

VOTING RIGHTS AND ELECTION ADMINISTRATION IN OHIO

HEARING BEFORE THE SUBCOMMITTEE ON ELECTIONS OF THE COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS FIRST SESSION

APRIL 25, 2019

Printed for the use of the Committee on House Administration



Available on the Internet
<https://govinfo.gov/committee/house-administration>

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2019

CONTENTS

APRIL 25, 2019

	Page
Voting Rights and Election Administration in Ohio	1
OPENING STATEMENTS	
Chairwoman Marcia L. Fudge	1
Prepared statement of Chairwoman Fudge	3
Hon. Rodney Davis, Ranking Member	5
Prepared statement of Ranking Member Davis	7
WITNESSES	
Daniel Ortiz, Outreach Director, Policy Matters Ohio	13
Prepared statement of Mr. Ortiz	16
Elaine Tso, Interim Co-CEO, Asian Services in Action	19
Prepared statement of Ms. Tso	21
Tom Roberts, President, Ohio Conference of the NAACP	26
Prepared statement of Mr. Roberts	28
Naila Awan, Senior Counsel, Demos	44
Prepared statement of Ms. Awan	46
Inajo D. Chappell, Member, Cuyahoga County Board of Elections	58
Prepared statement of Ms. Chappell	61
Mike Brickner, Ohio State Director, All Voting Is Local	64
Prepared statement of Mr. Brickner	66
SUBMISSIONS FOR THE RECORD	
Hon. Tim Ryan, Representative, 13th District of Ohio, statement	93
Jen Miller, Executive Director, League of Women Voters of Ohio, statement ...	96
Naila Awan, Senior Counsel, Demos, submission	102
<i>Rejected: How the Provisional Ballot System in Franklin County, Ohio Fails</i> <i>Voters</i> , All Voting Is Local, report	107
Mike Brickner, Ohio State Director, All Voting Is Local, responses to question on Ohio error rate for voter purges, submission	123
Inajo D. Chappell, Member, Cuyahoga County Board of Elections, photos of November 2, 2008, voting precinct lines, submission	126
Ohio Advisory Committee to the U.S. Commission on Civil Rights, Voting Rights in Ohio, Advisory Memorandum of May 2018, submission	130

VOTING RIGHTS AND ELECTION ADMINISTRATION IN OHIO

THURSDAY, APRIL 25, 2019

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELECTIONS,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:05 a.m., Cayahoga Community College, Jerry Sue Thornton Center, 2500 E. 22nd St., Cleveland, Ohio, Hon. Marcia L. Fudge [Chair of the Subcommittee] presiding.

Present: Representatives Fudge, Raskin, Butterfield, Davis of Illinois.

Also Present: Representatives Sewell, Kaptur, Gonzalez, and Joyce.

Staff Present: Jamie Fleet, Staff Director; Khalil Abboud, Professional Staff; Eddie Flaherty, Director of Operations; Sean Jones, Legislative Clerk; Peter Whippy, Communications Director; Veleter Mazyck, Chief of Staff; Mannal Haddad, Press Secretary; Cole Felder, Minority General Counsel; Jen Daulby, Minority Staff Director; Joy Yunji Lee, Minority Counsel; Jesse Roberts, Minority Counsel; Courtney Parella, Minority Communications Director.

Chairwoman FUDGE. The Subcommittee on Elections of the Committee on House Administration will come to order.

I would like to thank the Ranking Member, my friend, Mr. Davis, Members of the Subcommittee, and my colleagues from the House who are with us today, as well as our witnesses and those in the audience for being here today. I thank you.

I ask unanimous consent that all Members have five legislative days to revise and extend their remarks and that any written statements be made a part of the record.

Hearing no objection, so ordered.

I ask unanimous consent that Members not on the Subcommittee, Ms. Sewell, Ms. Kaptur, Mr. Gonzalez, and Mr. Joyce be allowed to sit on the dais with us today.

Hearing no objection, so ordered.

Good morning. I want to welcome my colleagues to Cleveland and thank them for coming to the 11th Congressional District of Ohio. I am proud to host this hearing. We are here to examine the state of voting rights and election administration in Ohio. As this Subcommittee continues traveling the country, I can think of no better place for our next stop than right here in my home State of Ohio.

America prides herself on being a beacon of democracy, but the field hearings we have conducted thus far have shown us a simple truth: America has a long way to go. The right to vote is sacred, yet over the last decade or more, Ohio has transformed from a State that expanded access to the ballot to one that is drastically constricting voters' access.

In 2004, Ohio voters faced such long lines at polling locations, some lasting into the next morning, that one court found it left voters—and this is their word—effectively disenfranchised. In response, Ohio adopted what would become known as Golden Week, 35 days of in-person voting, early voting that created five days in which voters could register and vote at the same time.

Our progress did not last long. In 2014, the State eliminated Golden Week, claiming the change would combat voter fraud despite no evidence of widespread fraud. Counties across the State are allowed only one early voting location regardless of the population. That means there is one polling place for more than 1 million people in our most populous counties, the same is for our smallest counties.

In 2014, the former Secretary of State eliminated Sunday early voting, except the Sunday before Election Day, and evening voting after 5 p.m. Sunday voting days were particularly important for African American parishioners and Souls to the Polls get-out-the-vote efforts on Sundays.

Ohio has also implemented voter purging. A 2018 Ohio Advisory Committee to the U.S. Commission on Civil Rights memorandum stated Ohio is one of the most aggressive States in purging voter registrations.

The list of constant changes to our voting laws goes on. These constant changes create confusion for voters. Advocates and litigators have been suing Ohio for years over our discriminatory voting laws.

Today, we will hear from people on the front lines of ensuring every Ohioan has the unfettered right to vote. Their testimony will help as the Congress examines what must be done to ensure every eligible voter can exercise his or her constitutional right to vote and can exercise that right in any chosen election and that the vote will be counted as cast.

I would now turn to my friend, the Ranking Member, Mr. Davis of Illinois, for his opening statement.

[The statement of Chairwoman Fudge follows:]

ZOE LOFGREN, CALIFORNIA
CHAIRPERSON

JAMIE RASKIN, MARYLAND
VICE CHAIRPERSON

SUSAN DAVIS, CALIFORNIA
G.K. BUTTERFIELD, NORTH CAROLINA
MARCIA FUDGE, OHIO
PETE AGUILAR, CALIFORNIA

JAMIE FLEET, STAFF DIRECTOR

Congress of the United States

House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-2061
<https://cha.house.gov>

RODNEY DAVIS, ILLINOIS
RANKING MINORITY MEMBER

MARK WALKER, NORTH CAROLINA
BARRY LOUDERMILK, GEORGIA

ONE HUNDRED SIXTEENTH CONGRESS

JEN DAULBY, MINORITY STAFF DIRECTOR

Voting Rights and Election Administration in Ohio Chairwoman Marcia L. Fudge Opening Statement

Good morning. I want to welcome my colleagues to Cleveland and thank them for coming to my District. I am proud to host this hearing. We are here to examine the state of voting rights and election administration in Ohio. As this Subcommittee continues traveling the country, I can think of no better place for our next stop than right here in my home of Ohio. America prides herself on being a beacon of democracy, but the field hearings we have conducted across the country thus far have shown us a simple truth—America has a long way to go. The right to vote is sacred yet over the last decade or more, Ohio has transformed from a state that expanded access to the ballot, to one that is drastically constricting voters' access.

In 2004, Ohio voters faced such long lines at polling locations, some lasting into the next morning, that one Court found it left voters "effectively disenfranchised." In response, Ohio adopted what would become known as "Golden Week." 35 days of in-person, early voting that created 5 days in which voters could register and vote at the same time. Our progress did not last long. In 2014, the State eliminated Golden Week, claiming it would combat voter fraud, despite no evidence of widespread fraud. Counties across the State are allowed only one early voting location, regardless of population. One polling place for more than a million people in our most populous counties.

The former Secretary of State eliminated Sunday early voting, except the Sunday before Election Day and evening voting after 5 p.m. in 2014. Ohio has also implemented voter purging. A 2018 Ohio Advisory Committee to the U.S. Commission on Civil Rights memorandum stated Ohio is one of the most aggressive states in purging voter registrations. The list of constant changes to our voting laws goes on. These constant changes create confusion for voters. Advocates and litigators have been suing Ohio for years over our discriminatory voting laws. Today we will hear from people on the front lines of ensuring every Ohioan has the unfettered right to vote. Their testimony will help as the Congress examines what must be done to ensure every eligible American can exercise their Constitutional

right to vote. That they can exercise that right in any election of their choosing. And that their vote will be counted as cast.

Mr. DAVIS. Well, thank you. Thank you, Madam Chairwoman. And thank you for reminding me these mics are hot. These mics might be hot all day.

I want to ask the crowd to give a round of applause to Chairwoman Fudge for bringing this hearing to Cleveland, Ohio today.

In my six and a half years in Congress, I have made a lot of friends, and I can tell you one of the closest friends that I have had that I have been able to make is Chairwoman Fudge. And to be here in her hometown, it is a privilege for me also, and I look forward to hearing the witnesses' testimony.

I am proud also to be joined by some of my Republican and Democratic colleagues. I want to welcome on our side of the dais the first guy I ever met when I got elected to Congress was my good friend and one of my best friends in the world, David Joyce.

Chairwoman FUDGE. And it has been downhill ever since.

Mr. DAVIS. David and I met the first day of orientation. We have been best buddies since. As a matter of fact, this is my fourth visit to Cleveland in the last three years, and I want to welcome him. Dave is a leader on our Appropriations Committee and does a great job in making sure we get good legislation passed in Washington.

I would also like to welcome one of our newest colleagues, Anthony Gonzalez. While I miss his predecessor Jim Renacci, more so because I like to beat him in Fantasy Football each year, we are very glad to have a new addition to our Republican Congressional baseball team in Mr. Gonzalez. As many of you know, he used to catch touchdowns from Peyton Manning. I certainly expect him to catch fly balls from Cedric Richmond this June.

Madam Chairwoman, I want to say, again, thank you for being here. And as the Ranking Member of the House Administration Committee, our Committee has an extremely important task to conduct oversight of Federal elections.

Throughout the Committee's existence, Republicans and Democrats have worked across the aisle to create significant election policy that widely impacted this Nation, including legislation to eliminate the poll tax, legislation to create easier access to members of the military and their families when voting overseas, and the Help America Vote Act of 2002, a landmark piece of legislation that took substantial steps to remedy problems seen in the 2000 Presidential election.

The Subcommittee on Elections was created for the primary purpose to be an extension of the House Administration Committee and enhance our Committee's oversight capabilities of Federal elections and how these elections are administered. Chairwoman Fudge has been leading our Subcommittee with the intention to investigate voting rights issues in order to create a new formula that will reauthorize Section 5 of the Voting Rights Act.

The Voting Rights Act, enacted in 1965 for the purpose of removing racial-based restrictions on voting has historically been a bipartisan effort. This legislation was most recently authorized under a Republican President and a Republican Congress.

In 2013, the Supreme Court determined Section 4 of the VRA to be unconstitutional in *Shelby County v. Holder*. Chief Justice Roberts said the Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem. While the Court

did not weigh in on whether there is still an extraordinary problem, the Supreme Court did hold that what made sense at one time has lost its relevance. They noted that nearly 50 years later, things changed dramatically.

The VRA primarily remains under the jurisdiction of the House Judiciary Committee. The House Administration Committee, however, has an obligation to review how elections are administered and recognize if any issues should elevate from State to Federal level, which is why we are all here today.

To that end, a particular issue that has brought us here today is the Supreme Court ruling in the *Husted* case. At the center of this case is the practice of States performing list maintenance of voter registration rules. Ultimately, the Court ruled that Ohio's practice was a constitutional method of compliance with the National Voter Registration Act.

Despite efforts to characterize this practice as voter purging, we must weigh the benefits to voter list maintenance that serves an important role in keeping down election costs, minimizing any existing voter confusion, and reducing long lines at polling locations.

As I have said many times since coming into my role as the Ranking Member of this Committee, the greatest threat to our system is partisanship. If there is clear evidence of intentional widespread voter discrimination, Congress should take steps to remedy that in a bipartisan manner. We should do our due diligence to review the facts and the numbers carefully, as well as hear from all stakeholders. What are the voting registration trends? What are the voter turnout trends?

It is essential that Congress make well-informed decisions and understand our role in assisting States and not overpowering them. Voting is a fundamental right for every American citizen, and protecting that right is the responsibility that I and my colleagues on the Republican side of the aisle take very seriously.

Today I am here to listen. We are here to learn more from our witnesses about voting rights and election administration. I look forward to hearing from both panels. I am very honored that you have agreed to share your testimony with all of us this morning.

Thank you, Madam Chairwoman, and I yield back.

[The statement of Mr. Davis follows:]

ZOE LOFGREN, CALIFORNIA
CHAIRPERSON

JAMIE RASKIN, MARYLAND
VICE CHAIRPERSON

SUSAN DAVIS, CALIFORNIA
G.K. BUTTERFIELD, NORTH CAROLINA
MARCIA FUDGE, OHIO
PETE AGUILAR, CALIFORNIA

JAMIE FLEET, STAFF DIRECTOR

Congress of the United States

House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-2061
<https://cha.house.gov>

RODNEY DAVIS, ILLINOIS
RANKING MINORITY MEMBER

MARK WALKER, NORTH CAROLINA
BARRY LOUDERMILK, GEORGIA

ONE HUNDRED SIXTEENTH CONGRESS

JEN DAULBY, MINORITY STAFF DIRECTOR

Voting Rights and Election Administration in Ohio Ranking Member Rodney Davis Opening Statement

Thank you, Madam Chair. I'd like to thank my Republican colleagues from Ohio, Congressman Dave Joyce and Congressman Anthony Gonzalez, for being here today to listen to the testimony presented before this Subcommittee. The Committee on House Administration has the extremely important task to conduct oversight of federal elections. Throughout the Committee's existence, Republicans and Democrats have worked across the aisle to create significant election policy that widely impacted this nation, including legislation to eliminate the poll tax, legislation to create easier access to members of the military and their families when voting overseas, and the Help America Vote Act of 2002, a landmark piece of legislation that took substantial steps to remedy problems seen in the 2000 presidential election.

The Subcommittee on Elections was created for the primary purpose to be an extension of House Administration to enhance the Committee's oversight capabilities of federal elections and how these elections are administered. Chairwoman Fudge has been leading our subcommittee with the intention to investigate voting rights issues in order to create a new formula that will reauthorize section 5 of the Voting Rights Act. The Voting Rights Act, enacted in 1965 for the purpose of removing racial-based restrictions on voting, has historically been a bipartisan effort. This legislation was most recently reauthorized under a Republican President and a Republican Congress.

In 2013, the Supreme Court determined Section 4 of the VRA to be unconstitutional in *Shelby County v. Holder*. Chief Justice Roberts said, "the Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem." While the court did not weigh in on whether there is still an extraordinary problem, the Supreme Court did hold that what "made sense" at one time, has lost its relevance. They noted that "nearly 50 years later, things have changed dramatically."

VRA primarily remains under the jurisdiction of the House Judiciary Committee. The House Administration Committee, however, has an obligation to review how elections are administered and recognize if any issues should elevate from state to federal level, which is why I'm here today. To that end, a particular issue that has brought us here today is the Supreme Court ruling in the *Husted* case. At the center of this case is the practice of states performing list maintenance of voter registration rolls. Ultimately the court ruled that Ohio's practice was a constitutional method of compliance with the National Voter Registration Act. Despite efforts to characterize this practice as needless voter purging, we must weigh the benefits to voter list maintenance that serves an important role in keeping down election costs, minimizing any existing voter confusion, and reducing long lines at polling locations.

As I have said many times since coming into my role as Ranking Member of House Administration Committee, the greatest threat to our election system is partisanship. If there is clear evidence of intentional, widespread voter discrimination, Congress should take steps to remedy that in a bipartisan manner. We should do our due diligence to review the facts and the numbers carefully, as well as hear from all stakeholders. What are the voter registration trends? What are the voter turnout trends? It's essential that Congress make well-informed decisions and understand our role in assisting states, not overpowering them. Voting is a fundamental right for American citizens, and protecting that right is a

responsibility I take seriously. Today, I'm here to listen and learn more from our witnesses about voting rights and election administration. I look forward to hearing from all who have agreed to share their testimony with us this morning. Thank you, and I yield back.

Chairwoman FUDGE. Thank you very much.

I am going to take one quick point of personal privilege since I am at home and since I have the mic. I have a number of my family members that are here, including my mother. If you would all stand, please, all my family.

Thank you.

Mr. DAVIS. Can I say something too?

Chairwoman FUDGE. Yes.

Mr. DAVIS. I know my mic is not hot, but her mother came here today after a dental visit. She is not supposed to be out, so don't ask her to talk much, okay. But, you know, my mom died 20 years ago today, and she would have been very proud to attend a hearing in my hometown. But to have you here, it is an honor for every one of us sitting at this dais. Thank you very, very much.

Chairwoman FUDGE. Now we will have opening remarks from the members of the Committee on House Administration. We will begin with Mr. Butterfield of North Carolina.

Mr. BUTTERFIELD. Thank you very much, Madam Chairperson Fudge, for your friendship. Thank you very much for bringing this field hearing to the people of America.

When we first organized the Subcommittee, Congresswoman Fudge said we are going to have five to seven of these hearings across the country, one has to be in Cleveland, and, of course, we knew that, and that is the way the Chair operates. But we have had these hearings across the country, from North Dakota all the way to Brownsville, Texas, and so it is our joy to be here today.

Congresswoman Fudge is a members' member. I don't need to make a speech about Marcia Fudge because you know it better than I do. She is a great friend and a great leader.

Our purpose here today—first, let me set the record straight—is not a political visit. This is not a political rally. This is a very serious Congressional hearing that we are conducting.

Our purpose is to collect evidence across the country, and certainly here in Ohio, to substantiate or refute claims of voter suppression and disenfranchisement. We are eliciting evidence that will inform our debate when we take up the Voting Rights Act amendment and legislate to make voting more accessible.

The Voting Rights Act, as we all know, passed Congress in 1965, days after my high school graduation. The VRA was needed to guarantee to African American citizens, particularly in the South but not exclusively, the right to vote.

It eliminated the literacy test. We often forget that, but the Voting Rights Act eliminated the literacy test and created many effective provisions, the most notable of which are Section 2 and Section 5. Section 2 granted minority communities a right of action to challenge discriminatory voting election systems.

Though Section 2 litigation is expensive and very time consuming, we have used Section 2 through the years to dismantle discriminatory barriers. The law is permanent, Section 2 is, and it is nationwide. In 1982, a bipartisan Congress amended Section 2 and eliminated the intent standard as a standard of proof.

Section 5, by contrast, applied to certain States and parts of certain States that had a sorry history of preventing African Americans from voting. These covered jurisdictions were required to sub-

mit voting changes to the Department of Justice and demonstrate that the voting change is not discriminatory. That is a very expedited way of getting voting changes approved. It is free, and the burden is on the submitting jurisdiction to prove that it is not discriminatory.

However, on June 25, 2013, the United States Supreme Court in the *Shelby* case handed down a decision that was devastating. Many of us did not fully understand it, but now we do. First, I need to set the record straight. It did find—the *Shelby* decision did find Section 5 of the Voting Rights Act to be constitutional, but it determined that the formula, Section 4 we called it, the formula was outdated and in need of amendment.

And so the Court has invited Congress to fix Section 4 and adopt a formula to require preclearance in jurisdictions that have fallen short using recent and relevant evidence. And we have come today to hear the Ohio story because reports are not good. The reports that we get about Ohio are not good, to say the least. Hopefully, we can craft good, bipartisan legislation that will protect the right to vote, not just to African Americans or to Latino Americans, but—or Asian Americans, but protect the right to vote for every American.

And I want to thank you Chairwoman for your leadership, thank you for your extraordinary leadership on this subject, and I look forward to the hearing as we go forward today.

Since I have 55 seconds remaining, I too want to recognize a friend in the audience, Dr. Beverly Armstrong Norman, who is a young lady that grew up with me in North Carolina. We grew up together many, many years ago. Thank you, Beverly, for coming out today.

Thank you. I yield back.

Chairwoman FUDGE. Thank you.

Mr. Raskin of Maryland.

Mr. RASKIN. Well, it is a great honor and a great privilege to be here in the beautiful 11th District of Ohio, home of our beloved Marcia Fudge, the Chair of this Subcommittee, and a very distinguished Member of the U.S. House of Representatives.

And I appreciate Mr. Davis' remarks, and I will try to pick up on the bipartisan theme by invoking a great Republican President, Abraham Lincoln, who spoke of government of the people, by the people, and for the people. And this has been the tantalizing, beautiful dream of American democracy.

It is, of course, not the way that we started. We started as a slave republic of white male property owners over the age of 21, but it has been through social democratic struggle and constitutional and statutory changes that we have opened America up.

You can, in fact, look at our Constitution and the Bill of Rights and all the amendments that have followed it as the chronicle of the expansion of our democracy. You know, we have had only 17 Constitutional amendments since the original Bill of Rights. Most of them have dealt with the expansion of the suffrage and franchise in attempt to perfect democracy.

The 15th Amendment eliminated discrimination in voting based on race. The 17th Amendment shifted the mode of election of U.S. Senators from the State legislatures to the people. The 19th

Amendment gave us women's suffrage. The 23rd Amendment said that people in the District of Columbia could vote for President. The 24th Amendment abolished poll taxes And the 26th Amendment lowered the voting age to 18.

And then, of course, we have had, as Mr. Butterfield reminds us, the Voting Rights Act, which is an important part of our work here today to try to repair the damage that was visited upon it by a five to four decision of the Supreme Court essentially knocking the wind out of the Voting Rights Act by striking down the coverage formula which is necessary for the preclearance requirement to work.

Now, I think that we have—we have kind of dueling impulses in our society going back to the beginning. On the one hand, nothing is more precious and beloved to us than the idea that every citizen has the right to vote. And that is the ideal embodied in that beautiful phrase, one person, one vote, which was the rallying slogan of Bob Moses in the Student Nonviolent Coordinating Committee in the civil rights movement in Mississippi in the early 1960s when they went at great pains and great personal risks to themselves door to door trying to register people to vote in—basically in apartheid state.

And the Supreme Court adopted that language of one person, one vote in the one person, one vote cases, *Reynolds v. Sims* and *Wesberry v. Sanders*. So that is a very deep part of our value system. But at the same time, we know that there have been recurrent efforts to keep people from voting, to stop people from voting even while we have this value, this ideal that everybody should have the right to vote, and there have been repeated efforts to keep people from voting.

And, again, this has been a bipartisan thing. It is not one party or other. And certainly, our party on our side of the aisle has a lot to repent for in terms of what it did in the middle of the 20th century in the Southern States. But I am proud of the fact that today we are very much the champions of giving every single citizen the right to vote and protecting that right to vote.

I happen to think that our—the right to vote is too weak because we don't have in our Constitution what most of the constitutions of democratic countries around the world have, which is a universal affirmative grant of the right to vote to everybody. We have these anti-discrimination voting amendments, like the 15th Amendment and like the 19th Amendment. You can't discriminate against this group, you can't discriminate against that group.

But what we don't have is the affirmative grant of the right to everybody to vote and to be represented, which is why we have millions of unrepresented people, like people who live in Washington, D.C., the only residents of a national capital who aren't represented in their own national legislature. We have got millions of former prisoners, people who live in the territories, Puerto Rico, American Samoa, Guam, and the Virgin Islands who can't vote.

I think we have got some constitutional weakness here and from that flows a structural weakness that it is so decentralized and fragmented. We have got to look at that as we try to repair the Voting Rights Act and move forward to make sure that everybody has the right to vote and to participate.

I yield back. And thank you very much, Madam Chairwoman, for convening this in Ohio.

Chairwoman FUDGE. Thank you.

If you hadn't noticed, Mr. Raskin is a former Constitutional law professor. Now you know why all that stuff is on the top of his head.

We are going to begin with our testimony from our witnesses. Each witness will have five minutes to give us their testimony. You will see a light system. When the light turns green, you begin. When it turns yellow, you will have about one minute left of testimony. When it turns red, I would ask you to please start to wrap up.

Let me introduce our witnesses for you today. Daniel Ortiz, who is the Outreach Director for Policy Matters Ohio. Mr. Ortiz joined Policy Matters Ohio in 2016, bringing thirteen years' experience in organizing campaign strategy and education.

Elaine Tso. Is that—did I pronounce it correctly?

Ms. TSO. Tso.

Chairwoman FUDGE. Tso, okay. Interim Chief Executive Officer of Asian Services in Action. In 2015, ASIA, along with 15 other organizations across the State, launched the very first ever new American-focused civic engagement network focused on voter registration, voter education, and voter turnout.

Mr. Tom Roberts, President, Ohio Conference of the NAACP. Mr. Roberts previously served as a member of the Ohio General Assembly where he represented the interest of residents in the Dayton, Ohio, area for more than 22 years.

Mr. Ortiz, you are recognized.

STATEMENTS OF DANIEL ORTIZ, OUTREACH DIRECTOR, POLICY MATTERS OHIO; ELAINE TSO, INTERIM CO-CHIEF EXECUTIVE OFFICER, ASIAN SERVICES IN ACTION; AND TOM ROBERTS, PRESIDENT, OHIO CONFERENCE OF THE NAACP

STATEMENT OF DANIEL ORTIZ

Mr. ORTIZ. Good morning, Chairwoman Fudge, esteemed Members of Congress, and staff. Thank you for convening these hearings and for the opportunity to testify about voting rights and election administration in Ohio.

My name is Daniel Ortiz. I am the Outreach Director for Policy Matters Ohio, a nonprofit, nonpartisan organization working for a more vibrant, equitable, sustainable, and inclusive Ohio. My experience with elections began when I joined my parents when they went door-to-door canvassing for my father's first election to city council. Since then, I have organized youth with curriculum on the struggle for voting rights and worked professionally for political campaigns to coordinate voter protection programs.

The integrity of our elections relies upon broad access to the vote, a transparent process to safeguard the integrity of the ballot, and straightforward access to the polls. Unfortunately, our country has a sad history of making it difficult for racial minorities and other groups to vote. The 2013 ruling of *Shelby County v. Holder* took away many protections, and the loss of preclearance for areas with

historic voter disenfranchisement has opened a flurry of activity to depress voting.

Reports of obstacles to voting, such as polling location closures, voter identification requirements, language access problems, mail delivery issues, low voter turnout rates, and flexible work schedules and transportation issues are rampant. While these challenges are most widespread in States formerly protected by the Voting Rights Act, they are alive and real in Ohio as well.

Ohio's struggles are not the same, but they are similar. In 2016, the legislature and then-Secretary of State Husted eliminated Golden Week, the period when citizens could register to vote and cast an absentee ballot on the same day. Since then, Ohioans have experienced a steady and subtle erosion of our voting rights with devastating results.

In Ohio, the closure of polling locations and consolidation of precincts, combined with the lack of reliable transportation options and paid time off from work make it hard for many vulnerable communities to vote. Since 2012, Ohio has closed more than 300 polling locations across the State, a disproportionate number in urban areas.

Reports from the Cuyahoga County Board of Elections show in that period there were closures that eliminated 78 polling locations in Ohio's second largest county. That obstacle alone will sideline many voters, especially those who do not own cars.

For decades, Ohio has underinvested in public transit, spending just 63 cents per capita on public transportation, ranking 40th among States. This presents an intersection of challenges to individuals with disabilities, people of color, and low-income people that is reminiscent of past struggles for civil rights.

The 2018 Supreme Court decision of *Husted v. A. Phillip Randolph Institute* made it easier for States to purge voters from the voting rolls. I would like to echo the dissenting opinion of Justice Sotomayor that Congress crafted the National Voter Registration Act of 1993 with the understanding that while States are required to make a reasonable effort to remove ineligible voters from the registration list, such removal programs must be developed in a manner that prevents poor and illiterate voters from being caught in a purge system which will require them to needlessly re-register and prevents abuse which has disparate impact on minority communities.

Sotomayor goes on to point out that a majority African American neighborhood of Cincinnati had 10 percent of their voters removed for inactivity compared to only 4 percent of voters in suburban neighborhoods.

Most people who follow campaigns and elections will attest to you that you win in the margins. This partisan urge to lock in an electoral advantage by manipulating the law will continue until there are new laws to stop it.

In my work to support community voter education initiatives, I find that Spanish language resources are often lacking and staffing levels are low. Our Nation's current atmosphere of fear and intimidation threatens to reduce civic participation in the growing Latino electorate. This is especially true for Ohio's Latino community and the recent arrivals coming from Puerto Rico.

Puerto Rico is currently in the midst of a migratory wave with 5 million people leaving the island between 2006 and 2016, and as many as 176,000 people migrating to the mainland United States in the one-year aftermath of Hurricane Maria. This will likely eclipse the wave of migration that brought my parents to Ohio in the 1950s.

Prior to the hurricane, Ohio's Puerto Rican population nearly doubled in size between 2000 and 2017, growing from 66,000 to just below 125,000. Ohio's Puerto Rican population is considerably younger, less educated, and more likely to be poor compared to Puerto Ricans on the island or in other States. Over 18 percent of Puerto Ricans in Ohio reported speaking English less than very well.

In northeast Ohio, many recent arrivals' biggest concern is the struggle to find stable, long-term housing. The instability combined with Ohio's system to purge voters is a cause for concern for anyone who cares about the voice of the diaspora community and would like to see more active participants in our democracy.

Puerto Ricans are U.S. citizens, but differences in Ohio's electoral process, coupled with a lack of appropriate cultural context in most civic education initiatives, will lead to low participation rates.

Any changes to the Voting Rights Act should reinstate preclearance and expand it in their coverage to States like Ohio. Voting somewhere near your home, on a major transit line, with a ballot in your most familiar language should be the norm, not the exception.

We should be making it easier to vote. Voters should not have to worry about what rights they are losing between elections, if their early voting period is being cut, whether they have been purged from the voter rolls and need to re-register, if their polling location has been shut down or combined, and how far they will have to travel to vote.

I cannot tell you what the future of the Voting Rights Act looks like, but I do ask that you consider what justice looks like. Help us bridge the divide. Consider solutions for those most burdened people in high poverty with language barriers, with low educational attainment, and less experience voting. If we make our elections work for them, our county, State, and country will be better for it.

Thank you. And I look forward to answering any questions.

[The statement of Mr. Ortiz follows:]



TESTIMONY
April 25, 2019

Committee on House Administration Subcommittee on Elections - Ohio Field Hearing

Daniel Ortiz

Good morning Chairwoman Fudge, esteemed members of Congress and staff members of the subcommittee. Thank you for the opportunity to testify about the state of our elections and for convening these field hearings. My name is Daniel Ortiz, and I am outreach director for Policy Matters Ohio, a nonprofit, nonpartisan organization working for a more vibrant, equitable, sustainable and inclusive Ohio for everyone. My electoral experience began when I joined my parents as they went door to door canvassing for my father's election to city council. I've volunteered to register voters since 2006 and organized youth with a curriculum on the history of the struggle for voting rights. I have worked professionally for political campaigns and coordinated voter protection programs. I still volunteer for local voter registration and civic engagement initiatives.

The integrity of our elections relies upon broad access to the vote, a transparent process to safeguard the integrity of the ballot and straightforward access to the polls. Unfortunately, our country has a sad history of making it difficult for racial minorities and other groups to vote. Reports of obstacles to voting such as polling location closures, voter identification requirements, language-access problems, mail delivery issues, low voter turnout rates, inflexible work schedules, and transportation issues, are rampant. These challenges are most widespread in states formerly covered by the Voting Rights Act but are alive and real in Ohio as well. Our struggles are not the same but they are similar. In 2016, the legislature and then Secretary of State Husted eliminated Ohio's Golden Week, the period when citizens could register to vote and cast an absentee ballot on the same day. Since then, many have found it harder to vote. The 2013 ruling of *Shelby County v. Holder* took away many protections but the specific loss of preclearance for areas with historic voter disenfranchisement has aged poorly. Last year we saw horrifying evidence for the need for those provisions from the Native population in North Dakota, the Latino population in Dodge City, Kansas and the Georgia gubernatorial race. In Ohio we have experienced more subtle erosion of our voting rights but the results are devastating nonetheless.

The 2018 Supreme Court decision of *Husted v. A. Phillip Randolph Institute* made it easier for states to purge people from the voting rolls. I'd like to echo the dissenting opinion of Justice Sotomayor that, "Congress crafted the National Voter Registration Act of 1993 (NVRA) with the understanding that, while States are required to make a 'reasonable effort' to remove ineligible voters from the registration lists, §20507(a)(4), such removal programs must be developed in a manner that 'prevent[s] poor and illiterate voters from being caught in a purge system which will require them to needlessly re-register' and 'prevent[s] abuse which has a disparate impact on minority communities.'" S. Rep. No. 103-6, at 18.¹ Sotomayor goes on to point out that in a majority African-American neighborhood of Cincinnati in Hamilton County had 10% of their voters removed for inactivity compared to only 4% of voters in suburban neighborhoods. Most people who follow campaigns and elections will attest that you win in the margins. The partisan urge to lock in an electoral advantage by manipulating the law will continue until there are clear laws to stop it.

¹ 584 U. S. ____ (2018) | SOTOMAYOR, J., dissenting

In Ohio, the closure of polling locations and consolidation of precincts combined with lack of reliable transportation options and ample time off from work make it hard for many vulnerable communities to vote. Since 2012, Ohio has closed more than 300 polling locations across the state, a disproportionate number in urban areas.² A specific analysis of reports available on the Cuyahoga County Board of Elections' website shows there were 423 voting locations in 2012³ compared to 345⁴ in 2018, leaving the residents of Ohio's second most populous county with 78 fewer polling locations. That challenge alone will sideline many voters, especially those who do not own cars. For decades, Ohio has underinvested in public transit and roughly 1 percent of the state's transportation spending goes toward public transit.⁵ Although we are the seventh most populated state, Ohio spends \$.63 per capita on public transportation, ranking 40th among states for commitment to public transit.⁶ This presents us with an intersection of issues that is reminiscent of struggle for civil rights.

In my work to support community voter education initiatives, I find that bilingual resources are often lacking. Unfortunately, the problems facing Northeast Ohio's Latino community are unique and likely growing. This is especially true for the recent arrivals coming from Puerto Rico. Puerto Rico is currently in the midst of a migratory wave, with 500,000 leaving the island between 2006 and 2016. According to September 2018 estimates, net migration from Puerto Rico to the mainland United States was as many as 176,603 people in the one-year aftermath of Hurricane Maria.⁷ This will likely eclipse the wave of migration that brought my parents to Lorain, Ohio in the 1950s. Prior to the hurricane, Ohio's Puerto Rican population nearly doubled in size from 66,269 in 2000 to 124,970 in 2017. Recent demographic research shows that Ohio's Puerto Rican population is considerably younger, less educated and more likely to be poor compared to Puerto Ricans living on the island or in other states.⁸ Over 18% of Puerto Ricans in Ohio reported speaking English less than "very well," which is slightly higher than the average. In Northeast Ohio many recent arrivals' biggest concern in resettlement is the struggle to find stable, long term housing. This is a cause of concern for anyone who cares about the diaspora community and would like to see these folks assimilate into active participants in our democracy.

Puerto Ricans are American citizens but our electoral process can often be jarring in how different it is from Puerto Rico. Election day in Puerto Rico is a holiday and, "turnout ranged from 86 percent and 90 percent for the general population between 2000 and 2012," with a notable dip in 2016.⁹ Local groups like Bienvenidos a Cleveland and Bienvenidos al Condado de Lorain have coordinated the support of the nonprofit community, educational institutions, health and human service agencies, faith organizations and other community-based groups. Yet civic education is understaffed and under resourced. Throughout this work civic education has been a challenge and often is missing a culturally appropriate context. Cuyahoga County Board of Elections has done well to comply with the consent decree of 2011

² How the Gutting of the Voting Rights Act Led to Hundreds of Closed Polls. Rob Arthur and Allison McCann, https://news.vice.com/en_us/article/kz58qx/how-the-gutting-of-the-voting-rights-act-led-to-closed-polls

³ Nov. 6, 2012 Presidential Election Post Election Profile, Cuyahoga County Board of Elections, https://boe.cuyahogacounty.us/pdf_boe/en-US/2012/November2012Profile.pdf

⁴ Post Election Profile November 6, 2018, Cuyahoga County Board of Elections, https://boe.cuyahogacounty.us/pdf_boe/en-US/2018/Nov%20Election/Election%20Profile%20November%206%202018.pdf

⁵ Written testimony to the Governor's Advisory Committee on Transportation Infrastructure, Amanda Woodrum, <https://www.policymattersohio.org/research-policy/sustainable-communities/transit/written-testimony-to-the-governors-advisory-committee-on-transportation-infrastructure>

⁶ Ibid

⁷ Puerto Rican Exodus: One Year Since Hurricane Maria. Jennifer Hinojosa and Edwin Meléndez, https://centropr.hunter.cuny.edu/sites/default/files/RB2018-05_SEPT2018%20%281%29.pdf

⁸ Puerto Ricans in Ohio, the United States, and Puerto Rico, 2014. The Center for Puerto Rican Studies (Centro), <https://centropr.hunter.cuny.edu/sites/default/files/PDF/STATE%20REPORTS/8-OH-PR-2016-CentroReport.pdf>

⁹ Recent Trends in Puerto Rican Electoral and Civic Engagement in the United States, Carlos Vargas-Ramos, https://centropr.hunter.cuny.edu/sites/default/files/data_briefs/RB2016-04_ELECTORAL%20AND%20CIVIC%20ENGAGEMENT.pdf

and provides bilingual ballots but I am concerned about the future work of a committee that they launched on civic education and hope to see a commitment to bring future efforts in house. Currently, civic education efforts in the Latino community are held together by dedicated volunteers with support from staff at other agencies but with modest staffing levels any employee turnover can result in a critical blow during an election year.

