  
23 in a nursing home or individuals with developmental disabilities. There's about  
24 5,000 that are in institutions for developmental disabilities, but some of that is  
25 just short term, emergency hospitalization or shorter term stays in a psychiatric  
26 hospital.

27 Ohio actually has some pretty good procedures in general for people that are  
28 hospitalized on election day and aren't able to get to the polls, but we have  
29 identified through our work a problem for voters who are hospitalized outside  
30 of their county, which is primarily individuals in psychiatric hospitals because of  
31 the way in which our psychiatric hospitals are set up across the state. We  
32 identified this first in 2012 when a young woman who'd been recently  
33 hospitalized outside of her county called us. She had requested an absentee  
34 ballot, but not received it. We were trying to help her vote. We had to file an  
35 emergency lawsuit, which we won, but unfortunately, even with that win, the  
36 problems still persisted as we discovered in 2016.

37 Since that time, we have worked with the Secretary of State's office to try to fix  
38 the issue, and I say we've narrowed the gap significantly, but it has not been  
39 fully resolved. In the November 2016 election, the Secretary of State did start a  
40 new process, a new directive to county boards and a new form that would allow  
41 individuals that were hospitalized outside of their county to get a ballot. The

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1 Secretary of State was providing direction to the boards of election on how to  
2 do that.

3 The provision, this option is very narrow. It only allows individuals who have  
4 been hospitalized after the absentee ballot deadline, which is the Saturday at  
5 noon prior to election day, to use this process. Interestingly enough, that is  
6 much more narrow than the actual statutory language that allows for voting  
7 when someone has an unexpected hospitalization.

8 We have argued that this does not comply with the Americans With Disabilities  
9 Act, which requires modification to state policies in order to ensure access to  
10 the ballot. In the general election 2016, we had calls from over 20 hospitals  
11 from individuals that were facing the situation and helped about 50 individuals  
12 by providing them advice on this process. Many were able to resolve it on their  
13 own with working with their county boards of election, but for about 13  
14 individuals, we had to get directly involved and work with the Secretary of  
15 State's office to get them access to a ballot. Those were all resolved. They were  
16 allowed to vote, but unfortunately many people never even call us. They don't  
17 know about this process or even if they do, the form is so narrow and restrictive  
18 that they may not realize they can access it. We still have this problem today.  
19 We're working to try to fix it, but the current status is that we have this rigid  
20 deadline and no process for accommodations under the Americans With  
21 Disabilities Act as needed.

22 That's a good segue then to just looking at what kind of means for  
23 accommodation there are and what people might need in order to access the  
24 polls. Obviously, the Americans With Disabilities Act, it provides that  
25 modification to policies and practices should be made to ensure equal access.  
26 I've talked about the most significant issue we've worked on in that area, but  
27 some other things that individuals with disabilities might need in order to vote  
28 include a personal assistance with voting.

29 As a general rule, this works fairly well. They may have a family member, friend  
30 or service provider that can help them vote or they can access help at the polls  
31 with two poll workers one from each party assisting them. Occasionally, we run  
32 into problems because service providers are mistaken as an agent of their  
33 employee and that's prohibited under state law, but as a general rule, it works  
34 fairly well.

35 There's other things that have been done to try to make voting more accessible,  
36 curbside voting for example, accessible voting machines. All of these are great  
37 tools that the State of Ohio has put into place to help ensure access to the  
38 ballots. Really it comes back down then to making sure that there's good poll  
39 worker education and voter education so that people know that these tools are  
40 available and how to access them.



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1 One thing that we've also seen a problem with is the interactions. Some people  
2 with disabilities may have trouble physically signing their name or their  
3 signature may significantly vary from time to time when they sign it because of  
4 their disability. It's important that there be alternative options beyond the very  
5 narrow option of designating a power of attorney for voting, which Ohio law  
6 also permits. Individuals should be allowed to use other options for signing their  
7 name if they're not physically able to do so. That's an area where we've had to  
8 do significant education and advocacy on a case by case basis to help individuals  
9 vote.

10 Unfortunately, even with all the progress over the years in general with people  
11 with disabilities getting into the workplace and becoming full participants of  
12 society, there is still a disproportionate number of individuals with disabilities  
13 that are lower income and many living in poverty. There is a disproportionate  
14 impact of all of the barriers that go along with poverty when it comes to voting.  
15 We've talked a lot about identification laws. Just the cost of getting photo  
16 identification can sometimes be problematic for individuals with limited means.  
17 The lack of access to affordable public transportation is certainly a barrier to  
18 voting whether it's in person early voting or day of election voting.

19 Lack of permanent housing or homelessness is an issue as well. You certainly  
20 can vote even if your residence is a homeless shelter, but it does make it more  
21 challenging and many individuals are not aware of how they can go about doing  
22 that. There's talk about the voter purge efforts. That's certainly a problem that  
23 often disproportionately impacts individuals that are living in poverty that may  
24 move around, may not receive their mail, may not vote in every election and  
25 certainly people with disabilities, who may find it difficult to vote and perhaps  
26 only vote in presidential elections as a result. They're going to be impacted by  
27 this as well and it then creates a new barrier because now they have to go  
28 through the process of re registering to vote.

29 Just to wrap up then, I mentioned earlier that we have a voter hotline. Every  
30 general election and some primary elections as well, we're open for our voter  
31 hotline the same hours as the polls. We have staff that are trained to answer  
32 pretty much any of the most common questions, which is usually where am I  
33 registered to voting? What polling location should I go to? We have attorneys all  
34 day long available to follow up on legal concerns.

35 This has been a pretty successful model. We get dozens of calls in every major  
36 election. Last election, we had about 60 calls on a variety of issues and were  
37 able to help most people solve and resolve their problem quickly. I just wanted  
38 to share one success story from the last election that we had a ... Last  
39 November, so the last general election. We had an individual, I've given you the  
40 link to our success story on our website. He was in an institution for individuals  
41 with development disabilities. He wanted to vote. He asked the staff to help him  
42 get to the polls. For whatever reason, they were telling him that the elections  
43 had already happened the day before.

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1 He called us and we got on the phone with the staff, and we called the person in  
2 charge of the institution and we kept following up until we got confirmation  
3 from him that he had indeed been taken to vote. He was obviously quite excited  
4 that he had been able to vote and that we were able to help him. There's a  
5 picture of him here holding the phone that he used to call us, and a link to the  
6 story about this individual and how we were able to help him vote. Thank you  
7 for having me participate, to speak about the experience of voters with  
8 disabilities. I'd be happy to answer any questions that the committee have.

9 Diane Citrino: Great. Thank you very much. Thank you to all three of our panelists. This was  
10 very informative. I'm going to now first turn it over to members of the  
11 committee, who can ask questions to our panelists. When that questioning  
12 period is over, which will be about 10 minutes of committee member questions,  
13 it will be turned over to the public for comment and questions. I believe we  
14 have three members of the committee on the call. Is there someone who has a  
15 question?

16 Edith Thrower: This is [crosstalk 01:06:04].

17 Scott Gerber: Hi Diane, this Scott. Go ahead Edith. You can go before me.

18 Edith Thrower: Good afternoon everyone. This is Edith Thrower. I have a question of the second  
19 panelist. You may have said this, so pardon me if you did and have to repeat it,  
20 but I would like to know. I'm really curious about the purging of electors who  
21 have not been active ... I believe you said in a period of four years ... From the  
22 election rolls or rosters or records of municipalities or counties in Ohio.

23 I kind of understand ... I kind of like it and I kind of don't because it could serve  
24 as an incentive to get people to voting or not. The flip side of that is that you're  
25 removing people from voting records and there's really no good reason for it.  
26 My question is what is the purpose, strategy or logic behind purging the  
27 records? You may have said it, so again excuse me if you did.

28 Catherine T.: Hello, this is Catherine. I'm guess that Dean Tokaji will actually be able to add  
29 more to this point. Basically, what the Secretary of State does is that if someone  
30 doesn't vote within a two-year period, they basically ask them to confirm their  
31 registration. If that voter doesn't respond or cast a ballot within the following  
32 four years, they're removed from the voter roll. It's a six-year period. The reason  
33 that the Secretary of State actually goes through this process, or at least this is  
34 what he said and actually a lot of this makes sense, is that the voter rolls end up  
35 having a lot of people who did not inform the board of election and the  
36 Secretary of State that they moved.

37 What happens is you just get so many different people on there who are not  
38 actually voters. It becomes more difficult to actually manage the election, so  
39 having what they call clean voter rolls so that you know who the voters are, it  
40 just makes it easier to manage. The folks that argue that people should be taken

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1 off the roles fairly quickly because they don't participate are thinking, "How can  
2 we make our database, our voter rolls as clear and as easy as possible to make  
3 election management as simple as possible?"

4 The folks like me that are like, "Well, wait a second. Use it or lose it, let's give it  
5 a little bit more time. Let's see what we can do try to bring folks into the  
6 process." I feel for the people that are concerned about those voter rolls, but at  
7 the end of the day, voting is a fundamental right. Telling people who actually  
8 registered and believe that they're registered, that they cannot return to voting  
9 so quickly is problematic. Dan, is there something you wanted to add?

10 Diane Citrino: Dean Tokaji, can you address that?

11 Daniel Tokaji: Sure. Let me respond to this from a legal perspective. As I mentioned earlier,  
12 but want to reiterate, I am one of the attorneys for the plaintiffs, respondents in  
13 the case regarding this issue that is currently before the Supreme Court. That's  
14 the Husted v. A. Philip Randolph Institute Case. Of course, as with all of my  
15 remarks, what I'm going to say represents my own views. I'm not speaking on  
16 behalf of the Ohio State University or any other institution of which I'm a part.

17 As a matter of law, the National Voter Registration Act, also known as Motor  
18 Voter, was designed to ensure not only that registration opportunities were  
19 made available, but that people weren't purged from the rolls without a very  
20 good reason. One of the good reasons, of course, is that someone has moved.  
21 The argument of the Secretary of State's office throughout the course of this  
22 case has been primarily that they are using the failure to vote as a proxy for  
23 having moved. That in our view is contrary to the plain language of the National  
24 Voter Registration Act, which says that you can't remove people by virtue of  
25 their failure to vote. Moreover, if the state's goal is to remove people from the  
26 registration [inaudible 01:11:08] actually moved, there are much better ways of  
27 doing that.

28 For example, you could rely on information from another state database like the  
29 Motor Vehicle records, which show that somebody has moved from one place  
30 to another. You could rely on information from another state. If Indiana, for  
31 example, were to provide information through a national information sharing  
32 system and these things do exist that tells Ohio that someone has moved from  
33 Ohio to Indiana. You could use that as a basis for initiating the removal process.  
34 Ohio or local boards of election could also send a mailing and if that mailing is  
35 returned as undeliverable because the person is believed to have moved, then  
36 Ohio could use that as a basis for initiating the removal process. As you all know,  
37 county boards of elections frequently do send information to voters. What Ohio  
38 can't do in our view is use the failure to vote as a proxy for having moved and on  
39 that basis initiate the purge process.

40 Diane Citrino: Great, thank you. I'm going to allow ... I believe I heard Scott Gerber from the  
41 commission.

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1 Scott Gerber: Yes, thank you.

2 Diane Citrino: Wanted to ask a question?

3 Scott Gerber: Yes, thank you, Diane, and thanks to the panelists for such wonderful  
4 presentation. I have a comparative and normative question to all of the  
5 panelists. The US commission is studying voting rights at the national level. Ohio  
6 is obviously a critical state in presidential elections in particular. I just wondered  
7 if people could give us a sense of how Ohio compares to other states in terms of  
8 our approach to voting rights making it easy, making it too difficult, and then  
9 how Ohio is doing now as compared to ten years ago or whatever. Any thoughts  
10 on that would be appreciated.

11 Daniel Tokaji: It's a great question. Why don't I lead off with some preliminary thoughts? I  
12 guess the first caveat I'd provide is that it can be really difficult to compare  
13 states because each state has its own electoral ecosystem. The way people vote  
14 from state to state tends to vary quite a lot. For example, there are some states  
15 in which a lot of people rely on early voting, some states in which very few  
16 people do, where some are in the middle on that point.

17 I think there are some respects in which we're doing okay. For example, we  
18 have avoided the imposition of a strict government-issued photo ID  
19 requirement in contrast to states such as Texas, Wisconsin, and Indiana. I think  
20 that is a good thing. We've avoided that barrier to voting. On the other hand,  
21 Ohio's practices regarding purges compare unfavorably to most other states.

22 On the front of early voting and, in particular, same day registration, we've  
23 actually moved backwards in the last few years. There was a period of time  
24 during which we had a window for same day registration and early voting, the  
25 so-called Golden Week between 35 and 30 days before the election, which has  
26 been taken away.

27 There's been progress in some respects, but in others, we've moved backwards.  
28 A final note on the subject of vote dilution and manipulation of redistricting,  
29 there's some good news there. I think it's really quite extraordinary that  
30 Democrats and Republicans in the Ohio legislature were able to come together  
31 on both state and legislative redistricting and most recently congressional  
32 redistricting. That has important voting rights implications. I guess the bottom  
33 line is it's a mixed bag, progress on some things, but regression in other areas.  
34 There are some places where we're better than other states, but others where  
35 we're worse.

36 Diane Citrino: This is Diane Citrino. I'm sorry to interrupt. I'm going to get back to this and  
37 allow Catherine and Kerstin to comment on this question, but first because we  
38 have a mandated by public publication that the public portion of this is to start  
39 at 12:45, I'm going to check with the operator to see if there are members of  
40 the public who would like to ask a question or make a statement. If not, we will

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1 return ... We will ask this public portion to be ... This will be for a set of period of  
2 time and then we are going to return so Catherine and Kerstin, you can have a  
3 chance to think on that and also I will give an opportunity to Mark Strasser to  
4 ask any questions they have. I'd like to check with the operator, is there anyone  
5 on the line who would like to ask a question or make a statement?

6 Operator: Thank you ma'am. If you'd like to signal for a question on the phone, please  
7 press the star key followed by the digit one. Again, it is \*1 to signal. Please be  
8 sure your mute function's on to allow that signal to reach our equipment. We'll  
9 pause just a moment to assemble our roster.

10 Diane Citrino: Thank you.

11 Operator: There are currently no questions in queue. Again, \*1 to signal.

12 Diane Citrino: Okay, well then we will go back to Catherine. If you, followed by Kerstin, would  
13 like to comment on the question Scott Gerber has posed.

14 Catherine T.: This is Catherine. I think that Dan covered it very well. I think the fact that we  
15 have a fairly long period of early vote is quite good. The fact that we don't have  
16 strict voter ID is one of the things that I think Ohio does well. One of the things  
17 that we didn't cover in a lot of detail ... I alluded to it ... Is that there are many  
18 times that the state legislature ... There will be bills there to make things more  
19 difficult. There has been a tug of war back and forth on how best to invite  
20 people into the process or basically make things a little bit harder for people to  
21 vote. It wasn't that long ago that there was legislation ... We're talking about  
22 2011, where it would have greatly reduced early vote. It would have made just  
23 much stricter voter ID. There were a variety of different problems with this new  
24 election law.

25 Voters collected signatures to stop the legislation in its path to do what they call  
26 a referendum. Ohio's one of those direct democracy states. Fortunately, the  
27 legislature of their own volition basically polled the legislation. They went  
28 through a legislative process to make sure it wasn't implemented, but it is a bit  
29 of an arm wrestling to keep the advances that we make.

30 Also, when I think about how long it took for us to get online voter registration.  
31 Generally, online voter registration would have made life much easier during  
32 2016 and would have made it much easier for folks to participate and that was  
33 not implemented until January 1 of this year. You think to yourself, "Wait a  
34 second. What's going on that it took so long." There just is always a struggle.

35 Diane Citrino: Great. Kerstin, if you have some comments?

36 Kerstin S-W.: I think, as I had mentioned earlier, Ohio has done several things using their Help  
37 America Vote Act funding, for example, to help increase physical accessibility,  
38 polling locations. We've had success and opened a better dialog I believe with

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1 the Secretary of State's office on accessibility issues for electronic information  
2 and things like the new online voter registration have moved forward in its new  
3 fashion in that respect. Even at the local level, we've had some dialog with  
4 county boards of elections, for example, the Franklin County Board of Elections  
5 reached out to us recently. They're looking at getting new machines. It was  
6 talked about earlier. There's variable machines in Ohio.

7 Before they decided on what type of machines to get, they wanted input from  
8 the disability community about accessibility and usability features. We were  
9 able to pull together some stakeholders to go and meet with the board of  
10 elections and even view some of the possible options with the board of  
11 elections. I think there's been an increasing willingness to consider accessibility  
12 issues generally and an ability to work with the local and state officials on many  
13 issues, not withstanding the fact that we still have disagreements on some of  
14 the items such as the out of county hospitalization issue that I talked about  
15 earlier. I think the dialog is there and we have been able to resolve most of our  
16 smaller issues even if we can't always make the wider policy changes that we  
17 may want.

18 Speaker 8: To follow up on that, I just had a quick follow up. We heard about the lack of  
19 money for training of poll workers. I would imagine that would affect people  
20 with disabilities in Ohio particularly. Can you, Kerstin and Catherine, address the  
21 funding issue and what impact that has or doesn't have?

22 Catherine T.: This is Catherine. One of the things that I was surprised about last cycle when  
23 they did the operating budget that the secretary basically zeroed out his budget  
24 saying that basically setting aside no funding for voter education. When we start  
25 to think about what that means and the challenges, for example, for counties  
26 that may need to have good voter education so that you're able to administer  
27 these elections more smoothly and you get accurate accounts and all of those  
28 kinds of things are problematic.

29 We also need to think about, well, it's possible that, in fact, the legislature will  
30 move the bill that will give some funding for machines, but we also know that  
31 the whole conversation about reducing the number of poll workers is all about  
32 saving some money. It's all about the cost of poll workers. It continues to be a  
33 challenge to make sure that we make democracy a priority for funding.

34 Kerstin S-W.: This is Kerstin. Just to follow up on that, I actually did not know about the  
35 zeroing out of funding until Catherine mentioned it today, but I agree that it's  
36 very problematic to not have any money directed towards voter education,  
37 especially with the many different ways to vote and the changes that have  
38 happened over the years. With respect to poll workers specifically, in our not  
39 very scientific, but the data that's available to, surveys, as well as information  
40 gathered by the organization SABE, poll worker education was identified and  
41 poll workers interactions were identified as one of the most prevalent problems  
42 in terms of maybe ... It was a wide range. Some individuals, it was a matter of

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1 the poll worker not being real adept at using the exceptional machine. It could  
2 be a matter of how the polling location had been set up because, again, they  
3 were not thinking about accessibility in terms of moving around and using the  
4 machines. It may have been simply a feeling that they were not being treated  
5 with respect or that they were taking up too much time.

6 There were a variety of different experiences and some of those are a little bit  
7 hard to get at even with training. My understanding is the Secretary of State's  
8 office actually does have some pretty good videos for training poll workers and  
9 interacting with individuals with disabilities, but it's not clear to me whether  
10 those are used consistently in the poll worker trainings across the different  
11 county settings. We don't really have that information directly. The last time I  
12 personally was in a poll worker training was a decade ago and my recollection is  
13 there was very little training, if any, on interacting with people with disabilities  
14 and the amount of information that is packed into that training is kind of  
15 overwhelming really for someone if they aren't a poll worker, many times for  
16 newer poll workers.

17 I think fortunately we do have a lot of people who are dedicated to being poll  
18 workers and at least know the basics of the process. It may be one way to deal  
19 with the problem of access for people with disabilities would be to think about  
20 having disability liaisons at polling locations, a poll worker that had a little extra  
21 training and emphasis on that, rather than trying to train every poll worker on  
22 every issue.

23 Diane Citrino: Thank you. I'm going to just ask the operator one more time to just make sure  
24 there's no member of the public who has dialed in. Can you check for us,  
25 please?

26 Operator: Yes, ma'am. We have had someone signal. We have a S.C Patterson with Self-  
27 Advocates Becoming Empowered.