Any additions to the Voting Rights Act should help expand preclearance coverage to state's like Ohio. Voting somewhere near your home, on a major transit line, with a ballot in your most familiar language should be the norm, not the exception. We should be making it easier to vote. Voters should not have to worry about what rights they're losing between elections – if their early voting period is being cut, whether they have been purged from the voter rolls and need to re-register, if their polling location has been shut down or combined and how far they will have to travel to vote. I cannot tell you what the future of the Voting Rights Act looks like but I do ask that you consider what justice looks like. Help us bridge the divide. Consider solutions for those most burdened groups in high poverty, with language barriers, with low educational attainment and less experience voting. If we make our elections work for them, our county, state and country will be better for it.

Thank you for the opportunity to testify. I look forward to the chance to answer any questions.

Chairwoman FUDGE. Thank you very much.
Ms. Tso.

STATEMENT OF ELAINE TSO

Ms. Tso. Thank you, Chairwoman Fudge, Ranking Member Davis, Committee Members, and staff for the opportunity to speak with you today. My name is Elaine Tso. I am the interim co-CEO of Asian Services in Action, and I am here today to speak on behalf of the community we serve.

Asian Services in Action, also known by the acronym ASIA, provides services to immigrants and refugees in northeast Ohio. ASIA was founded in 1995 by four women who saw a need to improve the quality of life for Asians and Pacific Islanders in northeast Ohio. Today, the organization is the largest Asian American and Pacific Islander focused health and social service 501(c)(3) organization in the State of Ohio.

Each year, ASIA serves tens of thousands of individuals and families at its offices located in Cleveland and Akron, Ohio. These services include culturally and linguistically focused medical care provided through our Federally Qualified Health Centers, as well as wraparound social services so that each client is treated holistically according to their individual needs.

ASIA serves some of the most vulnerable members of the community, newcomers to this country, who are learning to—learning how to navigate and adjust to a new environment with different rules and unfamiliar procedures. ASIA's mission is to reduce barriers and obstacles for new arrivals to this country and empower them to contribute to the strengthening and growth of America.

According to a 2018 report from the Ohio Development Services Agency, Ohio's Asian American community consists of more than 324,000 people. In 2012, ASIA's new American civic engagement project began. It was part of an effort to increase Asian American/Pacific Islander participation in the Presidential election. This work grew into a movement to educate and push for civic participation among new American communities throughout Ohio and is now known as the ACE Network.

Through the ACE Network, ASIA has supported numerous community-based organizations, ethnic groups, and student associations to increase voter participation and civic engagement within the AAPI community. You know, as voting is the foundation of democracy in this country, ASIA strives to ensure that new Americans are included in this process.

Significant investment of resources and collaborative effort has been made to increase voter turnout in the State of Ohio in the Asian American/Pacific Islander community. This year, ASIA is working with 15 diverse partners across the State who are organizing at the grassroots level to register and turn out new low-propensity voters. In 2018, in partnership with members of the ACE Network, ASIA contacted over 36,000 registered voters across the State.

For many members of the immigrant and refugee population that ASIA serves, the right to vote is a new and unfamiliar experience. A refugee, almost by definition, comes from a country where the in-

stitutions necessary to protect the freedom and safety of citizens have failed or have never existed.

In that context, many of ASIA's clients arrived in this country with little understanding of the features of a functioning democracy. Some of ASIA's clients have not even voted in their countries of origin. So ASIA's civic engagement team not only registers new voters, they also educate new Americans about the voting process.

Additionally, some members of the new American community have language challenges with limited English proficiency. The combination of voting being a new concept for the new American community plus a language challenge magnifies the effect of any barrier to voting. So frequent changes to election administration procedure has a disproportionate effect on new Americans.

Therefore, it is important for the government to consider the impact that these challenges have on what should otherwise be free, fair, and equitable access to the right to vote. I say equitable because what is needed for fair access to voting may be different for a new American than for someone who has lived in this country for a long time.

I will stop here because my time is running out, but I will welcome any questions.

[The statement of Ms. Tso follows:]

**Committee on House Administration
Subcommittee on Elections**

Written Testimony on behalf of Asian Services in Action, Inc. for the April 25, 2019

Field Hearing on Voting Rights and Election Administration in Cleveland, Ohio

Asian Services In Action, Inc. (ASIA, Inc.)

Asian Services in Action, Inc. also known by the acronym ASIA, Inc. provides services to immigrants and refugees in Northeast Ohio. ASIA, Inc. was founded in 1995 by four women who saw a need to improve the quality of life for Asians and Pacific Islanders in Northeast Ohio. Today, the organization is the largest Asian American and Pacific Islander-focused health and social service 501(c)(3) organization in the State of Ohio. ASIA, Inc. serves thousands of individuals and families at its offices located in Cleveland and Akron, Ohio. These services include culturally and linguistically focused medical care provided through our Federally Qualified Health Center as well as wrap around social services so that each client is treated holistically according to their individual needs. ASIA, Inc. serves some of the most vulnerable members of the community - newcomers to this country who are learning how to navigate and adjust to a new environment with different rules and unfamiliar procedures. ASIA, Inc.'s mission is to reduce barriers and obstacles for new arrivals to this country and empower them to contribute to the strengthening and growth of America.

AAPI Population in Ohio

According to a 2018 report from the Ohio Development Services Agency, Ohio's Asian American community consists of more than 324,000 people. The Asian community in Ohio includes

immigrants from countries like China, Korea and India; as well as Hmong, Karen, Bhutanese, Nepali, Laotian and other refugees. The 2020 Census will hopefully provide an updated and accurate count.

Asian American Pacific Islander Civic Engagement (ACE) Network

ASIA, Inc.'s new American civic engagement project began in 2012 as part of an effort to increase Asian American Pacific Islander (AAPI) participation in the presidential election. This work grew into a movement to educate and push for civic participation among new American communities throughout Ohio and is now known as the ACE Network. Through the ACE Network, ASIA, Inc. has supported 29 community-based organizations, ethnic groups, and student associations to increase voter participation and civic engagement within the AAPI community across the state of Ohio. The ACE Network operates under two core values: we believe in democracy and the democratic process, and we envision a society in which all Asian American and Pacific Islanders fully participate in and have access to the democratic process. The mission of the ACE Network is to educate the community on the importance of civic participation through community-based advocacy, and to increase the overall rate of civic engagement participation among the AAPI and new Americans community through voter education, canvassing, and Election Day initiatives that provide greater AAPI and new American voter turnout.

This effort represents a significant investment of resources to increase voter turnout in the State of Ohio in the Asian American Pacific Islander community. This year ASIA, Inc. will be working with fifteen diverse partners across the state who are organizing at the grassroots level to register

and turn out new, low propensity voters. In 2018, ASIA, Inc., along with members of the ACE Network, contacted over 36,000 registered voters across the state.

Educating New Americans on Voting

For many members of the immigrant and refugee population that ASIA serves, the right to vote is a new and unfamiliar experience. A refugee, almost by definition, comes from a country where the institutions necessary to protect the freedom and safety of citizens have failed, or have never existed. As such, many of ASIA, Inc.'s clients arrived in this country with little understanding of the features of a functioning democracy. Some of ASIA's clients have not even voted in their countries of origin. So, ASIA's civic engagement team not only registers new voters, they also educate new Americans about the voting process.

Language Barriers for English Language Learners

Some members of the new American community have language challenges with limited English proficiency. The combination of voting being a new concept for the new American community plus a language challenge will exacerbate any barrier to voting so that each feature of the election process that makes voting more difficult will have a disproportionate effect on new Americans.

Increasing Access to Poll Workers

In Ohio, we are particularly concerned about what we see as ongoing efforts to cut back on the infrastructure of the election system. The most recent example of this came in 2017 when the Ohio General Assembly considered a bill that would have dropped the number of poll workers per precinct from four to two.

ASIA, Inc. opposed the bill because it would have disproportionately affected voters with limited English proficiency as well as any other voter who needed extra help casting a vote. For example, a limited English proficiency voter has the right to bring a helper into the voting booth, but that accommodation has to be approved by poll workers. With fewer poll workers, the time for getting an accommodation approval will be longer. That effect creates a barrier to voting.

Fortunately, the bill to decrease the number of poll workers did not pass. It illustrates, however, how the state of Ohio is underfunding its election infrastructure. We have also seen the number of polling places steadily cut resulting in longer lines, which appear disproportionately to affect precincts that are predominantly minority and lower income. My co-CEO tells me that his polling location has changed eight times in the last ten years. Needless to say, that kind of inconsistency makes finding a polling place that much harder for someone still adjusting to life in this country.

Voter Registration Reform

For new Americans, access to the polls can be difficult, confusing or give the impression of being designed to discourage their participation. A circumstance that shows the need for voter registration reform occurs at the intersection where an eligible new American voter has an interest in voting on Election Day and then learns that he or she cannot vote because of not being timely registered in advance of the election. Sixteen states (ME, NH, VT, CT, MI, MD, IL, IA, WI, MN, MT, ID, CO, UT, CA, HI) plus DC have same day voter registration. Same day voter registration in Ohio would eliminate this barrier for the new American voter.

Voter Purge

While ASIA, Inc. has not directly counselled a voter who was purged, we do know that some features of refugee communities are likely to make them more susceptible to being purged erroneously. First, members of these communities are at least somewhat more likely to move around, especially in the first few years after being settled here. More importantly, refugees tend to have less formal education and tend to come from societies without the democratic institutions that native-born Americans take for granted. As such, they are more likely to be confused or even intimidated by an official notice like the one that the state of Ohio sends after a period of inactivity. For those citizens still mastering English, the confusion will be more pronounced. For these reasons, we are concerned that voter purge systems will affect some new Americans who otherwise would be eligible to vote. We particularly object to the feature of Ohio's voter purge system that excludes a voter even if he can prove that he was improperly purged.

Conclusion

ASIA, Inc. applauds the Committee's efforts in traveling across the country to inquire about the current status of voter access in each state. It reflects a shared consensus that all communities within the American family should participate in civic life, including voting in elections.

Chairwoman FUDGE. Thank you very much.
Mr. Roberts, you are recognized for 5 minutes.

STATEMENT OF TOM ROBERTS

Mr. ROBERTS. Thank you, Chairwoman Fudge and Ranking Member Davis. Thank you for being here in the State of Ohio, the Buckeye State. As some of you may know, we often say the road to the Presidency comes through the State of Ohio, and for many of us that has been true for many, many, many years.

I, first, want to bring you greetings on behalf of our Washington Bureau President, Hilary Shelton, who has dealt with many of you at our Nation's capital. As you know, the NAACP was founded in 1909. It is our Nation's oldest, largest, most rightly recognized grassroots civil rights organization.

And despite the fact African Americans and other racial and ethnic groups are guaranteed the right to vote by the 15th Amendment of the U.S. Constitution, States like Ohio are using outright intimidation to stop people from casting free, unfettered ballots.

I want to share with you some of what is going on in Ohio. There are many other issues I could share with you, but I want to take these three because they deal specifically in your role as Members of the U.S. Congress, as that is what I was asked to share with you.

The first of one is purging. In 2006, Ohio had 7,860,052 registered voters. At that time, 416,744 registered voters, that is 5.35 percent of those total were removed or deleted from the rolls in 2006. The number of voters purged vary significantly, range as low as, in your district, Madam Chairwoman, 20,353 were removed from the rolls in 1998 and 1999, in Franklin, Ohio, for failure to vote in the previous four years, 170,000 names were removed from the rolls in Cuyahoga. Let me flip that. Madam Chairwoman, yours is 170,000. Franklin was the 20,000.

Chairwoman FUDGE. Correct.

Mr. ROBERTS. The low to the high. All the purging of voters was done as part of a so-called annual voter roll maintenance process required by what we all thought was a positive law, the National Voter Registration Act. The Ohio Secretary of State was canceling these registrations.

The supplemental process targeted voters who did not vote in two consecutive Federal elections. Voters purged in the process often did not see and often showed up at the polls and realized they were not able to vote. This required groups like—and some of them are present today—Ohio's A. Phillip Randolph Institute to file a lawsuit against the Ohio Secretary of State.

The case ended up in the U.S. Supreme Court. The Supreme Court unfortunately ruled on behalf of the Ohio Secretary of State. In the end, the U.S. Supreme Court decision allows States to treat the fundamental right to vote as a use-it-or-lose-it right.

Let me talk about the other one that I think the Chairwoman shared. Golden Week was created in 2005 with a newly—with new early voting legislation allowed voters to cast absentee ballots up to 35 days before the election. This allowed for a week of overlapping with a deadline of voter registration. The number of people who took advantage of this opportunity was considerable.

During the 2012 general election, approximately 90,000 people cast votes during Golden Week, which translates to about 14 percent of the total early voting. Golden Week and early voting opportunities have been much debate in the State of Ohio and others.

In 2014, the Ohio House passed Senate Bill 238, which eliminated Golden Week, followed by a directive from the Secretary of State setting widely early voting hours to be used in the forthcoming election. Shortly afterwards, the NAACP, with the help of the ACLU, filed a lawsuit against the Secretary of State. In 2015, a compromise was reached in which Husted agreed to restore some weekend and evening to voting hours. This agreement expired when the Secretary of State was elected Lieutenant Governor.

Restrictive legislations. This is the third issue. Since 2013, members of the Ohio General Assembly have introduced no less than nine bills to restrict voting in the State of Ohio.

Madam Chairwoman, and Members of the committee, I look forward to your questions.

[The statement of Mr. Roberts follows:]

United States House of Representative Committee

Sub Committee on Elections

Testimony of

Tom Roberts

President of the Ohio Conference of the NAACP

April 25, 2019

Founded in 1909, the NAACP is our nation's oldest, largest, and most widely recognized grass based civil rights organization.

Despite the fact that African –Americans and other racial and ethnic groups are guaranteed the right to vote by the 15 Amendment of the U.S. Constitution. States are using outright intimidation to stop people from casting free and unfettered ballots.

I want to share with you some of what is going on in Ohio.

Purge

As of the 2006 election, Ohio had 7,860,052 registered voters and the state reported 416, 744 registrants (5.35%) of the total registrants were removed deleted from the rolls in 2006.

The numbers of voters purged vary significantly ranging as low as 20, 353 registrants removed from 1998 & 1999 in Franklin County for failure to vote in the previous four year or moving out of the county to 170,00 names moved removed from the Cuyahoga voter rolls in 2001 and 2002 .

All of the purging of voters was done as part of Ohio annual voter roll maintenance process required by the National Voter Registration Act, Ohio Secretary of State was cancelling the registrations.

The "Supplemental Process "targeted voters who did voter in two consecutive federal elections. Voters purged in the process often did not see, or understand the notice and did not realized they had been purged.

This resulted in Ohio's A Phillip Randolph Institute filing a lawsuit against the Ohio Secretary of State. The case ended up in the U. S. Supreme Court. The Supreme Court ruled in behalf of the Ohio Secretary of State.

In the end, the U S Supreme Court's decision allows states to treat the fundamental right to vote as a use it –or- lose it right.

Golden Week

Golden week was created in 2005 with new early voting legislation that allowed voters to cast absentee ballots up to thirty five days before the elections. This allowed for about a week of overlapping with the deadline of voter registration.

The number of people who took advantage of these opportunity proved to be considerable.

During the 2012 general election, approximately 90,000 people cast votes during Golden Week, which translated to about 14% of the total early, in person absentee ballots cast that year.

Golden Week and early voting opportunities have been the subject of much debate.

In 2014 the Ohio House passed Senate Bill 238 , which eliminated Golden Week followed by a directive by the Secretary of State ,setting state wide early voting hours to be used in forth coming elections .

Shortly afterwards the ACLU filed a lawsuit that became known as NAACP vs Husted.

The Ohio Conference of the NAACP, the League of Woman Voters and other groups were named plaintiffs in the lawsuit.

In 2015 a compromise was reached in which Husted agreed to restore some weekend and evening voting hours. (No Golden week)

Restrictive Legislation

Since 2013 the members of the Ohio General Assembly have introduced at least nine bills to restrict voting in Ohio. These bills are harmful because they block voter access and participation.

In 2011 HB 194 was passed. The bill slashed early voting days in half, eliminated the last weekend of early voting, , and eliminated the requirement that poll workers direct voters to the correct precinct.

Voters successfully petitioned to referendum the bill, which the legislature repealed HB 194 in 2012.

I thank the committee for coming to Ohio and hearing our concerns.

Chairwoman FUDGE. Thank you.

Just a warning to everyone, we are being live streamed nationally, so sometimes the camera is on us and sometimes it is on you. So just giving you a heads-up about that.

With that, we will begin our questioning. And I will move to Mr. Butterfield, and I will save my comments until the end.

Mr. Butterfield, you are recognized for 5 minutes.

Mr. BUTTERFIELD. Thank you again, Madam Chairwoman. You got to me pretty quickly.

First, let me thank the panelists for your testimony today. It has been very insightful. And if you didn't get to portions of your testimony, it will certainly be included in the record.

As I said in my opening statement, this is an official Congressional hearing, and so your remarks today are officially in the record of the House of Representatives and will be used as we take up legislation in the upcoming months so thank you so very much.

Let me start off with you, Mr. Ortiz. Your testimony, I read a portion of it in my binder and listened to you here today. And obviously, you are very hands on, and just thank you for your activism.

As—well, first of all, you said that Section 5 does not apply to the State of Ohio, it never has, but Section 2 does. Section 2 is nationwide and it gives minority communities the right to litigate whenever they feel that their votes are being diluted. Have there been instances of Section 2 litigation in Ohio?

Mr. ORTIZ. I cannot speak to that.

Mr. BUTTERFIELD. Do any of the others of you—I know NAACP and other States has been very active in Section 2 litigation, at least the Legal Defense Fund has. Do you know, Mr. Roberts, if there has been litigation in Ohio?

Mr. ROBERTS. I am not aware of it, but I almost believe there was at some point, but I can't speak to it.

Mr. BUTTERFIELD. And to the second panelist?

Ms. TSO. Yes. I am not aware of any, and that is outside of the scope of the work that the Asian Services does. But I would be happy to find that information for you.

Mr. BUTTERFIELD. Thank you. Thank you very much.

And we are not being rude to witnesses when we cut them off like this. This is kind of the way we do it. We have 5 minutes to cram all of this stuff in, and so don't think we are being disrespectful when that happens.

In reading the material and just watching Ohio politics over the years, it seems that there are constant changes in your election laws. Nothing is static. Nothing stays the same. And it seems to me that—I like to call these second-generation barriers anytime you talk about purging voter rolls.

I mean, I don't even know why it is necessary to purge a voting roll. They are not being done by hand. They are being done electronically. And so if you have people who just happen to be inactive, they may just decide, well, I am not going to vote again until I have someone on the ballot that I want to vote for. And so they may just choose to sit out for two or three elections, and so the voter purge evidence that I have heard is very disconcerting.

Early voting, that seems to be a trend across the country, not just in Ohio, but a trend everywhere, because there are groups of

people in our country who want to suppress votes of people who will not likely vote for their political party, whether it is the Democratic Party or the Republican Party. I mean, this thing can go in either direction.

But there seems to be a concerted effort on the part of groups of people across the country to do very subtle things. They are not trying to eliminate the right to vote. They want to suppress the right to vote. And so if a purge disproportionately affects a minority community versus a majority community or an early voting change disproportionately affects one community over another, then that is where the focus seems to be, and that is what we call voter suppression. And it appears to be happening in this great State, and so we have got to find a way to level the playing field to make sure that all of our voters get an equal opportunity to participate.

Am I wrong in believing that there have just been constant changes in your election laws, Mr. Roberts?

Mr. ROBERTS. Chairwoman Fudge, Congressman, you are absolutely correct. To date, 270,000 voters have been purged from the voting roll. When I mentioned the nine, let me just tell you, SB 47 made it difficult for voters to repeal unpopular laws. This is the initiative that we are guaranteed under the Constitution of Ohio.

One of my former colleagues in Cincinnati, because the polls, I think, opened up late, he got a court to allow an extension. Legislation was introduced to attempt to make it more difficult to keep these polls open, even though it was a technical——

Mr. BUTTERFIELD. Sure.

Mr. ROBERTS [continuing]. Reason for that happening.

Mr. BUTTERFIELD. Let me get to my final question then. Do you see any emerging issues, voting issues that may be surfacing? I know redistricting is right around the corner and the census is on the horizon. Do you see any emerging issues that we haven't talked about today? Yes.

Ms. TSO. Well, one issue that I think we didn't talk about extensively is there was a bill that the Ohio General Assembly considered to reduce the number of poll workers per precinct from four to two, and that would disproportionately impact anyone who needed additional assistance at the polls, whether that is inviting a helper for a limited English proficient voter or anyone who needs an accommodation of some sort, because that would need some approval from a poll worker.

Mr. BUTTERFIELD. Thank you. That is very helpful.

I yield back.

Chairwoman FUDGE. Ranking Member Davis.

Mr. DAVIS. Thank you, Chairwoman Fudge.

And thanks again to the witnesses. I enjoyed listening to your testimony.

It is a privilege for me to represent central Illinois. Mr. Roberts, Springfield, Illinois, particularly in my district, it is the birthplace of the NAACP. We are working to take artifacts that were unearthed during a project of the race riots of 1908, which began the movement toward the NAACP and get those artifacts into the Smithsonian Museum of African American History. When we are

successful, I hope you can join me out there. Thank you for your service, and thanks for your testimony.

I also have a chance to represent part of Abe Lincoln's old congressional district, where he served as a member of the Whig Party for one term. There is a joke in Illinois that in some parts of Illinois Abe probably could still cast a vote. So when we are talking about voter maintenance issues, you know, that is—I guess we have got to figure out a process, how do you move deceased voters from the rolls.

Voter maintenance, voter list maintenance, Mr. Roberts, is a practice used by 44 other States and is required by the National Voter Registration Act. And as your testimony and the testimony of others have stated, it has been upheld by the U.S. Supreme Court.

Additionally, the State of Ohio has an extremely low error rate. It is—the error rate is .001 percent with their practices. Yet all three of you are opposed to Ohio's list maintenance. Please, how do you square this, Mr. Roberts?

Mr. ROBERTS. Thank you, Ranking Member Davis. And let me just say, under the leadership of Illinois's president Teresa Haley—

Mr. DAVIS. Teresa is great.

Mr. ROBERTS [continuing]. We have been to Springfield last year for a regional meeting, so I am very familiar with your artifacts there.

I think the answer would be it is not the issue of dead people because Ohio law is clear on how that is taken care of. I think it goes to one of the other comments, and that is, if I choose not to vote, there is no way in the world that I should be taken off the rolls.

One of my former colleagues from the House said we should have put on the panel "none of the above," because that should give me an opportunity to say I don't like that person. I think that is not the issue. It is not the dead people. It is that I should have the choice to vote or not vote and not be removed from the rolls.

Mr. DAVIS. Don't you—I mean, Ohio is different than Illinois. I am learning too from your testimony about other States' practices, but, you know, the State legislature can't offer a choice of none of the above. The State legislature can offer some additional, you know, opportunities.

From what I have seen in my research, there have been multiple times where the voter list registration and the Secretary of State has gone above and beyond to send mailers out. Doesn't the voter also have the chance to send that back to verify that, hey, I do live here?

Ms. TSO. If I may, I can speak to just an illustration. There are—we are aware of a voter—they were not directly counseled by ASIA, but we are aware of a voter who worked in a submarine away from his Ohio residence for many months, you know, like majority of the year he was working on this submarine. The official notice came after a period of inactivity, to his residence that he intended to return to after his service.

And it is situations like that where, you know, the period of inactivity, having nothing to do with an intention or non-intention to remain on the roll.

Mr. DAVIS. Are you aware of that individual not getting a chance to cast a vote?

Ms. TSO. Yes.

Mr. DAVIS. So that individual did not—was not able to vote?

Ms. TSO. They were purged. That individual was purged from the roll and then had to re-register.

Mr. DAVIS. But was that individual stopped from voting in that particular election that you were counseling him on?

Ms. TSO. We did not counsel this individual. This is something that we are aware of, but we—

Mr. DAVIS. Do you know whether he was able to vote in a future election?

Ms. TSO. I do not.

Mr. DAVIS. Okay. Mr. Ortiz, you mentioned that the national trends are that voter turnout is lower. I don't think that squares with the facts. I think, you look at this recent midterm, voter turnout was at exceptionally high levels. We were in North Dakota recently where they have a—they don't even have a voting registration system and there was record turnout in the midterm election.

Can you clarify that comment for me?

Mr. ORTIZ. Thank you for the question. I would speak to some of the points that you have made. I think when we look at the process for purges, I don't disagree that people are given opportunities to reply to a postcard. But when we have such very quick process to bring people into that pipeline of potential purge, depending on how that data gets shared, we need to review to see if that is being done equitably, if it is being done to where all folks in a county, irregardless of which neighborhoods they are living in, are being brought into that process.

And then also, there is some concern that certain communities will be intimidated by written correspondence from government, and that could be something that they may be less likely or inclined to reply to.

Mr. DAVIS. Does that—we are going to have government mailers from the IRS, Selective Service. You know, are they—if they are intimidated, do they not have to respond to those?

Mr. ORTIZ. It is not that they don't have to respond to those. I think it is also that we need to have adequate services and funding for people to make sure that there is clarity in how we are communicating that things are being communicated in languages that are going to speak to the folks who are receiving those mailers, and that there are staff that can answer questions to clarify and dispel myths.

I think that sometimes the active imagination of what is going on in our politics can get the best of us, and many people can have a distorted view of what is happening with our government. And I think it is upon all of us to help explain with a very clear and transparent process how their voices need to be heard and they are a part of this process as citizens of this country.

Mr. DAVIS. I yield back. I don't have any time to yield back.

Chairwoman FUDGE. The gentleman's time has expired.

Mr. Raskin.

Mr. RASKIN. Thank you very much, Madam Chairwoman.

So, Mr. Roberts, let me start with you. Do people—people have a constitutional right to vote, we think, under the Equal Protection Clause. Do people have a constitutional right not to vote?

Mr. ROBERTS. Representative, I think so. I think they have a right not to vote.

Mr. RASKIN. Okay. If people have a Constitutional right to vote but you throw them off the rolls for not voting, you have basically violated their right not to vote by denying their right to vote. Right?

Mr. ROBERTS. Yes.

Mr. RASKIN. You testified that hundreds of thousands of people were purged from the rolls, removed by this statewide mechanism. And it is not just a question of some people not wanting to vote, not liking the choices. Ohio doesn't make it particularly easy to vote, does it?

I mean, it is not very easy to vote in America generally. We don't do it on the weekend. We do it on a weekday. Working people have to go to work. They have to drop the kids off at school. They have to pick the kids up from school. You have to get dinner ready. There is not a lot of time to vote.

And then, as I understand it, getting testimony that the legislature cut early voting days in half, it eliminated the requirement that poll workers direct people to the right precinct if their precinct place has moved, and the last weekend of early voting was eliminated.

So they are restricting people's ability to go vote. Then if they don't vote they use that as a reason to take them off of the rolls for the next election. And if they miss the postcard or it gets lost in a stack of bills or something, tough luck.

Mr. DAVIS suggested that the error rate was .01 percent, which is remarkable to me, if that is true. I would love to—

Mr. DAVIS. .001.

Mr. RASKIN. Say it again?

Mr. DAVIS. .001.

Mr. RASKIN. .001. I am reading that to be one in 100,000 people. They purged 400,000 people and only four people were falsely purged? I mean, that is hard—it is hard for me to believe, but, I mean, I would love to see some documentation of that. It just strikes me as an extraordinary practice, you know.

And Mr. Davis said something I really agreed with at the beginning, he said that the principal antagonist to the right to vote is partisanship. And, again, that applies across the board. There are no clean hands in American history when it comes to trying to deprive people of the right to vote based on partisanship.

But, you know, I know of Ohio, it is the pathway to the Presidency. It has produced, what, seven Presidents of its own. It is a very closely divided State. My beloved friend, Marcy Kaptur, keeps me apprised of what is going on in Ohio politics. You have got one progressive Democratic Senator. You have got one conservative Republican Senator. It is a basically 50/50 State, but when you look at the congressional delegation, it is 12 to 4 because it has been so heavily gerrymandered.

Now, that is not just a Republican problem, because in my State, which is a Democratic State, we have got seven Democrats and one Republican. I am opposed to gerrymandering across the board. That is why I am proud I voted for H.R. 1, which eliminates gerrymandering by mandating independent redistricting commissions in every State in the country.

But even if we could live with gerrymandering for a while, until we get rid of it, certainly we can't live with the gerrymandering of elections by throwing hundreds of thousands of people off of the rolls when they have got a right to vote. That is a very different kind of thing.

So what are the efforts in Ohio to stop this practice? What is going on? Mr. Ortiz, you are involved in it. Is there any hope of ending this practice of these systematic purges of voters?

Mr. ORTIZ. I would say that we are going to continue to organize. We are going to work with our coalition partners to make sure that this is something that we can bring more voice to, more awareness to.

I know that with specific regard to the point on gerrymandering, that is also something that Ohio has begun to address with ballot initiatives to—and that have passed and been successful—to make changes to how we are going to redistrict going into 2020 and beyond. But I also think—

Mr. RASKIN. I mean, gerrymandering does look like a really important obstacle to full voting rights. If one party, whatever it is, the purple party, the red party, if one party gets in control, then they can slice the deck in such a way that they end up with not a 2 to 1 advantage, a 3 to 1 advantage in the State's congressional delegation and in the State—something like that in the State legislative makeup.

And then they use that to pass laws that make it more difficult for people to vote, not just in their district election but statewide election. That is a serious dysfunction in the democracy, right?

So, I don't know, Mr. Roberts, if you would comment on what could be done about this.

Mr. ROBERTS. NAACP, League of Women Voters, and Environmental Council and many others worked together to have legislation passed we thought was very progressive gerrymandering legislation. The proof is in what happens, in 2021 what happens. And I think we have passed that legislation. We will see what happens.

Ohio has addressed those issues. And I just want to say that the current secretary of state is a little more receptive to working with various groups than the previous secretary of state.

Mr. RASKIN. I yield back. Thank you very much, Madam Chairwoman.

Chairwoman FUDGE. Thank you.

Mr. Joyce.

Mr. JOYCE. Thank you, Madam Chairwoman. It is an honor to be here with you in the county we share.

Chairwoman FUDGE. Yes.

Mr. JOYCE. And while the dean of our delegation, Marcy Kaptur as well, as well my friend Anthony, and the rest of our members that we welcome aboard. It just goes to show that northeastern

Ohio, we all work together. And I just have two quick questions, and I will defer the rest of my time to Representative Davis.

Mr. Ortiz, if I heard you correctly, you said that there is an up-tick, if you will, in Hispanic voters. Is it not true that Lorain and Cuyahoga County both offer bilingual ballots?

Mr. ORTIZ. That is true.

Mr. JOYCE. Okay. Thank you. I just wanted to clarify that.

And, Ms. Tso? Tso?

Ms. TSO. Tso.

Mr. JOYCE. I am sorry. You had brought up the fact that there are bills reducing the poll workers from four to two. Isn't it a fact that we are having a problem finding poll workers that is part of that process, so in order to make sure we can run the elections, that if we reduce the number of poll workers, we will be allowed to run the election more efficiently?

Ms. TSO. I mean, I think that that is part of the infrastructure in the State of Ohio that perhaps needs to be enhanced or strengthened. Perhaps if there was additional funding for additional poll workers, then it would be able to recruit more poll workers. I know that in our community, we are—we actively encourage our community members to be poll workers.

Mr. JOYCE. I know from my time as a prosecuting attorney that it is—that you are about minimum wage for all the work that you put in by the time you are through with the day as a poll worker, and I know it is really hard to recruit them.

I defer back to my colleague, Mr. Davis.

Mr. DAVIS. Thank you, Mr. Joyce.

I wanted to give the figures that got us on the .001 error rate. The new Secretary of State, Secretary LaRose, sent an additional mailing to try and re-register 270,000 that did not respond to the voter maintenance list mailer. 540 responded. 540 people responded.

When you look at voter turnout, you look at list maintenance processes, does—I mean, I asked the question last time, how do our local officials abide by the law, abide by the Supreme Court decision that was a decision based upon a suit filed here in Ohio? What is their choice, and what have they done lately?

I know, Mr. Roberts, you gave us some statistics, but the most recent one was 13 years ago, in 2006. And the other statistics you gave us were 20 years ago. What about now?

Mr. ROBERTS. I think the panel after us will have a lot more details because they are dealing with it intimately. I think they will have those numbers that they can share with you.

Mr. DAVIS. I certainly hope so, because statistics from 2006 and from 1998 and 1999 aren't as relevant today. And I would like to, for our knowledge and for the record, understand what is happening today.

And, you know, I am glad you mentioned Secretary LaRose is open to working with you. I think his office spent \$130,000 to send an extra mailer out to get only 540 responses.

And, Mr. Ortiz, now, I know you didn't clarify about voter turnout being—trending lower. I want to give you another chance to clarify your comments on low voter turnout when clearly the facts

are that voter turnout is up nationwide and up here in Ohio, even in predominantly minority precincts.

Mr. ORTIZ. Congressman, yes, lower turnout was up in the 2018 election. I would also say that, you know, to the question that you bring and pose on the purges, I think, to the earlier point that I made citing Justice Sotomayor, that we need to be looking at this and make the reasonable effort that any people removed, any ineligible voters, are done so and we develop processes that prevent poor and illiterate voters, illiterate voters specifically from being caught in this purge system.

I am familiar with the statistics that you shared on the response rates from the mailer from Secretary of State LaRose, but I do think that we aren't being mindful of all the challenges certain communities that may be receiving this mailer face.

Mr. DAVIS. Well, again, government mailers come all the time. Folks, no matter where they are, what their literacy level is, unfortunately don't get a break if they don't respond to the IRS. We have seen your local officials send multiple, multiple mailers out, and we got a .001 response rate. I think the local officials are doing their job. I don't have a lot of time left, so I am just going to ask you to raise your hand. With the Census coming up, we are going to get an accurate count of all the folks that live in each of our States. Raise your hand if you think it is okay—raise your hand if you think it is okay to have more registered voters in counties than people who are counted in the Census.

VOICE. That makes no sense.

Mr. DAVIS. It does when you don't maintain your voter lists because we have counties in my home State of Illinois that have more people registered to vote than were counted in the Census. That is a problem. Is that an okay process? Raise your hand if you think it is okay. All right. I yield back.

Chairwoman FUDGE. The gentleman's time has expired. Ms. Kaptur.

Ms. KAPTUR. Thank you, Madam Chairwoman. And I just want to say to those from Ohio here today, we are so proud of Marcia Fudge that she has the gavel for this Subcommittee and for the country. We are so proud of her. Thank you, Marcia. We know through your mother, who, by the way, comes to my Congressional district, too, to every meeting, right, how hard she works, as well, for the interests of our country and for the greater Cleveland and Ohio communities.

I wanted to offer some perspective. When I was born a few years ago, the Nation had 146 million people. We are headed to over 325 million now, headed to 350 million, so Ranking Member Davis, we thank you for traveling a great distance to be here, and all of the members of this Subcommittee, obviously, but it is sort of obvious that you are going to have more people voting when your population has doubled and tripled, and we are—hopefully, we will have more people voting. By 2050, we will be up to about 350 million or could be over that as a country.

I think population growth accounts for additional voters, and also that we work very hard to register people, but I wanted to give some perspective what troubles me about the system that has been set in place in Ohio.

When I was a little girl, we used to be able to walk to the precinct, and I would go with our mother. And it is one of my precious memories. The PTA would have a cupcake sale, that is probably why I went, and mom would hold me up, and in those days, we had paper ballots, and I would be able to mark the X for her. That is probably why I am in Congress. But I remember that she would give the ballot to our neighbor, who was a Republican, and he would put it in the box. And I would leave there completely perplexed not understanding why our mother would do that. And—but voting was very personal. We knew everybody at the voting table, the booth workers. They were from our neighborhood.

What has changed so dramatically over the years, even where I vote, is that our precinct has now been moved multiple times. The street that I live on was sliced right down the middle, and I don't think it was by accident. When, unfortunately, a few years ago, I was forced to be in a runoff with a Congressman from Cleveland named Dennis Kucinich, the mapping that was done in Columbus by a legislature controlled by the opposite party, drew the line around his house and my house.

I am trained as a city planner. I pay attention to maps. And I thought they have got it down to the granular level. And what has happened in the region where I vote, now we have to drive to go to the precinct so mothers in my neighborhood and fathers can't walk their children to the polls like we used to do. There is something fundamentally wrong with that. I represent Lorain, Ohio. It has no transit. How are people supposed to vote? I hope that this Committee considers how to endorse community at the most local level as precinct lines are drawn, because what is going on is wrong for our country.

The other thing that has been happening in Ohio, our booth workers are shifted. So rather than someone from my neighborhood being hired to work right there, they take someone they hire from my neighborhood and put them in a totally unfamiliar place. This is amazing. It can't only be happening where I live. It has to be happening in thousands of precincts across this State. So when we used to walk into the precinct, people would know who we were, because they were our neighborhood, and, yes, they were Republican, and, yes, they were Democrat, but we—it was community. And I think there is something really gone afoul in this State that the—we are becoming almost faceless in the voting process. I am sure my time has expired, but I just want to say—

Chairwoman FUDGE. You get 25 seconds.