28 Diane Citrino: Okay. Ms. Patterson, would you like to ask a question or make a comment at  
29 this time?

30 S.C Patterson: Yes, I would. Can you hear me?

31 Diane Citrino: Yes.

32 Essie Pederson: Great. I would just like to comment on the fact that I think that this hearing and  
33 this committee is covering a very important topic. I have learned a great deal  
34 about the systems and the process and the changes that have been made. What  
35 Self-Advocates Becoming Empowered has looked at is how the individuals who  
36 are using those processes, systems, equipment [inaudible 01:26:41] not ideal,  
37 they have had a good voting experience. We have been collecting data for the  
38 last eight years about these experiences and we're getting more and more. I  
39 know that you had some interest in progress that Ohio has made. Just a little



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1 thing about people's disabilities to indicate progress or our difference is that this  
2 year, the method of voting that people were using, the polling location  
3 [inaudible 01:27:15] % of Ohioans that we interviewed said the polling location  
4 is it.

5 For the absentee mailed-in ballots, it was 40% [inaudible 01:27:24] that the  
6 average voter, there are about one third of them that voted early with people  
7 with disabilities is only 58% in Ohio that are doing that. It is higher than that  
8 nationally. It is one third nationally, but in Ohio, it's lower. I think Kerstin's done  
9 an excellent job of pointing out some of the barriers as to why that is  
10 happening.

11 With all these changes and the evolution, the important thing to pick up here is  
12 that people are gravitating towards using the absentee mail-in ballot and early  
13 voting more and they're pulling away from the polling locations because in  
14 2014, 80% of the voters used the polling location. I think that's a significant  
15 change. I encourage the fact that the technology be looked at very closely and  
16 the absentee ballot be looked at very closely, so that people can understand it  
17 as well as read it.

18 I have a lot more information I could cover, but I just wanted to mention the  
19 way people were voting. Overall, the people with disabilities have that thought  
20 about their voting experience. There are a need for improvements as the poll  
21 worker to increase the training, include their training. That's all bits and pieces  
22 that can be tested out later, but overall, Ohio has made progress. Thank you.

23 Diane Citrino: Thank you, Ms. Patterson. Along with everyone on this call, I do want to remind  
24 you that if you like, you may submit a written statement by mail to the US  
25 Commission on Civil Rights at 55 West Monroe Street, Suite 410, Chicago,  
26 Illinois, 60603, or by email to mwojnaroski@usccr.gov. The phone number, if  
27 you didn't catch that, is 312-353-8311, where you can get information on how  
28 to do that. I'd now like to return to Mark Strasser or David Tryon to see if you  
29 have a question. Mark?

30 Mark Strasser: Yes. I wanted to ask Dean Tokaji, you had mentioned that if there was an  
31 imposition of a sphere of burden on voting, that'd be enough to trigger a strict  
32 scrutiny. I was trying to figure what would [inaudible 01:30:07] or trigger the  
33 severe burden. Is it the number affected, the degree of dilution or how hard it's  
34 voting or what do they do?

35 Daniel Tokaji: It's really a great question. I can't say that the cases both within the 6th Circuit,  
36 where we are here in Ohio or around the country has been entirely clear or  
37 consistent on that question. Let me relate to you some of the things that courts  
38 have looked at in determining the severity or substantiality on the burden. One  
39 thing that they've looked at is how much does it affect an individual voter? You  
40 could have a practice, let's say requiring that you have a permanent address on  
41 file, that affects a relatively small number of voters, but affects them in a



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1 significant way, where homeless people would be quite dramatically affected,  
2 effectively unable to vote if that kind of requirement were imposed.

3 The severity of the burden upon individuals is one thing. Number two is the  
4 number of people affected, something that courts have also looked at, is it  
5 1,000 people? Is it 10,000 people? Is it 100,000 people who might be affected?  
6 Then a third thing that courts have looked at is whether the effect bears heavily  
7 on particular groups of voters? That could be, for example, groups that are  
8 defined by race. A practice that has a disparate racial impact might be looked on  
9 with greater skepticism or that disproportionately affects less affluent people as  
10 did the poll tax struck down back in Harper. That would be another group.

11 We might also look with special disfavor on voting burdens that have a  
12 disparate impact on a partisan basis, for example, practices that  
13 disproportionately exclude Republicans or Democrats from voting, especially if  
14 those barriers to voting or burdens on voting have been adopted by the other  
15 party. Those are not an exclusive list, but some of the things that courts have  
16 looked to in trying to measure the severity of the burden.

17 Diane Citrino: We have just time for ... We're actually out of time, but I want David Tryon to  
18 have a chance to ask a question. If whoever answers it could try and be as brief  
19 as possible, that'd be great. David.

20 David Tryon: Thank you Diane. By the way, it is pronounced try-on.

21 Diane Citrino: [crosstalk 01:32:56].

22 David Tryon: That's okay. Dean Tokaji, I had a question for you relating to the representation  
23 of the plaintiffs in the case of Boustani v. Blackwell that you were involved in.  
24 Recently there's been concerns of foreign interference with our elections and  
25 others have expressed concerns about non-citizens voting, whether  
26 intentionally or unintentionally, and thereby diluting the votes of citizens. At the  
27 same time, the judge in the Boustani v. Blackwell case indicated that the  
28 different requirements for naturalized and native-born citizens created the  
29 unlawful potential for disenfranchising eligible citizens for "not looking quite  
30 American." I wonder if you have any recommendations in how we can make  
31 sure that all eligible citizens can vote and at the same time protect the value  
32 of citizens' votes from dilution caused by non-eligible votes, for example, by  
33 non-citizens who vote either intentionally or unintentionally?

34 Daniel Tokaji: It's a great and a very important question. It's funny. As it happens, I'm going to  
35 be participating in a conference that's going on at McGeorge Law School in  
36 Sacramento today. I'll be participating by video, which is on the very subject of  
37 foreign interference with our elections. It is a major concern, one that in some  
38 respects goes well beyond the scope of our discussion today, but I do think that  
39 there is a significant risk of foreign nationals and, in particular, agents of foreign  
40 powers, one in particular, attempting to and a risk of possibly their succeeding

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1 in interfering with our elections. I think that is a really important issue. Distinct  
2 from the question that you're really focused on of non-citizen voting, how can  
3 we make sure that only citizens are voting in the elections?

4 The Boustani case, in which I should again say I was co-counsel and the views  
5 expressed are my own, was challenging a peculiar rule that the Ohio legislature  
6 adopted by statute many years ago ... I believe it was around 2005 ... Where  
7 non-citizens if challenged at the polls were ... I'm sorry, I should restate that.  
8 Naturalized citizens, people who claim to be naturalized citizens, if challenged at  
9 the polls were actually required to provide their certificate of naturalization in  
10 the event of a challenge. This isn't the kind of document that most people who  
11 are naturalized citizens walk around with.

12 The Supreme Court has long looked with disfavor on rules that treat naturalized  
13 citizens less favorably than people who were born in the United States as US  
14 citizens. The court in the Boustani case said that discrimination against  
15 naturalized citizens as compared with native born US citizens was  
16 impermissible. That said, I don't really think that there's a lot of evidence to  
17 support the conclusion that we have a massive problem of non-citizens voting in  
18 our elections given the considerable risks that any non-citizen, especially one  
19 who's here illegally, would take by exposing himself or herself in that way. It's  
20 not to say that it's never happened, but actual non-citizen voting based on the  
21 evidence that we have available to us doesn't appear to be a huge problem.

22 One of the difficulties, however, is that we don't really have a national system,  
23 for better or for worse, for determining with precision who is and is not a  
24 citizen, which makes it very difficult either to verify that someone is or to verify  
25 with any degree of certainty that they are not a citizen, unless they're  
26 somebody who's actually in the process within the immigration and  
27 naturalization system. I throw that out as an issue, but again, I think there's a  
28 danger of overstating the magnitude of the problem in an era where we've seen  
29 at least in some quarters a return of a rather alarming nativist sentiment.

30 David Tryon: But I understand you discounting that, but you haven't answered my question.  
31 Is there a way to solve that concern by some people while still preserving the  
32 rights of everyone to vote?

33 Daniel Tokaji: I think I have answered it. I said it's a difficult problem.

34 Diane Citrino: [crosstalk 01:38:01]. I'm going to have to interrupt. I'm sorry to interrupt, but  
35 we are out of time. I would really love to have written supplements, especially  
36 since you're presenting on this topic or discussing this topic, Dean, later today. If  
37 you would be ... Anyone who would like is welcome to submit written  
38 comments and the members of this panel can also submit written questions to  
39 the panelists because the record is going to remain open through April 9th,  
40 2018. Please send those to email on the screen, mwojnaroski@usccr.gov or mail  
41 to the committee at 55 West Monroe Street, Suite 410, Chicago, Illinois, 60603.

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1 I want to remind everyone there is another panel meeting on Friday, March 9th,  
2 from 12:00 to 1:30 pm Eastern Standard Time. We will follow up with everyone  
3 in attendance to give minutes and the transcript from this meeting and a link to  
4 access those records. We will also notify everyone when the committee is  
5 meeting for discussion and when the report that results from this hearing is  
6 ready. I want to thank wholeheartedly everyone, the public, the members of  
7 this committee and most especially the panelists for your outstanding  
8 presentations and your participation today. It is so necessary and so  
9 appreciated. Thank you very much. Let's say that ends this. This meeting is now  
10 adjourned. Thank you.

11 Daniel Tokaji: Thank you Diane.

12 Speaker 12: Thank you.

13 Operator: Thank you, ma'am. It does conclude today's call. Thank you for your  
14 participation.

15

# Ohio Advisory Committee *to the* U.S. Commission on Civil Rights

Voting Rights in Ohio  
March 2, 2018



# Agenda

- **Welcome and Introductions (11:30-11:35am, EST)**
- **Panel Presentations (11:35am-12:25pm)**
  - Daniel Tokaji, Associate Dean, Ohio State University Moritz College of Law
  - Catherine Turcer, Executive Director, Common Cause Ohio
  - Kerstin Sjoberg-Witt, Director of Advocacy, Disability Rights Ohio
- **Committee Questions and Answers (12:25 - 12:45 pm)**
- **Open Comment (12:45-1:00pm)**
- **Adjournment (1:00pm)**



Ohio Advisory Commission to the  
U.S. Commission on Civil Rights

# Voting Rights in Ohio

Daniel P. Tokaji  
March 2, 2018



THE OHIO STATE UNIVERSITY

MORITZ COLLEGE OF LAW

# Voting Rights in Ohio

- National Context
- Vote Denial in Ohio
- Vote Dilution in Ohio

“[T]he political franchise of voting...  
is regarded as a fundamental political  
right, because [it is] preservative of  
all rights....”

- *Yick Wo v. Hopkins* (1886)



# Voting Rights History

1776 – Only white men with property could vote

1868, 1870 – 14<sup>th</sup> and 15<sup>th</sup> Amdts

1870s-1900 – Southern states disenfranchise blacks

1920 – 19<sup>th</sup> Amdt gives women right to vote

1957, 60 & 64 – Weak voting rights laws enacted

1964 – Just 29% of blacks in the South registered

1964 – 24<sup>th</sup> Amdt prohibits poll taxes in fed elections

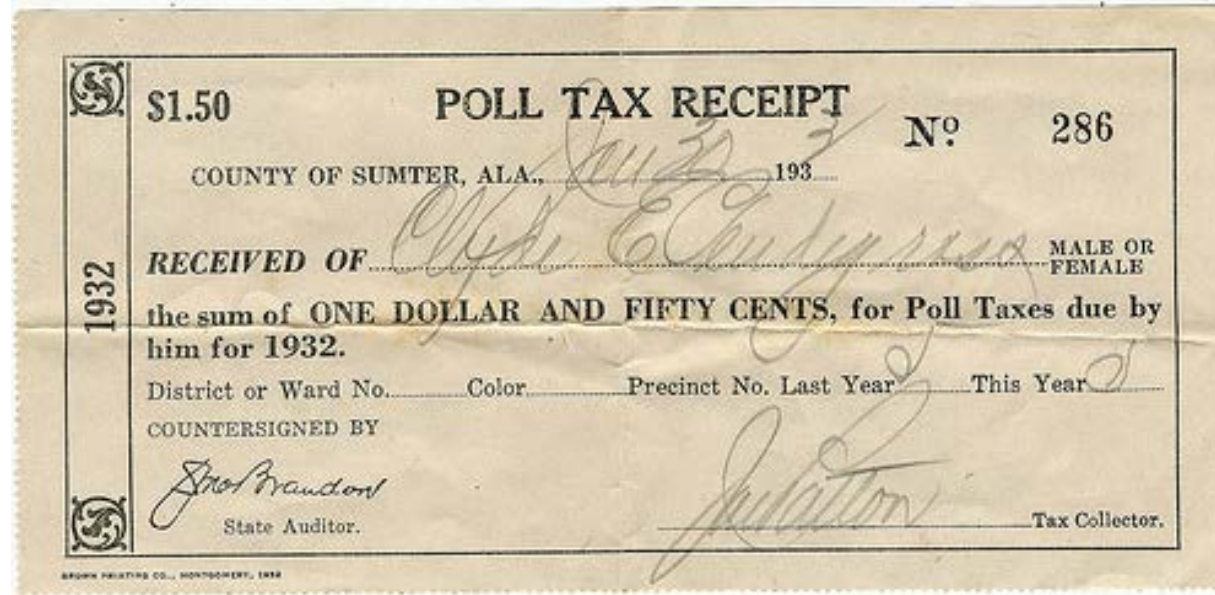
**1965 – Voting Rights Act** eliminated literacy tests and other barriers to voting, required preclearance of voting changes.

1982 – Voting Rights Act strengthened.

# Vote Denial & Vote Dilution

- **Vote Denial** – Impediments to voting or counting of votes.  
(e.g., poll taxes, literacy tests, voter ID)
- **Vote Dilution** – Practices that weaken the strength of a political group  
(e.g., at-large elections, gerrymandering)

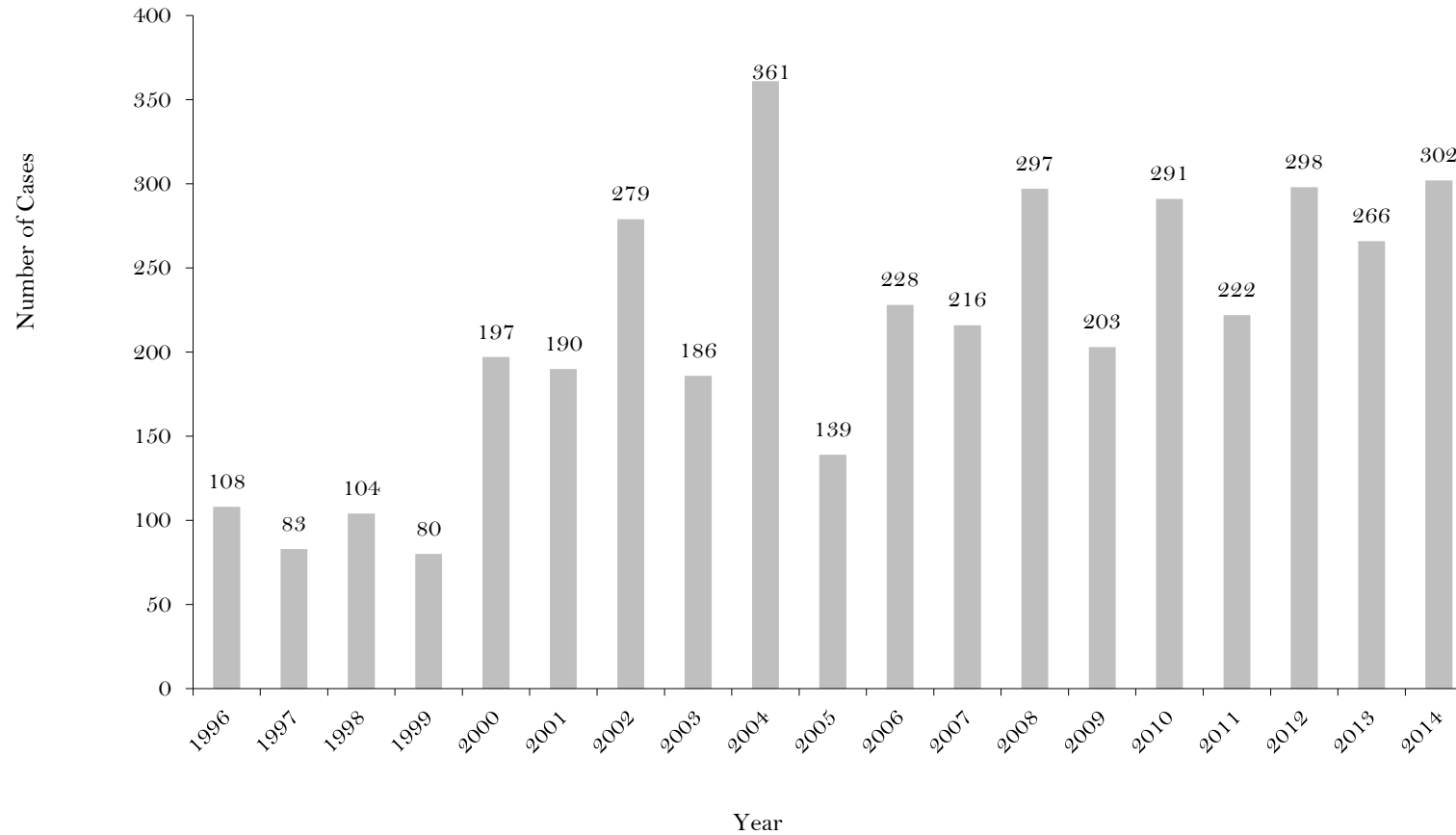
# *Harper v. Virginia* (1966)



- Struck down \$1.50 poll tax under Equal Protection Clause, citing “fundamental” character of the right to vote.
- Wealth isn’t germane to ability to participate in democracy

# Election Litigation: 1996-2014

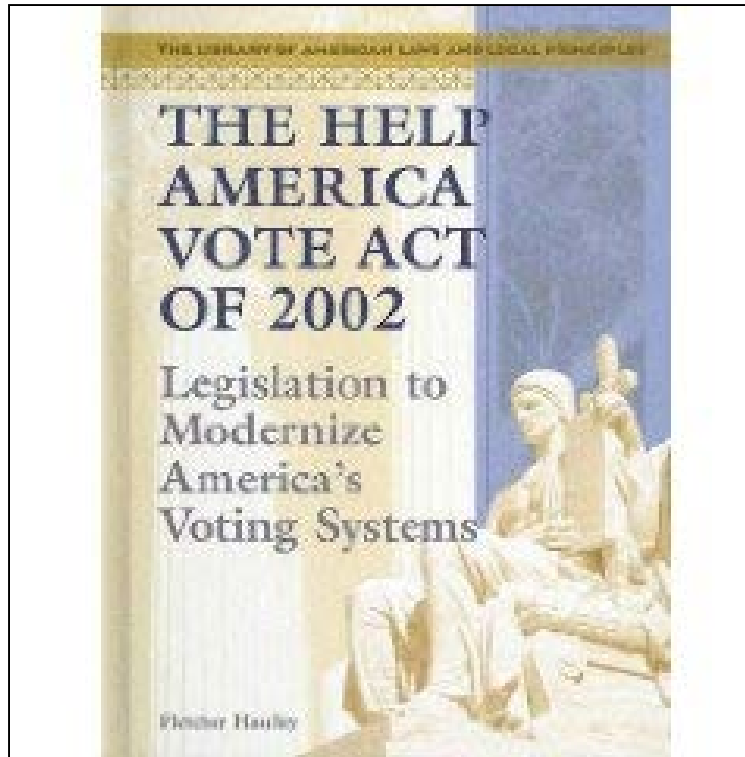
Pre-2000 Average: 94/yr Post-2000 Average: 246/yr



Source: Richard L. Hasen, *Election Law's Path in the Roberts Court's First Decade: A Sharp Right Turn but with Speed Bumps and Surprising Twists*, 68 STANFORD LAW REVIEW 1597, 1630 (2016).

## *Bush v. Gore* (2000)

“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”



- Voting Technology, §§ 101-06, 301
- Statewide Registration Lists, § 303(a)
- Voter Identification, § 303(b)
- Provisional Voting, § 302

## *Crawford v. Marion County Elec. Bd. (2008)*



Upheld Indiana's law requiring most voters to present photo ID against a facial challenge under the Equal Protection Clause.

# The Equal Protection Standard

## ***Anderson-Burdick-Crawford***

- Determine the “character and magnitude” of the burden on voting.
- If there’s a “severe” burden, then strict scrutiny applies.
- If burden isn’t severe, then the state’s important regulatory interests may justify.





# Race Discrimination



- Race discrimination claims under Fourteenth and Fifteenth Amendments require *intent*.
- Section 2 of the VRA (as amended in 1982) requires only a discriminatory *result*.

# Section 2 of the VRA

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which **results in** a denial or abridgement of the right of any citizen of the United States to vote on account of race or color... , as provided in subsection (b) of this section.

## Section 2 of the VRA

**(b)** A violation of subsection (a) of this section is established if, based on the *totality of circumstances*, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

# Vote Denial

## Recent Cases on Voting Burdens

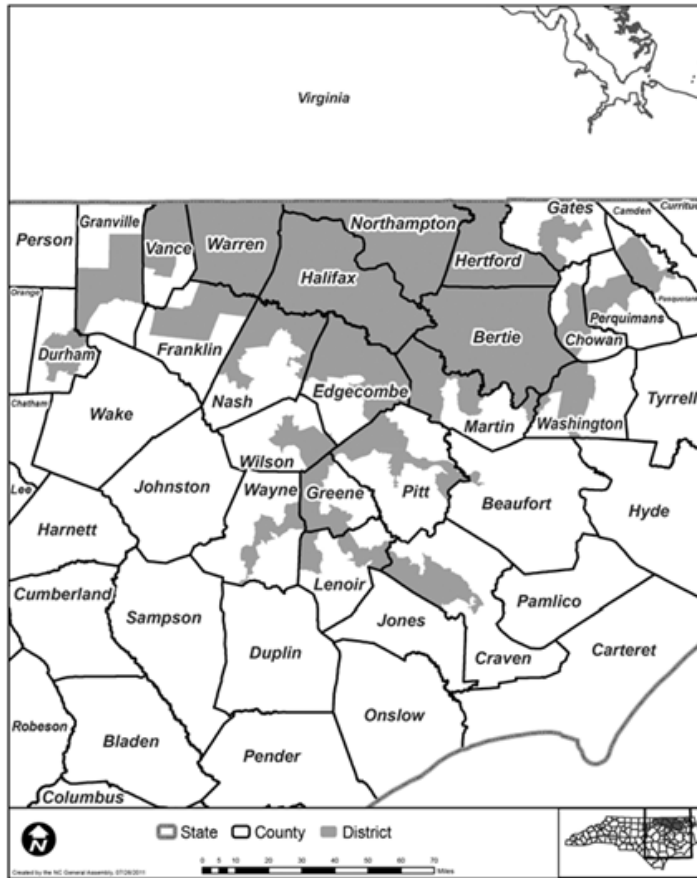
- **North Carolina:** 4<sup>th</sup> Circuit enjoined law imposing ID, limiting the means of voting, finding that it was intended to discriminate based on race. *NAACP v. McCrory*
- **Wisconsin:** 7<sup>th</sup> Circuit upheld WI voter ID law, as well as an order making it easier to get ID. *Frank v. Walker*
- **Texas:** 5<sup>th</sup> Circuit invalidated TX voter ID law as racially discriminatory in violation of Voting Rights Act. *Veasey v. Abbott*

# Vote Dilution

## Racial Gerrymandering Cases

- *AL Leg. Black Caucus v. AL* (2015) allowed EPC claim to proceed, rejecting argument that population equality was predominant factor
- *Bethune-Hill v. VA BOE* (2017) allowed EPC to proceed, holding that districts need not have bizarre shape for race to be predominant factor.
- *Cooper v. Harris* (2017) struck down two congressional districts under EPC, holding race was predominant factor and VRA didn't justify.

# *Cooper v. Harris (2017)*



1<sup>st</sup> CD



12<sup>th</sup> CD

# Voting Rights in Ohio

- National Context
- **Vote Denial in Ohio**
- Vote Dilution in Ohio

# Ohio 2004





# Election Administration Issues

- Voting Technology
- Provisional Voting
- Voter Registration
- Voter Identification
- Challenges to Voter Eligibility
- Long Lines at the Polling Place
- Recounts and Contests

# Ohio: Provisional Voting

- 2004: 6th Cir. ruled that HAVA doesn't require counting of provisional ballots cast in wrong precinct. *Sandusky County Dem. Party*.
- 2006: Consent decree requires counting of provisionals cast in wrong precinct or otherwise deficient *due to poll worker error*. *NEOCH v. Blackwell*.
- 2011: Ohio S. Ct. interprets Ohio law to require rejection of wrong-precinct provisionals. *Painter*.
- 2011: 6th Cir. holds that it likely violates EPC to reject some right location, wrong-precinct provisionals, while counting others. *Hunter v. Hamilton County*.
- 2012: 6th Cir. holds that it likely violates EPC and DPC to reject right location, wrong precinct provisionals, but not to reject *wrong location*, wrong precinct provisionals. *NEOCH*.
- 2014: OH legislature enacted restrictions on the counting of some provisional ballots.
- 2016: USDC invalidated some of the restrictions, but the 6<sup>th</sup> Cir. reversed. *NEOCH*

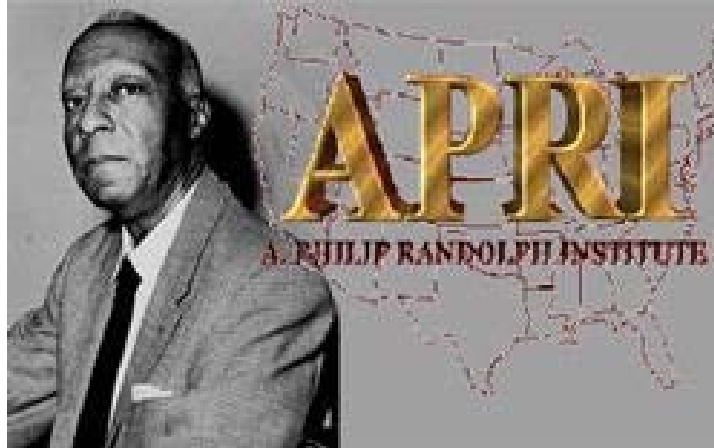
# Ohio: Early & Absentee Voting

- 2011: Ohio legislature eliminated in-person early voting Fri-Mon before Election Day.
- 2012: 6<sup>th</sup> Cir. invalidated differential treatment of voters using in-person early voting during the three days before Election Day. *Obama for America v. Husted*.
- 2014: Ohio legislature voted to eliminate same-day registration and early voting 35-30 days before Election Day (“Golden Week”), and placed other restrictions on counting of absentee ballots.
- 2014: 6<sup>th</sup> Cir. enjoined restrictions on same day registration and early voting but SCOTUS stayed. *NAACP v. Husted*
- 2016: USDC enjoined restrictions on early voting but 6<sup>th</sup> Cir. mostly reversed. *NEOCH, ODP v. Husted*.

# National Voter Registration Act of 1993

- **Regulates voter registration in federal elections.**
- Requires that voter registration opportunities be offered at motor vehicle, public assistance, and disability offices (§§ 5, 7)
- Limits the circumstances in which voters may be removed from the rolls (§8)

# *A. Philip Randolph Institute v. Husted\**



- If a voter hasn't voted in prior two years, Ohio initiates the process of removing them from the rolls.
- 6 Cir. held that this process violates NVRA.
- SCOTUS heard argument in Jan. 2018

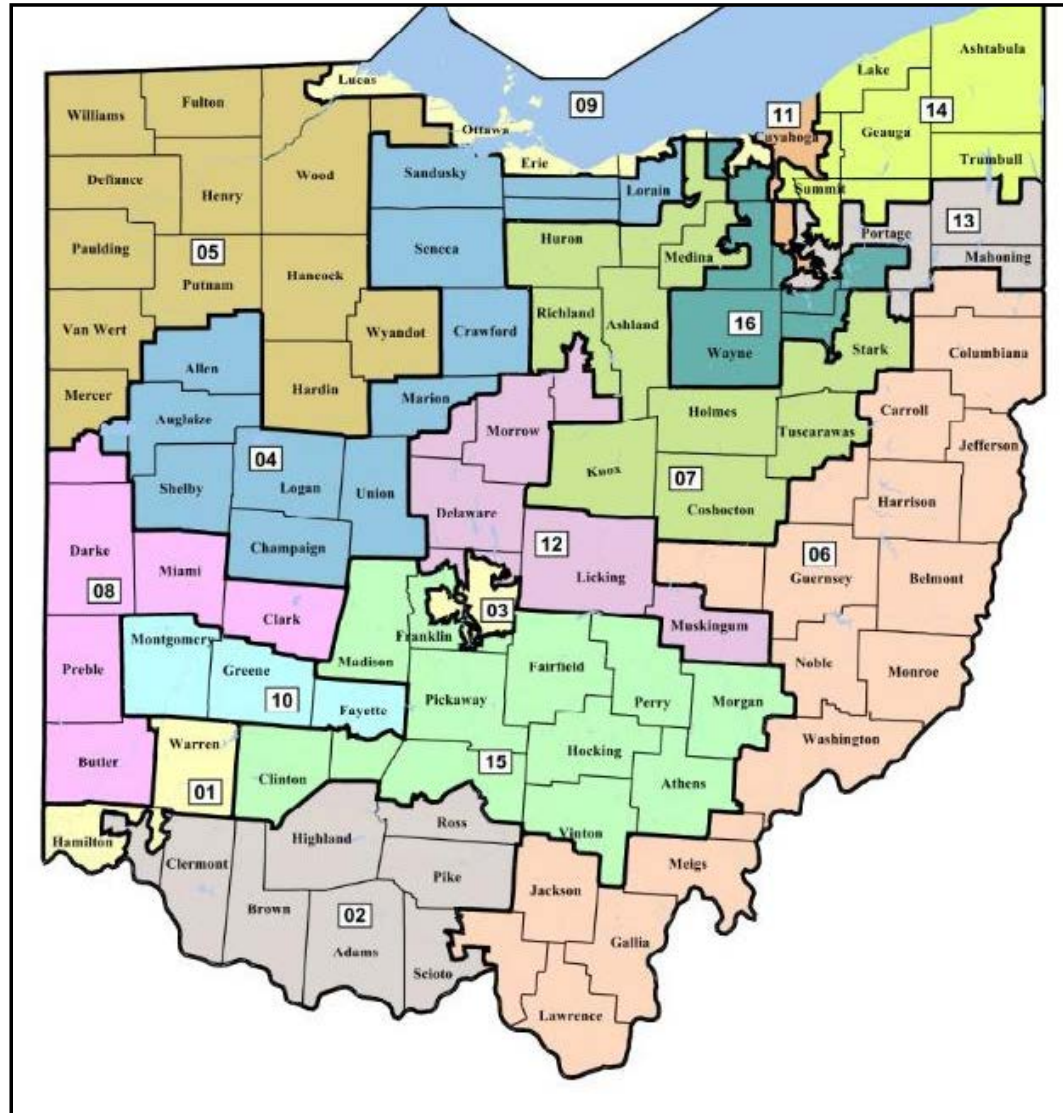
\* I'm one of the attorneys for plaintiffs.

# Voting Rights in Ohio

- National Context
- Vote Denial in Ohio
- **Vote Dilution in Ohio**

# Ohio U.S. House Districts 2012-2020

16 Districts:  
12 Republican  
4 Democratic





CD 11  
80% D





# Ohio SJR 5

## Congressional Redistricting Reform

(132nd General Assembly)  
(Substitute Senate Joint Resolution Number 5)

### **A JOINT RESOLUTION**

Proposing to amend the version of Section 1 of Article XI that is scheduled to take effect January 1, 2021, and to enact Sections 1, 2, and 3 of Article XIX of the Constitution of the State of Ohio to establish a process for congressional redistricting.

# Ohio Redistricting Reform

- 2005: Reform Ohio Now initiative emphasized competitive districts, defeated 70-30%
- 2012: Voters First Ohio initiative created nonpartisan commission, emphasized fairness and competitiveness, defeated 62-37%
- 2015: Legislative referendum created bipartisan redistricting commission for state districts, approved 71-29%.
- 2018: Legislative referendum creating multi-step process with criteria for congressional districts, will appear on May ballot...

# Catherine Turcer

Common Cause Ohio

[cturcer@commoncause.org](mailto:cturcer@commoncause.org)

[@CatherineTurcer](#)



# Elections in Ohio

## **Ohio is doing several things well when it comes to voting access:**

- Ohio has bucked the national trend of strict voter ID. Ohioans can use a number of different forms of voter identification including state identification and utility bills.
- Ohio has 29 day “no-fault absentee voting” which is often called Early In-Person voting. Approximately one-third of Ohio voters take advantage on this Early Vote period.
- Ohioans can now register to vote and update their voter registration online.
- Ohioans who are not incarcerated are permitted to vote.

# Election Administration

## **Ohio is doing several things well when it comes to election administration:**

- Ohio has truly bipartisan election administration. Like Noah's Arc, Democrats and Republicans go two by two which leads to more accountability.
- Touch screen voting apparatus have voter verified paper audit trails enabling voters to confirm votes and help with audit procedures.
- Voters are now able to track receipt of their absentee ballots which has helped improve voter confidence.

# Purging Ohio's Voter Rolls



# Use it or lose it

- Ohio is one of the most aggressive states for purging voters from the voter rolls for failing to vote. Ohio Secretary of State Jon Husted has established a practice of mailing a postcard to voters who do not vote within a two year period, asking them to confirm their registration. Voters who fail to respond or vote within the following four years are removed from the rolls without further notice.
- In advance of the 2016 election, tens of thousands of voters (primarily African Americans from urban areas) were removed from the rolls, despite still being eligible to vote.



Does aggressive purging violate the National Voter Registration Act of 1993 and the Help America Vote Act of 2002? It's now in the hands of the US Supreme Court.



# In Ohio, all counties are often treated equally rather than all voters.

- All counties are permitted to only have one location for Early In-person voting with limited hours. This leads to long lines at urban Boards of Elections especially on the weekend before presidential elections.
- Several urban counties had traditionally sent absentee ballot applications to voters every year as a cost-effective way to encourage Early Voting. In 2014, the state legislature passed Senate Bill 205. Under this new law, absentee ballot applications can only be mailed by the Secretary of State if the legislature appropriates the money to do so.

# Other challenges that Ohio is facing

- Ohio's voting equipment is aging. Most of the apparatus was purchased following the passage of the Help America Vote Act. Old voting equipment increases the likelihood of failures and crashes. This can lead to long lines and lost votes on Election Day. Older voting machines may also be less secure. Ohio Secretary of State Jon Husted would like \$118 million to replace voting apparatus but there is not funding for new machines in the capital budget.
- Frequent changes to voting rules can be confusing and there were no funds set aside for voter education in the state operating budget.
- Electronic poll books can make Election Day much easier but confusion about how to use them led to long lines in Montgomery County in 2016.
- The state legislature is considering reducing the number of poll workers (Senate Bill 21).

# Some simple changes could make a difference

- Voters using touch screen voting apparatus should be clearly informed that they can confirm their votes on the voter verified paper audit trail as part of the review by the poll workers.
- Infrequent voters should receive election information including changes in polling locations. Many voters only vote during presidential elections and are deemed inactive so that they don't receive election updates. In 2016, 13% of registered voters were deemed inactive. This means that one million voters didn't receive absentee ballot.
- We need better education so that Ohioans know that can vote even if they have a felony on their record. Misinformation about felon disenfranchisement is a real barrier especially for people of color.

We've come a long way since the long lines of Election 2004 but we need to find ways to truly invite voters to the polls.



# Barriers to Voting

Experiences of Ohioans  
with disabilities



**Disability  
Rights** OHIO

We have the  
legal right of way.

# Disability Rights Ohio



- Not-for-profit
- Mission: to advocate for the legal, civil and human rights of people with disabilities
- Ohio's designated protection and advocacy system (P&A) and client assistance program (CAP)



# Voting Work



- PAVA grant and other federal funding available to advocate on voting rights
- Strong emphasis on educating people with disabilities about their rights
- Voter hotline, and individual client advocacy
- Systemic policy advocacy and litigation when necessary



# Stereotypes and Discrimination



- Discriminatory voter qualification language in Ohio Constitution
- “No idiot, or insane person, shall be entitled to the privileges of an elector.”
- State statute: “adjudicated incompetent for the purpose of voting”

# Stereotypes and Misinformation



- “If you have a guardian, you can’t vote”
- “If you can’t verbally communicate, how can you understand enough to vote?”
- “If you are blind, how can you independently complete a ballot?”

# **Lack of Accessibility**



- Polling locations
- Voting information and registration
- Ballots
- Inadequate accessible transportation



# **Institutional Isolation**

- Thousands of individuals with disabilities spend some or all of their lifetime in institutions
- Long term isolation from community
- Short term disruption from community
  - Emergency hospitalization
  - Psychiatric hospitalization



# **Need for Accommodation**

- Modifications to Ohio voting policies
- Personal assistance with voting
- Curbside voting
- Access to voting machines
- Assistive technology
- Signature options

# **Disproportionate Impact of Poverty**



- Costs of photo identification
- Lack of access to affordable transportation
- Lack of permanent housing/homelessness
- Impact of Ohio's recent voter purge efforts

# Voter Hotline



- DRO operates a voter hotline for every general election in Ohio
- Open same hours as the polls
- Staff trained to answer common questions (e.g., where do I vote?)
- Attorneys follow up on any legal concerns

# Success Story



**He wanted to vote. We made it happen.**



<http://www.disabilityrightsohio.org/news/he-wanted-to-vote-we-made-it-happen-advocacymatters>



# Questions?



**Kerstin Sjoberg-Witt**

**Director of Advocacy and Assistant Executive Director**

**[ksjoberg-witt@disabilityrightsohio.org](mailto:ksjoberg-witt@disabilityrightsohio.org)**

# Committee Dialogue

## Ohio Advisory Committee to the U.S. Commission on Civil Rights

- Diane Citrino, Chair
- Cassandra Bledsoe, Vice Chair
- David Forte, Vice Chair
- Subodh Chandra
- Catherine Crosby
- Scott Gerber
- Emerald Hernandez
- Kevin McDermott
- Robert Salem
- Lee Strang
- Mark Strasser
- Edith Thrower
- David Tryon

## Panelists

- Daniel Tokaji, Associate Dean, Ohio State University Moritz College of Law
- Catherine Turcer, Executive Director, Common Cause Ohio
- Kerstin Sjoberg-Witt, Director of Advocacy, Disability Rights Ohio



# Open Forum

Press \*1 on your phone to indicate to the operator that you would like to speak. The operator will place you in queue and open your line when it is your turn.

Please remember this meeting is being recorded.

Thank you for your participation!



# Questions?

*For more information please contact:*

U.S. Commission on Civil Rights  
Midwest Regional Office  
55 W. Monroe, Suite 410  
Chicago IL 60603  
312-353-8311

To submit additional testimony in writing please email  
Melissa Wojnaroski at [mwojnaroski@usccr.gov](mailto:mwojnaroski@usccr.gov) by April 9, 2018



# Next Meetings:

The Committee will hold a second hearing on this topic:

- **Friday, March 9, 2018**, from 12:00 pm – 1:30 pm EST.
  - audio, dial: 877-718-5095, conference ID: 6801605
  - visual: <https://cc.readytalk.com/r/ray86wto2gj&eom>

To submit additional testimony in writing please email  
Melissa Wojnaroski at [mwojnaroski@usccr.gov](mailto:mwojnaroski@usccr.gov) by April 9, 2018



Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

1 Operator: Thank you for standing by. Good day and welcome to the US commission on civil  
2 rights, Ohio advisory committee conference. Today's conference is being  
3 recorded, and at this time, I'd like to turn this call over to Diane Citrino, please,  
4 go ahead ma'am.

5 Diane Citrino: Thank you. This meeting of the Ohio advisory committee to the US commission  
6 on civil rights shall come to order. For the benefit of those listening, I'm going to  
7 introduce myself, and my colleagues on the call. I'm Diane Citrino, an attorney  
8 working in Cleveland, Ohio, and the chair of the Ohio advisory committee.