Ms. KAPTUR. I have got 25 seconds left. I just think that we need local training of booth workers. We need to go back and see where people actually live and use the schools as a way of measuring that, but don't provide all this disruption to people. And in the poorest neighborhoods I represent, I guarantee you that in many communities I represent when the children come to school in September by the next May, there are the same number of children in the school, but two-thirds to three-quarters of the children have changed in the lowest-income communities I represent. They have a right to vote, too.

And we have to figure out a way to deal with our provisional ballot situation much more efficiently, and we have to have people in

those precincts who know the neighborhoods. Thank you so very much, Madam Chairwoman.

Chairwoman FUDGE. Thank you. Our newest member of our delegation, Mr. Gonzalez.

Mr. GONZALEZ. First, I want to thank Chairwoman Fudge, my new friend, for bringing this hearing to Cleveland, Ranking Member Davis, Tri-C for hosting us today and everybody for being here. Additionally, I would like to thank all the witnesses for taking the time to be here and discuss this important issue. The opportunity to participate in democracy by casting a ballot is one of the most important and fundamental rights in this country. My grandparents fled Communist Cuba and the Castro regime because they believed in the strength of our values and the strength of our Constitution. The belief in the right to vote, after watching what happens to a country when that right does not exist, was central to the inspiration that led them to our great Nation and is, frankly, why I am sitting in this chair.

Just recently, I had the opportunity to participate in a civil rights pilgrimage in Alabama, led by the legendary Rep. John Lewis. There have been few experiences in my life that have been as impactful as seeing this painful part of our history through his eyes as he and his civil rights brothers and sisters fought to gain the promises enshrined in our founding documents.

America's democracy is healthy and strong when everyone who has the right to vote uses that right freely and securely. Ohio has had a storied history in Federal elections as a swing State, often playing a major role in determining the winner in Presidential elections.

I was glad to see my friend, Frank LaRose, elected to the Secretary of State position last November to take over as chief election officer in Ohio. I believe that it is worth noting that this past election set a record for the highest turnout in a midterm in the history of our State. We have never had more voters.

As a State legislator, Frank led the fight on reforming our redistricting process, and to expand registration options to include online registration. Just yesterday, he announced a bipartisan initiative to ensure that when a citizen updates their information at the State in one place, say, on tax filings, that the new address will be automatically transferred to the Secretary of State's Office as well, for updating the voter rolls. This will ensure that more people are kept on the rolls and being properly counted.

While I recognize that there is always room for improvement, I would like to highlight several aspects of the Ohio election system that I feel are particularly strong. At 28 days, Ohio currently offers one of the longest early voting periods in the Nation, providing flexibility to voters who are unable to vote on Election Day. This even includes early voting on weekends.

Additionally, Ohio has no-excuse absentee ballot voting, meaning that voters are able to vote absentee, even without a stated reason. It is not the practice across the country. Practices like this encourage participation in our democracy, and I am proud that Ohio has been an example for other States who currently have not enacted these policies.

In turning to questions, I just have a couple, and then I will turn it back over to Mr. Davis if we have time. Mr. Ortiz, I want to get back to something you said, which is that voter suppression reduced the vote in the Latino community in the previous election. Can you share the data with that specifically?

Mr. ORTIZ. So, Congressman, thank you for the question. I would say that there is a number of data sources that I can share after this and follow up, but I will also say, I appreciate hearing your story, and I think as a child of immigrants, you know, you can appreciate that right now, the atmosphere in our country is particularly challenging. Just earlier this week, the Supreme Court heard oral arguments talking about the Voting Rights Act as it relates to this upcoming Census and addition of a citizenship question.

Many advocates across the country are united in thinking that this is going to produce a depressed count, and when everyone doesn't count on the Census, that turns all sorts of data that is reliable that everyone uses, regardless of what side of the aisle, whether you are working in business or for the public good, we all rely on that data. So with that as a prospect on the horizon, and forming the mood of specific folks in the Latino community who may not have the same experience that you had, but who may be the descendants of immigrants that feel intimidated, it could provide a shift in how folks view communications from government. So I do think that it is something that we need to be mindful of on how that can be a disruption for all sorts of things, including appropriations.

Mr. GONZALEZ. I don't mean to interrupt. My time is going to expire in a second.

Mr. ORTIZ. Okay.

Mr. GONZALEZ. Just to verify just really quickly, the claim that Latino turnout was down as a result of voter suppression, do you have the data source for that specific claim?

Mr. ORTIZ. I will follow up with additional data sources.

Mr. GONZALEZ. Please. I look forward to that, and I yield back.

Chairwoman FUDGE. Thank you very much. And last, but certainly not least, my colleague that represents not only Shelby County but Selma, Alabama, Terri Sewell from Alabama.

Ms. SEWELL. Thank you so much, Madam Chairwoman. I want to thank everyone for participating in today's field hearing, including our extraordinary panelists who have committed themselves to the great work of making sure that our civil rights and our voting rights for every American is ensured. I would also like to thank all my colleagues on the House Administration Committee, the Subcommittee on Elections, for allowing me to be here today, even though I am not on the Committee. Especially Chairwoman Marcia Fudge, for her leadership on the issue of voting rights.

I am the chief sponsor of H.R. 4. And H.R. 4, the Voting Rights Advancement Act, is a seminal piece of legislation, which seeks to restore Section 4 of the Voting Rights Act of 1965. I have the great honor of not only representing Alabama's Seventh Congressional District, which includes Birmingham, Montgomery, Tuscaloosa, and my home town of Selma, Alabama.

I know that people in my district bled, fought, prayed, marched, and many died for the right to vote for all Americans in this great

Nation. It is important to me, and I know it is important to all the panelists here today, as well as to my colleagues on the dais, that we get to the bottom of why it is that people are not voting in the numbers they should be voting.

The reality is that we live in a society where, human nature being human nature, we realize that by restricting the opportunity to vote to some people in this society, we actually can change elections. That is just a fact. Now what do we do about that fact? I think it is important that we realize that the fundamental base of our democracy is the right to vote. Also, the right not to vote. But it is important that we realize that you don't lose that right to vote simply by not voting.

I think that there are several myths here that I would like to challenge. The first myth is just because you have higher turnout and higher voter registration doesn't mean that we don't have voter suppression. Let me repeat that. As Rep. Marcy Kaptur so eloquently said, she knows more about the population in Ohio than I do, the population of Ohio has grown exponentially, so you would think that the number of people voting, registering to vote, turning out to vote, would also increase. But that, nevertheless, doesn't invalidate the fact that in certain vulnerable communities, it is harder to vote.

What do I mean by that? You know, just because we no longer have to count how many marbles are in a jar, or if you saw the movie *Selma*, recite how many counties, all 67 counties in order to register to vote, doesn't mean that State legislatures across this country are not imposing harder barriers for people to vote.

In North Dakota, this Subcommittee was just there, instead of allowing people to register to vote by any mailing address that they have, the State legislature imposed a physical address requirement. It should not be surprising to you, although I am sure it was not intentional by that legislature, that tribal lands and those Native Americans that live on tribal lands often vote by P.O. Box, not physical address.

Now, I am sure that the State of North Dakota's voter rolls are much higher than they were in the 1960s. I am sure that the State of North Dakota's voter registrations are higher than they were in the 1960s, probably record high, since their population has grown. But that, nevertheless, does not invalidate the fact that only by looking at physical addresses to be able to register to vote in that State doesn't cause voter suppression.

Let's be clear. We should be, especially as elected officials, all about making sure that it is easier for people to vote, not harder for people to vote. I think of my own State, the State of Alabama, where my dad, who recently passed, he was able to vote the latter part of his years after a massive stroke by a validly issued Federal ID called a Social Security card. But after the *Shelby* decision, it just so happens that the State of Alabama State legislature changed the requirements of what is required in order to go and vote.

The ID that you can show now does not include a Federal ID called a Social Security card. Rather, now it includes a much more limited number of IDs. I find it to be really hard to believe that you don't—you can't show a University of Alabama ID, but you can

show a hunting license ID and go and vote. The State of Alabama is picking and choosing who should vote. They are prioritizing hunters over students, and it is wrong.

So I want to thank this Committee for allowing us to see, in real time, and go out in the field and talk to constituents, talk to voters, nonvoters, those who wish they could vote because they don't have transportation. We have to think about all the reasons why people don't vote, and we should be encouraging that instead of limiting access to the polls. Thank you, Madam Chair, for the opportunity to participate today.

[Applause.]

Chairwoman FUDGE. I want to thank this first panel, and I want to thank all my colleagues, as well. And I just want to wrap up by saying a few things. We are as segregated and separated in this country today as we were in 1968. Our schools are more segregated; our neighborhoods are more segregated. And so, I think it is important that we understand what is happening in this country today.

And I think that when Chief Justice Roberts wrote his opinion in *Shelby*, the things that he said that I agree with, is that there is still discrimination in this country. What he said was that the information and the data that we had was old. He said there are still places that need to be precleared, but we need contemporaneous new data. That is what we are doing here today and around the country is collecting the data. He did not believe for a minute that everybody is treated fairly in this country and that the right to vote is the same for everybody in this country. He is a Supreme Court Justice. I agree with him on that, that there is still discrimination and we need to address it.

You know, it is interesting that we talk about the numbers of people voting. Because we vote in spite of difficulties doesn't make those difficulties right. I mean, just because the bar is raised, and we have to find a way to jump over it, it doesn't make it right that we go to Standing Rock a week ago, and they tell us that they are voting at chicken coops, that we go to Brownsville, Texas, and they tell us that they are voting in police stations knowing that the people who live in those communities are afraid of the police.

It doesn't make a difference when we talk about all the things that—and I happen to like LaRose, so I am really pleased that he is the Secretary of State, but the former one, the former one, you know, he would send us postcards that look like junk mail. Who looks at that? That is the first thing. It looks like junk mail.

The second thing is that he would believe that we should do everybody—treat everybody the same. Now, in theory, that makes some sense, except for that if I live in a county with one million people, and I have one place to vote with 30 parking spaces, and somebody that lives in a county with 5,000 people has one place to vote with 30 parking spaces, is that fair to me? Absolutely not. Equity and fairness are two very different things. And we have to understand the difference.

Also, the poor are disproportionately hurt, because poor people move more, so they don't get the junk mail. We don't have permanent housing. And if you look at places like Standing Rock, where most people do not drive, what do you need a driver's license for?

What do they need a particular ID for? So when we make them go and get one, it is a poll tax. If we make them go and buy a \$15 ID, it is a poll tax, that is exactly what it is. And so, I think it is important that we understand what we are doing in the name of democracy. We will support democracy in Venezuela, in Russia, in China, every place but here.

We should be making the franchise open to everyone as opposed to trying to make it more difficult for people to vote. And every time we change the rules, which we do in every single election, we make it more difficult for people to vote. If you are confused about what day you can vote it is suppressing your vote.

Now, is it incumbent upon us to know the rules? Yes, it is. But I would suggest to you that as elected officials, it is our responsibility to make sure that every American feels that they have the unfettered, unabridged right to vote. We should not say because you didn't vote today, I am not going to let you vote next week. The Constitution says you have a right to vote. It doesn't say if you don't vote, I am going to take it from you.

So let's talk about what the Constitution says. Jamie, I am not a constitutional lawyer, but I know a little bit about it. The Constitution gives us the right to vote, and if we are going to be the kind of Americans we say we are, then America needs to live up to its promise, and Ohio needs to live up to its promise, and that is to be sure that everyone who is qualified and wishes to vote can vote.

I thank you all so very, very much for your testimony.

[Applause.]

Chairwoman FUDGE. Guys, you can tell I am at home. We thank you, and if the next set of witnesses would please join us. Thank you all so much. Oh, you know what, let me do this while they are getting up. There are a number of elected officials, judges, council people. I saw the majority leader of city council. Just all the elected officials just stand up, would you please? The State Department of Education, it is a lot of people here. Thank you all so much for being here, thank you, thank you, thank you.

[Applause.]

[Recess.]

Chairwoman FUDGE. We are ready to begin our second panel. We are going begin, and we will just let Mr. Brickner join us when he returns. Okay. We are prepared to begin, so we would start today with—oh, let me introduce the witnesses. Naila Awan is the Senior Counsel at Demos. Naila is a civil and human rights lawyer, who joined Demos in 2015. She serves as local counsel in the *A. Philip Randolph Institute v. LaRose* case, challenging Ohio's practice of and procedures for purging infrequent voters from the registration rolls; and *Mays v. LaRose*, a case challenging Ohio's practice of denying eligible voters detained in the days preceding an election from accessing absentee ballots in jails.

Inajo Davis Chappell, a member of the Cuyahoga Board of Elections. She was appointed in April 2007. She is a partner at Ulmer Berne in Cleveland where she chairs the firm's nonprofit group.

Mike Brickner, Ohio State Director, All Voting is Local, a new campaign that seeks to work proactively to expand access to the ballot. Prior to joining AVL, Mike worked at the ACLU of Ohio for

14 years, most recently serving as its Senior Policy Director. Ms. Awan, you are recognized for 5 minutes.

**STATEMENTS OF NAILA AWAN, SENIOR COUNSEL, DEMOS;
INAJO D. CHAPPELL, MEMBER, CUYAHOGA COUNTY BOARD
OF ELECTIONS; AND MIKE BRICKNER, OHIO STATE DIREC-
TOR, ALL VOTING IS LOCAL**

STATEMENT OF NAILA AWAN

Ms. AWAN. Thank you, Chairwoman Fudge, Ranking Member Davis, and to all the Committee members for the invitation to testify today. My name is Naila Awan, and I am senior counsel at Demos, a think and do tank that powers the movement for a just inclusive multiracial democracy. My testimony will focus on two voter suppression issues that Demos has been actively combating in Ohio. I will discuss Ohio's controversial practice of targeting voters for removal from the registration rolls simply because they could not or chose not to vote, as well as Ohio's restriction on absentee voting in jails.

An Ohio purge procedure, known as the supplemental process, treats the right to vote as a use it or lose it right. Under this process, Ohio uses an individual's failure to vote over a two-year period as an indicator that they have moved. It sends such registrants a confirmation card and then removes them from the voter rolls if they do not respond to the card or vote in the subsequent 4-year period. Representing the Ohio A. Philip Randolph Institute, the Northeast Ohio Coalition for the Homeless, and Larry Harmon, a long-time Ohio resident and military veteran who was purged under the supplemental process, Demos and the ACLU of Ohio brought a lawsuit in 2016 challenging Ohio's supplemental process on two grounds: First, that the use of nonvoting to initiate a purge practice violated the national Voter Registration Act; and second, that the confirmation card Ohio sent to voters targeted for removal under the process did not satisfy the informational requirements set forth in the NVRA.

Last year, in *Husted v. A. Phillip Randolph Institute*, the U.S. Supreme Court considered the first of these two claims, and determined that Ohio was not violating the NVRA by targeting voters for removal, based only on their failure to vote. However, that does not make the supplemental process wise or right. A brief filed by 36 current and former Ohio election officials recognized that the supplemental process ultimately results in the disenfranchisement of thousands of Ohioans, undermines the ability to maintain up to date and accurate voter rolls, and other more targeted roll maintenance practices could be adopted without disenfranchising duly registered Ohioans.

Further, the Supreme Court's decision did not consider the constitutionality of Ohio's purge practice or whether it unlawfully discriminates on the basis of race. In her dissent, Justice Sotomayor did recognize that barriers to the ballot box that are experienced by communities whose voices have been traditionally marginalized through the political process render them particularly vulnerable to unwarranted removal under the supplemental process.

Time and again, Ohioans across the State show up to vote only to be told at the polls that their names are no longer on the voter registration rolls. We were able to secure court-ordered relief, commonly referred to as the APRI exception on our first claim for the November 2016 general election. This relief allowed over 7,500 eligible voters in Ohio to participate in 2016 who would have otherwise been disenfranchised, and the exception has remained in place for each Ohio election since that time.

Even after last year's Supreme Court decision, the Sixth Circuit determined that the APRI exception should remain in place in November 2018 to provide relief for purged voters who likely received insufficient notice.

We are concerned that Ohio continues to use the supplemental process and that the availability of relief to prevent the disenfranchisement of voters who are unlawfully and illegitimately purged remains in question.

A different voting problem that Demos is currently engaged in within Ohio is that registered voters who are arrested and held in jails after the absentee ballot request deadline and detained through Election Day, are prevented from obtaining and casting an absentee ballot, despite remaining completely eligible under Ohio law.

On November 6, 2018, Demos Campaign Legal Center in MacArthur Justice Center filed a class action lawsuit on behalf of two voters who were detained on misdemeanor charges after the time when they could request absentee ballots, and approximately 1,000 similarly situated voters who were impacted in each election, challenging as unconstitutional the State's practice of locking these late jailed voters out of the political process. A Federal judge in the Southern District of Ohio issued a temporary restraining order requiring that Ohio deliver ballots to our named clients and count their votes, finding that our clients would likely succeed on their claim, have the right to vote, and no mechanism by which to do so.

This and other barriers to voting, such as the topic some of my fellow panelists are addressing, make it more difficult for Ohioans, particularly those traditionally marginalized in our democracy to cast a ballot. We at Demos look forward to working with this Committee to increase access to the ballot and better protect the right to vote.

[The statement of Ms. Awan follows:]

Dēmos

**Written Testimony of Naila S. Awan
Senior Counsel at Dēmos
Before the U.S. House of Representatives
Committee on House Administration, Subcommittee on Elections
Field Hearing: Voting Rights and Election Administration in Ohio**

**April 25, 2019
Cleveland, Ohio**

Thank you, Chairwoman Fudge, and to all the Committee members for the invitation to testify today. My name is Naila Awan, and I am a Senior Counsel at Dēmos, a dynamic “think-and-do” tank that powers the movement for a just, inclusive, multiracial democracy. Our name—meaning “the people”—is the root word of democracy, and it reminds us that the promise of a democracy is only met when all the people can access the ballot, cast a vote that counts, and have a meaningful say in who and what laws govern.

A study released last November that examined registration and voting laws to assess the time and effort it took to vote ranked Ohio as the 43rd hardest state to cast a ballot in during the 2016 presidential election.¹ As a native Ohioan and proud Buckeye, who went to both college and law school in this state, I am proud of the work that Dēmos has done and continues to do to make voting accessible to all eligible Ohioans.

My testimony today will describe several significant barriers to voting that currently exist in the state. It will focus on Ohio’s problematic practice of purging infrequent voters from the registration rolls, other practices that unfairly prevent Ohioans from participating in the electoral process, and how the elimination of Ohio’s same-day registration period, often referred to as “Golden Week,” negatively impacts Ohio voters.

Ohio’s Practice of Purging People for Not Voting

Ohio has long used an individual’s failure to vote over a two-year period as an indicator that they have moved from their recorded residence. Under what it has dubbed the “Supplemental Process,” Ohio sends voters who have not voted in two years a single-sheet notice, and then removes them from the voter rolls if they do not respond to the notice or vote in the subsequent four-year period.² Because it is not uncommon for voters to limit their political participation to

¹ Quan Li, Michael J. Pomante II & Scot Schraufnagel, *Cost of Voting in the American States*, 17(3) ELECTION L. J. 234 (2018); *New Study Scrutinizes Time and Effort It Takes to Vote in Each State: Changes in Restrictions, State Discrepancies Impact Voter Turnout*, NIU NEWSROOM, Sept. 25, 2018, <https://newsroom.niu.edu/2018/09/25/new-study-scrutinizes-time-and-effort-it-takes-to-vote-in-each-state/>.

² See, e.g., Ohio Secretary of State, Election Official Manual (rev. Mar. 22, 2019), at 3-3, 3-68, https://www.sos.state.oh.us/globalassets/elections/directives/2017/dir2017-10_eom.pdf; Ohio Secretary of State, Directive 2018-20, 2018 General Voter Records Maintenance Program – Supplemental Process, July 9, 2018.

presidential election cycles, this means that, for such voters, the decision to sit out one presidential election can lead to the removal of their names from the registration rolls.

Numerous eligible voters across Ohio have been purged from the rolls pursuant to the Supplemental Process.³ Often, these individuals learn that their names no longer appear on the voter rolls when they appear at the polls to vote and are informed that their names are not in the poll books.⁴ While such persons should be provided provisional ballots to cast, such ballots were not counted prior to the lawsuit we brought challenging Supplemental Process purges. Rather, the provisional ballots served only as re-registration forms that placed people back on the voter rolls for future elections—often at the same address where they had been previously registered.⁵

Larry Harmon was one of the many eligible Ohio voters who was disenfranchised because of the Supplemental Process. Represented by Dēmos and the American Civil Liberties Union of Ohio, Mr. Harmon challenged Ohio’s purge procedure as violating the National Voter Registration Act (“NVRA”) alongside two organizations: the Ohio A. Philip Randolph Institute (“APRI”) and the Northeast Ohio Coalition for the Homeless (“NEOCH”). Both organizations conduct voter registration among communities that are likely to experience heightened rates of disenfranchisement as a result of the Supplemental Process—low-income communities, communities of color, and the housing insecure.⁶

The case brought by APRI, NEOCH, and Mr. Harmon—commonly referred to as *Ohio A. Philip Randolph Institute v. Husted* (“APRI”)—consisted of two claims. The first was that, by using a person’s failure to vote to initiate a voter registration record purge, Ohio was in violation of the NVRA.⁷ The second claim was that the single-sheet notice sent to voters targeted by the Supplemental Process itself did not satisfy the informational requirements set forth in the NVRA,

³ See, e.g., Plaintiffs’ Motion for Summary Judgment and Permanent Injunction or, in the alternative, Preliminary Injunction, at 17 n. 2, 20-24, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio May 24, 2016), ECF No. 39 (describing the number of people removed under the Supplemental Process and individuals who were disenfranchised in 2015 as a result of the Supplemental Process purge).

⁴ See, e.g., Plaintiffs’ Motion for Summary Judgment and Permanent Injunction or, in the alternative, Preliminary Injunction, at 18-24, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio May 24, 2016), ECF No. 39.

⁵ The Supplemental Process may also contribute to Ohio’s high rate of provisional ballots. As noted in a report from the U.S. Election Assistance Commission, “[i]n 2016, 2,460,421 provisional ballots were cast nationally and . . . [f]our states—Arizona, California, New York, and Ohio—each reported that more than 100,000 provisional ballots were cast in the 2016 election[.]” U.S. Election Assistance Commission, The Election Administration and Voting Survey: 2016 Comprehensive Report, at 16, available at https://www.eac.gov/assets/1/6/2016_EAVS_Comprehensive_Report.pdf; *id.* at 28 (noting that 154,965 Ohioans cast provisional ballots in 2016); see also U.S. Election Assistance Commission, EAVS Deep Dive: Provisional Ballots, June 7, 2018, <https://www.eac.gov/documents/2018/06/07/eavs-deep-dive-provisional-ballots/> (noting that in 2016 the provisional ballots cast in Arizona, California, New York, and Ohio amounted to nearly 75 percent of the total number cast).

⁶ Plaintiffs’ Motion for Summary Judgment and Permanent Injunction or, in the alternative, Preliminary Injunction, at 24-27, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio May 24, 2016), ECF No. 39.

⁷ Plaintiffs’ First Amended Complaint, at 15–16, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:16-cv-303 (S.D. Ohio June 29, 2016) (No. 2:16-cv-303), ECF No. 37.

including by failing to inform voters that failure to respond to the notice or vote in the subsequent four-year period *would* result in removal from the registration rolls.⁸

As a direct result of the *APRI* litigation, we secured court-ordered relief that required the provisional ballots cast by voters purged under the Supplemental Process in or since 2011 be counted if the voters (1) appear in person to vote, (2) continue to reside in the same county where they were previously registered, and (3) had not become ineligible for another cause subsequent to the time of their removal from the voter rolls.⁹ This relief is frequently referred to as the “APRI Exception.” In November 2016 alone, the APRI Exception prevented the disenfranchisement of 7,515 voters across Ohio.¹⁰ The “APRI Exception” has been in place for every federal, state, and local election held since November 2016,¹¹ including in the November 2018 election, through an emergency injunction pending appeal granted by the Sixth Circuit.¹² The emergency injunction pending appeal was based on the second claim brought in *APRI* related to the insufficiency of the notice sent to voters targeted for removal under the Supplemental Process.¹³ Because litigation over the second claim in *APRI* is ongoing, it is currently unclear how long the APRI Exception will remain available to Ohio voters.

While the U.S. Supreme Court held last year, in *Husted v. A. Philip Randolph Institute* (“*Husted*”), that Ohio’s use of non-voting to initiate a purge procedure did not run afoul of the NVRA,¹⁴ that disposed only of APRI, NEOCH, and Mr. Harmon’s first claim. The Supreme Court’s decision, however, does not make the Supplemental Process wise or right. As an amicus brief filed by 36 current and former Ohio election officials in the *Husted* case recognized that the Supplemental Process “ultimately results in the disenfranchisement of thousands of Ohio voters” and undermines the ability to maintain “up-to-date and accurate” voter rolls.¹⁵ These election officials and other amici recognized that “there are other, more targeted [roll-maintenance practices] that could be adopted without disenfranchising duly registered Ohioans.”¹⁶

⁸ *Id.* at 16–17.

⁹ *Ohio A. Philip Randolph Inst. v. Husted*, 2016 WL 6093371, *9-12 (S.D. Ohio Oct. 19, 2016); Order, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio Oct. 25, 2016), ECF No. 92; Order, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio Nov. 5, 2016), ECF No. 93.

¹⁰ Provisional Ballot Report: November 8, 2016 General Election, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio Sept. 14, 2018), ECF No. 132-7.

¹¹ See Declaration of Matthew Damschroder, at 8-9, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio Sept. 27, 2019), ECF No. 133-4.

¹² *A. Philip Randolph Inst. v. Husted*, 907 F.3d 913, 922-23 (6th Cir. 2018).

¹³ See, e.g., *id.* at 919-21.

¹⁴ *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1841–47 (2018).

¹⁵ Brief of Current and Former Ohio Election Officials as *Amici Curiae* in Support of Respondents, at 1, *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018) (No. 16-980) (hereinafter “OEO Amicus”) (noting also that the Supplemental Process undermines the ability to ensure “that every eligible voter has the opportunity to cast her vote”).

¹⁶ *Id.* at 2; Brief for the States of New York, California, Connecticut, Delaware, Hawai’i, Illinois, Iowa, Kentucky, Maryland, New Mexico, Oregon, and Washington, and the District of Columbia as *Amici Curiae* in Support of Respondents, at 22–27, *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018) (No. 16-980); Brief of the League of Women Voters of the United States, League of Women Voters of Ohio, and the Brennan Center for Justice as *Amici Curiae* in Support of Respondents, at 21–25, *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018) (No. 16-980); see also *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1865 (2018) (Sotomayor J.,

Further, no discrimination claim was brought in *APRI*, and the Supreme Court's decision in *Husted* did not consider whether Ohio's purge practice would run afoul of constitutional protections, such as the Equal Protection Clause, or other federal laws. However, in her dissent Justice Sotomayor recognized that barriers to the ballot box experienced by communities whose voices have been traditionally suppressed through the political process "render[] them particularly vulnerable to unwarranted removal under the Supplemental Process."¹⁷ This was borne out in an analysis of the number of infrequent voters purged in Hamilton County, Ohio from 2012 through 2015, which found that "African-American-majority neighborhoods in downtown Cincinnati had 10 percent of their voters removed due to inactivity, compared to only four percent of voters in a suburban, majority-white neighborhood."¹⁸

In apparent response to our lawsuit, Ohio decided last year that it will use data from the Bureau of Motor Vehicles to narrow the total number of individuals who are targeted and removed under the Supplemental Process. While we were pleased to see this change adopted, we remain concerned that this change was made purely by an administrative directive,¹⁹ which could be undone at any time, and uses data that will likely overlook low-income voters and voters of color.²⁰

The Reverend Jesse Jackson aptly recognized that, unlike how some states treat the right to vote, "[n]o other rights guaranteed to citizens are bound by the constant exercise of that right. We do not lose our right to free speech because we do not speak out on every issue."²¹ Something as fundamental as the right to vote should simply not be treated as a use-it-or-lose-it right. In treating it as such, Ohio shuts out countless qualified voters from the political process and calls into question the legitimacy of the state's democracy.²² The longstanding implications of this practice, moreover, are dangerous: the more the state removes eligible voters from the rolls, without sufficient evidence that they have moved, the likelier these voters—upon learning of their inability to vote on Election Day itself—will give up on political participation and voting altogether. This whittling away of the electorate takes the "demos" out of "democracy."

dissenting) ("The majority of States have found ways to maintain accurate voter rolls without initiating removal processes based solely on an individual's failure to vote.").

¹⁷ *Husted*, 138 S. Ct. at 1864 (Sotomayor J., dissenting).

¹⁸ Andy Sullivan & Grant Smith, *Use it or Lose it: Occasional Ohio Voters May Be Shut Out in November*, REUTERS (June 2, 2016), <http://www.reuters.com/article/us-usa-votingrights/ohio-insight/use-it-or-lose-it-occasional-ohio-voters-may-be-shut-out-in-november-idUSKCN0YQI9D>.

¹⁹ Ohio Secretary of State, Directive 2018-21, Automatic Confirmation of Address Safeguard, July 9, 2018.

²⁰ *Id.* (noting that the procedure put in place last year uses data from Ohio's motor vehicle agency); see also S. REP. NO. 103-6, at 15-16 (1993) (noting that the NVRA did not limit its registration requirement to motor vehicle agencies because such agencies "may not adequately reach low income citizens and minorities" and that "public assistance offices . . . are more likely to reach [such] eligible citizens"); *supra* notes 27 and 28, along with accompanying text.

²¹ S. REP. NO. 103-6, at 17 (1993).

²² Secretary Husted: A Single Vote Makes All the Difference (June 14, 2018), *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio Oct. 5, 2018), ECF No. 139-5.

Barriers to the Ballot Box

Numerous barriers exist that can and do prevent Ohio residents from voting and contribute to the likelihood that a voter will be targeted for removal under the Supplemental Process. This testimony describes some of the challenges Ohioans face getting to the polls and casting a ballot, as well as the problems posed by ineffective or inaccessible election materials.

Challenges getting to polling places.

Registered voters may not be able to make it to the polls for any number of reasons, but some of those most cited are: illness or disability, scheduling problems, transportation issues, registration problems, and inconvenient polling locations.²³ Several of these obstacles are discussed below.

Low-wage and hourly workers often have inflexible work schedules that can prevent them from making it to the polls during the polling location's hours of operation.²⁴ While Ohio law prohibits employers from "discharg[ing] or threaten[ing] to discharge an elector for taking a reasonable amount of time to vote on election day,"²⁵ it does not define what is considered a "reasonable amount of time." Further, there is no requirement that hourly workers receive compensation for the time they take to vote.²⁶ This means that individuals struggling to make ends meet may simply not be able to afford to take time off to go vote.

Lack of access to transportation—often acutely felt by low-income individuals, people of color, and persons with disabilities—can also impact an individual's ability to make it to the polls to vote. To illustrate:

- A 2013 report published by the Ohio Department of Transportation recognized that "8.1 percent of Ohio households do not own a vehicle, while 33.3 percent only own one vehicle," with areas of "lower median incomes" correlating to "no vehicle households."²⁷
- A 2014 analysis noted that "African Americans in Ohio report 1.2 vehicles per household, on average, compared to 2.2 vehicles for whites. No less important, African

²³ U.S. Census Bureau, Table 10. Reasons for Not Voting, by Selected Characteristics: November 2016, <https://goo.gl/SbTb6U> (noting also that a number of people indicated that they did not vote in 2016 because they did not like the issues or candidates on the ballot or they were not interested in the election).

²⁴ Brief of National Disability Rights Network, Disability Rights Ohio, AARP, AFL-CIO, SEIU, Democracy Initiative, National Coalition for the Homeless, Columbus Coalition for the Homeless, and Miami Valley Voter Protection Coalition as *Amici Curiae* in Support of Respondents, at 9-11, *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018) (No. 16-980) (hereinafter "NDRN Amicus").

²⁵ OHIO REV. CODE § 3599.06.

²⁶ Kenneth Quinnell, *Know Your Rights: State Laws on Employee Time Off to Vote*, AFL-CIO Blog (Nov. 5, 2016), <https://aflcio.org/2016/11/5/know-your-rights-state-laws-employee-time-vote>.

²⁷ CDM Smith, Technical Memorandum: Setting the Stage, Ohio Department of Transportation, at 22, 25 (Mar. 2013), available at http://www.dot.state.oh.us/Divisions/Planning/SPR/StatewidePlanning/access.ohio/AO40_library/TechMemos/Setting%20the%20Stage.pdf; see also NDRN Amicus, *supra* note 24, at 13 ("In the Census Bureau's 2016 voting and registration survey, approximately eight percent of registered citizens earning less than \$15,000 per year who did not vote cited transportation problems as the reason for not casting a ballot. Yet, transportation problems accounted for less than one percent of registered non-voters earning more than \$40,000.").

Americans in Ohio are about three times as likely to have to rely on public transportation or walk to work and are about four times less likely to own their own car, both of which imply immediate travel financial costs but also substantially more time costs to voting.”²⁸

- A 2016 survey conducted by Disability Rights Ohio “identified transportation as the second most prevalent issue for people with disabilities to access in-person voting.”²⁹

Compounding the obstacles that inflexible work schedules and lack of transportation access pose are the limitations that have been placed on the times and places when Ohioans can cast an in-person ballot. While Ohio’s early voting window is just under a month long,³⁰ evening and weekend voting times are limited.

With the exception of Presidential General Elections, early in-person voting evening hours extend until only 7 PM during the workweek prior to Election Day, and Sunday voting times are limited to only four hours the weekend before an election.³¹ Because the state legislature restricted the number of early voting sites to one per county in 2011,³² getting to the polls before 7 PM can be challenging for voters who cannot leave their places of employment until (or after)

²⁸ Expert Report of Vincent J. Roscigno, at 15, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp. 3d 808 (S.D. Ohio Sept. 4, 2014) (No. 2:14-cv-404), ECF No. 18-2.

²⁹ Disability Rights Ohio, *Voting in Ohio: A Disability Rights Perspective*, at 5, Mar. 2018, available at https://www.disabilityrightsohio.org/assets/documents/dro_voting_in_ohio_report_march_2018.pdf; *id.* at 5-6 (noting also that “[w]hile some voters with disabilities can utilize their own vehicle,” a 2017 “report found that many voters with disabilities rely on family, friends, or service providers to provide transportation,” and while some voters with disabilities “use public transportation, . . . service availability to polling places can limit this option”).

³⁰ Polling locations are *not* open each day of the early voting window. *See, e.g.*, Ohio Secretary of State, Voting Schedule for the 2019 Elections, <https://www.sos.state.oh.us/elections/voters/voting-schedule/#gref>; League of Women Voters of Ohio, November 2018 Election Early Voting Hours, <https://my.lwv.org/ohio/november-2018-election-early-voting-hours>; Election Official Manual, *supra* note 2, at 2-31 to 2-33.

³¹ Election Official Manual, *supra* note 2, at 2-31 to 2-33 (noting that in Presidential General Elections, polls are also open until 6 PM during the workweek two weeks out from the election and there is a second Sunday of early voting during which time the polls are open for 4 hours).

The availability of these early voting hours were agreed upon in a settlement agreement, which expired on December 31, 2018. Settlement Agreement Among Plaintiffs and Defendant Secretary of State Jon Husted, ¶ 10, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp. 3d 808 (S.D. Ohio Sept. 4, 2014) (No. 2:14-cv-404), ECF No. 111-1. Because the settlement term has now expired, we are concerned that the times when early voting is available may be scaled back. Between 2006 and the time that the settlement was entered in 2015, changes were frequently made to early voting opportunities. *See, e.g.*, Plaintiffs’ Motion for Preliminary Injunction and Memorandum in Support of Motion, at 8, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp. 3d 808 (S.D. Ohio Sept. 4, 2014) (No. 2:14-cv-404), ECF No. 17. And, when debating whether to cut early voting opportunities, decisionmakers explicitly understood the impact cuts to early voting opportunities would have on people of color and other traditionally marginalized groups. For example, one member of the board of the Franklin County Board of Elections stated that “I guess I really actually feel we shouldn’t contort the voting process to accommodate the urban – read African-American – voter-turnout machine.” Darrel Rowland, *Voting in Ohio: Fight Over Poll Hours Isn’t Just Political*, at 1, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp. 3d 808 (S.D. Ohio Sept. 4, 2014) (No. 2:14-cv-404), ECF No. 18-48.

³² *See, e.g.*, Bill Bush, *Few Will Travel Far to Franklin County’s Single Early-Voting Site, Analysis Finds*, THE COLUMBUS DISPATCH, Nov. 11, 2018, <https://www.dispatch.com/news/20181111/few-will-travel-far-to-franklin-countys-single-early-voting-site-analysis-finds> (noting that the prohibition on having more than one early voting location per county was established by a law passed in 2011); Election Official Manual, *supra* note 2, at 5-7 to 5-8; OHIO REV. CODE § 3501.10(C).