9 Members of the committee on this call are Cassandra Bloodstone, David Forte,  
10 Scott Garber, Mark Strasser, Edith Thrower, and David Tyron. Also, present on  
11 this call are David Moussatt, chief of the regional program unit for the US  
12 commission on civil rights, and Melissa Wojnaroski, a civil rights analyst.

13 The US commission on civil rights is an independent, bi partisan agency of the  
14 federal government, charged with studying discrimination or denial of equal  
15 protection of the laws, or the administration of justice, because of race, color,  
16 religion, sex, age, disability, or national origin. In each of the 50 states and the  
17 District of Columbia, an advisory committee to this mission has been  
18 established, and these commissions are made up of responsible people who  
19 serve without compensation, to advise the commission on relevant information  
20 concerning their respective states.

21 Today, our purpose is to hear testimony regarding voting rights in Ohio. If the  
22 speakers begin to veer away from the civil rights questions at hand, to discuss  
23 possibly important but unrelated topics, I will interrupt them, and ask them to  
24 refrain from doing that. I want to remind everyone this meeting is being  
25 recorded, and will be transcribed for the public record. Today's meeting is part  
26 two, of a two part series, the committee is going to hear on this topic.

27 We heard testimony last Friday, from a distinguished panel, and we are very  
28 excited to welcome today's speaker, Edward Leonard, director of the Franklin  
29 County Board of Elections, and Representative Kathleen Clyde, of the Ohio  
30 House of Representatives. We had scheduled Senator Frank Larose, of the Ohio  
31 Senate to speak, but unfortunately he was unable to make it today. We also  
32 reached out repeatedly to the Ohio Secretary of State's office, but hey declined  
33 to participate in this hearing. We are fortunate, and thankful to have the people  
34 we have, they are exceptional panelists, and we're very excited to hear what  
35 they have to say.

36 I'd also like to present the ground rules for today's meeting. This is a public  
37 meeting, open to the media, and the general public. We have a strict timeframe  
38 for making these presentations, we expect the panelists to speak about 15  
39 minutes each, after both the panelists have concluded their statements, the  
40 committee members will ask questions and answers. To accommodate people  
41 who are not on the agenda, but wish to make a statement, or as ka question,

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

1 we've scheduled one open session today, and that will after the questions from  
2 the committee are answered.

3 We expect this open session, and question and answers for the public, to be no  
4 later than 1:15. So, if the committee members are still asking questions, we will  
5 stop at 1:15 to allow the public to participate. The way they will do that is when  
6 the operator will get on the phone, and anyone wishing to make a statement  
7 should press \*1 on their phone, to request that their line be unmuted. In  
8 addition, people can submit written statements by mail to the US commission  
9 on civil rights, located at 55 West Monroe Street, Suite 410, Chicago, Illinois  
10 60603. Or by email to Melissa [inaudible 00:04:27] and her email is going to be  
11 on the screen but, I'm gonna spell it for you right now. It's  
12 MWOJNAROSKI@USCCR.gov. You also can call 312-353-8311 for more  
13 information.

14 Although some of the statements made today may be controversial. We want to  
15 ensure all invited guests [inaudible 00:04:56] defame, or degrade any person, or  
16 organization. Again, as the chair I reserve the right and privilege to cut short any  
17 statements that defame, degrade, or don't pertain to the issue at hand. We  
18 have some very knowledgeable people here, with a wide variety of experience,  
19 and viewpoints. If anyone on this call does feel defamed, or degrade by the  
20 statements, they can provide a public response during the open comment  
21 period, or alternatively can file written statements for inclusion in the  
22 proceedings.

23 We really appreciate the willingness of all participants to share their views and  
24 experiences with the committee. Finally, during the question and answer  
25 portion, the committee members may ask questions of both panelists, or of one  
26 panel member individually, after the prepared statements by both of them have  
27 been concluded. You must be recognized by the chair before asking any  
28 question of the participants, and in addition, because of the large number of  
29 members, and short amount of time, each committee member will be limited to  
30 one question plus a follow up.

31 So, at this time I am going to turn the meeting over to our first panelist, Edward  
32 Leonard, the director of the Franklin County Board of Elections. Thank you so  
33 much for joining us. Please proceed Mr. Leonard.

34 Ed Leonard: Alright, well good afternoon. I'd like to thank the committee for the opportunity  
35 to share some insights into the voting process here in Franklin County. As you  
36 mentioned, my name is Ed Leonard, I'm director of the Franklin County Board of  
37 Elections, and I've been in this role since September of 2016, but prior to  
38 becoming director, I've been in a number of positions in Franklin County  
39 government, both administrative and elected. Including, I served as deputy  
40 director of the Board of Elections from March of 1998 through March of 2001.

41 To tell you a little bit about Franklin County, in addition to being the home of  
42 the state capital, and the Ohio State University, it has a population of a

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

1 1,264,000. We have 853,000 registered voters. Has a median income about  
2 56,000, 16% of our population live below the poverty line, and 90 % of our  
3 residents have a high school degree or higher, and 39% have a Bachelor's  
4 degree or higher. All those statistics come from the Census Bureau from the 19,  
5 or 2016 update.

6 But, it's my understanding from the invitation to speak today that the  
7 committee was seeking an updated testimony, to identify the extent to which  
8 concerns raised in 2006, have been addressed, and any new concerns that may  
9 be present. In preparation of this discussion, I reviewed the testimony given by  
10 Franklin County's then director, Matt [inaudible 00:08:07], who's by the way  
11 now deputy Secretary of State, for the Secretary of State, Jon Husted.

12 And in that testimony, he had reviewed the following areas, and they included  
13 voting machine shortages, long lines on election day, some of the protections  
14 that were in place to prevent over voting, some of our poll worker training  
15 efforts, and so I'm going to address those issues as well as a few others. As the  
16 then Director [inaudible 00:08:36] mentioned in 2006, the Board of Elections  
17 was in the process of implementing a new voting machine system for  
18 placement, that would greatly expand the number of voting machines available  
19 for placement at the various voting locations in Franklin County. By the general  
20 election of 2006, Franklin County had over 4,600 voting machines, versus the  
21 2,800 machines that were in the field on the election day in 2004.

22 Today Franklin County has 4,735 [inaudible 00:09:11], touch screen voting  
23 machines with a voter verifiable paper audit trail. These machines are allocated  
24 based on a formula of one machine per every 175 active voters. The increased  
25 number of available voting machines ,has clearly had a positive impact on  
26 reducing lines at the polling locations, but there are some other factors that  
27 have contributed to significantly reducing lines at the polls on election day. the  
28 first factor is the change from a precinct based voting, to a location based  
29 voting.

30 Allow me to explain that a little bit. We've always had voting locations with  
31 multiple precincts in a location. Prior to 2006, a voting location with multiple  
32 precincts, would have a separate voting area for each precinct, a separate set of  
33 poll workers, a separate set of paper poll books, a separate set of machines, and  
34 those constraints, resolving from the limitations of the voting technology at the  
35 time, would lead to a voter potentially going to the wrong precinct check in  
36 table, and then being told that they were at the wrong precinct, and then having  
37 to start that process over again at the correct precinct check in table.

38 Also, based on that scenario that there could be a line forming at one precinct  
39 location, while there'd be no one else in line, and there'd be plenty of machines  
40 available at another precinct within that same location. Because of the new  
41 technology, Franklin County spearheaded that move to location based, which  
42 then allowed a voter to still vote based on their correct precinct, but they would  
43 just check in at one table, they could be assigned to any machine in the location,



Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

1 and given their correct ballot style to cast their vote. So, today most counties  
2 are voting on that location, rather than precinct based system.

3 Another factor that helped reduce the lines is the introduction of no fault  
4 absentee, or early vote centers. Prior to 2006 absentee was only reserved for  
5 individuals for instance who were 65 years of age or older, or had some physical  
6 disability, or infirmity, or they had to be absent from the county on election day.  
7 Today, any voter can request an absentee ballot, or vote at an early vote center,  
8 in that 28 days leading up to election day. Over each successive election cycle,  
9 more and more people have utilized that early vote option, either by mail, or in  
10 person.

11 In Franklin County in 2016 Presidential election, nearly 83,500 voters cast their  
12 vote at an early vote center, and another 142,000 cast their ballots by mail. So,  
13 just shy of 40% of all of our voters who cast a vote in 2016 general election, cast  
14 that ballot before election day. That equates to 225,700 voters who didn't  
15 show up at the polls, they cast their vote early. So, we continue to heavily  
16 advertise early vote options to encourage voters to vote early in an effort to  
17 reduce the strain on the voting locations on election day. In the 2016 general  
18 election cycle, Franklin County Board of Elections spent over \$245,000 in radio  
19 and TV advertising on both mainstream, as well as targeted media outlets.

20 Finally, the poll book, and poll pads we've added to speed up the process with  
21 which we process voters on election day, and in the early vote center. With the  
22 swipe of an ID, or a few keystrokes of a person's last name, the electronic poll  
23 book can quickly pull up that person's information, allow them to sign the poll  
24 pad, and then quickly be assigned to a voting machine. So, there's no more long  
25 lines behind paper poll books for one segment of the alphabet, while there's no  
26 line for the other segment. So, in our vernacular we say, it's any line, any time.  
27 So, this is how we've processed voters on election day, that does speed up that  
28 process, because you don't just have voters waiting in a line for the poll book  
29 any longer.

30 The concerns that were expressed in 2006, on preventing over voting. The  
31 concern regarding over voting, is an issue that we're certainly mindful of, but we  
32 don't see it as a huge problem in Franklin County. The current [inaudible  
33 00:14:07] touch screen technology that we have in Franklin County, for both  
34 election day voting, and the early vote center, doesn't allow a voter to over vote  
35 in a race. The contests are programmed in the software for the number of  
36 choices that are permitted in that contest. So, if it's a vote for one, or vote for  
37 two, or vote for three, whatever the case may be.

38 If the voter attempts to vote for more than the allowable number of candidates  
39 in a contest the machine is going to alert them that they're attempting to vote  
40 for more candidates than that are permitted, and that they have to deselect a  
41 candidate before they can select another candidate. An absentee over voting is  
42 still a possibility because voters are voting on a paper ballot, and in the  
43 presidential election of 2016, only 228 over votes among the 165,000 paper

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

1 ballots that were cast in that election were actually over votes. So, it's a  
2 relatively small number.

3 As Franklin County looks at new voting systems, controls to prevent, or  
4 minimize over voting will be a factor, that we're going to consider in evaluating  
5 each system. Typically touch screen systems don't allow voters to select more  
6 candidates than the contest allow, and the precinct level scanners that we've  
7 seen among the new optical scans systems warn a voter of an over vote  
8 situation, and then allow that voter to correct that potential over vote.

9 The other issue that was addressed in 2006 that we'll speak about is poll worker  
10 training. We recognize that our poll workers are often times the only  
11 representative of the Board of Elections that a voter will ever see. So, it is  
12 critically important that we train those poll workers to provide the best, and  
13 most accurate service to the voter. By statute poll workers must receive training  
14 once every three years, and voting location managers must receive training  
15 before every federal primary election. In Franklin County we go well above that  
16 standard. We have poll workers trained before every election.

17 Franklin County created a system of specialization of roles in the polling  
18 locations, and I know that we're not alone in that practice, but by having certain  
19 positions perform certain functions, such as a roster judge, paper judge, or a  
20 machine judge, or voting location manager, we can refine the training to cover  
21 those subjects, and those tasks that are pertinent to that role, rather than  
22 opening up a fire hose of information at every task, for every position, for every  
23 poll worker. So, that specialization allows us to refine our training.

24 The training manual that we've produced has actually won awards for its  
25 design. We've worked with design professionals to assist us in its creation. It  
26 gets updated every election, and we have a separate manual for a primary, and  
27 a separate manual for general. It's tabbed for its specific role, so it makes it  
28 easier for that poll worker to find the information that applies just to their  
29 responsibilities. When actually Department of Justice representatives visited  
30 Franklin County before the 2016 general election, they were very impressed  
31 with our training materials, and we regularly get requests from other counties  
32 about our manual.

33 One of the programs we're particularly proud of is the practice makes perfect  
34 where poll workers come in on the last weekend before the election to brush up  
35 on various election related skills. So, we have various stations throughout the  
36 office, that address provisional balloting requirements, setting up voting  
37 locations, setting up the poll pads, opening and closing the polls, just to give  
38 those poll workers that opportunity to brush up on their skills. We're beginning  
39 to incorporate video to evaluate our poll worker trainers, and to create short  
40 web videos, that will serve as a refresher resource to review if they can't make it  
41 to a practice makes perfect, it will allow those poll workers to brush up on their  
42 skills when they feel they need to.

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1 One area that wasn't addressed in much detail in 06, was the steps being taken  
2 to accommodate disabled voters. The IT staff at the Board of Elections created a  
3 software tool that allows us to document the ADA compliance of all of our  
4 voting locations, and this tool allows us to document, including photographs,  
5 any equipment that the Board of Election will need to bring to the site on  
6 election day to make an otherwise non compliant location, become an ADA  
7 compliant location, including where that equipment's gonna need to be placed  
8 by our poll workers, so that they can make sure they put the equipment in the  
9 right place to make the location compliant. We've actually won a national award  
10 for that software from the election center. Also the state of Iowa asked to  
11 borrow that software, and they won an award from the national association of  
12 Secretary of States for the software that they borrowed from us.

13 The current [inaudible 00:19:22] machines actually do provide greater  
14 accessibility for those with disabilities to vote, including an audio ballot for the  
15 visually impaired. We've gone through the voting machine process, or as we go  
16 through that process for new voting machines, we have been proactively  
17 including disability advocacy groups to ensure that we solicit feedback on the  
18 new voting systems, and how they may affect those with disabilities. Just before  
19 I arrived at the Board of Elections, or just as I was arriving, we made  
20 adjustments to the early vote center, to improve the accessibility of the building  
21 for those with disabilities. The most notable of those were to install motorized  
22 door openers, and made sure that those were installed in a way that made it  
23 most accessible to those with disabilities.

24 For a number of years now the Board of Elections has worked with Democracy  
25 Live to facilitate greater access for those with disabilities, including an online  
26 sample ballot that is easier to access, and is ADA screened reader friendly. The  
27 next phase with Democracy Live will be the implementation of a remote ballot  
28 marking system, whereby a disabled voter will be able to receive and mark their  
29 ballot on their computer screen.

30 Finally, we are currently undergoing a redesign of our entire board of Elections  
31 website, and working with the [inaudible 00:20:49] Center to that end. It will be  
32 a website that is more disability friendly, more info on the homepage, fewer  
33 drop down boxes, less drilling down to find the information that you need.

34 Finally, we wanted to discuss a few things that the board has done to improve  
35 the voters experience. In the past years we saw a high number of provisional  
36 ballots being ruled invalid, and the Franklin County Board of Elections developed  
37 a ballot ... For the provisional ballot envelope, we developed a template that  
38 rests atop that provisional ballot envelope to indicate to the voter, which items  
39 must be completed to ensure the ballot will be counted. This template's  
40 reduced a number of errors, and the number of ballots being ruled invalid  
41 because a certain item was left incomplete on a provisional ballot envelope. As  
42 with the training manual, we had a lot of Ohio Counties who've asked for that  
43 template, so that they can implement it in their counties with that same goal in  
44 mind.

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1 New Board offices have aided voters to access our services and make use of the  
2 early vote center, because we're now located in a more suburban part of  
3 Columbus, as opposed to being downtown. Being downtown was an  
4 impediment, sometimes a deterrent to some voters, who didn't want to deal  
5 with downtown traffic, or all the one way streets in downtown Columbus. This  
6 new location on a major east/west thoroughfare. The BOE is on a bus line,  
7 there's plenty of parking, easy access, and a larger space to accommodate the  
8 vote center. We have an ever growing Somali population in Franklin County. It's  
9 second only to Minneapolis, St. Paul. The Board has a Somali employee that  
10 works for us on a seasonal basis, during the early vote season, and is able to  
11 assist Somali voters in getting set up on the machines, and so forth.

12 Finally, I'd like to mention the online voter registration allows voters who have a  
13 drivers license to register online, and allows a voter who's already registered to  
14 update their registration online. It still doesn't surpass the old fashioned pen  
15 and paper in terms of number of registrations, but it is increasing significantly.  
16 So, a great deal's happened since the last time this committee discussed these  
17 issues in 2006. A great many strides have been made to improve voter  
18 experience, and improve voter confidence in the election process.

19 I know my fellow election officials throughout the state take great pride in  
20 executing their responsibilities of conducting fair and accurate elections, and  
21 will continue to do so. Is there a need for more resources, absolutely. But, we  
22 will continue to work with our partners at the state, local, and federal level to  
23 ensure that our elections are accurate and secure. I want to thank this  
24 committee for their interest in the matter, and allowing me the opportunity to  
25 share these insights today.

26 Diane Citrino: Great. Thank you so much Mr. Leonard. We really appreciate that, and we're  
27 glad you're able to stay and answer questions after we hear from our next  
28 speaker, Representative Kathleen Clyde, of the Ohio House of Representatives.  
29 Representative Clyde please go ahead.

30 Kathleen Clyde: Thanks Diane, and thank you for inviting me to be her today. I'm very honored  
31 to get to share some of my thoughts and experiences. As was stated, I am in my  
32 fourth term in the Ohio House of Representatives. I represent District 75, and  
33 northeast Ohio. I am the ranking minority member on the government  
34 accountability and oversight committee, which is where election related  
35 legislation comes through the legislature. I, full disclosure am a 2018 candidate  
36 for Ohio Secretary of State. I've just a quick road map of what I will talk about  
37 today. I would like to review some issues from 2006. I'd like to give an update  
38 on law and practice changes since 2006, improvements, and also still some  
39 problem areas. Then an update on election issues that have come up during  
40 various cycles, and issues that continue to be problems, or areas to monitor  
41 going forward.

42 So getting right to it, reviewing 2006 issues. Of course, we had the problem of in  
43 2004 we had Secretary of State Ken Blackwell issue a decision that voter

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1 registrations that were on not the correct form of card stock would not be  
2 accepted for voter registration purposes. That was a very controversial decision  
3 that received national attention. We had mass voter challenges in the 2004  
4 presidential election. We had a problem with not enough voting machines being  
5 deployed, and we had very long lines in 2004. The last voter in the country was  
6 actually a college student in Ohio who voted at around 4 a.m., the day after  
7 election day, after waiting in line for more than nine hours.

8 We've had big provisional ballot problems in Ohio, in 2004, in 2006, and we've  
9 had litigation almost every election cycle about this. A new complex voter ID  
10 requirement was enacted in 2005, despite broad opposition to that  
11 measure. The new no excuse needed absentee voting was enacted in 2005.  
12 Although, the in person early voting didn't start in practice till 2008.

13 So a quick update on law and practice changes since 2006. Again, we've had  
14 many problems in our election system. We've had since 2006, the no excuse  
15 needed absentee voting, although there have been many attempts to cut, or  
16 limit absentee no fault voting in Ohio, we have had many lawsuits trying to keep  
17 days and hours available for Ohio voters, specifically around the last three days  
18 of early voting, and whether those would be available to voters. The good news is  
19 that we were successful, and those days continue to be available. We had a bill  
20 that came through the legislature and passed on a part line vote, that cut off the  
21 first week of early voting, and we've had trouble maintaining evening, and  
22 weekend hours for early voting. That has been won through litigation, although  
23 that continues to be something that we'll need to monitor.

24 When it comes to our ID law in Ohio, I think that there is an improved comfort  
25 level with the law. I think voters, and poll workers, are familiar now with its  
26 different provisions in the last 12 years that it's been in place, but we still are  
27 experiencing challenges. There are challenges for student voters and meeting the  
28 requirement. In Ohio, it's actually okay to use your concealed carry license for  
29 ID, but not your student ID card. Homeless Ohioans can vote provisionally  
30 without ID, and have their vote counted, but that is only because of a victory in  
31 court.

32 We have had provisional ballot issues, some setbacks. We've had legislation  
33 passed on party line votes, making it harder to count some provisional ballots.  
34 But we've also had victories in court that have helped us to count groups of  
35 those ballots, but really there's been little meaningful change in the numbers  
36 cast, and the numbers thrown out. We are one of the top states in the country  
37 for the number of provisional ballots we have, and unfortunately the number  
38 that get thrown out.