5 PM or who do not own a vehicle and need to rely on public transportation or other options.³³ Further, the limits on early voting locations make it more likely that those who utilize early in-person voting are those who live in the immediate vicinity of their county's early voting location.³⁴

The recent consolidation of polling locations creates additional challenges for Ohio voters. As noted by the former Executive Director of the League of Women Voters of Ohio: "Between 2008 and 2010, fourteen Ohio counties reduced the number of precincts they had by more than 15%."³⁵ In some of Ohio's largest counties—Cuyahoga, Hamilton, and Lucas—precincts were reduced by 26 percent, 23 percent, and 28 percent, respectively.³⁶ And, reduction in polling site locations has continued since that time.³⁷ Disability Rights Ohio, Columbus Coalition for the Homeless, and the Miami Valley Voter Protection Coalition, among others, have noted the impact such changes have on voters:

[C]utbacks to polling locations can affect not only voters' ability to find their polling place but also their ability to get transportation to those locations and the lines once they get there. After 2008, many Ohio counties consolidated precincts and polling places. . . . As a result, for many Ohioans, what used to be a short walk to their polling place now requires a drive to a polling location that serves many more voters.³⁸

³³ DeNora Getachew, *Voting 2014: Stories from Ohio*, Brennan Center for Justice, Dec. 5, 2014, <https://www.brennancenter.org/analysis/voting-2014-stories-ohio> (noting that Brian Davis, former Executive Director of the Northeast Ohio Coalition for the Homeless, stated that "[e]arly voting cuts were incredibly restrictive to the homeless population of Cleveland because '40 percent of the homeless [population] work, [and] it is easier to coordinate rides [after 5:00 PM]'"").

³⁴ A November 2018 story published by *The Columbus Dispatch* noted that "[a]lmost half of the 54,000 Franklin County residents who voted in person before Election Day at the early voting center in [the county] live[d] within 5 miles of the facility; those who live[d] farther in the rest of the 532-square mile county used it sparingly." Bush, *supra* note 32.

³⁵ *Field Hearing on New State Voting Laws III: Protecting the Right to Vote in America's Heartland*, 112th Cong. 7 (2012), <https://www.judiciary.senate.gov/imo/media/doc/12-5-7DavisTestimony.pdf> (noting that the above data was "gathered from Election Results available on the Ohio Secretary of State website and presented in testimony to the Ohio House State Government and Elections Committee during the May 2011 hearings on HB 194 by Counsel for the nonpartisan Miami Valley Voter Protection Coalition, Ellis Jacobs").

³⁶ *Id.*

³⁷ See, e.g., Marion County Board of Elections, Marion County Polling Places, Aug. 18, 2017, <https://www.marionelections.com/news/2017-general-election-polling-place-changes/>; Tom Troy, *Elections Board to Consolidate Polling Locations: At Least 45,000 Voters Being Moved*, THE BLADE, June 30, 2017, <https://www.toledoblade.com/local/2017/06/30/Elections-board-to-consolidate-polling-locations/stories/20170629301>; Michael Cooper, *4 Springfield Voting Precincts Moving to New Location*, SPRINGFIELD NEWS-SUN, Mar. 4, 2018, <https://www.springfieldnews-sun.com/news/local-govt--politics/springfield-voting-precincts-moving-new-location/txWqBGJcOBhkoGWwkiSZDI/>. But see Kayla Beard, *Elections Board Reverses Controversial Plans to Consolidate Polling Places in Nelsonville, Alex*, THE ATHENS NEWS, Mar. 27, 2019, https://www.athensnews.com/news/local/elections-board-reverses-controversial-plans-to-consolidate-polling-places-in/article_617e9fa4-50b4-11e9-b0c5-cfb4de241e5a.html (reporting that the Athens County Board of Elections unanimously voted to overturn a number of polling location consolidation decisions this year after "residents and some elected officials . . . voice[d] opposition" to the changes).

³⁸ NDRN Amicus, *supra* note 24, at 14.

Challenges casting a ballot.

Ohioans experience additional challenges that may prevent them from casting a ballot on Election Day or absentee. These challenges include: accessibility issues, long lines, and restrictions on pre-trial detainee voting rights.

Disabled voters indicated in the 2016 Disability Rights Ohio survey, referenced above, that the most common barrier to voting involved “problems interacting with poll workers,” which suggested that poll workers would benefit from additional training on “how to set up [a] 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.”³⁹

Further, Ohio has a history of long lines at the polls. In 2004, it was widely noted that Ohio had the longest lines in the country⁴⁰ and reported that “long wait times caused 10,000 Columbus voters not to vote . . . and caused many voters to leave without voting to attend work, school, or provide care to family members.”⁴¹ In fact, the 2004 elections exposed deficiencies so severe that Dēmos and the Lawyers’ Committee for Civil Rights brought a lawsuit alleging that Ohio’s electoral system was failing to provide the fundamental right to vote guaranteed by the Constitution. As the Sixth Circuit’s decision allowing these claims to proceed summarized:

Voters were forced to wait from two to twelve hours to vote because of inadequate allocation of voting machines. Voting machines were not allocated proportionately to the voting population, causing more severe wait times in some counties than in others. At least one polling place, voting was not completed until 4:00 a.m. on the day following election day. Long wait times caused some voters to leave their polling places without voting in order to attend school, work, or to family responsibilities or because a physical disability prevented them from standing in line. Poll workers received inadequate training, causing them to provide incorrect instructions and leading to the discounting of votes. In some counties, poll workers misdirected voters to the wrong polling place, forcing them to attempt to vote multiple times and delaying them by up to six hours. Provisional balloting was not utilized properly, causing 22% of provisional ballots cast to be discounted, with the percentage of ballots discounted reaching 39.5% in one county. Disabled voters who required assistance were turned away.⁴²

³⁹ Disability Rights Ohio, *supra* note 29, at 4; *id.* at 5 (noting that poll workers are sometimes also not aware that individuals who are unable to physically sign their name in a poll book are not required to do so in order “to affirm [their] intent to vote”).

⁴⁰ See, e.g., Ari Berman, *Ohio Keeps Making It Harder to Vote*, THE NATION, Sept. 13, 2016, <https://www.thenation.com/article/ohio-keeps-making-it-harder-to-vote/>.

⁴¹ *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 468–69 (6th Cir. 2008) (noting allegations of complaint).

⁴² *Id.* at 477–78. The Supplemental Process may also contribute to Election Day resources being inaccurately allocated and longer lines at the polls, as a person who does not respond to a Supplemental Process notice within 30 days will not be counted when a county is determining precinct boundaries. OHIO REV. CODE § 3501.18(A).

Ohio increased early voting opportunities in order to respond to the 2004 debacle, but has since: reduced early voting times; restricted early voting centers to one per county, which does little to reduce the stress on polling sites countywide; consolidated polling locations, thus increasing the number of people being processed at voting sites across the state; and purged large numbers of people under the Supplemental Process, which can cause confusion and bottleneck at the polls.⁴³

In addition to the problems that occur at polling locations, Ohio also limits access to absentee ballots. For example, under Ohio law, registered voters who are arrested and held in Ohio jails after the absentee ballot request deadline and who are detained through Election Day are prevented from obtaining and casting an absentee ballot.⁴⁴ However, voters who are hospitalized, or whose minor children are hospitalized, during this time are permitted to obtain and cast a ballot.⁴⁵

On November 6, 2018, Dēmos, along with Campaign Legal Center and MacArthur Justice Center, filed an Election Day challenge to Ohio's practice of denying late-jailed Ohio voters the right to vote—a practice that is estimated to disenfranchise approximately 1000 voters each election.⁴⁶ Our clients—two Ohio voters who were detained on misdemeanor charges after the time to cast an absentee ballot had passed—filed a class action lawsuit alleging that Ohio's absentee voting laws violated their First and Fourteenth Amendment rights. A federal judge in the Southern District of Ohio issued a Temporary Restraining Order requiring Ohio to deliver ballots to our named clients and count their votes. In so ordering, the Court found that:

“[T]here is evidence that Named Plaintiffs are eligible and have the right to vote, and that there is evidence that Named Plaintiffs have no mechanism by which to cast their vote. Accordingly, . . . Named Plaintiffs are likely to succeed on the merits of their claim. The risk of irreparable harm is great, as failure to grant the requested relief would amount to the denial of Named Plaintiffs' right to vote.”⁴⁷

Barriers to voting such as those described above make it more likely that individuals will be prevented from voting and be swept up under the Supplemental Process.

⁴³ OEO Amicus, *supra* note 15, at 7 (“[L]engthier lines [are] occasioned by poll workers trying to sort out these matters or the back-up caused by purged voters having to cast provisional ballots—those lines may dissuade others from voting.”).

⁴⁴ OHIO REV. CODE § 3509.08(A) (noting that the board must receive a request for an absentee ballot by “twelve noon of the third day before the day of the election at which the ballot is to be voted”).

⁴⁵ *Id.* § 3509.08(B).

⁴⁶ Mark Salling, PhD, Estimation of the Number of Registered Ohio Voters Prevented from Voting Because They Were Arrested After the Absentee Ballot Request Deadline and Detained Through General Elections in November 2012, 2014, 2016, and 2016, at 3-11, *Mays, II, et al., v. Husted*, No. 2:18-cv-1376 (S.D. Ohio Apr. 12, 2019), ECF No. 31-1.

⁴⁷ Order, at 1-2, *Mays, II, et al., v. Husted*, No. 2:18-cv-1376 (S.D. Ohio Nov. 6, 2018), ECF No. 12.

Ineffectiveness of mailings: Supplemental Process notices and other voting materials.

Election mailings—whether Supplemental Process notices, polling location information, absentee ballot request forms, or other materials—often fail to achieve their purported goal. Individuals with limited English proficiency, disabilities, as well as those without traditional residential addresses, may not be provided information in a meaningful way or at all. This heightens the possibility that such voters will be targeted and removed under practices like Ohio’s Supplemental Process.

Asian and Spanish language speakers in Ohio are more likely to be of limited English proficiency than the national average, and it is estimated that over 51,000 of these individuals are qualified voters.⁴⁸ Because election mailings are often provided only in English, voters with limited English proficiency are often “reliant on assistance from fluent English-speaking family members or third parties to navigate the electoral process” and interpret election mailings.⁴⁹

Election mailings are often also not accessible to disabled voters, such as the blind.⁵⁰ In fact, November 2018 marked the first election where blind voters were able to receive and cast an absentee ballot privately, independently, and securely.⁵¹

Further, voters who lack a traditional residence or who are facing extended stays at hospitals or care facilities, often encounter problems receiving mail. For example, in Ohio, people who do “not have a fixed place of habitation” can list “a shelter or other location at which [they have] been a consistent or regular inhabitant” as their voter registration address.⁵² Election mailings sent to such locations are often not received.⁵³ Disabled or older voters who face extended stays at hospitals or care facilities can face similar problems receiving election-related mail, with the “effectiveness and efficiency of [a] facility[y]’s mail delivery system[.]” playing a critical role.⁵⁴

⁴⁸ Brief of Asian Americans Advancing Justice I AAJC, National Association of Latino Elected and Appointed Officials Education Fund, LatinoJustice PRLDEF, and Seventeen Other Organizations as *Amici Curiae* in Support of Respondents, at 6-18, *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018) (No. 16-980).

⁴⁹ *Id.* at 19. Ohio has had other problems in making elections accessible to people with limited English proficiency. Lawsuits were filed by the U.S. Department of Justice in both 2010 and 2011 alleging that Cuyahoga and Lorain Counties, respectively, were violating Section 4(e) of the Voting Rights Act, 52 U.S.C. § 10303(e), which requires that voters with limited English proficiency who were educated in Puerto Rico receive bilingual ballots, education materials, and poll worker assistance. *Id.* at 19, 22-23. Both cases settled, with the respective boards of elections promising to meet the requirements of Section 4(e). *Id.* at 23. However, several years after settlement federal observers determined that Cuyahoga County was still not meeting all of its responsibilities under the agreement. *Id.*

⁵⁰ NDRN Amicus, *supra* note 24, at 30.

⁵¹ Disability Rights Ohio, *supra* note 29, at 5; Ohio Secretary of State, Directive 2018-03, Availability of a Remote Ballot Marking System for Use by a Voter with a Disability During Ohio’s By-Mail Absentee Voting Period, Jan. 19, 2018, at 2.

⁵² OHIO REV. CODE § 3503.02(I).

⁵³ See, e.g., Northeast Ohio Coalition for the Homeless, Frequently Asked Questions, <https://www.neoch.org/faq-homeless-voting-2016> (last visited Apr. 22, 2019) (noting that mail addressed to a park bench will bounce back to the elections office from which it was sent).

⁵⁴ NDRN Amicus, *supra* note 24, at 30.

These obstacles make it less likely that voters will be aware of changes in polling locations, be able to effectively request an absentee ballot if they cannot make it to the polls, or be able to respond to a Supplemental Process notice. As a result, Ohio's elections are less accessible to individuals with limited English proficiency, disabilities, or who lack a traditional residence, and such individuals are more likely to have their names removed from Ohio's voter rolls.

Ohio's Elimination of "Golden Week"

The elimination of the same-day registration period—Golden Week—ended a week of early voting, as well as the one opportunity Ohio voters had to both register and vote simultaneously.

Golden Week provided a now-extinct, but important, safeguard to allow voters the opportunity to correct registration errors, update registration information at the polls, and avoid complete disenfranchisement if they were wrongfully purged. For example, a number of individuals who work with Ohio's homeless population have remarked that Golden Week was critical to ensuring that the homeless and housing insecure were able to participate in the democratic process; it provided individuals who lacked a fixed address with the opportunity to update their registration and vote and it provided those whose names had been removed with the ability to register and cast a ballot that counted.⁵⁵

Conclusion

It is not surprising that Ohio ranks behind 42 other states in terms of voter access.

Ohio's election rules, regulations, and procedures institute serious obstacles that prevent voters from being able to exercise their fundamental right to vote; they also make it more likely that eligible Ohioans will be erroneously removed from the registration rolls. Without same-day registration, Ohio voters are denied a one-stop opportunity to correct erroneous removals and participate in the democratic process.

We know that this is a state where even a single vote can make an enormous impact.⁵⁶ And, while some barriers to voting were reduced after the 2004 election, many of those have been built back up again and new barriers have also been created.

As Congress considers how to ensure that eligible voters are able to effectively participate in the political process, we at Dēmos strongly encourage you to take two steps. First, pass H.R. 1, the For the People Act. H.R. 1 creates a more robust democracy by, among other things: (1) directly

⁵⁵ See, e.g., Declaration of Josh Spring, ¶¶ 21-22, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp. 3d 808 (S.D. Ohio Sept. 4, 2014) (No. 2:14-cv-404), ECF No. 18-23; Declaration of Erik Crew, ¶¶ 14-21, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp. 3d 808 (S.D. Ohio Sept. 4, 2014) (No. 2:14-cv-404), ECF No. 18-24; Declaration of Georgine Gerry, ¶¶ 15-16, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp. 3d 808 (S.D. Ohio Sept. 4, 2014) (No. 2:14-cv-404), ECF No. 18-25; Getachew, *supra* note 33.

⁵⁶ In June 2018, former Ohio Secretary of State Jon Husted noted that "199 races and issues were decided by one vote or tied" in the past five years, with 59 of those elections being in the first half of 2018. Secretary Husted: A Single Vote Makes All the Difference, *supra* note 22.

responding to the U.S. Supreme Court decision in *Husted* and amending the NVRA to make clear that voters simply should not—and cannot—be targeted for removal from the registration rolls or otherwise penalized for not casting a ballot; and (2) mandating that same-day registration is available in federal elections. Second, advance legislation to increase access to the ballot for those individuals who are incarcerated, but eligible, to vote. This includes increasing access to registration in jails and guaranteeing that qualified voters are not disenfranchised merely because they are experiencing a period of incarceration. Dēmos is actively working on these issues, and we would be happy to work with members of this committee to advance such reforms.

Chairwoman FUDGE. Thank you. Ms. Davis Chappell, you are recognized for 5 minutes.

STATEMENT OF INAJO DAVIS CHAPPELL

Ms. CHAPPELL. Thank you, Honorable Marcia Fudge, Chairperson of the Subcommittee on Elections, for this opportunity today and the invitation to be here. Thanks also to the Elections Subcommittee Members, Butterfield and Davis, and all the distinguished Members of the United States House of Representatives who are present.

I am currently a member of the Cuyahoga County Board of Elections, where I have had the privilege of serving as a board member since 2007, and as immediate past board chair for the last 6 years. I am also a former member and Chair of the Ohio Board of Voting Machine Examiners. Please know that my testimony and comments today reflect my personal opinion and viewpoint, and I am not here in any representative or official capacity as a member of the Board of Elections. I am a nongovernmental witness, but my thoughts, conclusions, and statements here today are informed by my experiences in election administration as a member of the Cuyahoga County Board of Elections, and as an active voter in Ohio.

Notwithstanding my disclaimer that I don't represent anybody here that is also on the board with me, I am very much an advocate of voting rights, full enfranchisement of all voters, especially in my home county of Cuyahoga County, and for robust ballot access, which includes unfettered opportunities for early voting in person and vote by mail.

For those of you that do not know, Cuyahoga County is the largest voting district in Ohio. It has the greatest number of registered voters, and most recent Cuyahoga County election statistics from November 2018 are an indicator of size as follows: 903,046 registered voters, 973 precincts, 345 voting locations, 59 municipalities. We have 91 employees, and we use a significant number of temporary staff in any given election. For instance, in the November 2016 election, we hired 321 temporary staff resulting in a payroll of nearly \$1 million. Although a smaller election in November, significant temporary staff were hired with payroll process totaling more than half a million dollars.

I am going to skip some of those details because I want to focus on today what I—on what I believe to be challenges in election administration and the importance of early voting. One of our—the ongoing challenges faced by our Cuyahoga County Board of Elections concerns the ability to set our own rules around early voting.

In Ohio, at least since 2014, a decision was made by the Secretary of State, the Ohio legislature, and our trade association, that uniformity in the rules governing elections administration would be the key organizing principle for the 88 county boards of elections. Although these county boards in Ohio are very different in size, number of voters, staffing, and available resources, uniform rules have continued to be adopted and continue to be implemented in a manner that limits, rather than expands, ballot access.

While reasonable minds fairly disagree about the extent to which uniform rules have hindered voter participation in Cuyahoga County, I personally believe that limited early voting hours, particularly

in large-scale election cycles, run counter to basic democratic principles, and has excluded urban poor and older voters from the process. Some argue that this issue has now been well-settled, a negotiated result has been codified, but I view the uniformity principle and practice of having the same in-person early voting hours for every county as a missed opportunity, both for efficient election administration and robust voter participation in the largest voting district in Ohio.

Early voting remains a key tool for efficient election administration. The opportunity to cast ballots, other than on Election Day, is important for voters and for those of us charged with counting those ballots cast. Since 2010, early voting numbers represent anywhere from 35 to 40 percent of the total votes cast in elections in our county. Early voting has had a positive impact and effect on election administration, and wait times allows for preliminary processing. It results in efficient use of our staff time.

Because of the importance of early voting, it should be noted that a significant challenge to election administration exists. That challenges the State limitation codified at Ohio revised Code Section 3501.10(c), which prescribes early voting only at one location operated by a Board of Elections where voting is permitted.

I am going to have to skip over the statute because I am running out of time, but there are pictures that I have asked to be shown to you to show the effect of early in-person voting and the restriction to one location.

Chairwoman FUDGE. Can you stop? Can you see these screens?

Ms. CHAPPELL. This is our early voting location in Cuyahoga County at East 30th and Euclid Avenue. At this one location, we have significant space constraints. Parking is limited, and the site is congested. Difficult to manage during heavy periods of voting. So we have pictures from 2008 early voting, 2016 Election Day with lines wrapped around blocks around our building. We have 2018 in-house early voting pictures both inside of outside of our building.

Because of the limit in Ohio, and the statutory provision, it is a proviso of the code section I mentioned, voting lines are long, especially during the Presidential election cycle. So there is clearly a substantial challenge in our county with this one site limitation for early voting. It is my hope that legislative initiatives from our State for vote centers will be established, and will move forward. Such centers, of course, would need to be identified and located in a manner that is equitable, fair, and strategically sited to serve both suburban and urban voters.

In 2018, in the 132nd General Assembly, Representative Dan Ramos introduced House Bill 596 that would have allowed counties to add additional early voting sites, an additional site for every 60,000 registered voters. The bill was referred to committee and appears to have died there. Sadly, no new legislation on this matter has been introduced. Additional opportunities for early voting sites would clearly enhance election administration capabilities.

As a general comment, I wanted to share my observation over the years that major impediments to efficient elections administration in our county include last minute changes to process and voting rules, constant litigation even on expedited track, and the politicization of voting rights in the elections process.

So when I look at turnout, we talked about turnout, we can provide you with data that just over the years, you just can't look at one election. We have got some suggestions for you about things you can do. They are in my written testimony. But the constant clamoring about rampant voter fraud is discouraging voter participation, and my experience over the years permits me to say with confidence that claims of voter fraud in the elections process are wholly without merit.

[The statement of Ms. Chappell follows:]

To: Subcommittee on Elections of the Committee on House Administration

From: Inajo Davis Chappell, Esq.

Date: April 25, 2019

Re: Written Testimony on Early Voting and Challenges in Election Administration– Field Hearing on “Voting Rights and Election Administration in Ohio”

First, thank you to the Honorable Marcia L. Fudge, Chairperson of the Subcommittee on Elections, for the invitation and opportunity to testify today. Thanks also to the other distinguished Members of the United States House of Representatives who are present.

I am currently a member of the Cuyahoga County Board of Elections, where I have had the privilege of serving as a board member since 2007 and as immediate past board chair for the last six years. I am also a former member and chair of the Ohio Board of Voting Machine Examiners. Please know that my testimony and comments today reflect my personal opinion and viewpoint, and I am not here in any representative or official capacity as a member of the Board of Elections. I am a nongovernmental witness, but my thoughts, conclusions and statements here today are informed by my experiences in election administration as a member of the Cuyahoga County Board of Elections and as an active voter in Ohio.

It is important for me to be clear that I do not speak here today either for the Cuyahoga County Board of Elections or for any of my colleagues on that Board. Notwithstanding that disclaimer, I am very much an advocate for voting rights, full enfranchisement of all voters especially in my home County of Cuyahoga, Ohio and for robust ballot access, which includes unfettered opportunities for early voting (in-person and vote by mail).

For those of you that do not know, Cuyahoga County is the largest voting district in Ohio. It has the greatest number of registered voters. The most recent Cuyahoga County election statistics (from November, 2018) are an indicator of size as follows: 903,046 registered voters, 973 precincts, 345 voting locations, 59 municipalities. The Cuyahoga County Board of Elections currently has ninety-one (91) employees, and uses a significant number of temporary staff in any given election. For instance, in the November, 2016 election 321 temporary staff were hired, resulting in a payroll of \$997,468. Although a smaller election, in November, 2018 206 temporary staff were hired with payroll processed totaling \$631,808. Given nearly 1,000,000 registered voters, it is fair to say that election administration is of critical importance for our county. My comments today are going to focus on what I perceive as challenges in election administration and the importance of early voting (both in-person and vote by mail).

One of the ongoing challenges faced by our Cuyahoga County Board of Elections concerns the ability to set our own rules around early voting. In Ohio, at least since 2014, a decision was made by the Secretary of State, the Ohio Legislature and the Ohio Association of Elections Officials that uniformity in the rules governing elections administration would be the key organizing principle for the 88 county boards of election in Ohio. Although the 88 counties in Ohio are very different (in size, number of voters, staffing, and available resources), uniform rules have been

adopted and continue to be implemented in a manner that limits, rather than expands, ballot access. While reasonable minds fairly disagree about the extent to which uniform rules have hindered voter participation in Cuyahoga County, I personally believe limited early voting hours (particularly in large-scale election cycles) runs counter to basic democratic principles, and has excluded urban, poor and older voters from the process. Some argue that this issue has now been well-settled (a negotiated result has been codified). But, I view the uniformity principle and practice of having the same in-person early voting hours for every county as a missed opportunity -- both for efficient election administration and robust voter participation in the largest voting district in Ohio.

Early voting (both in-person and by mail) remains a key tool for efficient election administration. The opportunity to cast ballots other than on Election Day is important for voters and for those of us charged with counting those ballots. Since 2010, early voting (including in-person at the board of elections and vote by mail ballots returned) represents anywhere from 35-40% of the total votes cast in elections in Cuyahoga County. Early voting has had a positive effect on election administration, as it reduces lines and wait times on Election Day, allows for preliminary processing (not counting) in advance of election day, and results in efficient use of elections staff time.

Because of the importance of early voting, it should be noted that a significant challenge to efficient election administration exists. That challenge is the state limitation (codified at Ohio Revised Code Section 3501.10(C)), which prescribes early voting only at one location operated by a board of elections where voting is permitted. The statute expressly provides that: *"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."* [emphasis added]"

In effect, early in-person voting is restricted to one location for all counties, regardless of size. The early voting location in Cuyahoga County is our central office building at 30th and Euclid. At this one location, we have significant space constraints, parking is limited and the site is congested and difficult to manage during periods of heavy voting. Because of the limit to this one location, voting lines are long, especially during the presidential election cycle. During periods of heavy voting, long lines can be wrapped around the building and down the street for several blocks.

Clearly, a substantial challenge in our county is the 1-site limitation for early voting. It is my hope that legislative initiatives from our State legislature for vote centers to be established will move forward. Of course, such centers would need to be identified and located in a manner that is equitable, fair, and strategically sited to serve both suburban and urban voters. In 2018, 132nd General Assembly, Rep. Dan Ramos introduced HB 596 that would have allowed counties to add additional early voting sites; an additional site for every 60,000 registered voters. The bill was referred to committee and appears to have died there. No new legislation on the matter has been introduced. Additional opportunities for early voting sites would clearly enhance election administration capabilities.

As a general comment, I wanted to share my observation over the years that major impediments to efficient elections administration in our county include: last minute changes to process and voting rules; constant litigation (even on expedited tracks); and, the politicization of voting rights and the elections process. When I look at voter turn-out numbers from the past few election cycles, the downturn in the numbers of voters is concerning. We need to be looking at ways to increase voter participation and engagement and, conversely, to decrease voter uncertainty, confusion and fear.

I believe that the constant clamoring about rampant voter fraud is also discouraging voter participation. My experience in administering elections in Cuyahoga County over the last twelve years permits me to say with confidence that claims of voter fraud in the elections process are wholly without merit. Indeed, the voter fraud narrative is a patently false narrative.

As an elections official, I have had (and continue to have) responsibility for reporting election irregularities and instances of voter fraud. However, the instances of such irregularities are few and far between. In the last twelve years, I believe we have referred only a few individuals to the prosecutor's office to investigate suspected election violations or other misconduct.

I was pleased that just a few months ago our new Ohio Secretary of State and Chief Elections Officer, Frank LaRose, stated that voter fraud was rare. We need more truthful, public statements like this. My hope is that action is taken to eliminate false claims of voter fraud. Claims of voter fraud have a direct and negative effect on elections administration. False statements destroy voter confidence in the elections process and undermine the very hard work in which elections officials engage for the voting public.

In thinking about ways that Congress might act to strengthen voting rights and improve elections administration, I would suggest the following for consideration. First, authorize a subsidy to the US Postal Service that will cover the cost of processing and delivery of absentee ballots to and from voters so there would be no cost to vote by mail.

Secondly, change voting day for federal elections from the first Tuesday after the first Monday in November to the first Saturday and Sunday in November. Instead of one long marathon day during the traditional workweek, provide for two weekend days for voting from 8-5 each day. There would be benefits for voters as well as poll workers.

Finally, it would be wonderful if Election Day could be a National Holiday. In such a scenario, citizens would be given release time from employers and would have the day to exercise their fundamental right/privilege to vote or to participate in the process by serving as poll workers and elections officials.

In conclusion, thank you for undertaking this initiative around elections and voting rights and for allowing me this opportunity to testify. I appreciate the time you have given me to express a few thoughts about challenges we face in administering elections here in Cuyahoga County, Ohio. I am hopeful the information shared about the importance of early voting and increasing opportunities (and locations) for ballot access/exercise will be helpful as you continue this process.

Chairwoman FUDGE. Thank you very much. Mr. Brickner. And we would like to try to get the photographs. Mr. Brickner.

STATEMENT OF MIKE BRICKNER

Mr. BRICKNER. Thank you to Chairwoman Fudge, Ranking Member Davis, and Members of the Subcommittee on Elections. My name is Mike Brickner, Ohio State Director for All Voting is Local, and I submit testimony on the current State of voting rights and election administration in Ohio.

All Voting is Local launched in 2018 as a collaborative campaign housed at the leadership conference education fund in conjunction with the American Civil Liberties Union Foundation, the American Constitution Society, the Campaign Legal Center, and the Lawyers Committee for Civil Rights Under Law. We fight to protect and expand the right to vote working directly with disenfranchised communities to fight for a democracy that works for us all.

Ohioans, particularly people of color, face needless barriers to the ballot, including polling places that are moved, leaving voters confused and frustrated, and high rejection rates of provisional ballots, leaving voters at risk of losing their sacred right to vote. As a State and as a Nation, we must fight to eliminate these obstacles to voting. Ohio must do its part to ensure elections are administered freely and fairly, so that all voices are heard.

Ohio voters increasingly cast their ballots before Election Day. Despite its success, Ohio politicians have proposed restrictions to early in-person voting. *NAACP v. Husted* challenged the elimination of evening and weekend early in-person voting hours, and the elimination of same-day voter registration during a portion of early voting, stating the cuts would discriminate against black voters, and, in fact, that was a claim brought under Section 2 of the Voting Rights Act. While the Ohio Secretary of State agreed to some evening and weekend hours, the settlement agreement is no longer in force, and there is no law guaranteeing these hours.

In January 2019, All Voting is Local analyzed early in-person voting from the 2016 and 2018 general elections in six representative Ohio counties. We found that early in-person voting was popular in all areas: urban, rural, and suburban. The most popular times to cast a ballot included weekend hours, and the week before Election Day. In recent elections, voters waited in long lines at early voting locations, not just in Cuyahoga County, but in many places across the State.

Given the success of early in-person voting hours voting hours should be formalized in State law and should be expanded on the week prior to the election and on weekends. Polling place changes cause confusion and frustration for voters, which nonpartisan poll monitors noted in Cuyahoga County in 2018. Between 2016 and 2018, the county eliminated 41 polling locations, and nearly 16 percent of all precincts changed location. While polling places were reduced countywide, majority black communities were particularly harmed.

In Cleveland's 17 wards, 8 are majority black, comprising from 98 to 72 percent of the population. Of the city's 45 precincts with polling place changes, the majority, 29, were in black majority wards, while only 16 were in black minority wards.

For voters who rely on public transportation, have inflexible work schedules, or have a disability, the burden of traveling to a new polling location cannot be overstated. At one polling location in a black majority Cleveland ward, officials told a voter she was at the wrong location. She told the poll monitor she was simply going to go home and would not vote. The poll monitor encouraged her to call the Board of Elections and go to her correct polling location, but the voter left frustrated and discouraged. We don't know if she voted.

At another poll location in a black majority ward here in Cleveland, poll monitors reported assisting 40 voters who were at the wrong location. Both of these poll locations in these examples had changes between 2016 and 2018. State law requires that election officials notify voters with a postcard if their polling location has changed. Elections officials must do more to ensure these changes do not have a disparate impact on voters of color. Elections officials should clearly post signage outside any poll location with changes.

In addition, officials should partner with community groups to solicit feedback about potential changes, and increase outreach of changes are made so that voters are informed.

Lastly, provisional ballots are often the last resort for voters who have problems at the polls. While provisional ballots can be beneficial for voters who might otherwise be turned away, their use should be minimized. Ohio has one of the highest overall number of provisional ballots cast nationwide. In 2018 in Franklin County, the rate of provisional ballots cast countywide was only 1.84 percent. However, we did some analysis, and we have some maps that show this, our analysis found that people of color, millennials, and low-income voters were significantly more likely to cast a provisional ballot. If you—if the maps come on, you will see that there are areas of Franklin County; the blue are black voters, the pink are millennial voters, and the green are low-income voters. The orange dots are where provisional ballots were cast in the county. There are certainly people living in those areas without shading, but there were hardly any provisional ballots cast in those areas. Those are mostly white, affluent areas where there are older folks who live there as well.

So, in our analysis, we found, again, people of color, millennials, and low-income voters were more likely to cast a provisional ballot. If you look at just three polling locations near Ohio State University's campus, nearly one in 10 voters had to cast a provisional ballot. At the Ohio Union polling location, nearly 65 percent of those provisional ballots cast were rejected by the Board of Elections.

Franklin County's rate of provisional ballot rejection is troubling. In the 2018 general election, over one in five rejected provisional ballots statewide came from Franklin County. Thank you for the opportunity to testify, and I am happy to answer any questions you may have.

[The statement of Mr. Brickner follows:]



TO: Subcommittee on Elections, Committee on House Administration

FROM: Mike Brickner, Ohio State Director, All Voting is Local

DATE: April 25, 2019

RE: Voting Rights and Election Administration in Ohio

To Chairwoman Fudge, Ranking Member Davis, and members of the Subcommittee on Elections, my name is Mike Brickner, Ohio State Director for All Voting is Local, and I submit testimony on the current state of voting rights and election administration in Ohio.

All Voting is Local¹ launched in 2018 as a collaborative campaign housed at The Leadership Conference Education Fund, in conjunction with the American Civil Liberties Union Foundation; the American Constitution Society; the Campaign Legal Center; and the Lawyers' Committee for Civil Rights Under Law. We fight to protect and expand the right to vote, working directly with disenfranchised communities to fight for a democracy that works for us all. In Ohio, our campaign has worked with our partners on nonpartisan election protection for voters; providing public education to voters with disabilities on their rights; and recruiting poll workers to ensure elections run smoothly. In the November 2018 general election, we tackled a nationwide shortage of poll workers by recruiting approximately 3,000 individuals nationwide to sign up to serve, with nearly 450 volunteers in Ohio alone. Prior to joining All Voting is Local, I worked for 14 years at the American Civil Liberties Union of Ohio, most recently as senior policy director, where I oversaw our advocacy and policy campaigns.

Ohio has long been the epicenter of voting rights battles, where political parties and candidates have sought to manipulate the system to capture or maintain power -- all at the expense of voters. More common are the voters who are disenfranchised not because of malice or cynical power grabs, but because of administrative failures and a lack of adequate resources. The result: voters are denied access to the ballot box and our democracy is weakened.

¹ More information is available at www.allvotingislocal.org.

Ohioans, particularly people of color, currently face needless barriers to the ballot, including attempts to undermine early, in-person voting; polling places that are moved, leaving voters confused and frustrated; high rejection rates of provisional ballots; struggles to secure ballots in jail, which are mandated by law; and discriminatory voter purges that leave nearly 2 million voters at risk of losing their sacred right to vote. As a state and as a nation, we must fight to eliminate these obstacles to voting. Ohio must do its part to ensure elections are administered freely and fairly, so that all voices are heard.

Early in-person voting

In 2006, the Republican-controlled Ohio General Assembly enacted no-fault absentee balloting, allowing voters to cast an early ballot by mail or in-person 35 days before an election.² The impetus for expansion of early voting was Ohio's notorious lines in the 2004 general presidential election, where some voters waited as long as 10 hours to cast their ballots.³ From its inception, early in-person voting was a popular option for many voters to cast their ballot early without relying upon the U.S. mail. Black churches throughout the state have organized "Souls to the Polls" programs where they visit the polls immediately after Sunday services to encourage their communities to vote together. Generally, Black voters have been more likely to utilize early in-person voting.⁴ While any voter with an inflexible schedule may appreciate early in-person voting, given the history of voter suppression laws and policies targeting Black voters throughout U.S. history, it is particularly appealing to Black voters who may have apprehension about simply mailing in their ballot rather than casting it in person.

Early in-person voting has been successful in Ohio, with an increasing number of people opting to cast their ballot ahead of Election Day. Despite this accomplishment, Ohio politicians have sought to undermine the practice by attempting to pass several restrictions over the past decade.⁵ Many of these laws have been struck down, either by citizen referendum or litigation.⁶ However, barriers remain to early in-person voting and must be confronted.

² See 2005 HB 234 (eff. 1-27-2006) and 2006 HB 3 (eff. 5-2-2006).

³ Adam Cohen, *No One Should Have to Stand in Line for 10 Hours to Vote*, NEW YORK TIMES, August 25, 2008, available at <http://www.nytimes.com/2008/08/26/opinion/26tue4.html>

⁴ Norman Robbins & Mark Salling, *Racial and ethnic proportions of early in-person voters in Cuyahoga County, General Election 2008, and implications for 2012*, Northeast Ohio Voter Advocates, available at <https://drive.google.com/file/d/0B4HH5KrGW6jiTXNDdHdGSE9DbldJeGFMROxhTzZwZGxubVpn/view>. Richard Perez-Pena, *Ohio Limits on Early Voting are Discriminatory, Judge Says*, NEW YORK TIMES, May 24, 2016, available at <https://www.nytimes.com/2016/05/25/us/ohios-limits-on-early-voting-are-discriminatory-judge-says.html>;

NAACP v. Husted, No. 2:14-cv-404, U.S. District Court for the Southern District of Ohio.
⁵ See 2011 HB 194 (repealed by 2012 SB 295 on May 15, 2012); 2013 HB 250 (not enacted); 2014 SB 238 (eff. 6/1/2014); 2014 SB 205 (eff. 6/1/2014); Directive 2014-17, *Uniform Days and Hours for Early In-Person Voting*, available: <https://www.sos.state.oh.us/globalassets/elections/directives/2014/dir2014-17.pdf>; Directive 2012-35, *In-Person Absentee Voting Days and Hours*, available: <https://www.sos.state.oh.us/globalassets/elections/directives/2012/dir2012-35.pdf>.

⁶ *NAACP v. Husted*, No. 2:14-cv-404, U.S. District Court for the Southern District of Ohio; See 2012 SB 295 (enacted May 15, 2012.) *Author's note: SB 295 was passed by the legislature after citizen advocates successfully circulated petitions to place HB 194 under referendum. The Ohio General Assembly repealed HB 194 by passage of SB 295, thus ending the referendum.*

NAACP v. Husted challenged the elimination of evening and weekend early in-person voting hours, and the elimination of same-day voter registration during a portion of early voting. While the Ohio Secretary of State eventually agreed to some evening and weekend hours, the settlement agreement is no longer in force, and there is no permanent law guaranteeing these hours. A future Secretary of State could decide to cut or alter early in-person hours at their discretion. In December 2018, there was an attempt in the Ohio General Assembly to codify those hours in an amendment to HB 41, which was ultimately tabled by the Senate Committee considering it.

In January 2019, All Voting is Local conducted analysis on early in-person voting patterns from the 2016 and 2018 general elections in six representative Ohio counties that include urban, rural and suburban areas (Delaware, Defiance, Franklin, Summit, Warren, and Washington counties).⁷ We found that early in-person voting was popular across the board. In particular, the week before the election and the weekend times to cast ballots were the most used days. News reports showed that in the days leading up to those elections, voters waited in long lines at early voting locations.⁸ Given the success of early in-person voting, hours should be formalized in state law and should be expanded on the week prior to the election and on weekends.

Another major barrier to early in-person voting in Ohio is the law restricts early voting locations to only one per county, regardless of the needs of the community. By default, early voting locations are typically each county's local board of elections office.⁹ This makes casting an early ballot much more difficult for people who rely on public transportation, have a disability, or live far away from the early voting site.

Athens County, located in Appalachian Ohio and home to Ohio University, provides an example of this problem. Recently, the Board of Elections sought to move its offices due to storage and accessibility concerns for voters with disabilities. Currently, the office is located in the downtown Athens area, within walking distance for those who live downtown and at Ohio University. The proposed site would have moved the office to an industrial park, farther away from the city center and the university.

According to our analysis of 2018 general election data, two-thirds of all early in-person ballots cast were from Athens city residents.¹⁰ We found precincts that included Ohio University dorms traditionally have the highest increase in early in-person voting in presidential election years. Moving the site further away from the university could have significant ramifications. However, the current model of a single early voting site does not serve residents in other parts of the county. For voters outside of the city of Athens, they must drive up to 20 miles to be able to cast an early ballot. If the current prohibition on multiple early in-person voting sites were lifted, the

⁷ Dr. Megan Gall, *Ohio Early Vote*, All Voting is Local, see appendix.

⁸ Libby Nelson, There are 4,000 people in a half-mile voting line in Cincinnati today. This isn't okay., VOX.COM, Nov 6, 2016, available at <https://www.vox.com/presidential-election/2016/11/6/13542680/there-are-4000-people-in-a-half-mile-voting-line-in-cincinnati-today-this-isn-t-okay>

⁹ Ohio Revised Code § 3501.10(C)

¹⁰ Mike Brickner, *Letter to Athens County Commissioners*, January 7, 2019.

Athens County Board of Elections could opt to have multiple early voting sites on the campus, in the both the city and in remote areas, making it easier for every voter.

Polling place and precinct moves

In November 2018, All Voting is Local partnered with the NAACP Cleveland Branch and Lawyers' Committee for Civil Rights Under Law to coordinate nonpartisan election protection. In determining where to deploy poll monitors, we noticed that several polling locations had been consolidated and precincts had been moved. After the election, we determined that between 2016 and 2018, there was a reduction of 41 polling locations countywide, with 15.7 percent of all precincts with a change in location.¹¹

While polling places were reduced county-wide, majority Black communities were particularly harmed. In the city of Cleveland, there are 17 total wards, and eight of them are majority Black, ranging from 98.1 percent to 72.1 percent. The other nine minority Black wards range from 43.6 percent to 15.5 percent.¹² In the eight Black-majority wards, six had polling location changes, while only four of the nine Black-minority wards had changes. Throughout the city, 45 precincts had a change in their polling location, with 29 of them in Black-majority wards and 16 in Black-minority wards.

According to data from the Election Protection call center and monitors stationed at poll locations, Cuyahoga County had more than twice the number of reports of voters at the wrong polling location compared to Franklin and Hamilton counties. Poll monitors at Miles Pre K-8 (located in Cleveland Ward 2, which is 89.4 percent Black) reported that they redirected 40 voters who were at the wrong location. The location with the next highest number of reported voters at the wrong polling location was Murtis Taylor Human Services Center (located in Cleveland Ward 1, which is 98.1 percent Black). Both of these locations had precinct changes between 2016 and 2018.¹³

For voters who rely on public transportation, have inflexible work schedules, or have a disability, the burden of traveling to a new polling location cannot be overstated. In one instance at Murtis Taylor Human Services Center, officials told a frustrated voter she was at the wrong location. As she was leaving, she told the poll monitor that she was simply going to go home and would not cast a ballot. The poll monitor encouraged her to call the board of elections and go to her correct polling location, but the voter left frustrated and discouraged. We are not certain whether she cast a ballot in the 2018 general election.

It is the duty of boards of elections to notify voters that their polling location changed.¹⁴ State law requires that election officials mail the voter a postcard with the information, but this is limited in impact. Election officials should clearly post signage outside of any poll locations with

¹¹ All Voting is Local, analysis of polling locations in Cuyahoga County, March 2019.

¹² The Center for Community Solutions, *Cleveland Neighborhoods and Wards Snapshot*, available: <https://www.communitysolutions.com/resources/community-fact-sheets/cleveland-neighborhoods-and-wards/>

¹³ *Id.*

¹⁴ Ohio Revised Code § 3501.21

changes, so voters do not spend unnecessary time waiting in line. Elections officials must ensure these changes do not have a disparate impact on voters of color. In addition, officials should partner with community groups to solicit their feedback on potential poll location changes, as well as alternative public education methods to ensure voters are informed.

Provisional ballots

Provisional ballots are intended to be a last resort for voters who have some sort of issue that cannot be resolved when they cast their ballot. Reasons why a voter might cast a provisional ballot include their name not appearing in the poll book, the voter not having proper identification, or having recently moved or changed their name. In many cases, the board of elections can resolve the problem itself after the election, or the voter must provide additional information, such as proper identification. While provisional ballots can be beneficial for voters who might otherwise be turned away, their use should be minimized by strong election administration procedures, effective poll worker training, and robust voter education programs.

Ohioans cast far too many provisional ballots. While the overall number has decreased in recent years, the state still has one of the highest overall number of provisional ballots cast.¹⁵ All Voting is Local has studied provisional ballot use in Franklin and Greene counties, which illustrate how different voters are likelier to cast a provisional ballot.

Franklin County accounts for 10.93 percent of the state's electorate, only slightly trailing Cuyahoga County. Depending on where one lives in the county, voters have very different experiences with provisional ballots. In 2018, the countywide rate of provisional ballots cast was 1.84 percent. However, All Voting is Local's analysis found people of color, millennials, and low-income voters were all significantly more likely to cast a provisional ballot. Of the three polling locations near Franklin County's Ohio State University campus, nearly one in ten voters cast a provisional ballot. On campus at the Ohio Union, nearly 65 percent of the provisional ballots cast were rejected by the board of elections.¹⁶

Franklin County's rate of provisional ballot rejection is also troubling. In the 2018 general election, over one in five rejected provisional ballots statewide came from Franklin County. While urban counties, including Cuyahoga, Hamilton, and Summit decreased their rate of provisional rejections in 2018, Franklin's rate increased. Among the reasons ballots were rejected in Franklin County: the voter was in the wrong precinct, wrong location (38 percent of the statewide total); insufficient identification (36 percent of the statewide total); and signature mismatch (65.9 percent of statewide total).¹⁷

Another important example is Greene County, located west of Dayton and home to Central State University, Ohio's only public Historically Black College/University (HBCU). Voter advocates contacted All Voting is Local following the 2018 election because of the high rate of Central

¹⁵ Election Administration Commission, *EAVS Deep Dive: Provisional Ballots*, available: <https://www.eac.gov/documents/2018/06/07/eavs-deep-dive-provisional-ballots/>

¹⁶ All Voting is Local, *Franklin County Provisional Use*, see appendix.

¹⁷ *Id.*

State students casting provisional ballots. The overall rate of provisional ballots cast in Greene County was 1.89 percent, but in the precinct that serves Central State, nearly half--46.4 percent--of all ballots cast were provisional. Of those, nearly half--45.7 percent--were eventually rejected by the board of elections. According to advocates, these problems are not new and mark a pattern of needless barriers to the ballot over years. These problems have an overall suppressive impact on black voter participation and on participation from marginalized communities at large. While Greene County had a turnout of 70.9 percent and Ohio had a 55.7percent turnout overall, Central State's precinct only had 15.8 percent turnout, making it the eighth lowest turnout precinct in the state.¹⁸

Voting Rights of Incarcerated People

Ohio is comparatively progressive in its laws to enfranchise people with criminal convictions. Only those who are currently incarcerated post-felony conviction are disenfranchised, meaning that many people housed in jails are eligible to vote.¹⁹ On any given day in Ohio, more than 17,000 people are housed in local jails - nearly 60 percent of them awaiting trial.²⁰ Those who have not been convicted of a crime and those serving a sentence for a misdemeanor indisputably have the right to vote, but it remains a right in theory, not practice.

In 2018, All Voting is Local worked with advocates in Cuyahoga, Lake, Lorain, Franklin, Montgomery, Licking, and Lucas counties to launch voter registration and absentee voting at county jails. While some counties were successful, such as Cuyahoga and Lake, activists in other counties experienced administrative hurdles and a lack of clear accountability on who has ownership over this important service. As a result, the state has a patchwork of policies and practices that lead to very different access to the ballot for incarcerated voters in different jails. In most instances, we found a voter could get a ballot, but they had to assert themselves and agitate to receive one. Access to the ballot should be the rule for jailed eligible voters, but too often, it is the exception.

Access to the ballot is directly tied to our broken criminal justice system. Voters often languish days and weeks in jail unable to afford their bail, uncertain when they will be released. When we worked with jailed voters in 2018, it was common to speak to a person a month before the election who could only guess where they might be on Election Day. This made it difficult for the voter to decide if they should believe they would be released in time to vote in person on Election Day, or if they should request a ballot be delivered to them at the jail. Advocates working in the Cuyahoga County Jail reported it was common for a voter to request a ballot, but the voter would be released before it was delivered to the jail.²¹ Similarly, volunteers would encounter voters who did not request a ballot because they believed their release was impending.

¹⁸ All Voting is Local, *Central State University Provisional Use*, see appendix.

¹⁹ Ohio Revised Code § 2961.01(A)(1).

²⁰ American Civil Liberties Union, *Blueprint for Smart Justice Ohio*, available: <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-OH.pdf>

²¹ Northeast Ohio Voter Advocates, November 1, 2018, personal communication.

but were still incarcerated days or weeks later. Staff at jails were often under-resourced to facilitate jail voting, due to high jail populations driven by unjust laws and policies.

Another failure of Ohio law is that late-jailed voters--i.e. those incarcerated after 5 p.m. Friday before Election Day, cannot obtain a ballot unless they can afford to bail themselves by Election Day. In 2018, All Voting is Local analyzed the late-jailed population at the Montgomery County Jail in Dayton and found at least 62 such voters who would not be able to obtain a ballot.²² The Campaign Legal Center and Demos filed class action litigation on Election Day 2018 that is pending in federal court challenging this prohibition.²³

Voter purges

Ohio's voter purge system is notorious for removing large numbers of voters from the registration rolls. While the U.S. Supreme Court has upheld the state's process, the ramifications of the purges continue to reverberate. In early 2019, Secretary of State Frank LaRose announced he would continue the voter purge program, but would send out a final mailing to voters who may be purged. Secretary LaRose mailed 264,516 letters to voters about to be purged, and only 540 responses from voters. Of those, nearly 70 percent matched the voter's previous name and address--meaning those voters had no change in their eligibility and should never have been purged.²⁴

Leaders must devise new methods to reach voters. In 2018, All Voting is Local identified nearly 400,000 voters with inactive registrations and texted them the state's online voter registration site and encouraged them to update their registration. Over 30,000 of those voters clicked the link and visited the voter registration site. While we do not know yet how many then updated their registration, we know this was a higher response rate at 7.5 percent, while average for text campaigns is 3-4 percent.²⁵

Most importantly, large scale voter purges occur mostly because of outdated voter registration systems. Ohio does not have Automatic Voter Registration or Same-Day Voter Registration, both of which make it easier for voters to confirm and update their registration. Voters who do business with government agencies such as the Department of Job and Family Services, disability services, and veterans services should have their voter registrations automatically updated if they inform a government agency of a change. Additionally, allowing a voter to update their registration on the same day they cast their ballot helps those who move frequently, the homeless, and youth voters.

²² All Voting is Local, original analysis using publicly available voter registration lists and online booking report provided by the Montgomery County Sheriff's Office, Nov 1-7, 2018.

²³ *Tommy Ray Mays II v. LaRose*, U.S. Federal District Court for the Southern District, Case No. Case No. 2:18-cv-1376.

²⁴ Ohio Secretary of State Frank LaRose, *Fresh Start Voter Registration Campaign Announces Results*, April 10, 2019, available: <https://www.sos.state.oh.us/media-center/press-releases/2019/2019-04-10-a/>

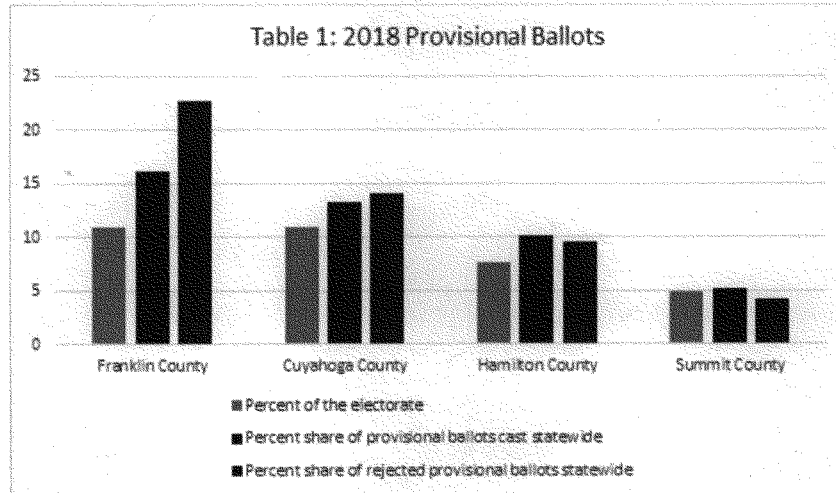
²⁵ Dr. Megan Gall, All Voting is Local, original analysis of text campaign results, January 2019.

Recommendations:

In 2018, the Ohio Voter Rights Coalition, which includes All Voting is Local, released a proactive voting rights agenda.²⁶ These proposals would address many of the issues outlined in this testimony, and ensure free and fair elections for all Ohioans. Ohio must establish uniform standards for implementing these reforms. Recommendations include:

- Adopt automatic voter registration.
- Expand and make permanent evening and weekend early voting hours.
- Allow multiple early voting sites per county.
- Stop voter purges based on voting activity.
- Require voter registration and absentee voting at Ohio jails.

²⁶ Ohio Voter Rights Coalition, available: https://allvotingislocal.org/wp-content/uploads/2018/08/AVL_Ohio_MultiPager_Web-1.pdf.

Appendix

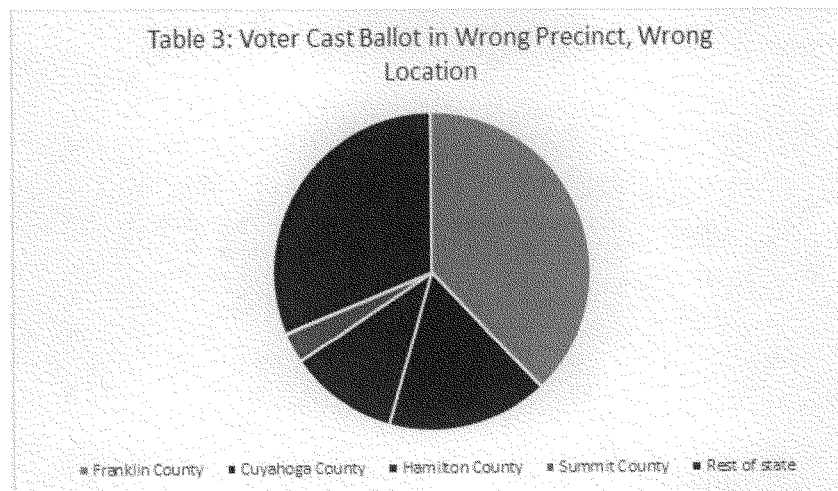
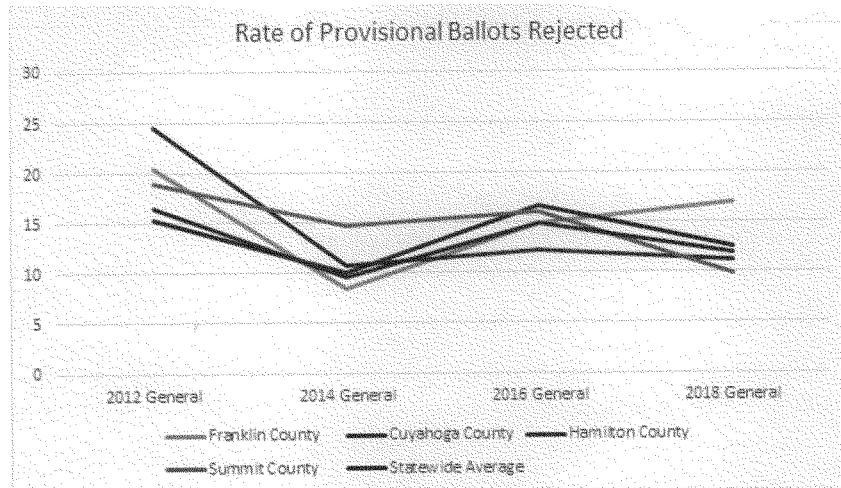
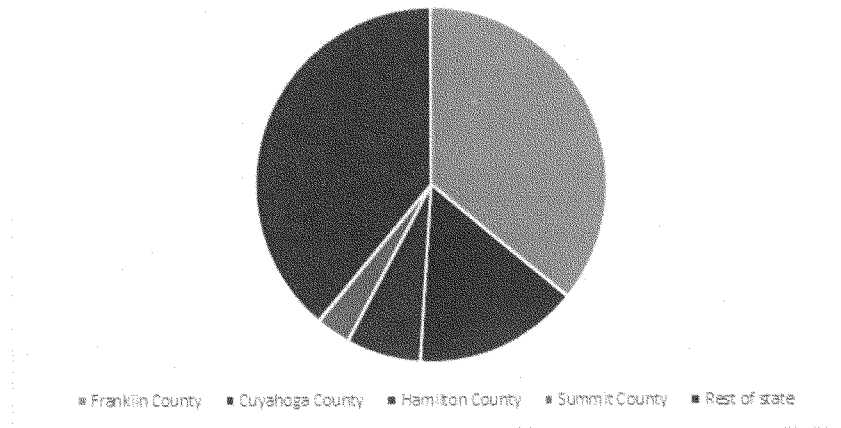
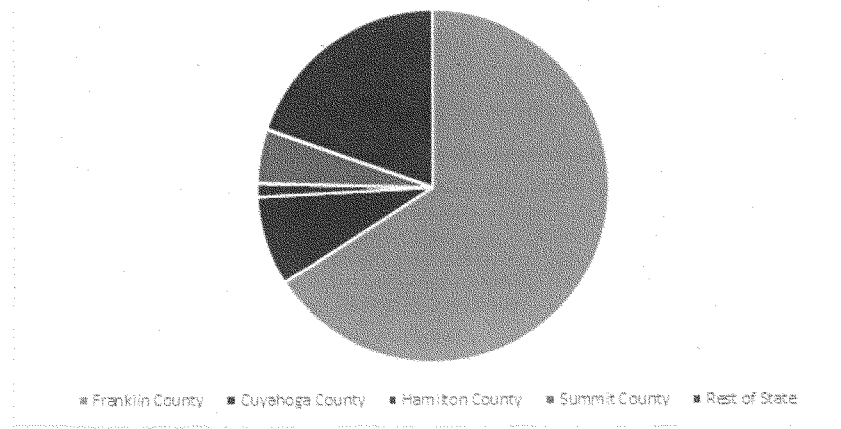
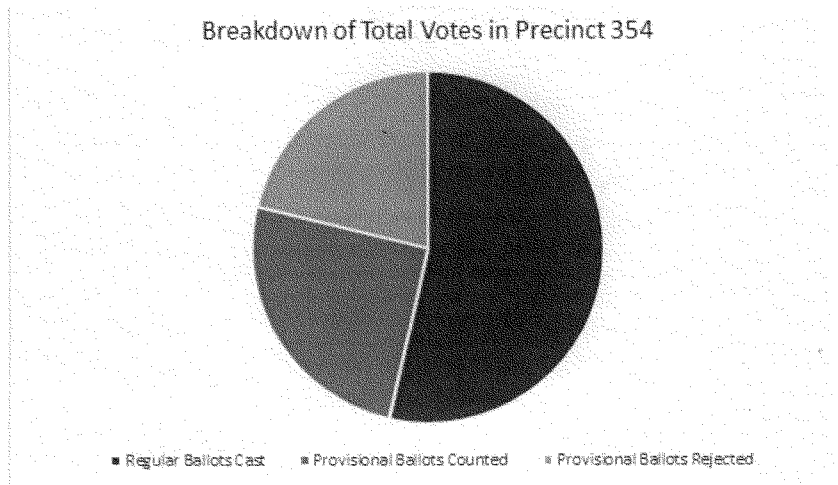
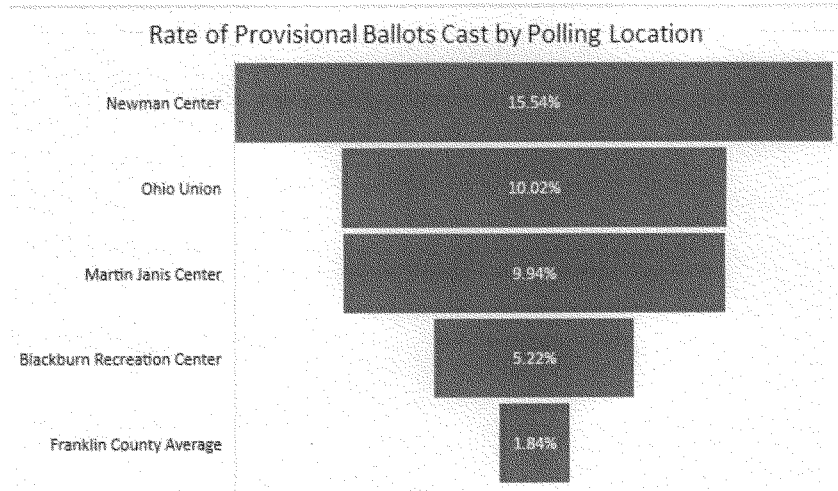


Table 4: Voter Did Not Provide Adequate ID



Signature Did Not Match



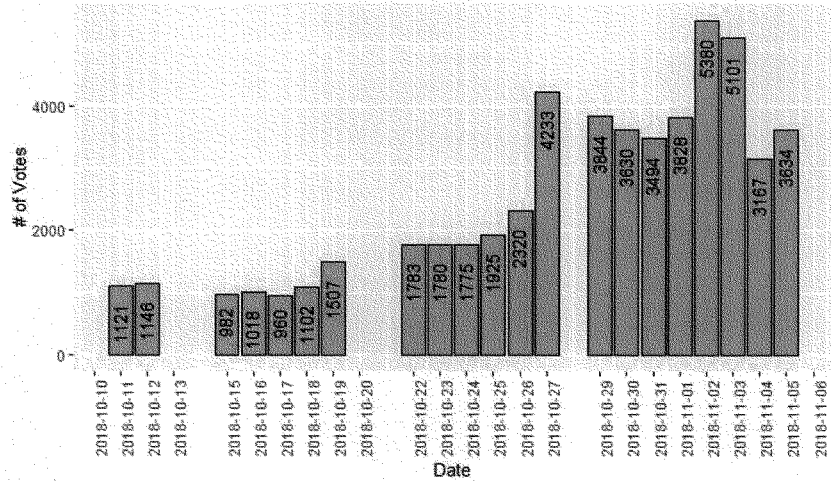


Ohio Early Vote

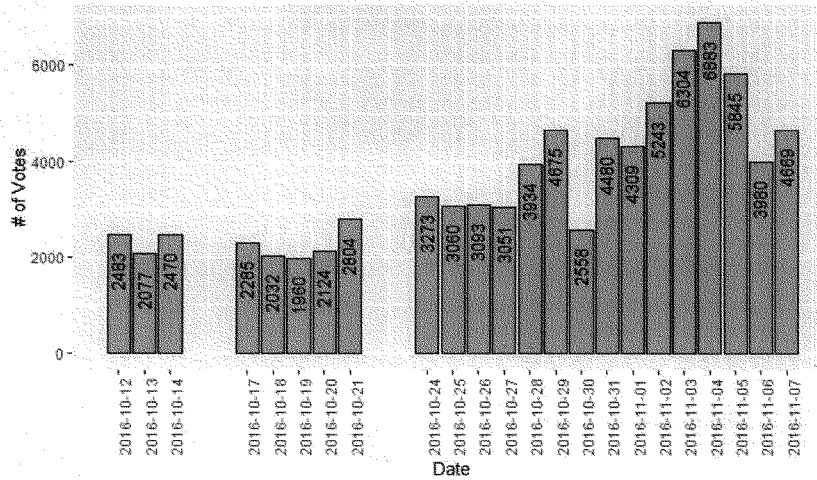
Code ▼

Early Vote for Franklin, Warren, Washington, Summit, Delaware, and Defiance Counties by day:
2016 & 2018

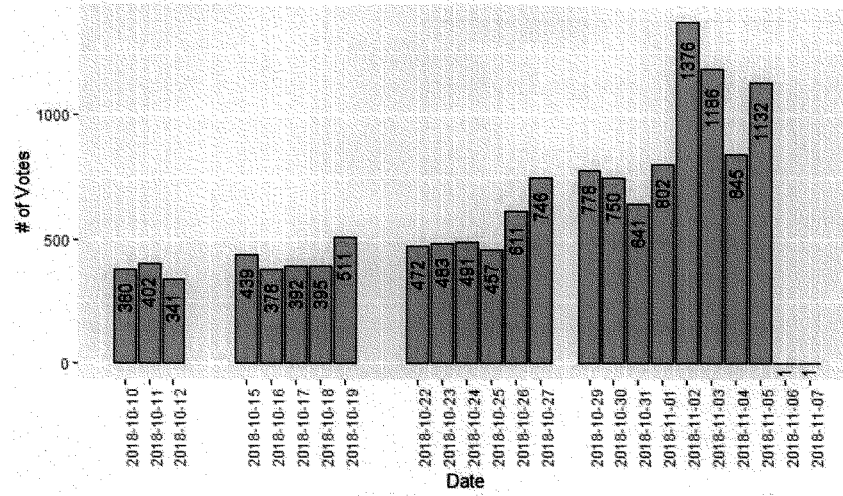
Franklin 2018 General



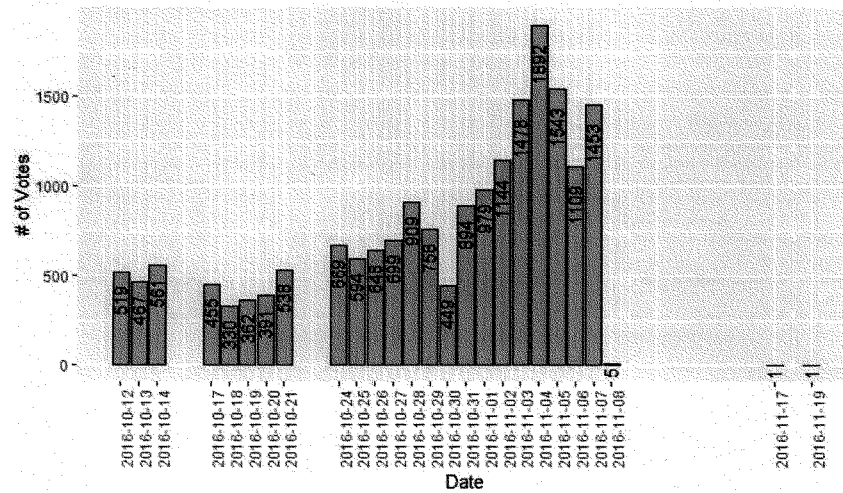
Franklin 2016 General



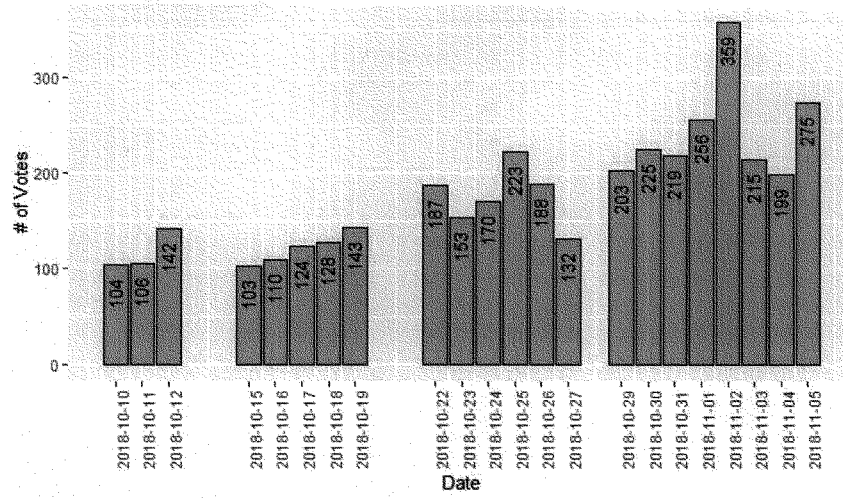
Warren 2018 General



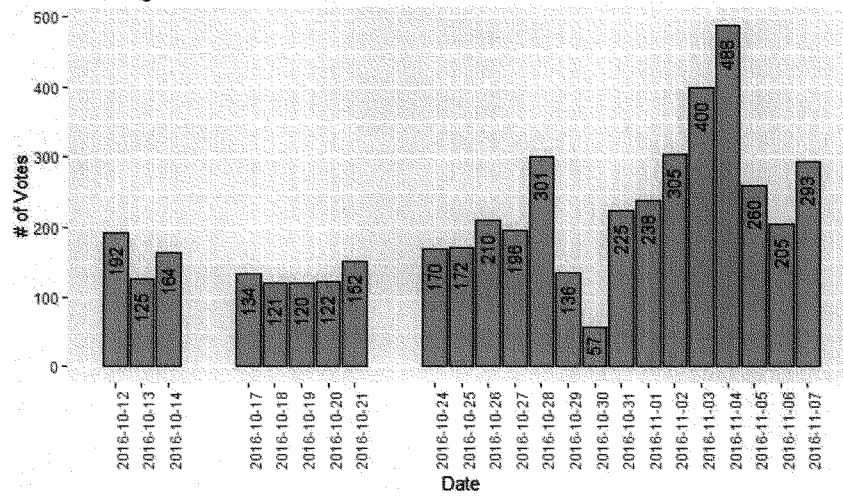
Warren 2016 General



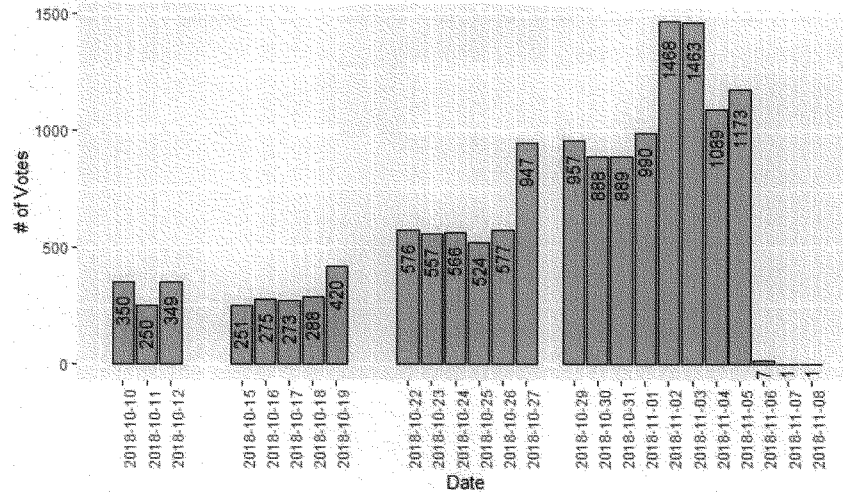
Washington 2018 General



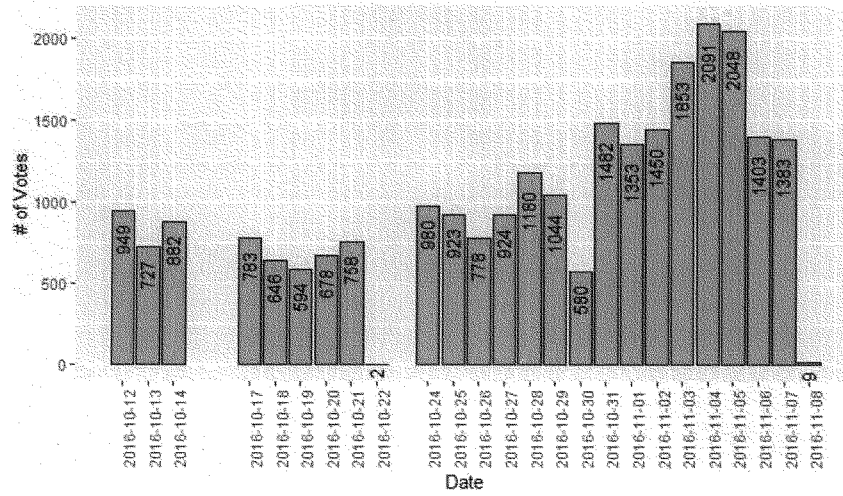
Washington 2016 General



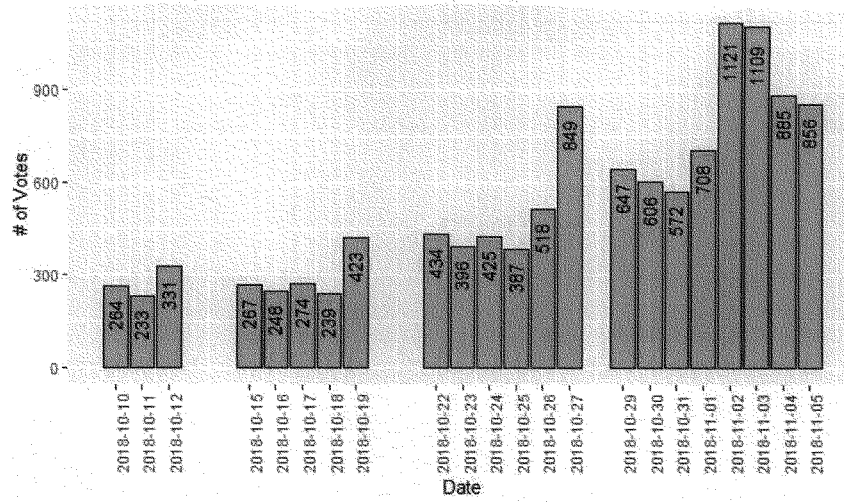
Summit 2018 General



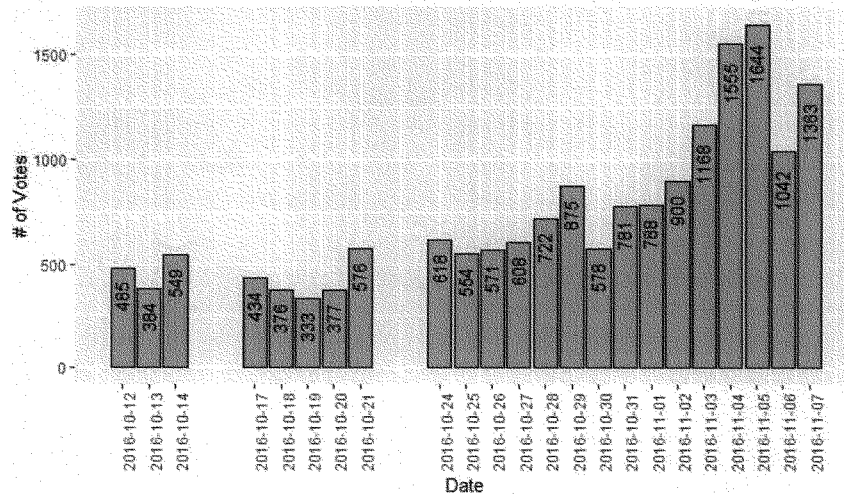
Summit 2016 General



Delaware 2018 General



Delaware 2016 General



Chairwoman FUDGE. I thank you all. We will now begin our questioning. Mr. Butterfield, you are recognized.

Mr. BUTTERFIELD. Thank you, Madam Chairwoman, and I won't consume the full five minutes. I have to head to the airport. Thank you for your testimony. It has been very insightful. I mentioned to the other panel the question about Section 2 litigation. Counsel, do you know if there has been any Section 2 litigation in Ohio?