39 We've had issues with absentee ballots. Again we've had some setbacks. We've  
40 had legislation passed on party line votes that have made it harder to count  
41 absentee ballots, but we've had some victories in court limiting some of those  
42 problems, although there's been little meaningful change in the numbers cast  
43 and thrown out. We've had 38 voting restriction bills introduced in the

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1 legislature since 2011, and 13 of those bills have passed, and then signed into  
2 law.

3 Turning now to the 2012 election. In that election we saw intimidating  
4 billboards, targeting African American neighborhoods, and near voting  
5 locations. We saw State House Democrats actually get more votes than the  
6 State House Republicans, but they only won 40% of the seats. We had a State  
7 House race that was decided by only four votes, and unfortunately the  
8 Republicans in the legislature refused to count votes in that contest, and that  
9 contest gave the Republicans a veto proof super majority.

10 We saw votes get thrown out in that situation because of a Board of Elections  
11 data entry error, and the voters social security, it didn't match what the voter  
12 provided on their provisional ballot envelope, so it was thrown out, even though  
13 the voter provided the right information. We had a young marine who was in  
14 training, and voted with an absentee ballot, but didn't send back both ballot  
15 envelopes, so his ballot was not counted. We had a man who wrote his birth  
16 year on his birthdate, and was off by one digit, his vote was not counted. And  
17 there are many, many, many more examples of votes thrown out in that  
18 election.

19 In 2016, more recently we had voter intimidation at the polls. An example from  
20 Summit County, we had reports of men riding around in pickup trucks, at the  
21 polls threatening people. We unfortunately still are only allowed to have one  
22 early voting site in each Ohio County, that is able, that is what passed through  
23 legislation. Because of that, we have early lines at our early vote locations,  
24 especially as you get up close to election day. Again, we have counties that have  
25 15,000 people, and counties in Ohio that have over a million people, but each  
26 county is only allowed to have one early vote location.

27 We had vote by mail applications mailed to Ohio voters. It was made public that  
28 it would be to every registered Ohio voter to try to encourage vote by mail in  
29 the 2016 election, but actually one million registered eligible voters were  
30 excluded from that mailing because they were deemed inactive, and were being  
31 set up for Ohio's unlawful purging process, which disproportionately affects  
32 black voters. Our turn out in 2016 was our lowest voter turn out as a state since  
33 the year 2000. We had 64% of Ohioans turning out to vote in a major,  
34 presidential election.

35 Some other current issues. We have a case out of Ohio pending before the  
36 United States Supreme Court. We have, unfortunately the state of Ohio has  
37 purged over two million voters from the voter roll since 2011, simply for not  
38 voting in a few elections. That process was challenged by voter advocates, and  
39 actually a voter who is from my house district, a veteran Larry Harmon. That  
40 case, we won at the six circuit level, and that purging was deemed unlawful. Our  
41 Secretary of State appealed to the United States Supreme Court, and we are  
42 awaiting a decision with about 2 million Ohio voters hanging in the balance.

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1 We also have a new, online voter registration system, which began after the last  
2 presidential election. It's new as of 2017. Unfortunately, it does exclude Ohioans  
3 who do not have a driver's license, or a state photo ID card. So, that  
4 unfortunately, some groups of Ohioans are not as able to participate in online  
5 voter registration. Homeless Ohioans, those in poverty who do not drive, or  
6 have an ID card, and it impacts the young, the elderly, and disabled Ohioans  
7 without photo ID.

8 Issues that continue to be a problem or issues to monitor as we go forward.  
9 Early voting is just a very controversial method of voting in Ohio, and is under  
10 constant attack. For example, we have had voters have to wait in long lines. We  
11 have had hours, and days be cut, and we see efforts to make it harder for the in  
12 person early voting process, which is favored by African American voters in  
13 Ohio. We continue to see people disappearing from the voter rolls. Other states  
14 have moved to automatic voter registration, which has really improved the  
15 situation for increasing the number of registered voters, but Ohio [inaudible  
16 00:37:42] of voter registration innovation has yet to take that reform seriously.

17 We continue to have a large number of provisional ballots being thrown out in  
18 each election. We need new voting machines in Ohio. Many counties have  
19 machines that are a decade old, or older. Unfortunately counties have been cut  
20 pretty significantly in their funding from the state, so county coffers are low.  
21 The state has not yet passed funding for new machines, and one proposal  
22 currently being considered bases the machine allocation amounts on registered  
23 voters, but purging has depleted registration numbers and could unfairly impact  
24 funding.

25 We've also seen government Russian government attacks on our voting system.  
26 This is certainly a civil rights issue for all Americans. Ohio was targeted in the  
27 2016 election, and there are reports that the Kremlin, and possibly other  
28 attackers will be attacking our election system again. Ohio is still very much  
29 roiled by voter rights attacks, and controversy. The voting wars are likely to  
30 continue in the legislature, and the courtrooms.

31 I hope I've provided a helpful picture of where we are after some important  
32 reforms, and elections, and where we still need to go as a state, to ensure that  
33 our elections in Ohio are fair, accessible to everyone who wants to vote, and  
34 that everyone's vote is counted. So, I'll leave it at that and again, I thank you all  
35 so much for listening, and for inviting me to be here with you today.

36 Diane Citrino:

37 Thank you Kathleen Clyde, Representative Clyde, we really appreciate that  
38 testimony, and with that we are going to open this up to our committee  
39 members, each of the committee members on this call are going to get one  
40 question, plus a follow up if necessary. So, I would like to ask our committee  
41 members to let me know if you have a question for either Edward Leonard, the  
42 director of the Franklin County Board of Elections, or Representative Kathleen  
Clyde of the Ohio House of Representatives. I will remind the public that they

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1 will have a turn no later than 1:15 today, to also participate. First to our  
2 committee members.

3 Speaker 5: Diane, it's Subodh, I just wanted the record to reflect I was able to join the call  
4 about halfway through Representative Clyde's testimony.

5 Diane Citrino: Welcome Subodh, thank you for joining us.

6 Scott: Hi Diane. This is Scott. I have a question if I may?

7 Diane Citrino: Certainly. You're recognized. Go ahead.

8 Scott: This is for either or both panels, director Leonard, and Representative Clyde well  
9 thank you both for testifying. I'm troubled that the Secretary of State's office did  
10 not participate in this meeting despite the diligent efforts of our staff to secure  
11 that participation. Do you have any thoughts about why that is, or whether it  
12 matters that they did not?

13 Kathleen Clyde: This is Representative Clyde. I am troubled by that, and have been concerned  
14 with many of the actions of our Secretary of State, and I think not being willing  
15 to participate in this important dialogue is very concerning. Again, our elections  
16 should not be a partisan issue, it should be something that we all work together  
17 to figure out how we can make our elections as accessible, fair, and open as  
18 possible, and this shows that this is a problem that is persisting in Ohio that  
19 there's hyper partisanship with our elections, and it's unfortunate that our  
20 Secretary of State couldn't join us today.

21 Ed Leonard: I would agree that is, I'm disappointed that they're not participating in today's  
22 presentation, particularly given the fact that the Deputy Secretary of State  
23 [inaudible 00:43:16], actually had been an election official here in Franklin  
24 County, and is quite familiar with the sort of issues, and I think could add to that  
25 conversation.

26 Kathleen Clyde: Thank you, another question from our committee members?

27 Mark: Diane this is Mark. I have one if there is time.

28 Kathleen Clyde: Mark, can you speak up please?

29 Mark: Shall I ask the question, actually this is for both.

30 Kathleen Clyde: Yes. Please go ahead.

31 Mark: Thanks. I'm interested in the process where the voters are purged from records.  
32 So, I'm assuming without knowing that they don't know. Then if someone  
33 shows, or they're given a provisional ballot, or basically what happens?



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1 Kathleen Clyde: So, can I give my read on this, and please fill in-

2 Ed Leonard: Sure.

3 Kathleen Clyde: What I may leave out. So, the process is directed from the Secretary of State's  
4 office, that Boards of Elections engage in this process. There are a couple of  
5 different processes for purging. Of course deceased voters, there is a lot  
6 addresses purging people who died, or purging people who've moved out of  
7 state. That's not what we're contesting here. THAT's not what's part of the  
8 litigation. The litigation, and the voters impacted, are ones who have missed a  
9 few Ohio elections.

10 So, the process in Ohio is, if a voter misses a federal election, an even year  
11 election, they receive a postcard from their Board of Elections. It's a  
12 confirmation notice to confirm if they have moved, or if they still are a  
13 registered voter living in that location. If they do not respond to that postcard,  
14 or show up to vote, or take some action in the voting process in the next two  
15 election cycles, so the next two even years, then they are purged from the rolls,  
16 with no further notice.

17 Some of these voters, actually thousands of these voters, show up to vote after  
18 they have been purged. The proper procedure, and this is what usually happens  
19 from my knowledge, is they are given a provisional ballot, because they are not  
20 in the poll book. THAT's what we do with voters who present themselves and  
21 there's a problem with their voter registration. If that voter was indeed a voter  
22 purged for this reason, their provisional ballot is thrown out, and that's also part  
23 of our problem with provisional ballots.

24 Diane Citrino: Mr. Leonard, do you have anything to add?

25 Ed Leonard: No, I think she's largely accurate on all the points that she made. We do,  
26 obviously we keep our voter rolls clean in regard to those who are deceased,  
27 and those who obviously moved to another county. Sometimes people get this  
28 impression that voter rolls are loaded, and that's an issue, and we do get reports  
29 on a regular basis of those who have died. We get that report through the  
30 Secretary of State's office, from the Bureau of vital statistics. We get notified of  
31 what are identified as duplicate voters, but in terms of the purged voters, again,  
32 it is somebody who is identified after two federal election cycles, that haven't  
33 responded to that letter that they should have received, or haven't voted in that  
34 election. We don't see a large number. We have had a number of people in that  
35 category in Franklin County. But I wouldn't identify it as a large number. Again,  
36 we don't want any voter to be denied the opportunity to vote in any election.

37 Diane Citrino: Thank you.

38 Mark: Just as a follow up, and then they have to register to vote again in order to vote  
39 in a future election, is that how it works?

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1 Ed Leonard: If they cast a provisional ballot, that application will be considered a voter  
2 registration form.

3 Mark: Oh, I see, so for the next time it might get counted, but for this time it would be  
4 thrown out?

5 Ed Leonard: I'd have to double check as to whether it would be thrown out. I'm not sure of  
6 that. Again, the Secretary of State sets forth the criteria we can use to invalidate  
7 that.

8 Kathleen Clyde: Let me just jump in, and say that, the ballot does get thrown out for that  
9 election, but the envelope that the ballot is in, is the provisional ballot envelope  
10 that serves as their voter registration, as long as they completed it correctly.  
11 They should be all good to go for the next election, but unfortunately, they are  
12 disenfranchised in the current election. Now, neighboring Indiana counts those  
13 provisional ballots of people that have been purged, but here in Ohio they are  
14 thrown out.

15 Mark: Thank you.

16 Edith: This is Edith [inaudible 00:49:26], and I have a question, or comment.

17 Diane Citrino: Go ahead, Edith. This is Diane, go ahead and ask your question, do you want to  
18 direct it to both panelists?

19 Edith: It could certainly be directed to both, and it's kind of a question, or comment.  
20 Thank you both for being here today, and your presentations were very  
21 informative. I think it's perfectly legitimate that if someone passes away to  
22 purge them, and I think it's perfectly legitimate to purge the names of someone  
23 who's moved out of the voting area. I don't think anyone would argue with that.  
24 I was just wondering, if either of you have any sense of why else, would no one  
25 vote? I know that from personal experience, and observation that some people,  
26 voting is emotional many times. Some people are reactionary in terms of their  
27 voting pattern. Reacting to issues or circumstances.

28 So, I'm just wondering if those are taken into account. There could be for  
29 instance, someone running in a presidential election, or a federal election. I  
30 think in federal elections people are focused on the president more than  
31 anything else, that they don't want to vote for. That person could run for a  
32 consecutive time, and they didn't support them the first time, so they're not  
33 gonna support them this time. Is that taken into account at all, if you get my  
34 drift.

35 Kathleen Clyde: I get your drift, and I think that just as it's a fundamental right for everyone to  
36 vote that's eligible. It's your right not to vote, and to not participate in the  
37 election. We should be working hard to get people who have been ... who have  
38 strayed away from voting and participating, back into the process of

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1 participating in our democracy. Unfortunately, in Ohio we purge people if they  
2 don't vote too many times, and I think that's exactly the wrong way to approach  
3 this. I think there are a couple of reasons for not voting.

4 One is the example I talked about where voters did not receive, people who  
5 were set up for purging. So, they received this mailing after missing one  
6 election, did not receive an absentee ballot application, like other registered  
7 voters in Ohio, which is a way to encourage them to participate, and to vote  
8 from home, to vote by mail.

9 I think there's a lot of confusion about there about the ID requirement. There  
10 have been a number of states that have adopted photo ID only for voting. Ohio  
11 thankfully, is not one of those states, but I think voters have heard about that,  
12 and sometimes there is some confusion. Is that the law in Ohio, I don't have an  
13 ID, you know just having that out there can be problematic. Other states  
14 disenfranchise ex felons. Ohio does not, and that is an area where I see  
15 confusion from voters.

16 They don't realize that they have the ability to again register, and participate. I  
17 think there is a suppressive affect, with these partisan battles, and attacks on  
18 the right to vote, that make people think, this is just too complicated, my vote's  
19 not gonna count. It just attaches, I think a negative stigma to the importance of  
20 voting, and the right to vote, and that it may be challenged, or taken away. I  
21 think people are very discouraged by that, and that affects turn out.

22 Finally, I would say our voter registration cut off deadline is a huge problem in  
23 Ohio. It is 30 days before an election that you need to be registered to vote.  
24 That is the longest amount of time allowed under federal law. Many states have  
25 shorter cut off periods, or have same day voter registration, or have automatic  
26 voter registration, and it correlates directly with turn out. States that have same  
27 day registration have 5-10% higher voter turn out than Ohio does. We need to  
28 continue to work to make our voter registration system better, and not actually  
29 be a burden on voters, and on their ability to turn out.

30 Diane Citrino: Thank you.

31 Ed Leonard: To your question though, is [inaudible 00:54:43] is that, I think voters don't  
32 typically don't participate in some of the local year elections, no matter how  
33 much we encourage them, and they do look at what they see at a national level,  
34 and that the presidential is the most important to them. They perceive it's the  
35 most important to them, even though their local officials are the ones who have  
36 the most direct impact. So, if they're not enthusiastic about the choices they  
37 have, or they've been turned off by the negative media coverage, or the  
38 negative advertising, and they simply fail to show up to one presidential  
39 election, and don't show up to the next one. All of a sudden, they're in that  
40 category, so it doesn't really take into account what voters might actually be  
41 experiencing in choosing not to participate in a federal election, or presidential  
42 election, then putting themselves at risk for being purged.

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1 Edith: Thank you.

2 Diane Citrino: Great. Thank you. This is Diane Citrino, I'd like to point of privilege, just ask a  
3 question, in the last time, we didn't have much time. We heard a little bit about  
4 it from Kathleen Clyde about the Russian government attack, and how Ohio was  
5 targeted. So, I have a two part question, I'd like to ask what are we doing in  
6 Ohio to protect from attacks form a foreign government, and is there more we  
7 should do? I would like Mr. Leonard if you could address what are we doing  
8 right now, and Representative Clyde if you have ideas of what other things we  
9 should be doing, I'd really appreciate hearing those.

10 Ed Leonard: Well from the voting standpoint, we do keep all the tabulation equipment, and  
11 all the computers that program the election are not connected to the internet.  
12 So, they're not subject to being hacked, because they're not connected to the  
13 internet. We take steps during the tabulation process to ensure that when we  
14 transmit results to the Secretary of State's office, that we're not in some way  
15 connecting to the internet, and then connecting back to the tabulation  
16 equipment. So, we keep those separate.

17 We do logic and accuracy testing on every machine before it's put out in the  
18 field. There aren't ports on the machine that are available form somebody  
19 outside to tamper with the machine, without it being obvious that something  
20 has happened. All the machines when they are put out at the voting locations  
21 are locked, and the locks are sealed with tamper proof seals so that if something  
22 has happened, it would know that. Then we have controls any place where live  
23 ballots are in the Board of Elections, that it is under double lock and key, those  
24 keys are maintained by a key control box with hand print and key code access,  
25 so we can track who enters, and accesses that key box.

26 The voting registration software, we transmit that to the Secretary of State's  
27 office, and so form a standpoint of being able to verify if there is something that  
28 had happened, we have that capability, but are those systems, those computers  
29 would be connected to the internet, and potentially susceptible, but we can  
30 maintain a duplicate record in addition to what we send off to the Secretary of  
31 State's office.

32 Our County data center has a cyber security effort to keep our system secure.  
33 We have worked with, we continue to work with Department of Homeland  
34 Security to assess our systems that we have in place to ensure that we've got  
35 adequate protections to prevent cyber attack on our system. So, at that point, I  
36 would let Representative Clyde address some of the issues that she might have.

37 Kathleen Clyde: Sure, thanks Ed. I would say that this is a prime example of what would be good  
38 to hear from our Secretary of State, had he joined us today, and what he's doing  
39 to prevent from future attacks. We know Ohio was one of the states where it  
40 was attempted. We have been told by the Secretary of State that these attacks  
41 were not successful. But much needs to be done to protect our elections going  
42 into the future.

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1 I think that we should have a dedicated cyber security director in the Secretary  
2 of State's office. I'd like to see that director advised by a bi partisan council of  
3 security experts, election officials, and voter advocates. Unfortunately our  
4 Secretary of state has cut back on staff pretty dramatically in his time in office.  
5 I'm not sure if the current staffing levels are adequate, especially when it comes  
6 to the security level of our elections, and helping counties make sure they have  
7 the resources that they need, and the advice that they need to keep our system  
8 secure.

9 I would like to see Ohio move to a paper ballot system. Right now we have  
10 about half our counties have electronic voting machines, where the ballot is an  
11 electronic ballot, with a paper trail, and then we have counties with paper ballot  
12 systems, and the paper ballot is a voter marked, voter verified, that is the ballot  
13 of record in the election. That is a more secure system. That is what other states  
14 are moving to, that is what security officials on the national level are saying is  
15 the safest system, and it also can be a cheaper system, a little easier to  
16 Maintain, and there is less overall equipment needed.

17 I also think an important part of any voting system is doing regular audits to  
18 make sure that the tabulating is 100% accurate, and our Boards of Election are  
19 doing that, via directive from the Secretary of State. I'd like to see that  
20 requirement put into law, and make sure that it is an important part of every  
21 election process to verify the results, and to make sure our systems are secure.

22 David: This is David Forte, May I have a question?

23 Diane Citrino: David, go ahead.

24 David Forte: Thank you. Is there any monitoring system to make sure that requests for  
25 absentee ballots are timely considered and sent out by the various Boards of  
26 Election. Is there any fail safe or checking system to monitor when applications  
27 are received, and when they are sent out?

28 Ed Leonard: Franklin County does. At least we process those applications, and track when we  
29 send the ballot out, when it hits the mail stream, and then when it comes back.  
30 In terms of the application, cause we can have a situation, and we do, where  
31 people say well I sent in my application, but we have no record of it, and so we  
32 can track it once we receive it, and then track when that ballot particularly is  
33 prepared and put in the mail stream. It still doesn't control for a situation where  
34 a voter asserts that they've sent in an application, and we have no record of  
35 having received it.

36 David Forte: I have a follow up question. Is there out of the Secretary of State's office, is  
37 there any monitoring of the various Boards of Elections response rate and  
38 alacrity, or is it all just self controlled?

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1 Ed Leonard: I have to state, I'm not aware that we're required to report anything to the  
2 Secretary of State's office pertaining to how we handle the tracking, and  
3 processing of our absentee application requests.

4 David Forte: So, just to be clear, if the Board of Election is [inaudible 01:04:33] in responding  
5 in a timely manner to applications for absentee ballots, no one knows outside of  
6 that Board of Election, is that correct?

7 Ed Leonard: That would be correct.

8 David Forte: Thank you.

9 Diane Citrino: Another question from, who is this David Tryon.

10 David Tryon: David Tryon.

11 Diane Citrino: David Tryon, go ahead.

12 David Tryon: Thank you. So, Edward Leonard, the college students, that move out of their  
13 parents home and go to college, and then they register to vote in their college  
14 town, is there a way that that is monitored, so that they are only voting in one  
15 location at the same time to make sure that their vote is not cast out because  
16 they are registered in more than one location. How does that all work? I  
17 presume that there is a system, but I don't know what it is.

18 Ed Leonard: Correct. It ends up going to the state wide voter registration database, and we  
19 get notified. Obviously, we get the registration, and then the losing county  
20 would get notified that this registered voter, is registered in Franklin County, so  
21 they're directed, they would remove that person from their voter rolls. In  
22 Franklin County, we don't delete them from them, but we put them in a cancel  
23 status, so that they're not active voters in Franklin County, because we received  
24 notification that they moved to Ohio University, and they're down in Athens  
25 now. We would get that notice from the Secretary of State's office that I am a  
26 resident of Franklin County, who's moved to Miami of Ohio, or to OU, and they  
27 are now residents of those counties. We would put them in a cancel status so  
28 that they wouldn't vote here in Franklin County, and vote in the county where  
29 they are going to school.

30 David Tryon: So, there's a centralized record in the Secretary of State's office for all the voters  
31 to make sure that they're-

32 Ed Leonard: Well that's sort of the Boards of Elections, and they do a comparison based on  
33 various factors, name, birthdate, last four of the social, and again, when  
34 somebody registers they indicate to us what their previous address was so that  
35 the Secretary of State could use that as an identifier to indicate that, while this  
36 person was previously registered in Athens County, now they're going to Ohio  
37 State, so they registered to vote her in Franklin County, from that Athens

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1 County would be notified that this individual is now registered in Franklin  
2 County, and so they have to be removed from that voter roll, and [inaudible  
3 01:07:34] County would add them to their voter rolls. So, if the person doesn't  
4 fill it out completely, there is still a comparison done, based on certain data  
5 elements to identify whether that voter is a duplicate voter, and if they are,  
6 each county is notified. We get a list of that, so we know that another county is  
7 having to drop this person, because they are now registered in Franklin County.

8 David Tryon: Thank you. Does that work on an interstate level basis too?

9 Ed Leonard: No. There isn't anything like that on an interstate basis.

10 David Tryon: Okay. Thank you.

11 Diane Citrino: So, Cassandra, or Subodh would either of you like to ask a question?

12 Cassandra: This is Cassandra-

13 Subodh: I would like to, I'll defer to Cassandra, go ahead.

14 Diane Citrino: Yes Cassandra, you're recognized, please go ahead.

15 Cassandra: My question is for Director Leonard, concerning language barriers. Her in  
16 [inaudible 01:08:29] County, there have been great discussion, and expert  
17 movement, to having the ballots in english, and in Spanish. I saw that one of  
18 your slides, that you do work along with the Somali community, so could you  
19 give me a little more information just in Franklin County, how many precincts  
20 you have your ballots in English, and in Spanish?

21 Ed Leonard: Right now, we don't have any. I don't know that, that conversation has begun,  
22 although I think it should, because I believe there may be some precincts where  
23 we've met the federal threshold. I'm not aware of any, where we've been  
24 notified that, that is in fact the case, but I think it is something we ought to  
25 primarily be growing the Hispanic community in Central Ohio as well as the  
26 Somali community in Central Ohio.

27 Cassandra: Thank you.

28 Ed Leonard: Okay.

29 Diane Citrino: Subodh, we're gonna have to interrupt at 1:15 to take calls from the public, so  
30 hopefully Subodh, you can ask your question, and get your answer in the next  
31 five minutes. Go ahead.

32 Subodh: Yes, I actually have two questions, I hope we'll be able to cover them both, but  
33 they're directed to Representative Clyde. In the interest of full disclosure to the  
34 committee and for the record, these relate to a case that I litigated as a private

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1                   litigator on behalf of the North East Ohio coalition for the homeless, and the  
2                   Columbus coalition for the homeless. The substance of the case is over now, but  
3                   Representative Clyde was a witness in that case, so I want to ask he about some  
4                   of the matters related to that. Forgive me Representative Clyde, if you covered  
5                   this extensively in your opening testimony, I didn't get to hear all of it, so let me  
6                   know if you've covered it already.

7                   The first question relates to changes in state law in Ohio that led to the so called  
8                   five fields requirement on ballot forms, and perfect form. The idea for example  
9                   that Secretary of State's have to find that if somebody writes, or the Secretary  
10                  of State's representative, and chief of staffs testifying that if somebody writes  
11                  their name in cursive, even legible cursive, where the form says print name, that  
12                  the Secretary of State's position is that, that voter should be disenfranchised.

13                  So, if you could describe the controversy surrounding that requirement, and  
14                  what led up to it in the general assembly, what your position was on it, and  
15                  what the current state of the law is on those requirements. The second, which  
16                  we can elaborate on when you finish on that, and any other issues that came to  
17                  play in that legislation that you think are problematic, relates to the concern  
18                  about whether this represents intentional discrimination. I'll be more specific  
19                  about that when you finish your response to the first question.

20   Kathleen Clyde:       So I covered that very briefly, and I would just say that legislation was past, that  
21                               was part of the 13 voter restriction bills that have been signed into law since I've  
22                               been in office. Two of those bills required more information to be provided by  
23                               the voter on their provisional ballot envelope if they're a provisional voter, or  
24                               their absentee ballot envelope if they're an absentee voter. If any of that  
25                               information is incorrect, or missing, the voter's ballot shall not be counted.

26                   In the legislature, it's been a few years now, but I remember that there were no  
27                   proponents of this legislation, only the sponsor of the legislation. They were  
28                   party line votes, and our concern was that too many votes would be thrown out.  
29                   This would increase the problem of us throwing out ballots, and we know who  
30                   the voter is, what the information generally you know that the voter is eligible,  
31                   you just are prevented from actually counting that vote. This is an outlier from  
32                   what other states do. It's really problematic that we are not counting people's  
33                   votes here in Ohio.

34   Subodh:               And are there different practices among the counties, where in one county they  
35                               will count your ballots, but in another they won't?

36   Kathleen Clyde:       Anecdotally, that is what I have heard, that different counties may be applying  
37                               different standards. There is also a part of the legislation too that said, if the  
38                               Board voted three to one, or four zero, to count certain groups of ballots that  
39                               they then would count. But in counties where you had disagreement, the votes  
40                               wouldn't count. So, you know this is still a serious problem.



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1 Subodh: And the last question is simply, what experiences have you had, that would  
2 cause you, including comments made by legislative colleagues, or others, Board  
3 members, that would cause you concern that some of these efforts that would  
4 shave off percentages of the vote, and not get them counted, particularly in  
5 larger urban counties, might be the product of any effort to intentionally  
6 discriminate against minority, poor, or Democratic leaning voters?

7 Kathleen Clyde: That's been a concern of mine in the legislature frequently with this legislation.  
8 We have heard comments about, when it comes to early in person voting, which  
9 is absentee voting technically, that certain legislators don't want those people  
10 who take the bus after church on Sunday to make it too easy for them. We have  
11 heard-

12 Subodh: Was that a phenomena occurring in the African American community, starting  
13 with the election of President Barack Obama in 2008?

14 Kathleen Clyde: Yes. That comment, I think it was generally agreed by anyone who heard it, was  
15 referring to this whole to the polls that typically happens in Ohio on Sundays  
16 after church. That is a big, important part of the get out to vote effort for our  
17 African American communities in Ohio.

18 Subodh: Did Secretary of State you say cut back early voting on Sunday?

19 Kathleen Clyde: Yes. We have less early voting under our Republican Secretary of State on the  
20 evenings, on the weekends, than we had under a Democratic Secretary of State.  
21 Less voting opportunity, less, fewer days, fewer hours. These pieces of  
22 legislation are, I believe almost everyone, or everyone was decided on a party  
23 line vote, so not bi partisan agreement, this is not how we should be making  
24 changes to our election system.

25 You hear legislators in Ohio talk often about voting being a privilege, not a right,  
26 and voter's need to be more personally responsible to meet all of these  
27 different requirements. It's really sad to see this occurring, and I'm hopeful  
28 moving forward as a state that we can come out of this, and be ensuring the  
29 right to vote for every single Ohioan that wants to vote, and that we [inaudible  
30 01:17:14] this partisan fighting, and often attacks on certain groups of voters  
31 behind us. This belongs on the past.

32 Subodh: I do want to step, I would-

33 Diane Citrino: I'm sorry, we're gonna have to interrupt, because we have a scheduled time  
34 that's set in the public record for the public to participate. So, we can come back  
35 if we have time, but we do need to allow members of the public right now, to  
36 press one on their telephone keypad to request that their line being unmuted,  
37 and then I'm gonna check and see with the operator to see if there are  
38 members of the public who would like to either make a statement, or ask a  
39 question of the panelists.

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1 Operator: Thank you ma'am. Edward Leonard, please press star one on your telephone for  
2 a question, or comment at this time. Please make sure your mute function is off,  
3 to allow us to [inaudible 01:18:15] equipment against star one to signal.

4 We have no questions at this time from the public.

5 Diane Citrino: Thank You.

6 Subodh: May I follow up then Diane, May I follow up on the last discussion, please.

7 Diane Citrino: Yes, Subodh, go ahead.

8 Subodh: So, Representative Clyde, just going back to the second larger question about  
9 evidence, or things that cause you concern about intentionally discrimination.  
10 Were there other comments that you heard, or that were made? And could you  
11 also talk about the billboard incident in Cleveland, related to one of the  
12 presidential elections.

13 Kathleen Clyde: Yes, and I did talk about that in my presentation, and had a slide.

14 Speaker 13: A point of order. Are we having a controversy case placed into the record here?  
15 I thought we were just obtaining information.

16 Subodh: No [inaudible 01:19:21]-

17 Speaker 13: If you've already tried the case, do we need to retry it?

18 Subodh: Well, I don't think were talking about the case, I think we're talking about  
19 information that Representative Clyde is aware of, and can testify about. Now, it  
20 happens to relate to information that was presented in a case that is now  
21 resolved, but that doesn't mean that these things didn't happen, and aren't a  
22 part of the voting issues that are the subject of this hearing. So, I don't  
23 understand the objection, I don't think it's a fair objection, and I think this  
24 witness has the ability to comment on these issues.

25 Scott: Yeah, I have a point of order too this is Scott, I thought Diane you said we could  
26 ask one question, and then a follow up.

27 Diane Citrino: Yes. I agree. I was seeing that we had a little more time, and I was allowing this  
28 follow up. I'm gonna allow the question, and allow Kathleen to comment.  
29 Representative Clyde. I understand Subodh [inaudible 01:20:30] question to be  
30 directed in a more general sense. I think he was disclosing that he participated  
31 in a lawsuit with you, but we as David Forte mentioned, we don't want to retry  
32 the lawsuit, but if you can comment, and directly just answer his question, we'd  
33 appreciate that.

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1 Kathleen Clyde: I will just say generally, this has been a difficult environment, where many  
2 problematic things have been said. There's one quote that I can remember that  
3 received national attention, and it was the Chairman of the Republican Party in  
4 franklin County, Doug Price, saying that we shouldn't accommodate the African  
5 American voter turn out machine when it comes to this early voting, and the  
6 fights over the in person early voting process.

7 There have been many witnesses, who have come before the legislature and  
8 described these various pieces of legislation that have been signed into law as  
9 discriminatory against African Americans, and other marginalized communities.  
10 Whether it's the billboards, whether it's the comments, whether it's failing to  
11 address problems in our election system that particularly affect certain voters.  
12 These are problems that need to be addressed. We need to come together. We  
13 need to work to make our system as fair and accessible to every Ohioan, You  
14 know, I'll leave it at that.

15 Diane Citrino: Okay.

16 Ed Leonard: This is Director Leonard. If I could-

17 Diane Citrino: [inaudible 01:22:27].

18 Ed Leonard: I'd like to just come to the defense of Boards of Elections in that, the employees  
19 at the Board of Elections, regardless of party are genuinely trying to ensure  
20 everybody can vote. I understand the Board members are comprised of folks  
21 who represent their political parties, but the staff at Boards of Elections across  
22 the state, work to try and allow everyone to vote, particularly when it comes to  
23 provisional ballots that we work to try, every opportunity, and every effort is  
24 made to try and count those provisional ballots, to attempt to identify and make  
25 sure that if we can identify that individual voter. If there's issues about someone  
26 filing it out incorrectly, and trying to find that information on our system to  
27 identify that correct address, that might be a number transposed, or might be  
28 something erroneous about it, but trying to identify the information, so that we  
29 can count that ballot.

30 There have been some restrictions. The Secretary of State imposed a restriction  
31 in terms of what information we can look at, that we're only allowed to look at  
32 the state wide database, that we can't look to ... Cause counties, we would look  
33 at auditor records. We would look at treasurer records, we would look at ever  
34 governmental record that we could try and access, to try find information that  
35 would help us validate the accuracy of that provisional ballot. The Secretary of  
36 State has restricted that, so we can now only look at the state wide voter  
37 database. But again, our boards of elections regularly work to try and count the  
38 vote, and try and make ourselves available to ensure that voter have access to a  
39 ballot. I just wanted to state that, cause it seems like there's a lot of discussion  
40 about Boards of Elections, and casting it in a negative light.

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1 Diane Citrino: Thank you.

2 Kathleen Clyde: Let me just jump in, and agree with Ed Leonard, and the good work done by  
3 election officials across the state, and our professional staff. I think a lot of the  
4 problems I'm describing have happened at the legislative level, and the state  
5 level, but our election officials persist, and do an excellent job serving Ohio  
6 voters. I would like to see the environmental laws that they operate under  
7 change, and us to work on these problem areas that I've discussed.

8 Diane Citrino: And, Mr. Leonard, this is Diane Citrino, I was wondering, when you said you try  
9 and validate it, so if you saw that there was a number transposed, is there a way  
10 to fix that?

11 Ed Leonard: No, but we can, again try and find that voter in the system, even if they may not  
12 be in the voter registration, the state wide voter registration database, but  
13 trying to find the information that will allow us to consider that provisional  
14 ballot valid.

15 Diane Citrino: Okay, we have time for one more question, so I wanted to open it up to our  
16 committee members again. Is there someone who would like to ask another  
17 question?

18 Scott: Hi, this is Scott, I'll go if I could.

19 Diane Citrino: Sure, go ahead Scott.

20 Scott: Yeah. Again, I want to thank the panelists. They were terrific. My earlier point  
21 was that you had limited us to one question, I know Subodh came in late, so he  
22 didn't hear that instruction, so that's all I have to say about that. But, it's pretty  
23 clear to me that Representative Clyde's identified a number of continuing  
24 problems, so I'd like to direct my final question to Director Leonard, when we  
25 vote unanimously to invite the people to present that we did, and you two are  
26 on that list obviously. The reason we pick Franklin County, because in 2006, in  
27 the transcript that we read, there were a lot of problems in Franklin county. It  
28 was not on your watch, so I'm not blaming you, I just wondered what you think  
29 now, that we're in 2018, whether things are a lot better in Franklin County,  
30 whether there is still room for improvement in Franklin County, etc.

31 Ed Leonard: I think we have made a lot of improvements, and I think I went through a lot of  
32 those in my remarks, in terms of changes that we've made with regard to poll  
33 worker training. Some of the implementation of poll pads, and the voting  
34 location based voting have really helped us reduce the number of lines. The fact  
35 that we are amongst the counties that do aggressively advertise during the  
36 presidential elections, the early vote and absentee availability, which helps us  
37 reduce the number of voters who show up at the polls, and thus reduce the  
38 lines, which I think were the biggest issue discussed regarding the 2004 election,

1 where long lines at the polls, and they were limited at that point in terms of  
2 their ability to get new equipment.

3 So, I think our new equipment that we operate on currently allows us to process  
4 voters a lot more quickly, and allows us to put any voter on any machine at a  
5 voting location, so we can actually utilize the equipment to, it's fullest extent,  
6 instead of the way the old equipment was where, you were limited to the single  
7 precinct that was programmed on that machine. Therefore, if somebody came  
8 up in the same location, with a different precinct, they could not be put on an  
9 available machine. So, the technology has changed such that it allows us to  
10 maximize the utility of the equipment that we have. As we look toward the new  
11 system, we anticipate, we are looking for that same type of flexibility of the  
12 equipment that allows us the same ability to maximize it's utility so that we're  
13 not creating any situations in which voters would be forced to wait in long lines  
14 in order to cast their vote.

15 Diane Citrino: No, we don't have any [inaudible 01:29:30] sorry. There's no further time. We  
16 have to, we only have the recording for a limited time, so I want to thank the  
17 panelists, the members of the committee, members of the public for attending  
18 this meeting. The record is going to remain open through April 9, 2018. So, this  
19 conversation can continue in written form. You can submit a written comment  
20 to MWOJNERSKI@USCCR.gov, and that information should appear on your  
21 screen, or mail it to USCCR, 55 West Monroe Street, Suite 410, Chicago, Illinois.

22 There it is, on the screen. 60603. We will follow up with everyone in attendance,  
23 to provide the minutes, and a transcript from this meeting, and a link to access  
24 those records. We are going to als notify everyone when the committee is  
25 meeting for discussion, and when a report based on these meetings that we've  
26 had, and again, this was the second of a two part series are ready. So, thank you  
27 again, we appreciate your time here today. We've all learned a great deal, and  
28 again, we're very, deeply appreciative. Thank you now.

29 Ed Leonard: Thank you.

30 Diane Citrino: This meeting is adjourned. Bye.

31 Operator: Thank you, and again, that does conclude the meeting, thank you for  
32 participating. You may disconnect at this time.