Ms. AWAN. Yes, and I think Mr. Brickner spoke to this as well. The challenges to the State's elimination of the early—same-day registration period and cuts to early voting brought in 2014, and there was some litigation brought later on on some of the—

Mr. BUTTERFIELD. Under the Voting Rights Act?

Ms. AWAN [continuing]. Were brought under Section 2 of the Voting Rights Act, as well as the Equal Protection Clause. So there were challenges related to the disparate impact that those cuts had on people, based on the basis of race as well as the impacts that it would have on individuals.

Mr. BUTTERFIELD. So just one lawsuit that you can recall?

Ms. AWAN. Yes. Well, there were at least two lawsuits addressing the cuts to early voting and then—

Mr. BUTTERFIELD. What about at the local level?

Ms. AWAN. That I am not entirely sure of.

Mr. BUTTERFIELD. Are you aware of the costs associated with Section 2 litigation? I know in my State of North Carolina, it is very expensive. I did VRA litigation back in the 1980s, and even back then, it was several hundred thousand dollars, and I suspect now it probably has exceeded \$1 million.

Ms. AWAN. I mean, so I cannot speak to the actual numbers, I would say that I would assume that the cost would be quite high based on—

Mr. BUTTERFIELD. But you stipulate it is very expensive?

Ms. AWAN. Yes, and I would say, too, that they fund other voting rights litigation that I have been involved in that doesn't require expert reports to the extent that Section 2 litigation does. You can, just going through the preliminary injunction process and some of the depositions, be ranging into the millions, right, or so—

Mr. BUTTERFIELD. Thank you. Thank you. Ms. Chappell, does changing the laws constantly affect the ability of the Board of Elections to effectively administer the elections?

Ms. CHAPPELL. Absolutely. You know, in Cuyahoga County, our Board of Election is the subject of, or involved in a number of suits, and it impacts even when the suit is filed in an expedited track, it impacts our ability to prepare for the election. It impacts staff time. And it is just the uncertainty about knowing are we putting something on the ballot? Are we taking something on a ballot? Do we have to have the messaging needed at the polling location to make sure people are aware of what the change is? So the litigation absolutely impacts us in an adverse way.

Mr. BUTTERFIELD. Thank you. Thank all of you. I yield back.

Chairwoman FUDGE. Mr. Joyce?

Mr. JOYCE. Thank you. Ms. Chappell, what would you recommend is a cure for that problem? I understand that a lot of times when there is potential—there is lawsuits about the ballots, you are already stuck, the administration of picking—purchasing

ballots and then potential to repurchase ballots because if something goes on or goes off. Do you have a recommendation of what should be a time set certain for all litigation to be filed by to allow boards to have more time to do that?

Ms. CHAPPELL. Well, yes, I mean, I thank you for the question, and I do think one of the ways in which we can try to reduce some of the litigation is to do exactly what this Committee is doing, and come to some real understanding about what is happening, what is triggering the litigation. You know, looking at elections, not just in a vacuum, one election at one time, to reach a conclusion about what it is saying, but over time, looking at what the patterns are, and coming to some basic fundamental conclusions which resonate, I think, for most voters that voting is so critical and intrinsic to our democracy that you don't forfeit your right to vote, you don't lose your right to vote, and there ought to be a way to balance the need to maintain voting records with the need to ensure that there are opportunities for full access to the ballot. So, I mean, if we hit some of these issues, I think the litigation—the cost and litigation itself will be driven down.

Mr. JOYCE. Thank you. Another one that is not necessarily right on point with what we are discussing today, but since you have the expertise here in Ohio regarding it, I understand the Secretary of State is working with the counties to purchase, or procure new voting machines for everyone. I understand from my time working as a prosecutor that the system we had in Geauga County, for example, is ES&S, Election Software and Systems, I believe. And to allow fixes the day of elections, they had a back door that was set up so that people could come into the computer, come into the scanner and do some changes. What do you see, and what needs to be done to make sure that no one has the ability to hack those voting machines?

Ms. CHAPPELL. Well, that is a great question. We also have ES&S as our vendor here in Cuyahoga County. I think one thing at the Federal level you can do is really put some teeth into the EAC, really look to make sure that the testing labs that are used because there aren't that many that there are enough that they are testing the equipment to make sure that there is no way to hack in. Most of our equipment is not connected to the internet. There has been extensive cybersecurity intrusive testing, and we have been on the forefront of making sure—at least making the effort to ensure that we are not hacked, but there is a lot around cybersecurity that needs to be done, and so, yes, there has been money allocated to allow us to continue that effort.

Mr. JOYCE. And you are going to be part of that study to make sure it doesn't happen to us?

Ms. CHAPPELL. I would be happy to be a part of it, absolutely.

Mr. JOYCE. I yield back.

Chairwoman FUDGE. Ms. Kaptur.

Ms. KAPTUR. It is on.

Chairwoman FUDGE. It is on automatically. It is on. Just start talking. You turned it off, I think.

Ms. KAPTUR. There. All right. Thank you very much. I wanted to ask a question about provisional ballots. And, first of all, thank you all for what you are doing. What you are doing is so important

to the country and to this State. You went over the data very quickly, Mr. Brickner, but what would you say to the people gathered today about what Ohio could do to fix the problems with provisional ballots? Why do we have so many? Why are so many rejected, many on the basis of signature? Why is that? What is going on in this State with provisional ballots? And I can tell you from the counties that I represent, and I represent parts of five due to very sinister gerrymandering. I could say plenty. But this is mathematical. And it isn't just Ohio. And it is the reason that we have such trouble in Congress, because the system defaults to extremes, and both parties have their share of those members now who cannot reach compromise, and it is mathematical.

So I want to ask you, in terms of provisional ballots, talk about the big picture of provisional ballots in this State. I have seen so many voters misdirected at the precinct level. We need greater training of our booth workers, and they need to—it has to happen at the local level, at the most local of levels by wards. But I want to ask you, on the provisional ballot issue, get us inside that system, tell us a little bit about what is going on in this State?

Mr. BRICKNER. Absolutely. So if you look at provisional ballots, again, Ohio is an outlier with other States. We cast far too many provisional ballots and far too many people of color particularly cast provisional ballots. With rejections and why people cast provisional ballots, the number one reason why a person has to cast a provisional ballot in the State is because they are not in the poll book, and that has to do, I think, with our outdated voter registration system. If you look at the fact that we don't have automatic ways to update your voter registration or same-day voter registration that would allow somebody who recently moved into the State, or is a student, to be able to go on Election Day, or during the early voting period, to register to vote, that becomes a major barrier. Most people don't think about voting 35 days before the election, or in excess of that. And so, you know, we tend to leave things up to the last minute. Having an automatic system and same-day voter registration would help that.

I think to your other points—

Ms. KAPTUR. Is Ohio—I am going to interrupt you, sir, and I am going to ask Ms. Chappell also to comment. Is Ohio effectively applying for and using the election assistance dollars at the Federal level to help solve some of these issues?

Ms. CHAPPELL. Well, let me just say, thank you for the question. The implementation of electronic poll books is going to be helpful, we believe, in reducing the number of provisional ballots cast. Because the e-poll books are able to when the ID is swiped, to tell the voter you are in the wrong location, and not only you are in the wrong location, this is the place you need to be, so it will direct the voter to the correct location. The provisional ballots, unfortunately, are a necessary evil because I would rather have somebody vote provisionally than not vote at all. We do have a robust way of reconciling those votes. We have seen the numbers come down. We are always looking at ways to try to figure out what is happening with the numbers. And, you know, there is a disparate impact, but we have got—we have got to continue to have it because we need people to vote.

Ms. KAPTUR. There was one other question this afternoon, or this morning, regarding hacking into our election systems, and I just want to say that in reading the Mueller Report, I can assure the American people, the hacking into our election systems was significant and continues. And here in Ohio, for those responsible, it is very important for us to think about how we gird ourselves against what this election year and the next is going to yield and how we really armor ourselves against hacking. And I heard what you said about not being connected to the internet, but we need really good oversight. Do you think our State has the capability to do that well, and our counties?

Ms. CHAPPELL. I think we are starting to. Under our Secretary of State LaRose, we have. There has been dollars allocated for cybersecurity measures for—each county in Ohio was required to undergo to take advantage actually of a cybersecurity consultant to begin some of that process. I think there is a lot more work to be done there though, but steps have been taken.

Ms. KAPTUR. Thank you very much. Thank you, Madam Chairwoman.

Chairwoman FUDGE. Mr. Gonzalez.

Mr. GONZALEZ. Thank you. Thank you, witnesses, for being here, and for your participation. Ms. Chappell, I want to read something from your written testimony that I don't think you were able to get to and just kind of cosign on that. I am just going to quote you here. It says, "I was pleased that just a few months ago, our new Ohio Secretary of State and chief elections officer, Frank LaRose, stated that voter fraud was rare. We need more truthful public statements like this." Amen to that. Completely agree. Thank you for stating that.

I will give another kind of cosign, Mr. Raskin earlier, and we talked a lot about the partisan gerrymandering that takes place. I am thrilled that we passed, in Ohio, the law that we did on our last election cycle to hopefully stop that. I think our democracy functions far better when the districts make more sense candidly. But let me get to some questions, and also, obviously, Ms. Chappell, I want to thank you for all the service on the BOE. My wife voted in Ohio for the first few times. She is new to Ohio, and the process was seamless, and I know that that was, in large part, due to your leadership and Pat McDonald's leadership and everybody at the board, so I really appreciate all the work you do.

Ms. CHAPPELL. Thank you. Thank you for that.

Mr. GONZALEZ. My question, and I only have one, is one of the main reasons our bipartisan county boards of elections eliminate precincts and polling locations is, in part, due to the fact that it has become harder to find people willing to work as precinct election officials on Election Day. That is partly due to the fact that pay for this vital service is very low, and because county boards of elections are unable to raise the pay threshold due to various administrative challenges. For example, if a PEO makes more than \$600 in a year, even if they are working three or four elections, the Board of Election would have to begin issuing 1099s or W-2s for these workers. There is also the issue of OPRS retirees being unable to work part-time at the board or as booth workers because of the U.S. Treasury rule resulting from the ACA.

So I guess my question would be: first, do you support studying ways to remove barriers at the Federal level to make hiring part-time election workers easier, and then what would those be? Help us understand that?

Ms. CHAPPELL. Yes, no, I do appreciate the question. We have—we hire a huge group of individuals to work the polls. I mean, the number is staggering. We have to do it. One of the suggestions, I actually, in my written testimony, had a few suggestions for you guys. One would be to let's move the marathon day of voting to the weekend. It would help us recruit poll workers. People would get relief time. We would have two days to administer the election instead of one crazy, long day. And I think it would—we would be able to improve the numbers and the quality of the poll workers that we get for that kind of weekend voting. Again, vote centers would allow us, I think, to do that and have a major effect on poll workers.

Mr. GONZALEZ. Great. Anything else on just kind of the availability piece of finding poll workers? I think that is a reasonable suggestion we should look at, but anything else?

Ms. CHAPPELL. We have had a pretty robust program over the years of, you know, engaging our poll workers, training our poll workers. We have a program that allows for repeat folks to work with us so we don't lose their expertise. I think there have to be—one of my recommendations, you know, we should have Election Day be a national holiday and people should be off from work and really allowed an opportunity to exercise the franchise. We would see greater numbers of poll workers if we do something like that.

Mr. GONZALEZ. Thank you. And I will yield back the balance of my time.

Chairwoman FUDGE. Ms. Sewell.

Ms. SEWELL. I thank you, Madam Chairwoman. I also want to thank this panelist for providing a lot of the statistics and facts about why it is that it is so important that we—maybe that is the question I should ask. Is it important that we restore the full protections of the Voting Rights Act of 1965? I think that there are—I started my questioning in the last panel about myths, and one of the myths that I think that people often espouse is that voter maintenance, voter roll maintenance, which is very important, don't get me wrong, I think that that is important, but is it more important that we purge people than we encourage people to go and vote?

I mean, to say that we are—voter maintenance is about cost, you know, we are trying to lower the cost of administering elections. At the end of the day, though, isn't our job also to promote democracy? And isn't democracy about promoting access to the ballot box and making sure that we are encouraging? Has the Voting Rights Act of 1965 outlived its time? That is really, I guess, the question I would ask you, Mr. Brickner.

Mr. BRICKNER. Absolutely not. We are, you know, in full support of the VRAA and having a new formula for Section 5 of the Voting Rights Act. And I think your point around data collection, really understanding the problems, is a really important one to remember when we are thinking about the Voting Rights Act, because, certainly, under the formulas that are being proposed, they are very

flexible, and it is important for us to collect data to show what is really happening in a jurisdiction to see if pre-clearance is needed in that jurisdiction.

Ms. SEWELL. And would you say, given the fact that you have given us a lot of data, both in your written testimony but also in your oral, do you think that the data shows that we need to figure out a formula to put back the full protections of the Voting Rights Act?

Mr. BRICKNER. Absolutely, and that we need a system to also look—keep the data for the entire country and for longer periods of time. We as a nonprofit organization put this together. I think that the government has a role in keeping that data and analyzing those things.

Ms. SEWELL. Well, let's go along that same line of questioning. So, Ms. Chappell, first of all, thank you so much for your years of service to the board of registrars. You do an admiral job that is critically important in protecting our democracy.

Does the Federal Government have a role to play? So often I hear that the Federal Government is setting up barriers. But I think that many of us, especially those of us who come from States like Alabama that were part of the former confederacy, that literally I wouldn't be a Member of Congress let alone Alabama's first black Congresswoman had we not gotten the right to vote and civil rights, and last time I checked, it was the Federal Government and the Federal court systems that actually gave us that right.

We are coequal branches of government, just like the judiciary, and we have a role to play in making sure that we promote this democracy. So I guess my question to you is, when you think about the many barriers and impediments to what you are doing in your role, is the Federal Government the biggest impediment?

Ms. CHAPPELL. No. Thank God for the Supremacy Clause and thank God for Federal preemption. I really think you guys have got to really give some—and what you are doing today is important to oversee what is happening at the State level. You know, we have to get—you know, numbers can be made to say anything, and we can parse out and numbers are important and the data collection is important.

Ms. SEWELL. They are critically important.

Ms. CHAPPELL. The data collection is important. But it has got to be overlaid with some basic fundamental principles that the vote cannot be forfeit. You cannot forfeit your vote. How can you forfeit your vote? So I think we have to have the Federal Government absolutely involved.

In my testimony, written testimony I actually gave you a specific thing you might consider, authorizing a subsidy perhaps to the U.S. Post Office that would cover the cost of processing and delivery of absentee ballots.

Ms. SEWELL. Absentee ballots. I like that.

Ms. CHAPPELL. And, you know, I mean, we have got a lot of ideas here at our Cuyahoga County Board of Elections, but we do think the role of the Federal Government and your role is key to allowing full and unfettered access to the ballot.

Ms. SEWELL. So in closing, I just want to say I had the great opportunity of being the Member of Congress representing Alabama

during the 50th anniversary of the Selma to Montgomery march. And I had as my special guest Ms. Amelia Boynton Robinson at the State of the Union in 2015. She was the oldest living—at the time—survivor of being bludgeoned on that bridge in Selma, Alabama, in 1965. She was at the time 103 years old.

And I had the opportunity to meet with her and for her to meet President Barack Obama in this small little room off of the Capitol before he gave his speech. And to a person—everyone came in and kneeled down where she was sitting in her wheelchair and said, “Ms. Boynton, you know, we are where we are, Ms. Amelia, because of you and your sacrifices.” “We stand on your shoulders,” is what they kept saying.

So by the time President Obama came in, all of his Cabinet members had all said the same thing, we stand on your shoulders, we stand on your shoulders. When Eric Holder said it, she said, get off my shoulders, all of you. Do your own work, is what she said. There is plenty of work to be done and we must do our own work.

And I just want to remind this panel of our constitutional responsibility. We have to do our own work. Progress is elusive. Progress never, ever, ever stays the same. We have to fight to hold on to the progress that we have made in this country and advance it for future generations. And I just want to make sure—I know that this panel has very important work that has to be done, and I look forward to seeing us continue to do that and do our constitutional duty.

Thank you for the opportunity.

Chairwoman FUDGE. Mr. Davis for his closing comments as well as questions, if you have some.

Mr. DAVIS. Thank you, Madam Chairwoman.

And thank you again to the witnesses. I appreciate your attendance here.

Quick question, any of you can answer it or all of you. Now, since the Supreme Court’s 2013 decision on *Shelby County*, have you noticed any enforcement trends related to Sections 2 and 3?

Ms. AWAN. I mean, I can’t cite numbers, but what I would say is we have seen an increase in the number of Section 2 Voting Rights Act lawsuits. Prior to, you know, the States, especially where there was previously preclearance in place—

Mr. DAVIS. So there are an increase in lawsuits, but you are not seeing any enforcement actions?

Ms. SEWELL. Because enforcement law is not there.

Ms. AWAN. Well, and, I mean, some of these Section 2 lawsuits have been successful requiring there to be changes in the law, right, as a result of that. I mean, prior to *Shelby County*, there were very few vote denial cases brought, right. Everything was under the vote dilution section of Section 2 of the VRA almost where it was addressing gerrymandering.

But now we are seeing things brought about voter ID, elimination of same-day registration, and early voting opportunities, elimination of preregistration. So, you know, I think that we have seen an uptick in the need for that.

Mr. DAVIS. Anybody else?

Ms. CHAPPELL. I don’t have any data to be able to be responsive to that.

Mr. DAVIS. Okay. Mr. Brickner.

Mr. BRICKNER. I would agree with Ms. Awan.

Mr. DAVIS. Okay. So number one, thanks again for being here. This has been a great opportunity to hear from our colleagues. This is a great opportunity to understand what happens in a State that is not our own.

You know, as somebody who is from Illinois, as somebody who has a—coincidentally four public universities in his district, I obviously don't know how that happened with the Democratic super majorities and a Democratic governor in 2011, but that is clearly a gerrymandered district.

The gerrymandering issues that are talked about here at this dais happen, as Ms. Kaptur said, in a bipartisan manner. And I certainly hope that I can count on the support of my colleagues as we move into this next set of redistricting to do what we can to stop a practice that shouldn't happen anywhere, let alone in Illinois or Ohio.

But I want to say thank you to both panels, because the message I got out of this hearing today too is that there are a lot of folks that are happy with what Secretary of State LaRose is doing in this State right now.

You know, there is a process of voter maintenance that he and his predecessors have had to do to follow the law, to follow decisions made by our Federal Government and our Federal courts. And the process right now, from my data, lasts 4 years. So thank you for recognizing the efforts of Secretary LaRose because I think that clearly shows this hearing has a very bipartisan result, and that is exactly what I mentioned in my opening comments.

Now, I do want to say I am a little confused by Ms. Chappell and Mr. Brickner. You had some issues about—you talked about how the State of Ohio has early voting everywhere, the county offices, same time, same days, that is strictly—it is the same everywhere at the same time, right?

Ms. CHAPPELL. Throughout the State.

Mr. DAVIS. Throughout the State.

Ms. CHAPPELL. That is correct.

Mr. DAVIS. I was in North Dakota a week and a half ago, many of the witnesses said that since there wasn't such strict adherence to times and dates, that that was the reason why voters were somehow being suppressed from voting. Which is it?

Mr. BRICKNER. I can answer that. So I think that with uniformity and equal protection, which was why there were uniform hours put in place years ago by former Secretary Husted, I think that with what Ms. Chappell said, it was more of a race to the bottom was how equal protection worked. It wasn't about lifting up all of the counties. We instead took away some of the evening and weekend hours.

And I think that uniformity actually has some benefits. If we are talking about public education for voters, it can become confusing if there are more hours in one county and fewer hours in an adjoining county just to put that out on television or newspaper—

Mr. DAVIS. I appreciate that. I wanted to make sure that we got it clarified as we—

Mr. BRICKNER. But I think we need to raise the bar too when we talk about expanding evening and weekend hours.

Mr. DAVIS. Well, thank you. And thanks for that clarification.

And there is—one comment that my colleague made earlier, numbers are important. We had a lot of discussion about population. The population of Ohio is growing less than 1 percent right now. And we saw an increase in voter turnout of 15 percent. It seems like folks here in Ohio, you are doing something right.

And I want to commend you and I want to commend everybody here for working hard to ensure that that happens and encourage you and encourage everyone to continue to work with our election officials to make sure that trend continues to go up. Work hard to make sure there is an accurate count with the Senate. Work hard to make sure people get a chance to cast their vote because that is the backbone of a free society.

And I am glad to be a part of this Subcommittee. I am glad to be here in Ms. Fudge's, Ms. Kaptur's, and Mr. Joyce's, and Mr. Gonzalez's almost hometowns, in some cases. But this is an opportunity for us to learn. And let me tell you something, I have learned. And I appreciate your testimony, appreciate the time, and I appreciate Chairwoman Fudge's leadership.

Chairwoman FUDGE. Thank you.

I want to thank the witnesses and just say a couple of things. One is, I clearly understand that we follow the law, but every law is not just. Martin Luther King told us that years and years ago, that every law is not just, because it was against the law for us to vote. It was not a just law, but it was the law.

So I think that sometimes we have to look at what is right and what is fair and what is just. And just because it is the law does not make it right.

So we changed the country, not through the law, really through the Supreme Court. It was the Supreme Court that determined we should be able to vote. The same thing when black people could not serve in certain parts of the military. It was not the legislature. It was not the law. It was the courts.

And so sometimes we have to look at them and say, it may be what is written, it doesn't mean that it is right. And so, you know, there was a time we had to sit at the back of the bus. It wasn't right, but it was the law. So sometimes we can't follow the law because it is not just.

Certainly, uniformity is not equity. It is a lot harder for 1 million people to vote at one polling place between the hours of 9 and 5 than it is for 5,000, and so it is not just. It may be what is on paper, but it is not just.

I want to thank all of our witnesses for being here today for their testimony. We may have some additional questions, and we would ask that you would respond to us in writing and we will put it in the record.

I want to thank Tri-C for always being so kind and having their doors open to us whenever we need them, especially Claire Rosacco, and all of those who made this happen.

I want to thank my colleagues for being here. And I think that it is important for you all to see us together as opposed to seeing what the television says. We disagree on many, many things. There

are very few things I agree with Rodney on, but I like Rodney. Rodney is my friend. And so we have relationships. So don't ever believe that we are enemies. We are not.

And I am just so pleased that Rodney has taken the time to come here, because a lot of people thought he wouldn't, and so I thank you for that from the very bottom of my heart.

We disagree on how to get there, but we all love our country. And I know that we are here to try to fix something that was changed. We are here to fix the Voting Rights Act, and I believe that we are going to do it. I have confidence in my colleagues that they are willing to work with me. I know these are. And so we are going to move this process forward.

I want to thank our staffs. Like I said, we—you see a lot of things here, but all I really do is come and sit down. Our staffs do this work, and I want to thank them for the work they do.

And with that, the Subcommittee stands adjourned without objection.

[Whereupon, at 12:22 p.m., the Subcommittee was adjourned.]

Testimony of U.S. Representative Tim Ryan (D-OH-13)
“Field Hearing on Voting Rights and Election Administration in Ohio”
Ford Room, Jerry Sue Thornton Center, Cuyahoga Community College
2500 East 22nd Street, Cleveland, OH 44115
Thursday, April 25, 2019 @ 10:00 a.m.

Good morning, Chairwoman Fudge and Members of the Subcommittee on Elections. I would like to convey my sentiments regarding voting rights and election administration in the State of Ohio, and in the United States more broadly. I believe the right to vote is the single most sacred privilege in America. We teach our children from an early age that the right to vote is the cornerstone of our democracy. It is a right that millions of Americans have marched, fought, bled, and died to protect. The strength of the franchise has always been the measure of our commitment to a free and fair society. And yet, in 2019, voter suppression persists across the United States of America.

For decades, the Voting Rights Act of 1965 served as a bulwark against structural racism. Section 4 required certain states and local governments to get approval, or preclearance, from the federal government before making changes to voting laws. This ensured equal voting rights in areas with a known history of discrimination. But in 2013, the U.S. Supreme Court struck down Section 4—effectively gutting the Voting Rights Act and opening the door for state-sanctioned voter suppression. Since this ruling, we have witnessed efforts by conservative state legislatures and secretaries of state to restrict ballot access through modern methods of disenfranchisement: strict voter ID laws, voter registration purges, inadequate polling places and voting machines in minority communities, and the elimination of early voting.

Here in Ohio, we have witnessed these voter suppression tactics firsthand. A few months before the 2016 presidential election, former Ohio Secretary of State Jon Husted purged the voter

registrations of hundreds of thousands of Ohioans. He justified this so-called “clean up” of the voter rolls based on these otherwise eligible voters failing to respond to a postcard mailed to their last known address. In Cuyahoga County alone, over 40,000 voter registrations were removed through this process. Those affected were disproportionately people of color, college students, homeless, transient, or low-income—demographics that tend to support the Democratic Party. Many Ohioans had no idea their registration had been purged until they went to the polls and could not cast a ballot.

Joseph Helle was one of them. Joseph is currently the mayor of Oak Harbor, Ohio. He registered to vote at age 18 and kept the same address while serving in the U.S. Army. Twelve years later, after returning home from several tours in Iraq and Afghanistan, Joseph discovered he was no longer registered to vote. Due to his military service, he did not meet the threshold of having voted in the previous six years. Think about that—the State of Ohio stripped an active-duty servicemember of his right to vote for being in so-called “inactive status.” Joseph captured the injustice of the situation best when he said, “I’m not one of these people that flaunts their military service, by any means, but to be told I couldn’t do one of the fundamental rights I went off and served this country for was just appalling.”

Our former secretary of state was also responsible for eliminating Golden Week—an early voting period during which Ohioans could register to vote and cast in-person ballots at the same time. In the aftermath of the 2004 presidential election, when African American voters in Cuyahoga County were forced to wait for hours in notoriously long lines due to too few polling places, tens of thousands of Ohioans have utilized Golden Week to facilitate early access to the ballot box. Despite being upheld by the U.S. Supreme Court, the decision to eliminate Golden Week was completely arbitrary. Since then, voters have been forced to deal with inadequate

polling locations, onerous exact match and signature verification requirements, rejections of absentee ballots mailed without enough postage, and new strict voter identification laws. If Golden Week were still in place, many of these election administration issues could have been avoided.

A coalition of civil rights organizations including the A. Philip Randolph Institute, the ACLU of Ohio, and the NAACP Legal Defense and Educational Fund ultimately filed a lawsuit against Secretary Husted to challenge the legality of Ohio's voter roll purge. Unfortunately, the U.S. Supreme Court ruled in a 5-4 decision to uphold the practice. As everyone here knows, this practice is not harmless. It is no different from any other voter suppression tactic: a systematic, thinly-veiled, often partisan effort to deny some Ohioans of their fundamental right to vote. This right should not be "use it or lose it," or have an expiration date. The decision to cast a ballot—to participate in our democracy—should always rest with voters. It is not the role of government to mandate it by threatening them with consequences.

I am reminded that my former colleague, the Honorable John Dingell and the longest-serving Member of Congress, believed our nation would be best served by an electoral system based on full participation of American citizens—with automatic registration at age 18 with no photo ID or residency requirements. It is time we move in that direction. It is my responsibility as an elected representative to clear a path to the ballot box; to make voting easier, not harder. Every eligible Ohioan who wants to exercise his or her constitutional right should have an equal opportunity to do so. That begins by exposing and opposing any attempt to infringe on the right to vote, a fundamental American privilege.

Thank you very much.



League of Women Voters of Ohio
Written Testimony by Jen Miller, Executive Director
U.S. House Committee on House Administration, Subcommittee on Elections
April 25, 2019

Thank you for the opportunity to submit testimony regarding much needed improvements in voter access, voting rights, and election administration in Ohio. First, a bit about our work in Ohio over the years.

In May 1920, at the Ohio Woman Suffrage Association Convention in the Southern Hotel in downtown Columbus, the Ohio Woman Suffrage Association transformed into the League of Women Voters of Ohio. Our founding mothers represented diverse sectors of Ohio women: nurses, teachers, letter carriers, business owners, newspaper reporters, and even groups like the Federation of Colored Women's Clubs and Daughters of the American Revolution. From the beginning, we were a diverse and accomplished group, and making a more perfect union has always been the focus of our work, especially through the engagement of voters and the improvement of electoral operations.

The League's nonpartisan voter guide is celebrated and utilized by voters across the country, and that was actually started right here in the Buckeye State during the 1920s. We began our work to get ballots standardized in the 1930's, were the architects of mail-in voter registration policies in the 1970s, and central to Ohio's recent adoption of online voter registration. In the 1960s, we were active in highlighting the challenges to voting rights in Ohio, and we actively pushed every member of Ohio's congressional delegation to support the VRA. We successfully pushed the Ohio Secretary of State to ensure that all voting locations were accessible to people with mobility challenges well before progress at the national level. In fact, the disability provisions within the NVRA were inspired by Ohio's policies that the Ohio League helped craft.

Today, our volunteers register and educate voters, serve as nonpartisan election protection monitors, and are one of the largest sources of poll workers at precincts across Ohio. This testimony is informed by our work in the field as well as our long history of serving as Ohio's election experts.

We attest that there continues to be more that we can do to improve elections access, rights, and administration. Practical improvements should include outlawing the purging of infrequent voters from the rolls, standardizing data collection practices, enabling voter education groups to reach voters who voted provisionally, automatic voter registration, election administration plans, improved security and oversight, improving voter ID requirements, improving access for incarcerated voters, and studying the experiences of student voters.

END THE PURGE

While the National Voter Registration Act calls upon states to make “a reasonable effort to remove the names of ineligible voters,” Ohio’s Supplemental Process of commencing a purge based on the failure to vote in a single federal election cycle is not reasonable. Even if SCOTUS upheld this practice as constitutional in *Husted v ARPI*, it is a bad policy that the Congress should outlaw. Hundreds of thousands of otherwise eligible Ohioans have been purged from the rolls, including countless minority and low-income voters. While we applaud Ohio’s current Secretary of State LaRose for discontinuing the practice and reaching out to purged voters to get them re-registered, we call on Congress to outlaw this terrible policy. Voters have the right to vote, but they also have the right to not vote.

AUTOMATIC VOTER REGISTRATION

Fortunately, there is a better policy for ensuring that voter rolls are accurate and secure, and we ask that every state be required to institute Automatic Voter Registration (AVR). AVR is an innovative policy to streamline how voter rolls are maintained through two simple, cost-effective, and transformative changes. Eligible citizens who interact with government agencies would be registered to vote or have their existing registration information updated, unless they affirmatively opt-out. Those agencies then transfer voter registration information electronically to election officials instead of using paper registration forms. This is the most commonsense approach for ensuring the accuracy of voter rolls while also improving access to all eligible voters. Given the ease and efficiency of AVR for eligible voters, it would address persistent and significant registration gaps among otherwise eligible people of color, youth, or low-income voters. Given that registration is the first step in voting, efficiently addressing the registration gap would also help increase turnout among underrepresented voters as well.

ELECTION ADMINISTRATION PLANS

In 2005 the Ohio League, the League of Women Voters of Toledo-Lucas County, and a dozen Ohio voters filed a lawsuit alleging that then-Ohio Secretary of State J. Kenneth Blackwell, Governor Bob Taft, and their predecessors failed to protect the fundamental rights of eligible Ohio voters to vote and have their votes counted, as required by the Fourteenth Amendment to the United States Constitution. Our complaint detailed three decades of deficiencies including widespread problems with election planning and unequal allocation of voting equipment and resources that resulted in long lines - especially in precincts with high numbers of seniors, low-income voters, and Ohioans of color. In addition, the suit found inconsistent poll-worker training and significant accessibility challenges for people with disabilities. A settlement was reached with former Secretary of State Jennifer Brunner and the plaintiffs, which required BOEs to submit election administration plans detailing how BOEs were preparing for elections. That settlement agreement expired in January 2015.

Now many aspects of Ohio’s electoral practices are back to the discretion of the Secretary of State and local Boards of Elections (BOE), therefore, we ask that Congress make these commonsense provisions national policy. Every BOE should be required in

law to issue a Pre-Election Administration plan that explains resource allocation (number of distribution of voting equipment), staffing allocations (how many poll workers will be acquired and distributed across polling locations), security operations, contingencies (how unexpected challenges will be addressed), and an election day communications plan.

POST ELECTION REPORTS WITH STANDARDIZED DATA

LWVO's settlement with former Secretary of State Brunner also called for post-election reports; such reports should be improved upon and adopted into federal law. Standardizing this data across states will empower states and local BOEs to improve future elections, while giving voting rights groups the tools needed to serve as election watchdogs at the local, state, and federal levels.

In fact, this lack of standardized data could be one of the most insidious threats to voting rights overall, because we cannot adequately address disparities for minority and underrepresented voters, if we cannot first adequately identify the biggest challenges in our electoral system. For example, we have evidence that minority students in one Ohio county are far more likely to be required to vote provisionally, and that the rate of those provisional votes actually being validated and counted is dismal. We do not, however, have an ability to analyze this across counties at this time, because of a lack of standardized data collection. Similarly, we found in 2004 that lower-income polling locations had on average fewer machines in some counties and therefore longer lines, but such data collection should be standardized across the country so that we can analyse such trends and address equity concerns at local, state, and federal elections.

Every BOE in the country, should by law, be required to conduct Post-Election Reports that contain the following data: total ballots cast and counted, early voting statistics (including most common times for casting those votes), number of provisional ballots cast and counted as well as data analysis on the reasons voters were made to vote provisionally, number of provisional ballots that were not accepted as valid and the reasoning, voting equipment malfunctions or problems, detailed analysis of voter wait times, and other data that could be used by election administrators and advocacy groups to improve future election operations.

POST ELECTION AUDITS

Ohio requires that touch screen voting have a voter verified paper audit trail. While this plus some limited auditing provides some measure of comfort, it is essential that Ohio and other states institute strong post election audits. One of the best practices for identifying problems with voting apparatus is to institute risk limiting audits, an evaluation method that has been used by the Cuyahoga County Board of Elections.

The BOE has used batch comparisons in which the computerized totals for a batch of ballots (example precincts) and a hand out of a random sample are reviewed. It is essential that voters have faith in the mechanics of our voting system, and many are

fearful that their votes are not properly recorded. Risk limiting audits provide a statistically significant method for examining the computerized record and the paper record to identify any problems. The audit begins with a small percentage of the ballots and if a problem is identified a larger review is required. If there are significant problems, then all ballots are reviewed and the paper ballot count is considered the official count, thus ensuring that the proper winner is identified.

SUPPORTING PROVISIONAL VOTERS

Provisional voting counts remain high among Ohio's racial/ethnic minority, low-income and student populations. Reporting the numbers of provisional ballots with detailed data about the provisional voters will help with future election operations. But voter education groups like the Ohio League would like to have access to the list of provisional voters and their contact information immediately after Election Day.

Most provisional voters do not understand that before a provisional ballot can be included in the official count of an election, the BOE must confirm that voter's eligibility to cast the ballot, as well as the validity of the ballot cast. If nonpartisan voter education groups had the list of provisional voters along with their contact information, we could follow-up with them to make sure that they know how to ensure that their ballots count through acts such as bringing adequate proof of identity to the board within 7 days. We also could follow-up with them before the next election with information on how to vote to reduce overall provisional vote counts in the future.

EARLY VOTING

The 2004 elections were notable in Ohio for many reasons including the long-lines where some voters waited for four hours to cast their votes, and other voters gave up completely. Early voting benefits individual voters, especially underrepresented communities, voters with transportation and/or mobility challenges, and working people. System-wide benefits of early voting include shortened lines, reduced stress on the overall voting system, hands-on experience gained by poll workers before Election Day, and time for BOEs to identify and address possible technical glitches before Election Day.

Early voting policies have been protected through a settlement between Secretary of State Jon Husted and ACLU of Ohio, NAACP, LWVO, and several African-American churches. Given that the settlement is now expired, early voting is now left up to the discretion of the current and future Secretaries of State.

In 2018, 1.3 million voters cast their vote early or by mail, but some Ohio voters still experienced lines that were an hour or more. Clearly, we do not want to go backwards and still have a need to improve, so we ask for early voting to be expanded and protected for all Ohio voters by being enshrined in federal law.

INCARCERATED VOTERS

Ohio laws regarding incarcerated voters are fairly good, but there are much needed implementation improvements. Currently there is no standard procedure for registering those in jails awaiting sentence. Oftentimes, volunteer-led advocacy groups, like the League, will select certain jails to conduct registration, but many inmates never interact with these groups and therefore aren't able to register. Additionally correctional system staff often don't understand the inmate's right to register and vote, and most do not receive this assistance from their jail. Without a uniform, standardized system, Ohio's inmates do not have equal access to registration or voting.

There is also massive misinformation about voters with felony records. Many Ohioans who have completed their felony sentence do not realize that they are eligible to vote when they re-enter society, and unfortunately, there are deliberate attempts by some groups to discourage voting through intimidation tactics that include spreading false information in low-income communities about the voting rights of former felons. In addition, they may not know that their name was removed from the voter rolls and that they will need to re-register.

STUDENT VOTERS

Several incidents have been reported to prevent college students from voting, especially in small jurisdictions where their vote can make a difference in the outcome of an election. We have been informed of several incidents where college students have been threatened with denial of scholarships and funding if they voted in local elections and other scenarios where local BOEs encourage students to register at home, not school, even though it would be far easier to get to the polls near their school. In other places, students face challenges voting because their dorms do not have street addresses and/or are different than their campus mail addresses. We are concerned that these incidents could be far more prevalent than we know, which renews our calls for standardized data tracking and a system for voters to report problems at the polls that will become available for voting rights groups to review.