33

# Ohio Advisory Committee *to the* U.S. Commission on Civil Rights

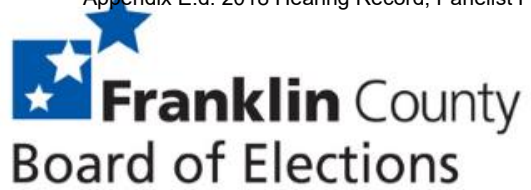
Voting Rights in Ohio, Session II  
March 9, 2018



# Agenda

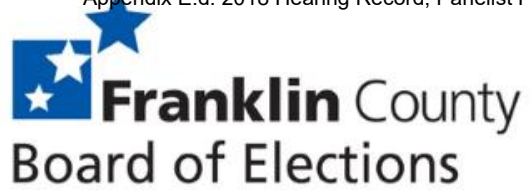
- **Welcome and Introductions (12:00-12:05pm, EST)**
- **Speaker Presentations (12:05am-12:35pm)**
  - Edward Leonard, Director, Franklin County Board of Elections
  - Representative Kathleen Clyde, Ohio House of Representatives
- **Committee Questions and Answers (12:35 – 1:15 pm)**
- **Public Comment (1:15-1:30pm)**
- **Adjournment (1:30pm)**





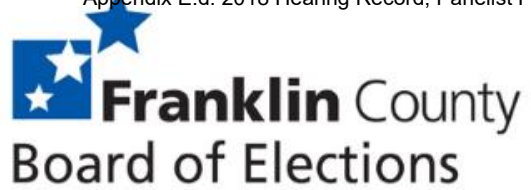
Edward Leonard, Director  
Franklin County Board of Elections  
before  
Public Meeting of the  
Ohio Advisory Committee to the  
U.S. Civil Rights Commission  
March 9, 2018





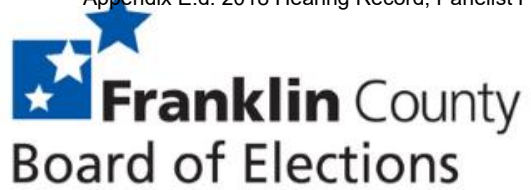
## Topics Covered in 2006

- Voting Machine Shortages
- Long Lines on Election Day
- Protections to Prevent Over-Voting
- Poll Worker Training
- Additional Subjects Not Addressed in 2006



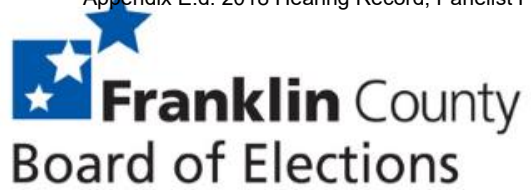
## Voting Machine Inventory & Reducing Lines at Polls

- 4,600 new voting machines were acquired in 2006
- Currently have 4,735 machines available
- Change from Precinct to Location Level Voting
- Introduction of “No-Fault” Absentee in 2006
- Introduction of Early Vote Centers
- Introduction of Electronic Poll Pad throughout Ohio in 2016-17
- Currently in the midst of Voting System Selection Process



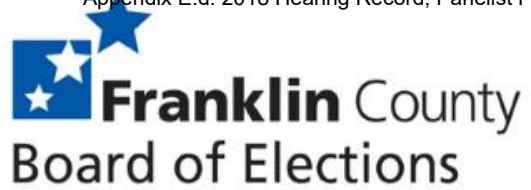
## Preventing Over-Voting Issues

- Ivotronic Touch Screen DRE Prohibit Over-Voting
- Absentee Over-Voting Still an Issue
- Factor to be considered as we look at new systems
  - Touch screen system that do not allow a voter to over-vote
  - Precinct-level paper ballot scanners that identify, warn voter and allow voter opportunity to correct and over-vote



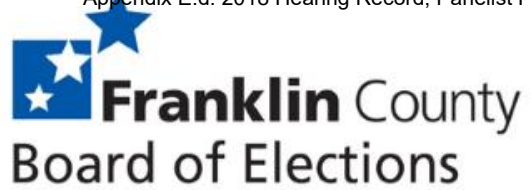
## Poll Worker Training

- Poll Worker Training Critical to Voter Experience
- Franklin County Poll Workers Trained Every Election Cycle
- Specialization of Poll Worker Responsibilities
- Award Winning Training Manuals
- “Practice Makes Perfect” Program
- Champions of Democracy and Youth-at-the-Booth Programs
- Incorporating Training Videos for Polishing Critical Skills



## Improvements for those with Disabilities

- ADA Compliance Software Tool
- Current Voting Systems Compliance with ADA Requirements
- Facility Improvements
- Work with Democracy Live to Facilitate Access
  - Current Sample Ballot
  - Remote Ballot Marking Capability
- Upcoming Website Refresh will be more disability-friendly



## Other Improvements at the Franklin County BOE

- Provisional Ballot Envelope Template Reduces Errors & Rejections
- New Board Office Location
- Somali Interpreter for Early Vote Center
- Online Voter Registration

# State Representative Kathleen Clyde

District 75, Ohio House of Representatives

Ranking Member, Government Accountability and Oversight Committee

4<sup>th</sup> Term Legislator, 2018 Candidate for Ohio Secretary of State



# Voter Intimidation Billboard in Ohio





# Long Lines at Single Early Vote Location



# Online Voter Registration System Exclusion

## WE ARE UNABLE TO PROCESS YOUR APPLICATION ONLINE

---

We are unable to process your application online for the reason below:

You can complete a paper voter registration form (PDF). Select 'Yes' to continue with a paper voter registration form or if you entered your information incorrectly, you may select 'Cancel' to try again.

Cancel

Yes

# Committee Dialogue

## Ohio Advisory Committee to the U.S. Commission on Civil Rights

- Diane Citrino, Chair
- Cassandra Bledsoe, Vice Chair
- David Forte, Vice Chair
- Subodh Chandra
- Catherine Crosby
- Scott Gerber
- Emerald Hernandez
- Kevin McDermott
- Robert Salem
- Lee Strang
- Mark Strasser
- Edith Thrower
- David Tryon

## Speakers

- Edward Leonard, Director, Franklin County Board of Elections
- Representative Kathleen Clyde, Ohio House of Representatives



# Open Forum

Press \*1 on your phone to indicate to the operator that you would like to speak. The operator will place you in queue and open your line when it is your turn.

Please remember this meeting is being recorded.

Thank you for your participation!



# Questions?

*For more information please contact:*

U.S. Commission on Civil Rights  
Midwest Regional Office  
55 W. Monroe, Suite 410  
Chicago IL 60603  
312-353-8311

To submit additional testimony in writing please email  
Melissa Wojnaroski at [mwojnaroski@usccr.gov](mailto:mwojnaroski@usccr.gov) by April 9, 2018



To: U.S. Civil Rights Commission  
From: Camille Wimbish, Ohio Voter Rights Coalition  
Date: March 1, 2017  
Re: Voting Access in Ohio

My name is Camille Wimbish, and I am the director of the Ohio Voter Rights Coalition (OVRC). The OVRC is a network of non-partisan organizations who are committed to free, fair and accessible elections. Over the last several years, we have testified against numerous pieces of restrictive legislation in the Ohio Statehouse. We also organize a non-partisan election protection program in coordination with the Lawyers' Committee for Civil Rights Under Law, providing assistance to Ohio voters who call the 866-OUR-VOTE hotline.

I am pleased to share that Ohio is doing several things well when it comes to voting access. Ohio accepts a number of forms of voter identification such as utility bills, government checks, or pay stubs, bucking the trend of strict photo ID. Because of our history of long lines on Election Day, Ohio also has a generous 29 day no-fault absentee voting period. Approximately 1/3 of all Ohio voters now vote early.

Ohio has also made strides in modernizing our election system. In 2016, Ohio joined the Electronic Resource Information Center (ERIC), an inter-state data sharing service sponsored by the Pew Center, which improves the accuracy of the voter rolls. In 2017, Ohio implemented online voter registration, which is universally praised for being convenient for voters and cost-effective for election officials. Additionally, voters are now able to track the receipt of their absentee ballots, improving voter confidence in early voting.

Ohio voters are also challenged in a number of ways by a spate of restrictive voting laws and practices, which make it more difficult for voters to cast their ballot and have their vote counted. I will briefly outline a three significant restrictions below:

- **The Purge:** Ohio is one of the most aggressive states for purging voters for failing to vote. Secretary of State Jon Husted has established a practice of mailing a postcard to voters who do not vote within a two year period, asking them to confirm their registration. Voters who fail to respond or vote within the following four years are removed from the rolls without further notice. In advance of the 2016 election, tens of thousands of voters (primarily African Americans from urban areas) were removed from the rolls, despite still being eligible to vote. The U.S. Supreme Court now has the final say whether this practice violates the National Voter Registration Act of 1993. Ultimately, infrequent voters are most at risk for losing their right to vote, which only erodes people's faith in the system.
- **Loss of Golden Week:** In 2014, the legislature passed SB 238, which eliminated Ohio's same-day registration period in which the last week of voter registration overlapped with the first week of early voting. The bill sponsor claimed that the change was needed to curb voter fraud, however this claim was unsubstantiated as ballots cast during Golden

Week were segregated and were not counted until the voter's eligibility could be verified. Litigation worked its way all the way to the U.S. Supreme Court, but ultimately the elimination of Golden Week was upheld. The loss of this cure period means that for the majority of voters who need to update their registration, they are forced to vote provisionally. In 2016, approximately 15% of all provisional ballots cast in Ohio were not able to be counted.

- Absentee Ballot Restrictions: In 2014, the Ohio General Assembly passed SB 205, which changed the procedure for sending absentee ballot applications. Several urban counties had traditionally sent absentee ballot applications to voters every year as a cost-effective way to encourage early voting. But under the new law, absentee ballot applications can only be mailed by the Secretary of State *if* the legislature appropriates the money to do so. In practice, this means that voters only receive applications in even-numbered years, leaving voters confused about whether they will receive an application in the mail, or whether they must request one. Voters would be far better served if government officials sent absentee ballot applications for every election. Additionally, SB 205 instituted hyper-technical rules that disqualify ballots for paperwork errors such as writing a name in legible cursive instead of print, omitting a zip code from an address, or missing a single digit from a social security number. Voters deserve better than a game of “gotcha” when it comes to their ballot.

Ohio has made frequent changes to its voting rules over the last decade and yet the state has not prioritized voter education. Combined with voting restrictions, the lack of voter information is a one-two punch. Community groups and non profit organizations have had to stand in the gap to provide voters with information about the mechanics of how, where and when to vote. Additionally, voter education needs to be strengthened in the following areas:

- Voter registration updates: Approximately 10% of voters move each year, and yet many voters are not aware that their Ohio voter registration does not automatically update when they move. They may not realize their registration is no longer valid until they attempt to early vote or show up at the polls on Election Day and often their only recourse is to vote provisionally. Voters need information to encourage them to verify their registration in advance of every election.
- Send important mailings to inactive voters: Voters who do not vote within a two year period are designated as “Inactive” voters and do not receive important election mailings, despite there being no evidence that the address is invalid. Excluded mailings include absentee ballot applications and change of polling place notifications. In 2016, for example, the Secretary of State excluded 13% of registered voters because they were deemed inactive<sup>1</sup>. Many voters are accustomed to only voting every 4 years during

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<sup>1</sup> “A million Ohio voters didn’t get absentee ballot mailing,” *Columbus Dispatch* October 2, 2016. <http://www.dispatch.com/content/stories/local/2016/10/02/1-a-million-ohio-voters-didnt-get-absentee-ballot-mailing.html>

presidential elections, and are thus may not receive the basic election information they need to vote and/or have their vote counted.

- Felon re-enfranchisement: Ohio has a favorable felony re-enfranchisement policy, in that allows citizens who have been convicted of a felony can simply re-register once they have completed their sentence. They do not have to wait until they are on probation or parole, and they may even register and vote from jail. Sadly, these facts are not widely known among the public, which serves as a barrier, particularly for people of color.

In short, there is a lot of work that can be done to remove barriers to the ballot box in Ohio. We welcome ideas for how to make it easier for more citizens to participate in our democracy. Thank you for the opportunity to submit testimony.





We have the legal right of way.

## VOTING IN OHIO: A Disability Rights Perspective

**March 2018**

**Prepared for: Ohio Advisory Committee to the U.S. Commission on Civil Rights**

Disability Rights Ohio is a non-profit corporation with a mission to advocate for the human, civil and legal rights of people with disabilities in Ohio. Disability Rights Ohio is also Ohio's Protection and Advocacy System (P&A) and Client Assistance Program (CAP).

Disability Rights Ohio is governed by a nonprofit board that guides the organization's programmatic priorities. Disability Rights Ohio receives funding from federal grants to advocate for Ohioans with disabilities in a wide range of issues, including employment, mental illness, developmental disabilities, assistive technology, traumatic brain injury, victims of crime, and voting. Voting rights for people with disabilities is an important aspect of Disability Rights Ohio's work, and is reflected in the organization's priorities.

### Disability Rights Ohio's voting activities

Disability Rights Ohio receives federal funding through the Help American Vote Act to support voting advocacy on behalf of Ohioans with disabilities. This work includes education and outreach to voters with disabilities and professionals in the disability field, direct and systemic voter advocacy, and operating a voter hotline every Election Day. Disability Rights Ohio also engages in voting-related litigation.

### How voting impacts disability rights

Title II of the Americans with Disabilities Act (ADA) not only prohibits discrimination based on an individual's disability; it also seeks to ensure full participation of people with disabilities in society by removing barriers to access.<sup>1</sup> The ADA embodies in the

<sup>1</sup> See 42 U.S.C. § 12131 *et seq.*

law the key elements of the independent living movement: nondiscrimination, integration, and full inclusion of people with disabilities as members of society. People must be treated as individuals, not as stereotypes or caricatures. Full participation in the political process is a central value of the disability movement. Broad protections, both constitutional and statutory, exist to ensure that people with disabilities have full access to the ballot. While both HAVA and the ADA provide broad protections to ensure voting access by people with disabilities, implementation in practice is not always smooth, and antiquated notions about people with disabilities persist.

## Barriers to voting

Disability Rights Ohio focuses its work on the voting barriers faced by people with disabilities. Several issues have emerged over the last decade. The following are examples of barriers experienced by Ohioans with disabilities and the advocacy efforts engaged in by Disability Rights Ohio to increase voting access.

### STEREOTYPES AND DISCRIMINATION

The Ohio Constitution provides that any U.S. citizen who is a resident of the state is a qualified “elector” or voter.<sup>2</sup> But the Constitution also contains antiquated and discriminatory language that “No idiot, or insane person, shall be entitled to the privileges of an elector.”<sup>3</sup> This class of voters is the only one that is conclusively disqualified in Ohio’s constitution. These terms are offensive relics of an 1851 constitution.

Disability Rights Ohio advocated to have these offensive terms removed from the Ohio Constitution before the recent Ohio Constitutional Modernization Commission, noting the conflict with federal law protecting the right to vote for people with disabilities and the illusory nature of capacity to vote. Despite Disability Rights Ohio’s efforts, no changes to update this language were made through the modernization process. Fortunately, these antiquated terms are not used in current Ohio statutory or administrative law, and this provision is essentially not being implemented in Ohio law.

In fact, the only relevant statutory section regarding competency to vote allows for probate court judges to “adjudicate” as “incompetent for the purpose of voting” individuals subject to another statute regulating involuntary hospitalization.<sup>4</sup> This provision adjudicating an individual incompetent for voting purposes does not appear to be widely utilized in Ohio.

However, some probate guardianship application forms do have a check box question as to competency to vote. Disability Rights Ohio is concerned that someone might argue that checking this box on the application (an action taken by the applicant, not the court) supports a finding of incompetency for voting purposes if the guardianship is granted, even where no hearing or examination of this issue ever occurred. While Disability Rights Ohio is unaware of this problem having surfaced, if it did it would be a

<sup>2</sup> Ohio Const. Art. V, § 1.

<sup>3</sup> Ohio Const. Art. V, § 6.

<sup>4</sup> See Ohio Rev. Code §§ 5122.301, 5122.11-15; 3503.18.

significant violation of an individual's due process rights.

## STEREOTYPES AND MISINFORMATION

While great strides have been made in accessibility, many common misconceptions remain about disability voting rights. These misconceptions often arise from paternalistic views of people with disabilities, lack of understanding about the capabilities and communication methods of people with disabilities, and lack of knowledge about technology available to voters with disabilities. Disability Rights Ohio has released publications and conducted extensive outreach efforts to help educate the public about these misconceptions, several of which are outlined below.

### *First misconception: "You can't vote if you have a guardian."*

While in some states, guardianship may limit or even prohibit an individual's voting rights,<sup>5</sup> people with guardians in Ohio can still vote in Ohio elections. The only exception to this rule is where an individual has been specifically adjudicated incompetent for voting purposes, and this type of finding is very rare. Indeed, as outlined in the *Glancy* Consent Order signed by the Ohio Secretary of State, registration to vote creates a presumption of capacity to vote.<sup>6</sup>

### *Second misconception: "How can you understand enough to vote if you can't verbally communicate?"*

Voting eligibility criteria in Ohio involves residence, citizenship, and age.<sup>7</sup> There is no requirement that a voter be able to communicate verbally. Assistive technology also exists to help people with disabilities communicate by other means. In addition, Ohioans who wish to register to vote who cannot sign their name on the registration form can still register to vote with the assistance of another who attests that the voter indicated a desire to register.<sup>8</sup> Finally, capacity is not a valid challenge to a person's ability to vote at the polls.<sup>9</sup>

### *Third misconception: "If you are blind, how can you independently complete a ballot?"*

Under both state and federal law, voters with disabilities—including those who are blind or visually impaired—must be given the same opportunity for access and participation as others. The Help American Vote Act (HAVA) requires access to private and

5 See State Provisions Regarding Voting: Constitutions, Election Laws, and Guardianship Statutes, *American Bar Assn.*, available at: [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/State\\_Provisions\\_Regarding\\_Voting.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/State_Provisions_Regarding_Voting.authcheckdam.pdf); Thousands Lose Right to Vote Under 'Incompetence' Laws, *Stateline*, The Pew Charitable Trusts, available at: <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/03/21/thousands-lose-right-to-vote-under-incompetence-laws>.

6 *Glancy* Consent Order at <http://www.disabilityrightsohio.org/voting-glancy-consent-order>.

7 To be eligible, voters also cannot be currently incarcerated for a felony, be found incompetent for voting purposes, or have lost voting privileges for election law violations.

8 Ohio Rev. Code § 3503.14(C).

9 See Ohio Rev. Code §§ 3503.24, 3513.19; *Glancy* Consent Order n. 6.

independent voting, and accessible voting machines.<sup>10</sup> The ADA also requires accessible voting procedures, routes of travel at the polling location, and voting machines. State law requires poll workers to assist voters with disabilities at the poll if requested.<sup>11</sup>

## ACCESSIBILITY BARRIERS

While laws such as HAVA and the ADA require equal access to the voting process, voting access issues for people with disabilities do persist. Below are some of the major advocacy successes and remaining shortcomings in voting access for people with disabilities in Ohio.

### *Polling locations*

In recent years, there has been a considerable push to ensure that polling locations are physically accessible for people with disabilities. While overall polling place accessibility has improved dramatically, voters with disabilities still run into problems at the polls. For instance, a 2017 voter survey conducted by Self Advocates Becoming Empowered (SABE) found that some voters who use wheelchairs have difficulty navigating around the voting machines (e.g. voting machines too close together, loose cords), problems with an accessible route of travel to the voting area or entrance, problems with accessible parking, and problems with inoperable wheelchair ramps or elevators.<sup>12</sup>

### *Poll workers*

Disability Rights Ohio also conducted an informal survey in March 2016 asking individuals to identify barriers to voting. The most prevalent issue identified was problems interacting with poll workers.<sup>13</sup> These results suggest that additional training for poll workers on topics such as how to set up the polling location to be physically accessible, how to use all available equipment including accessible machines, and how to communicate effectively with voters who may have difficulties speaking, hearing, or writing would be beneficial. The Franklin County Board of Elections, for example, has begun training that seeks to specialize certain staff on different topics in the hopes of creating more positive and accessible voter experiences.

### *Accessible voting information and registration*

People with disabilities must also have access to voter resources such as registration or change of address forms and other voting materials. Today, this information is frequently accessed on the internet, so it is critical that these materials be made available in accessible formats.<sup>14</sup>

<sup>10</sup> 52 U.S.C. § 20901 *et seq.*

<sup>11</sup> Ohio Rev. Code § 3505.24.

<sup>12</sup> Voters with Disabilities Election Report, July 2017, *Self Advocates Becoming Empowered*, available at: <http://www.sabeusa.org/wp-content/uploads/2017/03/2016-Voter-Survey-Final-Report-28229.pdf>.

<sup>13</sup> See also SABE Report n. 12, which also identified poll worker training as a need to increase voter access.

<sup>14</sup> See Web Content Accessibility Guidelines 2.0 AA, available at: <https://www.w3.org/TR/WCAG21/>.

In December 2015, the Ohio Secretary of State's website had many accessibility problems for people who are blind or have print disabilities. After attempts to resolve the issue informally, Disability Rights Ohio filed a federal lawsuit under Title II of the ADA as co-counsel on behalf of individual plaintiffs and the National Federation of the Blind seeking remediation by the Secretary's office.<sup>15</sup> The federal court issued an injunction in February 2017 ordering the Secretary of State to make his website accessible by September 2017. Recent testing showed that much of the website is now accessible, including online registration and change of address functions. The Secretary of State's office is currently working to fix remaining problems, which include inaccessible PDFs.

In addition, Ohio recently implemented new electronic poll books, and is also in the process of working with boards of elections to replace outdated voting machines. These new technologies must be accessible for people with disabilities under the ADA. In addition, voters with disabilities often utilize a myriad of assistive technology devices for communication or mobility. Ongoing poll worker and board of elections staff training is critical to ensure that these workers know how to operate the technology, and provide accommodations as modifications as needed to ensure equal access to voting services.

### *Accessible absentee ballots*

In the same ADA lawsuit on behalf of the National Federation of the Blind, plaintiffs challenged the accessibility of Ohio's absentee ballot marking system. Under the current paper absentee ballot system, voters who are blind or who have print disabilities could not submit a ballot privately and independently, thus denying them equal access to the absentee ballot program. After a ruling in the United States Court of Appeals for the Sixth Circuit, the Ohio Secretary of State recently issued a directive ordering all county boards of elections to adopt and implement accessible electronic ballot marking tools by the November 2018 election.<sup>16</sup> Now for the first time, voters who are blind or who have print disabilities will be able to absentee vote privately and independently.