PASSPORTS

While Ohio's Voter ID law is not as strict as other states, the restriction still creates significant confusion, resulting in higher than necessary provisional ballot counts. Lack of proper ID at the polls is the number one reason for an otherwise eligible Ohio voter to receive a provisional ballot. Many voters, especially younger, disabled, or low-income voters, may not own a car or have a license, and therefore do not have a state government ID. Many of those same voters, however, have passports, but passports do not count as a valid form of ID in Ohio. Regularly, we hear voters share confusion that a document can be accepted as proof of identity to travel internationally - even to war torn places - but not to vote in a local election. Congress could fix this by either requiring Voter ID states to accept passports and federally issued photo IDs, including or by ensuring that passports include the person's address.

BETTER TRACKING OF POSSIBLE SUPPRESSION

Currently, there is no easy or transparent way for voters who may have experienced voter suppression or intimidation to report their concerns. It is up to the local BOE to report to the Secretary of State if any suppression or intimidation has occurred, which raises a conflict of interest, as they would be reporting themselves. We call for a uniform, easily accessible system that allows voters to report their negative voting experiences and to require authorities to make these findings public, so that voting rights groups can review them to call for further investigations and/or policy reforms as necessary.

In conclusion, restoring and expanding upon the VRA is necessary to ensure that our elections are free, fair, and accessible for all Americans. The problems that spurred the passage of the original Voting Rights Act of 1965 still exist and new considerations have also arisen. We urge Congress to outlaw harmful practices like purging otherwise eligible but infrequent voters from the rolls, and to institute Automatic Voter Registration. We also encourage Congress to support into law early voting, provisional voting analysis and services, considerations for incarcerated and student voters, and to require ID states to accept US Passports as valid ID.

But perhaps most importantly, we ask Congress to help us solve the issue of massive data gaps and to standardize oversight practices. It is only through strong oversight and analysis that we can truly know if our elections are free, fair, accurate, accessible, and equitable for all, which is why we ask Congress to institute requirements for Election Administration Plans, post election reports, post election risk-limiting audits, and standardized data collection.

Without continued oversight and safeguards in place to protect voters from all backgrounds, it is left to organizations like the League of Women Voters and other nonprofit voting rights groups to inform and protect voters affected by these policies and practices. Without a fully functioning Voting Rights Act, the State is able to shirk its duty to justify the changes. Congress must fulfill its obligations under the Constitution to eradicate voting discrimination by restoring the strength and effectiveness of the Voting Rights Act. The right to vote is one of the most sacred and basic rights in our country and it must be protected.

The League will continue to pursue all avenues to fight for voters' rights, but we require strong action by Congress now to repair, restore, and modernize the Voting Rights Act's protections that have helped us prevent racial and language discrimination in our elections for decades. It is the duty of our government to protect the rights of voters and to encourage participation in our political system, not create barriers that prevent involvement. As it has for nearly 100 years, the League looks forward to holding our elected leaders accountable for protecting and upholding their responsibility to ensure voters have the unobstructed ability to exercise their right to vote.

For more information, please contact me at director@lwvohio.org or 614-469-1505.

Dēmos

Supplemental Response of Naila S. Awan
Senior Counsel at Dēmos

For the Record

Subcommittee on Elections Ohio Field Hearing (April 25, 2019)

During the Field Hearing, it was stated that Ohio’s error rate for purging infrequent voters from its registration rolls—through a process known as the Supplemental Process—is 0.001%.

1. Do you know what this number could be in reference to?

This number appears to be in reference to the response rate to a mailer that Secretary LaRose sent in March to certain voters purged under the Supplemental Process in January 2019.¹ However, the response rate to this mailer, sent years after the initial legal challenge to the Supplemental Process, fails to provide any remotely accurate data point for the overall error rate of Ohio’s Supplemental Process.

In November 2018, then-Secretary Husted instructed local boards of elections to “proceed with the cancellation of the registration of any voter” who would have been scheduled for removal under the Supplemental Process in the summers of 2017 and 2018.² These removals had been prohibited under a 6th Circuit injunction won by Dēmos and the ACLU of Ohio, until the Supreme Court’s decision in *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833 (2018).³

Per the Secretary’s order, such voters had to be removed “no later than Friday, January 11, 2019.”⁴ Between 30 and 45 days before such removals could take place, each voter was to be provided with a “last chance notice” that informed voters they were scheduled to be purged from the registration rolls and gave them a chance to respond.⁵ If a voter confirmed or updated their voter registration information, they would be removed from the queue for removal.⁶ Further, if a voter responded indicating that they had moved or were no longer eligible to vote in Ohio, the state was able to proceed with their removal. This “last chance” notice was **never** a part of Ohio’s original Supplemental Process that was challenged in the *Husted* litigation.

¹ See, e.g., Ohio Secretary of State, *Fresh Start Voter Registration Campaign Announces Results*, Apr. 10, 2019, <https://www.sos.state.oh.us/media-center/press-releases/2019/2019-04-10-a/>.

² Ohio Secretary of State, Directive 2018-39: Cancellation Procedures for Voters Who Failed to Act on a Confirmation Notice Issued in 2013 or 2014 Pursuant to the Supplemental Process of the General Voter Records Maintenance Program, Nov. 20, 2018, at 1, <https://www.sos.state.oh.us/globalassets/elections/directives/2018/dir2018-39.pdf>.

³ *Id.*

⁴ *Id.* at 2.

⁵ Ohio Secretary of State, Directive 2018-22: Notice of Cancellation Procedures, July 9, 2018, <https://www.sos.state.oh.us/globalassets/elections/directives/2018/dir2018-22.pdf>; Directive 2018-39, *supra* note 2, at 2.

⁶ Directive 2018-22, *supra* note 5, at 2.

In March 2019, Secretary LaRose sent voter registration forms to voters purged two months prior who had *not* responded to the “last chance notice.”⁷ The Secretary sent a total of 264,516 forms.⁸ Three-hundred and seventy-six of these forms were returned by voters whose voter registration information remained entirely the same as it was when the state removed them from the registration rolls.⁹ As Secretary LaRose noted the number of voters who registered as a result of the March mailing, indicating that their name and address had not changed, “is equal to 0.1%” (as $376 / 264,516 = .001$).¹⁰ This is unsurprising given that the mailings went only to those who had previously failed to respond to the broader set of notices sent to eligible voters in previous years.

2. It was later stated that the .001% figure was the response rate to a supplemental mailer sent by the Secretary of State’s office. Why is the response rate to this supplemental mailer not an accurate representation of the potential error rate of the Ohio purge procedure known as the Supplemental Process?

The response rate to the March 2019 mailer fails to provide any useful data point for the error rate of Ohio’s Supplemental Process.

Under Ohio’s Supplemental Process, voters are removed from the registration rolls if they do not respond to a single-sheet notice sent to them after a mere two years of not voting and then fail to vote in the subsequent four-year period.¹¹ The voters who were purged in January 2019 (and who subsequently received the March 2019 mailer) are not representative of those voters typically removed under the Supplemental Process in at least two ways.¹²

First, the voters who were queued for removal in January 2019 are those who received confirmation notices in 2013 and 2014, and would have been removed in the summers of 2017 and 2018, respectively, had Supplemental Process removals not been temporarily halted per court order.¹³ This means that fewer voters were likely queued for removal in January 2019 because they had more than the typical six years—including one more federal general election—in which to cast a ballot before being subject to removal under Ohio’s Supplemental Process.

⁷ *Fresh Start Voter Registration Campaign Announces Results*, *supra* note 1 (The March mailing sent “voter registration forms to addresses which never responded to ‘last chance’ postcards sent by their local county Boards of Elections in 2018.”).

⁸ *Id.*

⁹ *Id.* (noting that the names and addresses provided by voters on these forms matched the previous registration information of those voters).

¹⁰ *Id.* The discussion of a .001% error rate at the field hearing appears to be a mathematical miscalculation that failed to properly convert the raw number (.001) to a percentage.

¹¹ *See, e.g.*, Written Testimony of Naila S. Awan, Field Hearing: Voting Rights and Election Administration in Ohio, Apr. 25, 2019, at 1, <https://docs.house.gov/meetings/HA/HA08/20190425/109326/HHRG-116-HA08-Wstate-AwanN-20190425.pdf>.

¹² These voters also may have benefited from the fact that there is now greater awareness about Ohio’s Supplemental Process in the state, and thus taken independent efforts to confirm their registration or otherwise prevent their removal from the registration rolls.

¹³ *See, e.g.*, Directive 2018-39, *supra* note 2, at 1.

Second, multiple additional procedures were employed to whittle down the number of voters who were ultimately removed under the Supplemental Process in January 2019. These procedures included:

- Using data received from the Ohio Bureau of Motor Vehicles (“BMV”) to reduce the number of people targeted for removal under the Supplemental Process. Per Secretary of State directives, if a voter has interacted with the BMV “and provides the BMV with the same address as his/her voter registration address” the voter “will be credited as having confirmed that address” for voter registration purposes.¹⁴ Essentially this makes it so that a visit to the to the BMV is treated the same by Ohio boards of elections as a response to the single-sheet notice or casting a ballot in an election.¹⁵
- Sending a “last chance notice” to voters who had not cast a ballot between the time they received their 2013 or 2014 notice and the November 2018 General Election. For the first time since employing the Supplemental Process, Ohio sent voters who did not respond to their initial single-sheet notice and did not vote subsequent to that notice’s receipt a “last chance notice” in the 30 to 45 days directly preceding their removal, as discussed in the response to question 1 above.¹⁶

Given the longer length of time that elapsed prior to the January 2019 Supplemental Process purge and the new processes employed by the Ohio Secretary of State in the later part of 2018, the Supplemental Process purge that occurred earlier this year simply cannot provide an accurate representation of the Supplemental Process’s error rate.

Further, the response rate to the Secretary’s March mailing tells us little other than the fact that, even taking into account all of the above, qualified Ohio voters were still removed from the voter rolls in January 2019. While only 0.1% of mailing recipients responded and indicated that they had been removed despite the fact that their eligibility had not changed,¹⁷ 67.8% of recipients did not respond and did not have their mailings returned as “‘not deliverable’ or ‘unable to forward.’”¹⁸ The eligibility of these voters is unknown.

¹⁴ See, e.g., generally Ohio Secretary of State, Directive 2018-21: Automatic Confirmation of Address Safeguard, July 9, 2018, <https://www.sos.state.oh.us/globalassets/elections/directives/2018/dir2018-21.pdf>; see also Ohio Secretary of State, Directive 2018-21-02: Automatic Confirmation of Address Safeguard Lookback, Sept. 11, 2018, <https://www.sos.state.oh.us/globalassets/elections/directives/2018/dir2018-21-2.pdf> (using BMV data back to January 2011, which takes in voters sent notices under the Supplemental Process starting in 2013). Directive 2018-21 noted that “[o]ver time,” such use of BMV data “may result in fewer registered voters” being targeted under the Supplemental Process “and possibly fewer voters cancelled for lack of activity following” the sending of a single-sheet notice. Directive 2018-21, *supra* note 14, at 1.

¹⁵ See, e.g., Directive 2018-21, *supra* note 14, at 2 (noting that individuals queued for removal must be placed back into active status, with “[t]he date of voter activity for the voter’s record” being the date BMV data indicates such individuals interacted with the BMV).

¹⁶ See notes 4-6 above and accompanying text.

¹⁷ *Fresh Start Voter Registration Campaign Announces Results*, *supra* note 1.

¹⁸ The Secretary noted that of the 264,516 mailers, 85,116 were returned as “‘not deliverable’ and ‘unable to forward,’” 376 were from voters indicating that their registration information had not changed, and 164 were from voters who had moved to a new address. *Id.* This leaves 179,400 mailings that were not returned as undeliverable and not responded to.

3. Given the Supreme Court’s decision in *Husted*, and the obligation federal law places on states to conduct routine roll-maintenance, must Ohio use the Supplemental Process?

No. All the Supreme Court’s decision in *Husted* did was say that, under a federal law known as the National Voter Registration Act, Ohio can *choose* to treat the failure-to-vote as an indicator that a voter may have moved and use failure-to-vote alone as the basis for initiating a removal process.¹⁹ The Supreme Court did not hold that Ohio—or any other state—must use non-voting to initiate a purge procedure.²⁰ It also did not find that the Supplemental Process was wise, nor did it consider whether Ohio’s Supplemental Process runs afoul of other federal protections, such as the Equal Protection Clause of the U.S. Constitution or the Voting Rights Act. However, in her dissent Justice Sotomayor recognized that barriers to the ballot box experienced by communities whose voices have been traditionally suppressed through the political process “render[] them particularly vulnerable to unwarranted removal under the Supplemental Process.”²¹

4. If Ohio need not use the Supplemental Process, what options exist for the state to identify registrants who may have moved and remove them from the registration rolls?

Most states meet their federal roll-maintenance obligations without initiating a purge procedure based on non-voting alone. Evidence of a possible move that states use to initiate a purge procedure²² include, but are not limited to:

- Relying on information received from the U.S. Postal Service’s National Change of Address (“NCOA”) process that indicates a voter filed an address change with NCOA;²³
- Using information received from inter-state databases, such as the Electronic Registration Information Center, indicating that a registered voter may have moved to a different state;²⁴

¹⁹ *Husted*, 138 S. Ct. at 1838–46.

²⁰ See generally *id.*, 138 S. Ct. 1833.

²¹ *Id.* at 1864 (Sotomayor J., dissenting); see also Written Testimony of Naila S. Awan, *supra* note 11, at 4–9 (discussing how the Supplemental Process may disproportionately disenfranchise traditionally marginalized communities).

²² 52 U.S.C. § 20507(d) (The National Voter Registration Act requires that states send a written notice to initiate a purge procedure when conducting removals on change-of-address grounds).

²³ *Husted*, 138 S. Ct. at 1839 (noting that at least 36 states use NCOA data to conduct roll-maintenance activities). In addition to the Supplemental Process, Ohio uses NCOA data to conduct change-of-address purges. See, e.g., *id.* at 1840.

²⁴ See, e.g., Brief for the States of New York, California, Connecticut, Delaware, Hawai’i, Illinois, Iowa, Kentucky, Maryland, New Mexico, Oregon, and Washington, and the District of Columbia as Amici Curiae in Support of Respondents, at 26–27, *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018) (No. 16-980) (discussing ERIC and other “smaller regional information-sharing agreements” entered between states); Brief of League of Women Voters of the United States, League of Women Voters of Ohio, and the Brennan Center for Justice as Amici Curiae in Support of Respondents, at 21–22, *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018) (No. 16-980).

- Using mail that has bounced or been returned as non-deliverable as an indicator that a voter may have moved.²⁵

In each instance there is some affirmative evidence—something beyond a mere failure to act by a voter—that indicates a voter may no longer reside at the address where they are registered.

During the Field Hearing, Congressman Butterfield asked about litigation brought under Section 2 of the Voting Rights Act in Ohio:

1. Have there been instances of Section 2 litigation in Ohio?

Both Section 2 vote dilution and vote denial cases have been brought in Ohio. Such cases have included, but not been limited to, challenges to Ohio's cuts to same-day registration and early voting,²⁶ as well as redistricting challenges.²⁷

2. Are you aware of the cost with bringing Section 2 litigation?

Section 2 litigation is resource intensive for both Plaintiffs and Defendants. Plaintiff-side expenses are often in the six- and seven-figure range.²⁸ And, Defendants also often times spend in the millions defending such lawsuits. For example, North Carolina spent nearly \$5 million defending a state law that restricted access to the ballot.²⁹ In addition to these dollar figures, these cases can span years,³⁰ and, because Section 2 lawsuits can only be brought after new voting laws or regulations have been put into place, votes may be lost and voters suppressed before a lawsuit has been resolved.

²⁵ See, e.g., Br. of League of Women Voters of the United States, *supra* note 24, at 20-24; Br. for the States of New York, et al., *supra* note 24, at 22-28.

²⁶ See, e.g., *Ohio State Conference of the NAACP v. Husted*, 768 F.3d 524 (6th Cir. 2014), *vacated as moot* 2014 WL 10384647.

²⁷ See, e.g., *U.S. v. City of Euclid*, 580 F. Supp. 2d 584 (N.D. Ohio 2008) (challenge to the City of Euclid's "method of electing its City Council, using a combination of single-member districts and slotted, at-large positions"); *Armour v. Ohio*, 775 F. Supp. 1044 (N.D. Ohio 1991) (Section 2 challenges to Ohio's legislative apportionment scheme).

²⁸ See, e.g., Brief of Joaquin Avila, et al. as Amici Curiae in Support of Respondents, at 24, *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529 (2013) (No. 12-96) (noting that these figures are high, in part, because of the need to pay "expert witness fees and deposition costs").

²⁹ Alice Miranda Ollstein, *North Carolina Spent Nearly \$5 Million Defending Voter ID, And Lost*, THINKPROGRESS, Aug. 9, 2016, <https://thinkprogress.org/north-carolina-legal-spending-voter-id-f0aa75082518/>.

³⁰ See *id.*

REJECTED

**How the Provisional
Ballot System in
Franklin County, Ohio
Fails Voters.**

ALL **V**OTING IS
LOCAL
OHIO

All Voting is Local fights to eliminate needless and discriminatory barriers to voting before they happen, to build a democracy that works for us all.

It is a collaborative campaign housed at The Leadership Conference Education Fund, in conjunction with the American Civil Liberties Union Foundation; the American Constitution Society; the Campaign Legal Center; and the Lawyers' Committee for Civil Rights Under Law.

AVL launched in 2018 in Ohio to advocate on the state and local level to expand access to the ballot, especially for Americans historically silenced at the ballot box, to achieve a democracy where all voices are heard. The campaign uses data-driven organizing, strategic communications and grassroots powerbuilding to achieve its goals. *Rejected: How The Provisional Ballot System in Franklin County, Ohio Fails Voters* aims to expose and remedy the problem of provisional ballot use and rejection in Franklin County, Ohio.

© All Voting is Local

By Mike Brickner
Ohio State Director

Megan A. Gall, PhD, GISP
National Data Director

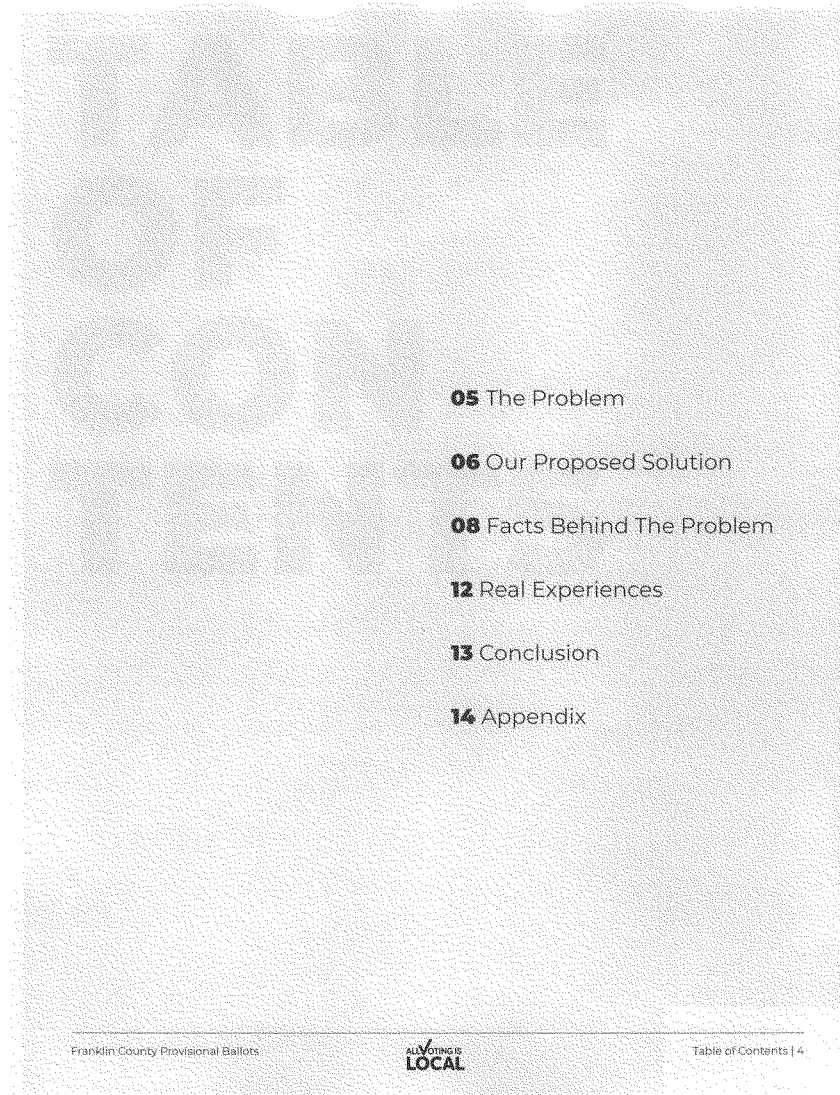
<https://allvotingislocal.org>

✉ Hello@allvotingislocal.org

🐦 [@allvotingislocal](https://twitter.com/allvotingislocal)

📷 [@allvotingislocal](https://www.instagram.com/allvotingislocal)

Chart data taken from
Franklin BOE public records and SOS



05 The Problem

06 Our Proposed Solution

08 Facts Behind The Problem

12 Real Experiences

13 Conclusion

14 Appendix

The Problem

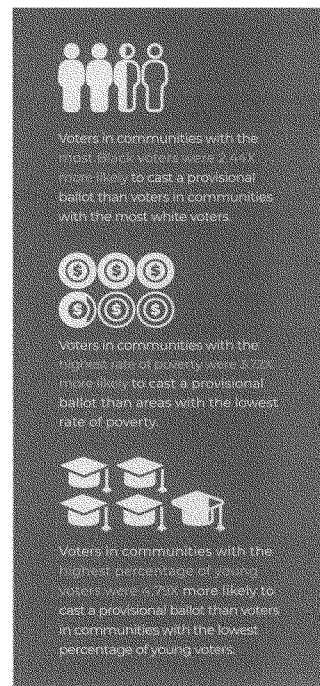
Provisional ballots are generally considered a "last resort" for voters who encounter a problem that prevents them from casting a regular ballot. Voters who go to the wrong polling location or don't appear in the poll book on Election Day may need to cast a provisional ballot. Election officials work to resolve the issue in the days and weeks after the election to ensure the provisional ballot is counted, if they find the voter was eligible to cast a ballot. High rates of provisional ballot use - and rejection - not only raise questions about the health of the election system, but also reflect barriers to voters being able to cast a ballot that counts.

Columbus is one of the fastest growing communities in Ohio and Franklin County trails Cuyahoga County only slightly in total number of votes cast in recent elections. As a large election system, Franklin County must manage the needs of a diverse community while also administering elections fairly and efficiently.

Franklin County has a provisional ballot problem.

Our analysis found:

- 1** Voters in Franklin County cast a disproportionate number of ballots compared to their percentage of the statewide electorate.
- 2** Black, low-income, and young voters were far more likely to cast provisional ballots in the 2018 general election, underscoring troubling inequalities for many historically disenfranchised voters.
- 3** Over one in five rejected provisional ballots statewide came from Franklin County.
- 4** Nearly two-thirds of all provisional ballots statewide rejected due to a mismatched signature are from Franklin County.
- 5** Voters who cast a provisional ballot because of insufficient ID or because they are in the wrong location may have their ballots rejected. Franklin County made up one-third of the total number of ballots rejected statewide for these reasons.



Our Proposed Solution

County officials should address these problems with increased poll worker training and recruitment, as well as voter education. Unfortunately, the Franklin County Board of Elections and Franklin County Commissioners have been locked in a stalemate since 2018 over funding for voter education, with some members of the Board of Elections claiming that voters in Franklin County do not need additional education. Our analysis indicates otherwise. The ongoing failings of the county's provisional ballot system show the need for robust voter education.

To ensure free and fair access to the ballot, the Board of Elections and County Commissioners must adopt the following measures:

1 VOTER EDUCATION

Fully fund a voter education program that targets provisional ballot issues and the communities most impacted by them.

Improve systems to notify voters of polling location changes. Far too many voters cast provisional ballots and have them rejected because they cast their ballot in the wrong precinct and wrong location. The Franklin County Board of Elections should have clear and prominent signage outside of polling locations that have had any changes instructing voters where to report. Additionally, elections officials should invest in potential solutions through civic technology that could better alert voters to changes in their polling location. This could include targeted digital advertisements directing voters to check their polling location, and development of technology that could automatically alert a voter via text, email, or phone call if there are last-minute changes or other problems at their polling location.

Increase education on voter identification.

Franklin County rejects a disproportionate number of provisional ballots due to issues with voter ID. This indicates a clear need for voters to better understand what ID they must bring to the polls.

Dedicate funding for voter registration

education for college students. One in 10 voters who cast a ballot at the Ohio Student Union in 2018 were forced to cast a provisional ballot. Nearly 65% of those ballots were rejected, many because the voter was not already registered. The Franklin County Board of Elections must focus additional resources on educating and registering young voters. Other states have been successful by opening voter centers on college campuses, and integrating voter registration into the orientation for first-year students.

Our Proposed Solution

2 POLL WORKER TRAINING

Ensure poll workers are directing voters to their correct polling location. With the advent of electronic poll books, elections officials should be able to identify a voter's correct polling location and direct them there. Some electronic poll books print instructions and a map for voters to take with them, and poll workers should be trained on how to effectively utilize this.

Increase training on proper forms of voter identification. Voters who present alternative forms of identification should not be required to cast a provisional ballot, and training and procedures should reflect that.

Mandate that poll workers record the reason a voter cast a provisional ballot. Records from the Franklin County Board of Elections showed that a large number of provisional ballots included no information as to why the voter cast a provisional ballot. To tackle the inequalities at the polls, officials must first understand why they happen. Officials must be trained to record this information and there must be accountability for officials who fail to do so.

Elections officials should not reject provisional ballots unduly for signature mismatch. Franklin County accounts for the vast majority of provisional ballots rejected for signature issues in the entire state. Officials who review signatures on provisional ballots should receive additional training and clear protocols about when ballots should be rejected. Such disproportionate numbers indicate potential disparate treatment of those provisional voters who may have a disability or other reason their signature may have changed over time.

Instructions for provisional ballots should be available in multiple languages and a multilingual poll worker should be available to voters who are not English proficient.

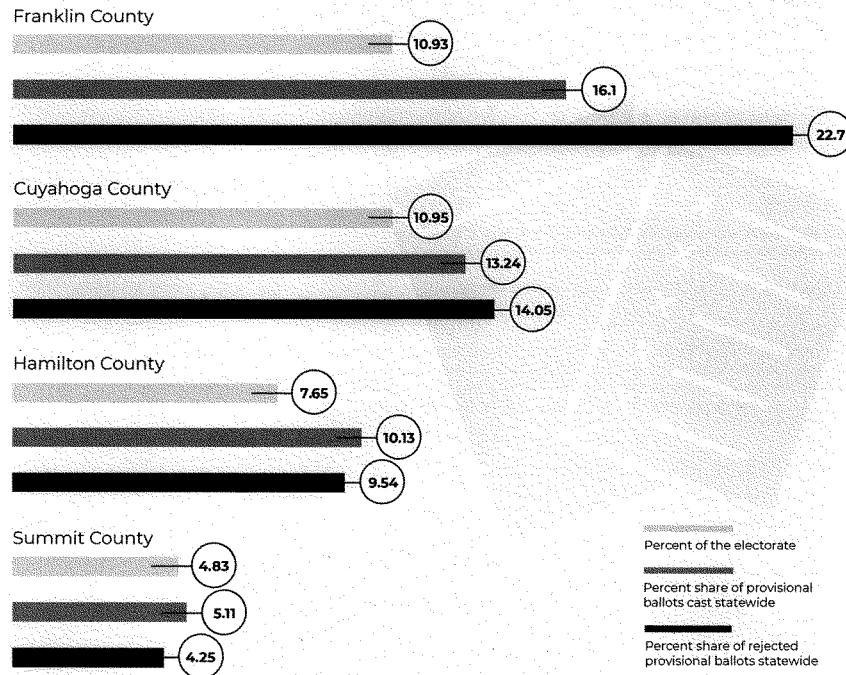
While Franklin County has implemented a multilingual poll worker recruitment program, it must expand its efforts. Many voters who are not English proficient may make mistakes on provisional ballots because of complicated provisional ballot rules. Translators who speak Somali, Spanish, Arabic, Chinese, Nepalese, and American Sign Language should be deployed to polling locations with a high density of these voters. All instructions should be translated and simplified, so they may have broad accessibility.

Facts Behind the Problem

Franklin County is an outlier in its use of provisional ballots compared to the other largest counties in the state. As can be observed in Chart 1, Franklin County trails Cuyahoga County only slightly in its share of the statewide vote, accounting for 10.93% and 10.95%, respectively. However, this is where the similarities end, as Franklin County accounts for a much larger

share of provisional ballots cast statewide. Over one in five of all provisional ballots rejected in Ohio come from Franklin County. While Hamilton and Summit counties are comparably smaller, the overall trends indicate that Franklin County is a significant outlier.

Chart 1: 2018 Provisional Ballots



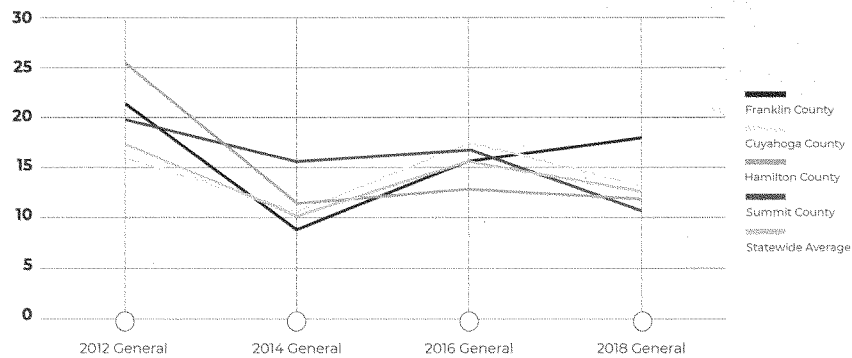
This phenomenon was not limited to 2018—Franklin County appears to have a practice dating back to at least 2012 of issuing more provisional ballots than its share of the electorate. Chart 2's trend lines illustrate that Franklin County consistently outpaces the other largest counties in the state.

Chart 2: Rate of Provisional Votes Cast



While Franklin County voters disproportionately cast more provisional ballots than other large counties, its rate of rejection is even higher and has climbed since 2014. As Chart 3 illustrates, the other urban counties decreased their rejection of provisional ballots while Franklin County's increased.

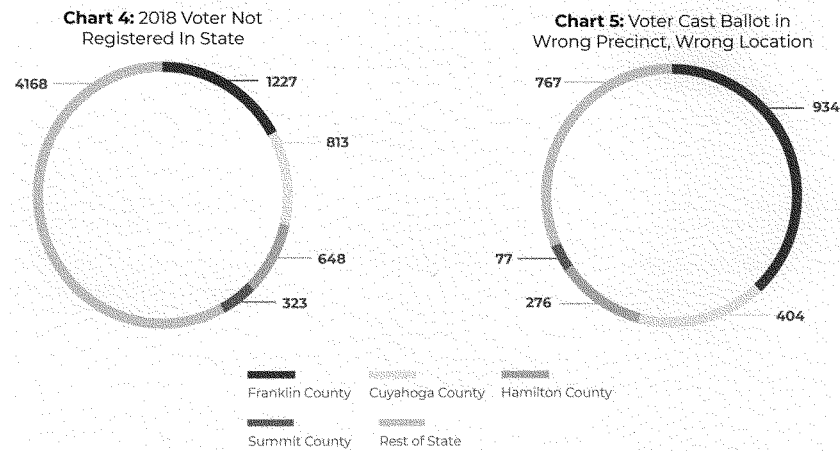
Chart 3: Rate of Provisional Ballots Rejected



Facts Behind the Problem

While Franklin County voters cast a disproportionate number of provisional ballots—and have them subsequently rejected at a higher rate—the experience at the ballot box is not the same for all voters. In areas where more Black, low-income, and young voters reside the likelihood of them casting a provisional ballot increases substantially (See Appendix Map 1). Black, low-income and young voters were also more likely to have their provisional ballot rejected (See Appendix Map 2).

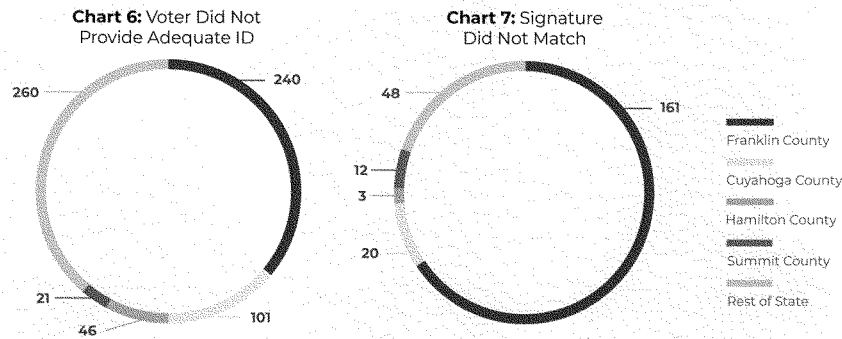
By far, the single largest reason why provisional ballots are rejected statewide is because the voter was not already registered in Ohio. This is also true in Franklin County, but with 17 percent of the total share of these rejected ballots, Franklin County voters account for far too many. Their proportion of unregistered voters who cast a ballot is out of step with the other large counties in Ohio.



The disparity grows even more stark when examining additional reasons provisional ballots are rejected. The next most common reason for rejection of provisional ballots statewide is that the voter cast a ballot in the wrong precinct, and wrong location. **Franklin County accounted for more than one-third (37.99%) of all provisional ballots rejected statewide for this reason.** When the other three largest counties are removed, Franklin County rejects more provisional ballots for this reason than the remaining 84 counties combined (see Chart 5).

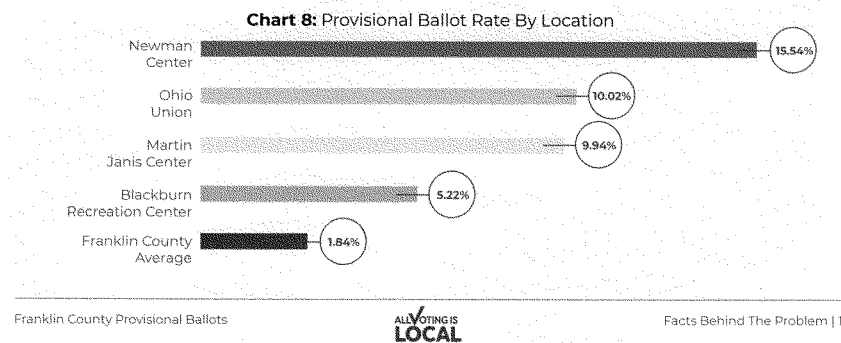
Identification at the polls was a significant problem in Franklin County. In terms of voters whose provisional ballots were rejected, **Franklin County again accounted for more than one-third of those ballots statewide** (see Chart 6).

The most extreme example of Franklin County's outlier status is the number of provisional ballots that were rejected due to signature mismatch. This means that the signature provided on the absentee ballot did not sufficiently match what the board of elections has on file for the voter. **As illustrated in Chart 7, Franklin County accounted for 65.9% of all provisional ballots rejected statewide for mismatched signatures in 2018.**



However, not all Franklin County residents are as likely to be forced to cast a provisional ballot. The countywide rate of provisional ballots cast represented only 1.84% of all ballots in the 2018 General Election. In an analysis of precincts with high rates of provisional ballots cast, four polling locations were identified as having more than two precincts where more than 5% of voters cast a provisional ballot, with rate of provisional

ballots cast illustrated in Chart 8 below. **In three of these polling locations, an astounding one in 10 voters cast a provisional ballot.** The data were even more grim at the Ohio Union, which serves many precincts that are home to Ohio State University students. According to data provided by the Franklin County Board of Elections, **nearly 65% of all provisional ballots cast were eventually rejected.**



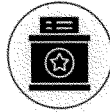
Real Experiences



On Election Day 2018, the nonpartisan Election Protection hotline received a call from a mother and daughter who attempted to vote together. They lived in the same apartment and voted in the same polling location and precinct in Franklin County.

Both voters had valid Ohio driver's licenses that showed their current address, but the mother was able to cast a regular ballot, but the daughter had to cast a provisional ballot.

Neither understood why the daughter had to cast a provisional ballot, as the daughter also provided a utility bill and doctor's note with her current address on it. After the election, All Voting is Local checked both voters' registrations on the Secretary of State website and found both were properly registered and active voters.



Amber Decker served as a precinct election official for the 2018 general election and has for the past 10 years. While Amber has had positive experiences as a poll worker in past elections, she was disturbed by the lack of training about, and increased use of, provisional ballots in 2018. Amber reported multiple voters' registration had not shown up in the poll books and that the process for provisional voters was different in 2018.

Traditionally, provisional voters would be directed to a provisional table and the poll worker would use their address to identify the correct provisional ballot to give to them. "If you showed up and were not in the poll book... they were not letting you go to provisional table unless you manually added to the poll book," said Decker. "Previously, they would have said 'your address is not in the poll book, go to the provisional table' and they would look up the address in the poll book. But that didn't happen in 2018." According to Decker, only the precinct manager had access to the address information in her polling location.