### *Accessible signature options*

Some voters with disabilities cannot physically sign their name on a voter registration or poll book, and need alternative options to affirm intent to vote. Ohio law does provide a process through which a voter can sign with an "X" or have someone sign applicable forms affirming under penalty of elections fraud that the voter wishes to submit the form. Confusion with this process occasionally resurfaces during election season, and additional training on the law for both board or elections staff and poll workers may be warranted.

### *Inadequate accessible transportation options*

Disability Rights Ohio's March 2016 survey identified transportation as the second most prevalent issue for people with disabilities to access in-person voting. While some voters

<sup>15</sup> *Hindel v. Husted*, Case No.: 2:15-cv-3061 (S.D. Ohio).

<sup>16</sup> *Hindel v. Husted*, 875 F.3d 344 (6th Cir. 2017); Ohio Secretary of State Directive 2018-03, available at: <https://www.sos.state.oh.us/globalassets/elections/directives/2018/dir2018-03.pdf>.

with disabilities can utilize their own vehicle, the 2017 SABE report found that many voters with disabilities rely on family, friends, or service providers to provide transportation. Some use public transportation, but service availability to polling places can limit this option.<sup>17</sup>

### *Institutional isolation*

Ohio houses tens of thousands of people with disabilities in institutional settings such as intermediate care facilities, nursing homes, and psychiatric hospitals. Lengths of stay vary widely based on a number of factors, including available resources, needs, and caregivers' decision making. A stay can be for just a few days, causing only a short-term disruption to an individual's daily life, but for many the stay in institutionalized settings may last many years and can result in long-term isolation from the community. When individuals are isolated from the community, they might not have ready access to or know about their fundamental right to vote. Disability Rights Ohio conducts annual outreach efforts to speak with residents and staff in institutional settings to educate them on voting rights and resources.

### *Unexpectedly hospitalized voters*

Disability Rights Ohio has also focused efforts on one type of institutionalized setting where voter access is particularly susceptible to falling through the cracks. Existing Ohio law provides a special process for voters to obtain an absentee ballot if they are unexpectedly hospitalized on or shortly before Election Day.<sup>18</sup> While the law applies to all unexpectedly hospitalized voters as well as those whose children are unexpectedly hospitalized, it has proven to particularly impact voters with mental illness who are admitted to psychiatric hospitals shortly before Election Day.

The law provides that when a voter is hospitalized within their county of residence, the voter can make a request up until 3 p.m. on Election Day for two elections officials or an eligible family member to deliver the ballot to the voter personally, and then return the completed ballot to the board of elections. This process has worked in the past and helped voters exercise their voting rights despite extenuating circumstances.

However, for voters who are not hospitalized in their county of residence, there is no option for board of elections in-person delivery. As a consequence, out-of-county hospitalized voters must either have an eligible family member pick up, deliver, and return the ballot for them, or they must mail the ballot to the board of elections themselves. But under Ohio law, absentee ballots must be postmarked prior to Election Day,<sup>19</sup> so as a practical matter, returning by mail is not an option for day of Election requests.

Disability Rights Ohio first encountered this problem in 2012 when a young woman hospitalized in a psychiatric hospital outside of her county of residence did not receive her requested absentee ballot, and neither the county board of elections nor the Secretary of State's office would agree to ensure her access to a ballot. Under the ADA, a public entity must modify its usual policies and procedures when necessary to ensure

<sup>17</sup> *Id.* n. 12.

<sup>18</sup> Ohio Rev. Code § 3509.08(B).

<sup>19</sup> Ohio Rev. Code § 3509.05.



equal access to individuals with disabilities. After trying to resolve the issue through negotiation, Disability Rights Ohio filed a lawsuit to require the county board of election and the Secretary of State to make the necessary modifications so this young woman could vote. The Court agreed with Disability Rights Ohio.<sup>20</sup>

Despite subsequent attempts by Disability Rights Ohio to work with the Secretary of State to address future similar problems, no meaningful steps were taken by the Secretary's office until the November 2016 election.

In 2016, after additional negotiations with Disability Rights Ohio, the Secretary did issue a very narrow temporary directive and accompanying forms. However, the new forms are complicated and the directive severely limits applicability of the process. Now, hospitalized voters can only request an emergency ballot if they were hospitalized after the regular deadline for requesting an absentee ballot (noon the Saturday before Election Day). This new limitation is narrower than the Ohio Revised Code language on emergency hospitalization, which does not limit its application to only those admitted to the hospital after the regular absentee ballot request deadline.

In the 2016 general election, Disability Rights Ohio received calls from more than 20 psychiatric hospitals, and gave advice to more than 50 voters about how to get a ballot on Election Day while hospitalized. Many of these voters had been admitted to the hospital during the week prior to the election but were in no condition to request an absentee ballot within the Saturday deadline. Some did not have an eligible family member to pick up and submit their ballots. While many voters were able to vote with limited assistance, Disability Rights Ohio had to directly intervene and contact the Secretary of State's office to help 13 of them exercise their rights to vote. Many other hospitalized voters likely did not get to vote at all because they were admitted prior to the Saturday cutoff and did not obtain assistance from Disability Rights Ohio.

After the 2016 general election, the Ohio Secretary of State issued a permanent directive and modified the applicable forms, creating a new form through which voters must "declare, under penalty of election falsification, that [they are] a qualified elector with a qualifying disability under the [ADA]."<sup>21</sup> The same narrow limitations, however, still apply, and hospitalized voters will continue to face barriers to voting until addressed more thoroughly.

## HARMFUL IMPACT OF POVERTY AND OHIO VOTING POLICIES

### *Disproportionate impact of poverty*

Voters with disabilities disproportionately experience poverty and thus the barriers to voting commonly experienced by voters with limited incomes. This includes limited voting hours, erratic job schedules, child care needs, homelessness or lack of permanent housing, inadequate or inaccessible transportation, and the costs associated with obtaining a photo identification, to name a few.

<sup>20</sup> *Mooneyhan v. Husted*, 2012 WL 5834232 (S.D. Ohio Nov. 16, 2012).

<sup>21</sup> Directive 2017-06, available here: <https://www.sos.state.oh.us/globalassets/elections/directives/2017/dir2017-06.pdf>; Form 11-B (non-ADA form) available at: <https://www.sos.state.oh.us/globalassets/elections/forms/11-b.pdf>; Form 11-B-2 (ADA form) available at: <https://www.sos.state.oh.us/globalassets/elections/forms/11-b.pdf>.

### Removal of voters from voter rolls

Current Ohio law includes a “supplemental process” which allows the Secretary of State to target voters who fail to vote in a designated period for removal from the voter rolls on the presumption that such voters have moved.<sup>22</sup> As a direct result of this process, voters who remain otherwise fully eligible to vote are stripped from the registration rolls and denied their right to vote. Registrants are targeted for removal from the voter rolls after failing to vote in one election and could ultimately be removed if they do not vote in the following four-year period.

In 2015 alone, hundreds of thousands of voters were removed under Ohio’s purge practice. This means that many eligible voters are unable to cast ballots on Election Day, despite registering where necessary, being motivated to vote in the particular election, and in some cases, even arriving at the correct polling place and waiting in line.

In 2016, the A. Phillip Randolph Institute and other plaintiffs filed a lawsuit against Ohio’s Secretary of State challenging this practice and claiming that the National Voter Registration Act (NVRA) does not allow states to initiate the voter purge process based solely on their failure to vote.<sup>23</sup> Plaintiffs argued that allowing states to disenfranchise voters on this basis is contrary to the NVRA’s general purpose of broadening participation of the electorate and the Act’s specific goal of expanding access for historically disenfranchised groups. It would also unnecessarily and unjustifiably tread on the fundamental right to vote of many Americans already facing significant obstacles to political participation.

This lawsuit is now awaiting a decision by the Supreme Court of the United States. Disability Rights Ohio, its national affiliate the National Disability Rights Network, and other disability and civil rights organizations filed an *amicus curiae* brief to advocate for the removal of access barriers and enforcement of rights to participate in Ohio’s electoral process.

### Conclusion and Recommendations

While state and federal laws provide protections for equal access to voting for Ohioans with disabilities, barriers to access still persist. Ohio has made progress in removing these barriers, but in many instances such progress occurred only after focused advocacy by Disability Rights Ohio or others. Ohio should make accessibility a priority. This must include effective policies for procuring and implementing accessible information technology in all aspects of the voting process, and effective training for election officials and poll workers about the rights of people with disabilities and how to provide an accessible voting experience.

We thank the Ohio Advisory Committee for undertaking these important issues and for considering the experiences of Ohioans with disabilities in their report and recommendations to the U.S. Commission on Civil Rights.

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<sup>22</sup> See Ohio Rev. Code § 3503.21

<sup>23</sup> *Husted v. A. Philip Randolph Institute, et al.*, 137 S.Ct. 2188 (2017) (Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit granted).



To: Melissa Wojnaroski, U.S. Commission on Civil Rights  
From: Dan Tokaji, Associate Dean for Faculty, Charles W. Ebersold & Florence Whitcomb Ebersold  
Professor of Constitutional Law, The Ohio State University, Moritz College of Law  
Date: May 14, 2018  
Re: Response to Written Question on Non-Citizen Voting

Thank you for the opportunity to speak before the Ohio Advisory Committee to the U.S. Commission on Civil Rights in March. Thanks also to Mr. Tryon for his follow-up question, which affords me the opportunity to elaborate on the topic of non-citizen voting. These comments are of course only made on my own behalf, not that of The Ohio State University, the Moritz College of Law, or any other entity or person. The institutional affiliation above is provided for the purpose of identification only.

Mr. Tryon asks for recommendations regarding non-citizen voting. He prefaces his question with a comment that helpfully distinguishes between the *reality* and the *perception* of non-citizen voting. I agree that it is important to recognize that these are two very different things. It is, moreover, essential that any recommendations be informed by evidence on the character and magnitude of the problems at hand. We cannot intelligently consider solutions to any problem without examining the evidence regarding its nature and severity. Accordingly, I discuss the research regarding the reality and perception of non-citizen voting, before considering what might be done to address both of these issues.

As for the reality of non-citizen voting in the U.S., the available evidence demonstrates that it is vanishingly rare. The most recent in-depth study of the subject is a paper published earlier this year by David Cottrell, Michael C. Herron, and Sean J. Westwood of Dartmouth College.<sup>1</sup> As the paper describes, the last presidential election featured prominent and highly publicized allegations of widespread voter fraud, including noncitizen voting. This study, which relied on multiple regression analyses, found “little evidence consistent with widespread and systematic fraud fomented by non-citizens.”<sup>2</sup> This finding is consistent with prior research on the subject, which the article reviews.<sup>3</sup> It is also consistent with common sense. While proving a negative is inherently difficult, it should come as no surprise that there is so little evidence of non-citizen voting, given the potential for jail time and even deportation as well as the infinitesimally small likelihood that any illegal non-citizen’s vote will affect the result.<sup>4</sup>

Another recent study employs a different methodology but arrives at the same conclusion: that non-citizen voting is exceedingly uncommon. The Brennan Center for Justice at New York University School of Law examined the problem from the perspective of local election officials, reaching out to those administering elections in places with large number of non-citizen residents.<sup>5</sup> After interviewing people in 42 electoral jurisdictions collectively encompassing 23.5 million 2016 voters, the researchers found

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<sup>1</sup>David Cottrell, Michael C. Herron & Sean J. Westwood, *An Exploration of Donald Trump’s Allegations of Massive Voter Fraud in the 2016 General Election*, 51 *Electoral Studies* 123 (2018).

<sup>2</sup> *Id.* at 124.

<sup>3</sup> *Id.* at 125, 138.

<sup>4</sup> *Id.* at 125.

<sup>5</sup> Christopher Famighetti, Douglas Keith & Myrna Pérez, *Noncitizen Voting: The Missing Millions* (2017).

that only 30 incidents of suspected non-citizen voting fraud were referred for further investigation or prosecution.<sup>6</sup> It bears emphasis that not all these are instances of *proven* illegal voting by non-citizens. But even assuming they were, it would amount to just 0.00013% of votes cast in these jurisdictions (just over one in a million).<sup>7</sup> This is consistent with a prior survey conducted by the Republican National Lawyers Association. Examining prosecutions and convictions across the country between 2000 and 2011, the RNLA identified just 24 cases of non-citizen registration or voting.<sup>8</sup>

Mr. Tryon's comment references a 2014 article in *Electoral Studies* by Jesse T. Richman and Gulshan A. Chattha of Old Dominion University, and David C. Earnest of George Mason.<sup>9</sup> That analysis relied on survey data from 2008 and 2010, to find that some people identifying themselves as non-citizens reported voting in those years. Extrapolating from their survey data, they concluded that "more than three percent of non-citizens reported voting" in 2010.<sup>10</sup> Other scholars have severely criticized the methodology used in that study and on that basis expressed doubt about the reliability of its findings.<sup>11</sup> Without getting too deep into the methodological weeds, the main problem is the focus on a small number of people in a much larger sample, some of whom may have misreported their status, leading to a substantial overestimate of how many non-citizens actually voted. As explained by Stephen Ansolabehere of Harvard, Samantha Luks of YouGov (which conducted the surveys), and Brian Shaffner of University of Massachusetts, Amherst, the 2014 study "presents a biased estimate of the rate at which non-citizens voted in recent elections," and its anomalous results are "completely accounted for by very low frequency measurement error."<sup>12</sup> When this error is corrected for, Dr. Ansolabehere and his co-authors conclude, "the likely percent of non-citizen voters in recent US elections is 0."<sup>13</sup>

While the lead author of the 2014 study, Jesse Richman, disagrees that non-citizen participation in elections is zero, he has since acknowledged that their study led some people to exaggerate the magnitude of non-citizen voting. As he puts it, "there has been a tendency to misread our results as proof of massive voter fraud, which we don't think they are."<sup>14</sup> He goes on to say that "our results suggest that almost all elections in the US are not determined by non-citizen participation, with

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<sup>6</sup> *Id.* at 1.

<sup>7</sup> *Id.*

<sup>8</sup> Republican National Lawyers Association, *Vote Fraud Survey*, <http://www.rnla.org/survey.asp>. The webpage notes that it is "not intended to be a comprehensive list of all instances of vote fraud," but rather than the "RNLA conducted a limited survey to indicate whether voting charges have been filed in states across the country since 2000."

<sup>9</sup> Jesse T. Richman, Gulshan A. Chattha & David C. Earnest, *Do Non-Citizens Vote in U.S. Elections?*, 36 *Electoral Studies* 149 (2014).

<sup>10</sup> *Id.* at 154.

<sup>11</sup> Stephen Ansolabehere, Samantha Luks & Brian F. Schaffer, *The Perils of Cherry Picking Low Frequency Events in Large Samples*, 40 *ELECTORAL STUDIES* 409 (2015). For journalistic accounts of the methodological problems in the 2014 study by Richman, et al., see Maggie Koerth-Baker, *The Tangled Story Behind Trump's False Claims of Voter Fraud*, FIFTYEIGHT.COM (May 11, 2017), and Michael Tesler, *Methodological Challenges Affect Study of Non-Citizens' Voting*, WASHINGTON POST, MONKEY CAGE (Oct. 27, 2014).

<sup>12</sup> *Id.* at 409.

<sup>13</sup> *Id.*

<sup>14</sup> Jesse Richman, *Some Thoughts on Non-Citizen Voting*, <https://fs.wp.odu.edu/jrichman/2016/10/19/some-thoughts-on-non-citizen-voting/>.

occasional and very rare potential exceptions.”<sup>15</sup> The back-and-forth among scholars that has followed the 2014 study is exactly what one would expect and hope for among academics who disagree on how to interpret the data. But as Dr. Richman has acknowledged, the title of the 2014 paper (“Do non-citizens vote in U.S. elections?”) misled some people: “The title suggested a ‘yes’ answer, where our ultimate conclusion was really one more that they probably wouldn’t. Maybe if there was a really, really close race, they might, but otherwise [they] probably wouldn’t have much effect on the outcome of the elections.”<sup>16</sup>

This exchange illuminates the disjunction between perception and reality when it comes to non-citizen voting. The evidence shows non-citizen voting to be a very small problem in reality. But the *perception* of non-citizen voting is a different matter. There is evidence that many voters falsely perceive voter fraud in general and non-citizen voting in particular to be a significant problem.<sup>17</sup> In a 2007 survey, for example, 26% of people expressed the view that vote fraud such as multiple voting or voting by those who are not U.S. citizens was “very common.”<sup>18</sup> More recent surveys are consistent with this study. A 2017 Rasmussen survey found that 27% say that vote fraud is a “very serious” problem.<sup>19</sup>

The available research thus shows that there is a gap between the reality and the perception of non-citizen voting. The former is an extremely small problem; the latter a larger one. It is therefore appropriate to think of this as a “two pronged problem,” as Mr. Tryon puts it. Accordingly, in thinking about solutions, we must separate reality and perception.

Let me start with reality. The best solution to actual non-citizen voting – minuscule though it is – is to bring criminal prosecutions where it can be proven. Such prosecutions have in fact been brought in the past, as noted above. The evidence indicates that such prosecutions have been and continue to be an effective means by which to deter and punish illegal non-citizen voting. Where such prosecutions are brought in good faith based on reliable evidence that someone has violated criminal laws, they are unlikely to discourage eligible citizens from voting.

A more significant problem is the mistaken perception that non-citizen voting is widespread. I agree with Mr. Tryon that accusing people of “bigotry” is an inadequate response. While some people’s beliefs on this topic may stem from some form of bias, we need not presume latent racism to explain why so many people incorrectly believe that non-citizen voting is widespread. Given the substantial

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<sup>15</sup> *Id.*

<sup>16</sup> Koerth-Baker, *supra*.

<sup>17</sup> See, e.g., Stephen Ansolabehere & Nathaniel Persily, *Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements*, 121 HARVARD LAW REVIEW 1737 (2008).

<sup>18</sup> *Id.* at 1746. The question was subsequently reworded to reduce the likelihood that respondents were being primed to express concerns about voter fraud more generally rather than these specific types of fraud. *Id.* at 1745 n.25. When the question was reworded, the percentage responding that the problem was “very common” or occurred “very often” declined to 12% or 14% (depending on how the question was framed). *Id.* at 1747.

<sup>19</sup> Rasmussen Reports, *Most Still See Voter Fraud as Serious Problem*, [http://www.rasmussenreports.com/public\\_content/politics/general\\_politics/august\\_2017/most\\_still\\_see\\_voter\\_fraud\\_as\\_serious\\_problem](http://www.rasmussenreports.com/public_content/politics/general_politics/august_2017/most_still_see_voter_fraud_as_serious_problem) (Aug. 10, 2017).

amount of misinformation that has swirled around the topic for the many years, it is not surprising that many people harbor erroneous beliefs about the frequency of non-citizen voting.

In my opinion, the best response to public misperceptions regarding non-citizen voting is truthful information. This view stems from my longstanding commitment to the First Amendment and the constitutional values for which it stands. As Justice Brandeis once wrote: “If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”<sup>20</sup> There are limits to this adage, of course, but the basic principle is as important today as it was a century ago. The best antidote to false beliefs is reliable information, truthful counter-speech, and public education.

In my view, public education is where the U.S. Commission on Civil Rights could perform the most useful role. As I have explained, there is a disconnect between perception and reality when it comes to non-citizen voting. The Commission could help ameliorate this problem by disseminating accurate information about just how uncommon non-citizen voting in particular – and voter fraud more generally – really is. Raising additional barriers to voting based on a false perception of widespread fraud would clearly be a mistake, one that would only serve to exacerbate the problem of inaccurate perceptions. A much better approach is to counter mistaken beliefs with truthful information about the infrequency of non-citizen voting.

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<sup>20</sup> *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

**Ohio Advisory Committee to the  
United States Commission on Civil Rights**



**U. S. Commission on Civil Rights Contact**

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USCCR Contact	Regional Programs Unit U.S. Commission on Civil Rights 230 S. Dearborn, Suite 2120 Chicago IL, 60604 (312) 353-8311
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