She noted that she spoke with both the precinct manager and the Board of Elections that day, but neither were able to adequately address the issues.

Ms. Decker suspects that some confusion may have been due to Ohio's aggressive purging process. She was also troubled by the process that left some poll workers without access to certain information. "Whether or not the intent was malicious, it felt intentional," said Decker.

Conclusion

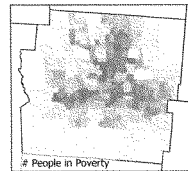
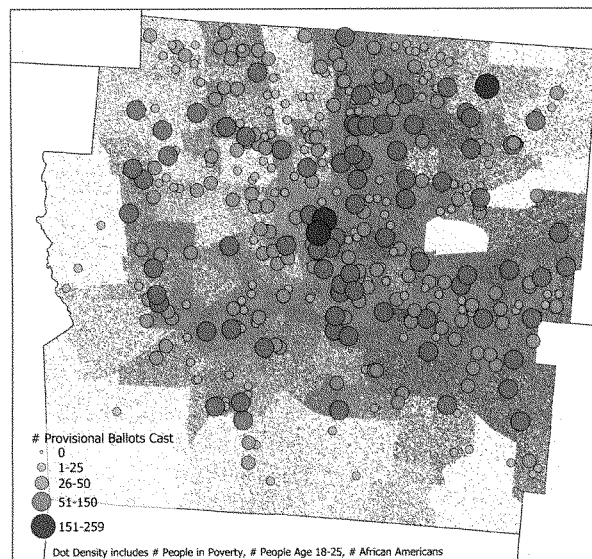
Franklin County's provisional ballot system is failing voters and must be reformed.

Election officials must receive proper training and accountability for administering provisional ballots fairly. Equally as important, the Franklin County Board of Elections must increase its voter education programs in high-risk communities to reduce its reliance on provisional ballots. While elections officials and county commissioners have been deadlocked on whether voters require additional educational outreach, the data clearly show this is a significant need. Both groups must come together and adopt an education program that directly addresses these issues and benefits voters who might otherwise be forced to cast a provisional ballot.

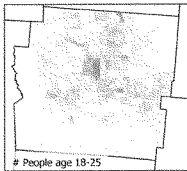
Appendix

Map 1: 2018 General Election Provisional Ballots Cast

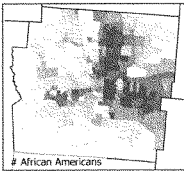
This map of Franklin County illustrates the numbers of provisional ballots cast at each polling place. We determined that higher rates of people in poverty, young people, and African-Americans are associated with higher rates of provisional ballots. We mapped county demographic data on poverty, age and race to illustrate that the areas with the most provisional ballots are more concentrated in communities with high numbers of low income people, young voters and African Americans.



People in Poverty
One dot represents a single person living in poverty, as defined by the U.S. Census Bureau.



People age 18-25
One dot represents a single person between the ages of 18-25.



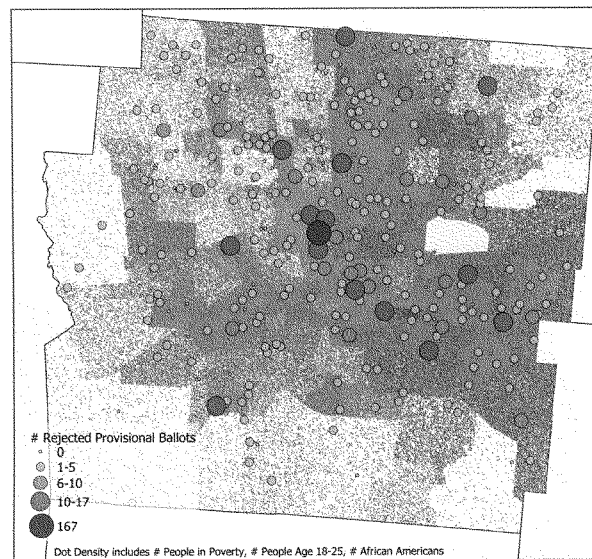
African Americans
One dot represents an African American resident of Franklin County.

Citation for Census Bureau data for maps:
For race data: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates, Table C02003: DETAILED RACE
For poverty data: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, Table S1701: POVERTY STATUS IN THE PAST 12 MONTH
For age data: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, B01001 SEX BY AGE

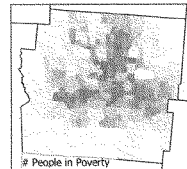
Appendix

Map 2: 2018 General Election Rejected Provisional Ballots

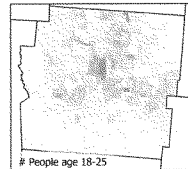
This map of Franklin County illustrates the numbers of provisional ballots rejected at each polling place. We determined that higher rates of people in poverty, young people, and African-Americans are associated with higher rates of provisional ballot rejection. We mapped county demographic data on poverty, age and race to illustrate that the areas with the most provisional ballots rejected are more concentrated in communities with high numbers of low income people, young voters and African Americans.



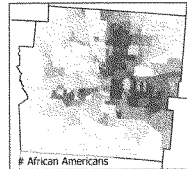
Citation for Census Bureau data for maps:
 For race data: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates, Table C02003: DETAILED RACE
 For poverty data: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, Table S1701POVERTY STATUS IN THE PAST 12 MONTH
 For age data: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, B01001 SEX BY AGE



One dot represents a single person living in poverty, as defined by the U.S. Census Bureau.



One dot represents a single person between the ages of 18-25.



One dot represents an African American resident of Franklin County.

REFORMED



All Voting is Local

The Leadership Conference Education Fund

6815 Euclid Ave. Cleveland, OH 44103

<https://allvotingislocal.org>

For the Record

Subcommittee on Elections Ohio Field Hearing (April 25, 2019)

During the Field Hearing, it was stated that Ohio's error rate for purging its voter rolls was 0.001%.

1. Do you know what this number could be in reference to?

This number is likely a reference to Ohio Secretary of State Frank LaRose's January 2019 mailing that was sent to 264,516 voters who were to be purged. However, the 0.001% number is inaccurate even according to the Secretary of State's own press release, which states "376 voter registrations were received via mail and online that matched the name and address of the previously abandoned voter registration. **This is equal to 0.1%** of the total registrations sent a Fresh Start mailing [*emphasis added*]."

2. It was later stated that the .001% figure was the response rate to a supplemental mailer sent by the Secretary of State's office. Why is the response rate to this supplemental mailer not an accurate representation of the potential error rate of the Ohio purge procedure known as the Supplemental Process?

As stated above, if this number was in reference to the response rate to this particular mailer, it is inaccurate on its face.

However, these numbers are unlikely to capture the true number of voters wrongfully purged. According to the Secretary of State, only 540 of the 264,516 voters either confirmed or updated their registration following the mailing. That leaves 263,976 voters who may not have received the mailing, may have been confused by the mailing, or otherwise may not have acted upon the mailing.

U.S. mail is an imperfect mechanism to communicate with voters, but new technology has the potential to reach more voters. For instance, in October 2018, All Voting is Local launched a text campaign reaching nearly 400,000 infrequent Ohio voters at risk of being removed from the rolls. Our texts linked them to Ohio's online voter registration portal and urged them to make a plan to vote. More than 30,000 text recipients visited Ohio's online registration portal using the link we provided them. This resulted in a 7.5% response rate, compared to the 0.2% total response rate from the Secretary of State's mailing.

Ohio has one of the most aggressive voter purge programs in the nation, revoking voters' registrations if they do not cast a ballot or update their registration in three consecutive federal elections. In the 2016 General Election, the State of Ohio and plaintiffs in *A. Phillip Randolph Institute v. Husted* agreed to a system (known as the "APRI exception") that allowed purged voters who had no change in their registration and were otherwise eligible to cast a provisional ballot and have it counted. Between the 2016 and 2018

General Elections, 8,570 purged voters were able to cast ballots that were counted.¹ If this temporary solution were not in place, each of these eligible voters would have been disenfranchised. Voters in future elections where there may be no APRI exception will simply be turned away at the polls.

Nearly 265,000 Ohio voters were purged in early 2019 after receiving a “last chance mailing” from Ohio Secretary of State Frank LaRose.² It is estimated that up to 1.9 million Ohio voters risk being purged if they do not cast a ballot, sign a petition, or otherwise update or confirm their voter registration.³ Compounded with the hundreds of thousands of Ohio voters already purged, and future elections could see large numbers of voters completely disenfranchised due to the state’s aggressive purge program.

The right to vote should not be dependent on how frequently a voter exercises their right. There are a litany of reasons why a voter may not cast a ballot in an election--ranging from medical issues, inflexible schedules, or simply not being inspired by candidates on the ballot. The U.S. Constitution protects all citizens’ right to vote, and also gives citizens the freedom to decide whether to cast a ballot in a particular election.

Simply missing one federal election harms Ohio voters. Upon being moved to the inactive voter list, these otherwise eligible voters are excluded from statewide mailings of absentee ballot request forms.⁴ Since the advent of no-fault absentee ballots in 2006, increasing numbers of Ohio voters rely on the vote by mail system, and have become accustomed to receiving absentee ballot applications in the mail.

3. Given the Supreme Court’s decision in *Husted*, and the obligation federal law places on states to conduct routine roll-maintenance, must Ohio use the Supplemental Process?

No. Ohio is obligated to maintain accurate voter rolls, but the Supplemental Process undermines that by purging otherwise eligible voters.

4. If Ohio need not use the Supplemental Process, what options exist for the state to identify registrants who may have moved and remove them from the registration rolls?

There are a variety of tools available to states to conduct routine list maintenance. Many states utilize the National Change of Address database, which tracks individuals who

¹ Data from “Provisional Supplemental Reports” for all elections from Nov 2016-Nov 2018, publicly available on the Ohio Secretary of State’s website: <https://www.sos.state.oh.us/elections/election-results-and-data/>.

² Ohio Secretary of State Frank LaRose official press release, available at: <https://www.sos.state.oh.us/media-center/press-releases/2019/2019-04-10-a/>.

³ Exner, Rich. “Find out if you are in danger of being purged from Ohio’s registered voter list,” *cleveland.com*, June 27, 2018, available at https://www.cleveland.com/datacentral/2018/06/find_out_of_you_are_in_danger.html

⁴ Wade, Stephanie. “Ohio Sec. of State sends absentee applications to all active voters,” *WNWO*, September 20, 2016, available at <https://nbc24.com/news/local/absentee-ballot-applications-mailed-to-all-active-ohio-voters>.

have alerted the U.S. Postal Service they have moved. There are a variety of other state and federal databases that may assist elections officials in determining if a voter's eligibility has changed for any reason. Utilization of these databases, along with proper due process for voters, helps ensure secure and accurate rolls. Additionally, the implementation of reforms such as Automatic Voter Registration and Same Day Voter Registration also enhance security and accuracy, while also making the election system more accessible for voters.

During the Field Hearing, Congressman Butterfield asked about litigation brought under Section 2 of the Voting Rights Act in Ohio:

1. Have there been instances of Section 2 litigation in Ohio?

Yes. In 2014, a lawsuit was filed challenging cuts to same day voter registration, evening and weekend hours during the early in-person voting period.⁵ The lawsuit relied on Section 2 of the Voting Rights Act, claiming that the cuts to early in-person voting would disproportionately impact African American voters. The federal district court and the Sixth Circuit Court of Appeals agreed initially, holding that the cuts would violate Section 2. Unfortunately, with only 18 hours before the start of early voting for the November 2014 gubernatorial election, the U.S. Supreme Court ruled 5-4 to stay the Sixth Circuit Court of Appeals' ruling, and the court vacated its ruling. The case ultimately settled to restore some evening and weekend early voting hours.⁶

The U.S. Department of Justice brought a pair lawsuits under Section 2 of the Voting Rights Act in Euclid, in northeast Ohio.⁷ Both complaints were similar in that they alleged the city's at-large system of voting for city council and school board members diluted the voting power of African Americans in the city and violated the protections of Section 2 of the Voting Rights Act.

2. Are you aware of the cost with bringing Section 2 litigation?

I am not aware of the cost in these specific cases. However, I am aware that Section 2 litigation often requires complex statistical research, expert witnesses, and significant discovery to demonstrate the impact of vote denial or dilution. These are often costs that far exceed the means of many civil rights groups, leaving many voters without the protection of Section 2.⁸

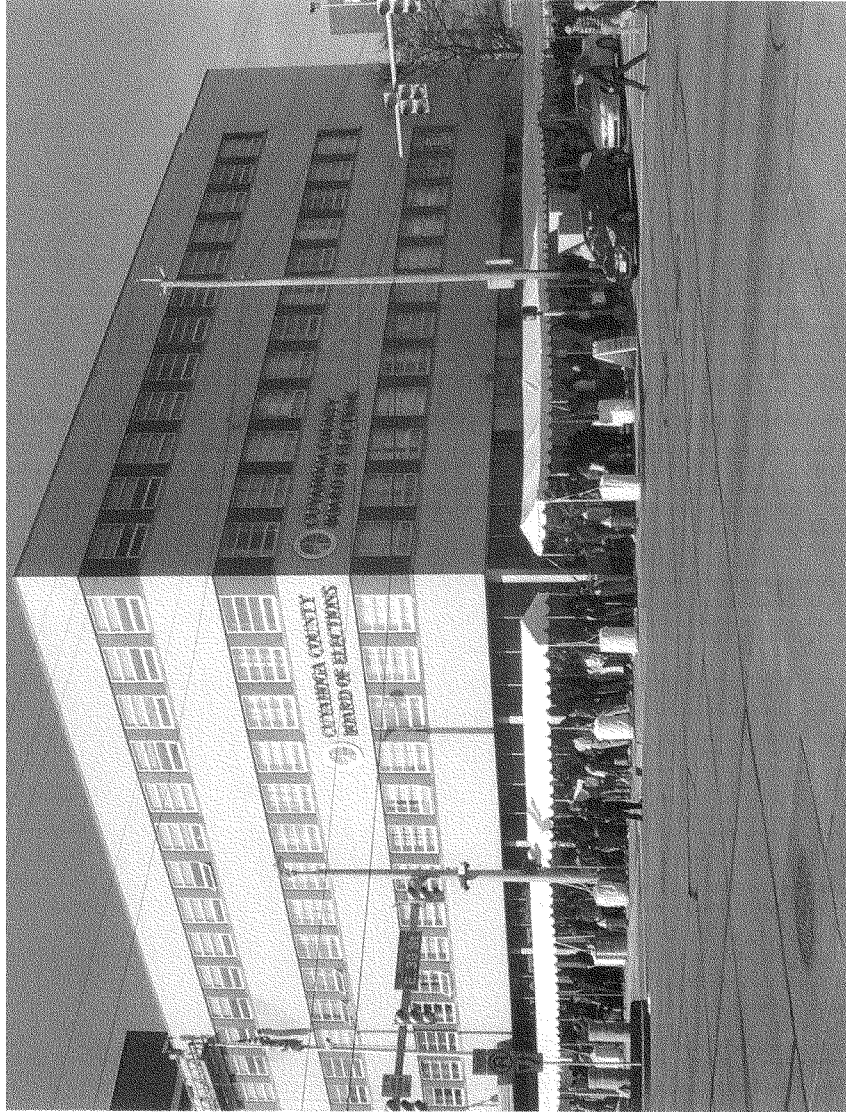
⁵ *Ohio State Conference of the NAACP v. Husted*, 768 F.3d 524 (6th Cir. 2014), vacated, No. 14-3877, 2014 WL 10384647 (6th Cir. Oct. 1, 2014).

⁶ Ho, Dale E. "Building an Umbrella in a Rain Storm: The New Vote Denial Litigation Since *Shelby*," *The Yale Law Journal*, Volume 127, February 8, 2018, available at: https://www.yalelawjournal.org/forum/the-new-vote-denial-litigation-since-shelby-county#_ftnref16

⁷ *United States v. City of Euclid, et al.* (N.D. Ohio 2006.); *United States v. Euclid City School District Board of Education* (N.D. Ohio 2008).

⁸ NAACP Legal Defense Fund, "The Cost (In Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation," available at: https://www.naacpldf.org/wp-content/uploads/Section-2-costs-08.13.18_1.pdf









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

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.¹

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.² 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

¹ Please see Appendix for meeting agendas and complete list of speakers.

² 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.”³ Throughout its history, the Commission and its Advisory Committees have released numerous reports on the state of voting rights in the U.S.⁴

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.⁵ 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,⁶ 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

³ 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).

⁴ 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/sublist_index.html (last accessed July 21, 2016).

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

⁶ 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.⁷
 - 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,"⁸ 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 19th century.⁹
 - a. Based on the standard set forth by *Crawford v. Marion County Election Board*,¹⁰ 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.¹¹ The state then must justify the burden by demonstrating that it serves an important regulatory interest.¹²
 - 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.¹³

⁷ 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.

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

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

¹⁰ 553 U.S. 181 (2008).

¹¹ 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.).

¹² *Ibid*.

¹³ 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.¹⁴
 - a. Variance in election law results in confusion and misinformation.¹⁵ For example, differences in voter ID laws between states may leave voters confused as to what is required in Ohio.¹⁶ Individuals with felonies on their record are permitted to vote immediately upon completion of their sentence in Ohio, but not in other states.¹⁷ This may lead many such individuals to be unaware of their right to vote, and may disproportionately impact people of color.¹⁸
 - b. There has been a significant increase in election related litigation in the United States since 2000.¹⁹ Litigation and resulting frequent changes in voting laws may contribute to voter and poll worker confusion regarding voting requirements.²⁰ Changes are particularly damaging when rules are modified shortly before an election.²¹ The Ohio Secretary of State's Office has reportedly not allocated any funding to voter education to make voters aware of the changes in 2018.²² "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."²³
4. Poll worker training

¹⁴ Tokaji Testimony, *2018 Transcript I*, p. 21 lines 11-35.

¹⁵ 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).

¹⁶ Clyde Testimony, *2018 Transcript II*, p. 14 lines 9-15.

¹⁷ Wimbish Statement at 3.

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

¹⁹ 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.

²⁰ 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.

²¹ Damschroder Testimony, *2006 Transcript*, p. 259 line 8-22.

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

²³ 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.²⁴ However, some counties implement additional training for poll workers.²⁵
- b. Franklin County trains poll workers before every election.²⁶ 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.²⁷
- 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.²⁸ 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.²⁹ Increased education is needed.³⁰
- 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.³¹
- 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.³² Poll worker and voter education remain the most important factors in making sure these accommodations are properly implemented.³³ 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.³⁴

²⁴ Ohio Rev. Code § 3501.27(B).

²⁵ Leonard Testimony, *2018 Transcript II*, p. 5 lines 9-16.

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

²⁷ *Ibid.*

²⁸ Cassandra Hicks Testimony, *2006 Transcript* at 153.

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

³⁰ *Ibid.*

³¹ *Ibid.* pp. 16 line 27 – p. 17 line 21.

³² *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.

³³ 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.

³⁴ 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.³⁵ This has led to transportation issues as voters must travel longer distances to vote.³⁶
 - 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.³⁷ Currently there is no accommodation for such individuals outside of designating a power of attorney for voting.³⁸
6. Provisional voting in Ohio
- a. Ohio has seen a number of cases regarding the counting of provisional ballots since 2004.³⁹ 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.⁴⁰ If provisional ballots are not counted, the voter has no right to challenge that decision.⁴¹ In close races, provisional ballots can have a significant impact on the outcomes of the election.⁴²
 - 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.⁴³ This has resulted in a reduction in the number of ballots being ruled invalid.⁴⁴
 - 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.⁴⁵
 - d. In 2012, one house race was decided by just four votes.⁴⁶ 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.⁴⁷

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

³⁶ *Ibid.*

³⁷ *Ibid.*, p. 18 lines 1-9.

³⁸ *Ibid.*

³⁹ 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.

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

⁴¹ Gresham Testimony, *2006 Transcript*, p. 78.

⁴² *Ibid.*

⁴³ Leonard Testimony, *2018 Transcript II*, p. 6 lines 34-44.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.* p. 22 lines 18-40.

⁴⁶ Clyde Testimony, *2018 Transcript II*, p. 9 lines 5-18.

⁴⁷ *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.⁴⁸ This disproportionately results in long lines for voting in urban, more densely populated counties who must accommodate more voters.⁴⁹
- 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.⁵⁰
 - 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.⁵¹
 - 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."⁵²
- c. Limitations on absentee mail-in voting and early voting may also disproportionately affect African American voters⁵³ and people with disabilities⁵⁴ who tend to gravitate toward such alternative voting provisions.
- d. Absentee ballots are tracked and processed at the county level.⁵⁵
 - i. Voter ability to track receipt of their ballot may help to improve voter confidence in early voting.⁵⁶

⁴⁸ 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.

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

⁵⁰ Wimbish Statement at 2.

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

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

⁵³ Clyde Testimony, *2018 Transcript II*, p. 10 lines 8-16.

⁵⁴ Pederson Testimony *2018 Transcript I*, p. 24 line 32 – p. 25 line 17.

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

⁵⁶ 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.⁵⁷
 - iii. Some concern was raised that counties may be inconsistent in how they count provisional and absentee ballots.⁵⁸
- e. Ohio introduced no fault absentee/early voting in 2008.⁵⁹ Previously, early voting had been available only to those with demonstrated need.⁶⁰ 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.⁶¹ Aggressive advertising for early and absentee voting has helped to reduce long lines at the polls on Election Day in Franklin County.⁶²
8. Voter Registration
- a. As of 2017, Ohio allows citizens to register to vote online.⁶³ 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.⁶⁴ 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.⁶⁵
 - b. Ohio closes voter registration 30 days before an election, the longest time allowed under federal law.⁶⁶ Same day voter registration and automatic voter registration are directly correlated with voter turnout.⁶⁷ States with same day registration

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

⁵⁸ Clyde Testimony, *2018 Transcript II*, p. 19 lines 20-40.

⁵⁹ Clyde Testimony, *2018 Transcript II*, p. 8 lines 11-12.

⁶⁰ *Obama for America v. Husted*, 697 F.3d 423 (6th Cir. 2012). The 6th 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.

⁶¹ Leonard Testimony, *2018 Transcript II*, p. 4 lines 3-19.

⁶² *Ibid*, p. 23 line 34 – p. 24 line 2.

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

⁶⁴ 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)

⁶⁵ Clyde Testimony *2018 Transcript II*, p. 10 lines 1-7.

⁶⁶ 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).

⁶⁷ Clyde Testimony, March 9, 2018 Transcript, p. 14 lines 22-29.

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

- c. Ohio previously allowed same day registration and early voting for one week, between 35 and 30 days prior to an election.⁷⁰ Once known as “Golden Week” this opportunity has been canceled.⁷¹
- d. Ohio is currently one of the most aggressive states in purging voter registration rolls.⁷²
 - 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.⁷³ 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.⁷⁴
 - ii. If a citizen attempts to vote after his or her voter registration has been canceled, he or she is given a provisional ballot.⁷⁵ 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.⁷⁶
 - iii. Ohio has canceled the voter registration of more than two million voters since 2011 for failure to vote in two consecutive elections.⁷⁷ Litigation challenging this process as a violation of the National Voter Registration Act is currently pending before the U.S. Supreme Court.⁷⁸
 - 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,⁷⁹ as well as others living in poverty, those without a permanent home, and individuals with disabilities, “who may

⁶⁸ Ibid.

⁶⁹ Ibid. p. 9 lines 32-34.

⁷⁰ Ohio Rev. Code Ann. §§ 3509.01, 3511.10.

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

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

⁷³ 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.

⁷⁴ Ibid.

⁷⁵ Clyde Testimony, *2018 Transcript II*, p. 13 lines 8-14.

⁷⁶ Ibid.

⁷⁷ Ibid. p. 9 lines 35-42, p. 10 line 13.

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

⁷⁹ 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.”⁸⁰

- v. Infrequent voters are moved to an “inactive” list prior to their registration being canceled.⁸¹ In 2016, 13% of registered voters (approximately 1 million people) were deemed “inactive.”⁸² These voters did not receive information from the Secretary of State’s Office about vote by mail, in contrast to “active” registered voters,⁸³ raising concerns about equal treatment. There was also concern that voters flagged as “inactive” were disproportionately black voters.⁸⁴
- vi. Funding available for new voting machines is proposed to be based on the number of registered voters.⁸⁵ Large cancellations of voter registration may impact the funding available in the most affected counties.⁸⁶
- 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.⁸⁷
- e. It is important for the Secretary of State to maintain accurate voter rolls.⁸⁸
 - 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.⁸⁹
 - ii. In 2016 Ohio joined the Electronic Resource Information Center, an inter-state data sharing service sponsored by the Pew Center, which reportedly may improve the accuracy of voter rolls.⁹⁰
- f. Ohio maintains a state wide voter database so that if a voter moves from one county to another, both counties are notified.⁹¹ The voter is removed from the

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

⁸¹ Turcer Testimony, *2018 Transcript I*, p. 11 lines 39-41.

⁸² 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.

⁸³ *Ibid.*

⁸⁴ Clyde Testimony, *2018 Transcript II*, p. 9 lines 27-34.

⁸⁵ Clyde Testimony, *2018 Transcript II*, p. 10 lines 18-24.

⁸⁶ *Ibid.*

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

⁸⁸ Leonard Testimony, *2018 Transcript II*, p. 12 lines 25-36.

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

⁹⁰ Wimbish Statement at 1.

⁹¹ 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.⁹² There is no such tracking system available at the national level.⁹³

9. Voting Administration

- a. Ohio permits a number of forms of voter identification, including utility bills, government checks, and pay stubs.⁹⁴ This is less strict than many other states and helps to facilitate voter access.⁹⁵
- b. Voting machines in Ohio are aging, and funding for new machines is currently not in the state's capital budget.⁹⁶ Without state funding, wealthier counties with the funding to updates or replace their machines will have an advantage over counties with fewer resources.⁹⁷
- 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 2018.⁹⁸ These machines also include a voter-verifiable paper trail.⁹⁹
- 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.¹⁰⁰
- 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.¹⁰¹
- 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

⁹² Ibid.

⁹³ Ibid.

⁹⁴ See Ohio Secretary of State, Elections and Voting, Identification Requirements:

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

⁹⁵ 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).

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

⁹⁷ Ibid.

⁹⁸ Leonard Testimony, *2018 Transcript II*, p. 3 lines 16-29.

⁹⁹ Ibid.

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

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

of such technology with security concerns, economic limitations,¹⁰² and public education.¹⁰³

10. Districting

- a. Panelists expressed concern about gerrymandering in Ohio. In the current redistricting plan, the state's 11th congressional district is 80% Democratic and 52% African American.¹⁰⁴ 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."¹⁰⁵
- 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.¹⁰⁶

11. Election security

- a. Testimony indicated that there is little evidence of voter fraud generally, and noncitizens voting in U.S. elections specifically.¹⁰⁷
- 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."¹⁰⁸ Courts have historically not supported laws that treat natural born and naturalized citizens differently for the purposes of voting.¹⁰⁹
- c. At least two panelists noted significant risk of foreign nationals and foreign powers interfering with U.S. elections generally and in Ohio specifically.¹¹⁰
- 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,

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

¹⁰³ Moke Testimony, 2006 Transcript, pp. 27-29; Jeff Jacobson Testimony, 2006 Transcript, pp. 166-168.

¹⁰⁴ Tokaji Testimony, 2018 Transcript I, p. 8 lines 12-34.

¹⁰⁵ Ibid.

¹⁰⁶ 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).

¹⁰⁷ 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.

¹⁰⁸ Tokaji Testimony, 2018 Transcript I, p. 27 lines 16-29.

¹⁰⁹ 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.

¹¹⁰ 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.¹¹¹

- e. Electronic voting machines in Ohio contain a paper trail for auditing purposes.¹¹² However, one panelist noted that poll workers do not always show the paper trail to voters for verification.¹¹³ Paper ballots were noted as more secure and more economical than electronic.¹¹⁴
- f. While audits currently exist to ensure that vote tabulation is accurate in Ohio, these audits are not required under state law.¹¹⁵ 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.¹¹⁶
- 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.¹¹⁷
 - ii. Voter registration information is sent to the Secretary of State over the internet and could potentially be susceptible to cyber-attack.¹¹⁸ In Franklin County, the Board of Elections maintains duplicate records.¹¹⁹ The county also collaborates with the Department of Homeland Security for cyber security efforts.¹²⁰

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.¹²¹

¹¹¹ Clyde Testimony, *2018 Transcript II*, p. 16 lines 1-8.

¹¹² Turcer Testimony, *2018 Transcript I*, p. 9 lines 24-35.

¹¹³ *Ibid.*, p. 11 lines 29-36.

¹¹⁴ Clyde Testimony, *2018 Transcript II*, p. 16 lines 9-16.

¹¹⁵ *Ibid.*, p. 16 lines 17-21.

¹¹⁶ Turcer Testimony, *2006 Transcript*, p. 39.

¹¹⁷ Leonard Testimony, *2018 Transcript II*, p. 15 lines 10-36.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ 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.¹²² One panelist noted that harassment at the polls is prohibited under state and federal law; however, “harassment” is not defined.¹²³

13. Language Access

- a. Section 203 of the Voting Rights Act requires that certain jurisdictions¹²⁴ 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.¹²⁵
- b. Currently there are no jurisdictions covered under Section 203 in Ohio.¹²⁶ 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.¹²⁷
- c. The Franklin County Board of Elections has one Somali employee who is able to assist Somali voters.¹²⁸

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

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

¹²² Clyde Testimony, *2018 Transcript II*, p. 9 lines 19-22.

¹²³ Rosenfeld Testimony, *2006 Transcript*, p. 87.

¹²⁴ 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*).

¹²⁵ *About Language Minority Voting Rights*, “Legal Requirements.”

¹²⁶ *About Language Minority Voting Rights*, “Covered Jurisdictions.”

¹²⁷ Leonard Testimony, *2018 Transcript II*, p. 18 lines 15-26.

¹²⁸ *Ibid*, p. 7 lines 1-11.

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

¹³⁰ 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.¹³¹ 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.

¹³¹ 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

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

Friday, March 17

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

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

Lynwood L. Battle, Jr., <i>Chairperson</i> Cincinnati	Sandra M. Morckel Dublin
Cassandra A. Bledsoe Cleveland	Virginia C. Ortega Toledo
Diane E. Citrino Solon	John Perez Powell
Dilip D. Doshi Westerville	Roberta B. Presley Shaker Heights
Lee Esprit Xenia	Altagracia Ramos Beavercreek
James L. Francis Dayton	David W. Reid Dayton
David A. Harris Toledo	Thomas C. Rogers Beavercreek
Jad A. Humeidan Westerville	Aaron Wheeler, Sr. Columbus
Mildred P. Martinez Parma	Sharon J. Zealey Cincinnati

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

3 * * *

4

5

6 "OHIO'S PREPAREDNESS FOR THE 2006 ELECTIONS"

7

8

9 * * *

10

11

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

15

16 * * *

17

18

19

20

21

22

23 Deposition Specialists, Inc.
 Professional Court Reporters
24 35 East Gay Street, Suite 300
 Columbus, Ohio 43215
 (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 * * *
21
22
23
24

1	AGENDA	
2	* * *	
3	PANEL ONE	
4	SPEAKER	PAGE
5	Daniel Tokaji, Moritz College of Law	7
6	Paul Moke, Wilmington College	23
7	Catherine Turcer, Ohio Citizens Action	33
8	PANEL TWO	
9	Samuel Gresham, Common Cause	70
10	Peg Rosenfeld, League of Women Voters	84
11	Sue Willis, AXIS	91
12	PUBLIC SESSION	
13	Stewart Wright	130
14	Phil Fry	133
15		
16	* * *	
17		
18		
19		
20		
21		
22		
23		
24		

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

7

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.

10

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

11

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

12

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

14

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

15

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

16

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

21

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

27

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

31

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

47

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

50

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 machine
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.

111

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.

113

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

114

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

115

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

117

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

120

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 curbside 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 curbside 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

127

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

131

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

135

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.)

18 - - -

19

20

21

22

23

24

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.

10

11

12 Cheryl D. Edwards,
13 Notary Public in and for
the State of Ohio
My commission expires 11/05/08

14

15 - - -

16

17

18

19

20

21

22

23

24

1

1 BEFORE THE UNITED STATES COMMISSION ON CIVIL RIGHTS
2 OHIO ADVISORY COMMITTEE
3 * * *

4
5
6 "OHIO'S PREPAREDNESS FOR THE 2006 ELECTIONS"
7

8 * * *
9
10
11 Ohio Civil Rights Commission
12 1111 East Broad Street
13 Columbus, Ohio 43205
 March 17, 2006

14 * * *

15
16
17
18
19
20
21
22 Deposition Specialists, Inc.
23 Professional Court Reporters
24 35 East Gay Street, Suite 300
 Columbus, Ohio 43215
 (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 * * *
21
22
23
24

1	AGENDA	
2	* * *	
3	PANEL ONE	
4	SPEAKER	PAGE
5	Cassandra Hicks, Office of the Secretary of State	7
6	Jeff Jacobson, State Senator	18
7	Aaron Ockerman, State Street Consultants	30
8	PANEL TWO	
9	Michael Vu, Cuyahoga County Board of Elections	78
10	Matthew Damschroder, Franklin County Board of Elections	87
11	Cliff Arnebeck, Ohio Honest Elections	97
12	Public Session	
13	Marty Galfan	136
14		
15	* * *	
16		
17		
18		
19		
20		
21		
22		
23		
24		

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's 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.

12

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

15

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

21

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 OAEO, 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

37

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 Coglin 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

41

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 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

57

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

71

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

100

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

101

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

104

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 through 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

106

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

107

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.

109

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.

110

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.

111

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

112

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

113

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.

114

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.

115

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.

116

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.

117

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

121

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 politicizing 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

123

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

127

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

130

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

131

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 curb side 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 curb side voting.

24 I think from talking to Michael, I don't want to

132

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,

133

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

136

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

139

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

140

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.

141

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.)
9 - - -
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

142

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.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

Cheryl D. Edwards,
Notary Public in and for
the State of Ohio
My commission expires 11/05/08

- - -

142

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.

10

11

12 Cheryl D. Edwards,
13 Notary Public in and for
the State of Ohio
My commission expires 11/05/08

14

15 - - -

16

17

18

19

20

21

22

23

24

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&eom](https://cc.readytalk.com/r/kyos4gwvgpp5&eom)

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

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.

State Advisory Committees to the U.S. Commission on Civil Rights are composed of state citizens who serve without compensation. The Committees advise the Commission of civil rights issues in their states, providing recommendations and advice regarding such matters to the Commission.

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.

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

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.

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

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 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
2 Civil Rights Ohio Advisory Committee conference call. Today's conference is
3 being recorded. At this time, I'd like to turn the call over to Ms. Diane Citrino.
4 Please 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 in the audience, I'm
7 going to introduce my colleagues and myself. I am 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 Scott Gerber, Mark Strasser, Edith
10 Thrower and David Tryon. Also present on the call is David [Guerreras 00:00:52],
11 a civil rights analyst for the commission.

12 The US Commission on Civil Rights is an independent, bi-partisan agency of the
13 federal government charged with studying discrimination, denial of equal
14 protection of the laws or in the administration of justice because of race, color,
15 religion, sex, age, disability or national origin. In each of the 50 states and in the
16 District of Columbia, an advisory committee to the commission has been
17 established and they are made up of responsible people who serve without
18 compensation to advise the commission on relevant information concerning
19 their respective states.

20 Today, our purpose is to hear testimony regarding voting rights in Ohio. If
21 speaker veer away from this topic to discuss possibly important, but unrelated
22 topics, I'm going to interrupt and ask them to refrain from doing so and to get
23 back on track. I want to repeat what we just heard that this meeting is being
24 recorded and will be transcribed for the public record. I also want to remind
25 everyone that this is a two-part series. This is part one. We will also hear
26 testimony on Friday, March 9th, from 12:00 to 1:30 pm Eastern Standard Time.
27 We hope you will join us for that meeting as well. We are fortunate and thankful
28 to have such a balanced and diverse group of panelists to share with us at both
29 of our meetings.

30 I also just want to briefly go through the ground rules for today's meeting. This
31 is a public meeting open to the media and general public. We have a very full
32 schedule of people who will be making presentations within a very limited time.
33 The time allotted for each presentation is going to be strictly adhered to. This
34 will include a presentation by each panelist of about 15 minutes. After all the
35 panelists have concluded their statements, the committee members will engage
36 in questions and answers. I will ask our committee members and recognize you
37 and you will ask verbally some questions.

38 To accommodate people who are not on the agenda, but wish to make
39 statements, we have scheduled one open session today at 12:45. At that time,
40 when indicated by the operator to do so, anyone wishing to make a statement
41 should press *1 on their phone to request that their line be unmuted. In
42 addition, written statements may be submitted by mail to the US Commission

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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@uscrr.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.

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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 [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."

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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 Sjoborg-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,

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

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.

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

Appendix E.a: 2018 Hearing Record, Transcript I
 Voting Rights in Ohio: March 2, 2018
 Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

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

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

Appendix E.a: 2018 Hearing Record, Transcript I

Voting Rights in Ohio: March 2, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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



[1]

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 Sjoborg-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



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 – 14th and 15th Amdts

1870s-1900 – Southern states disenfranchise blacks

1920 – 19th Amdt gives women right to vote

1957, 60 & 64 – Weak voting rights laws enacted

1964 – Just 29% of blacks in the South registered

1964 – 24th 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)

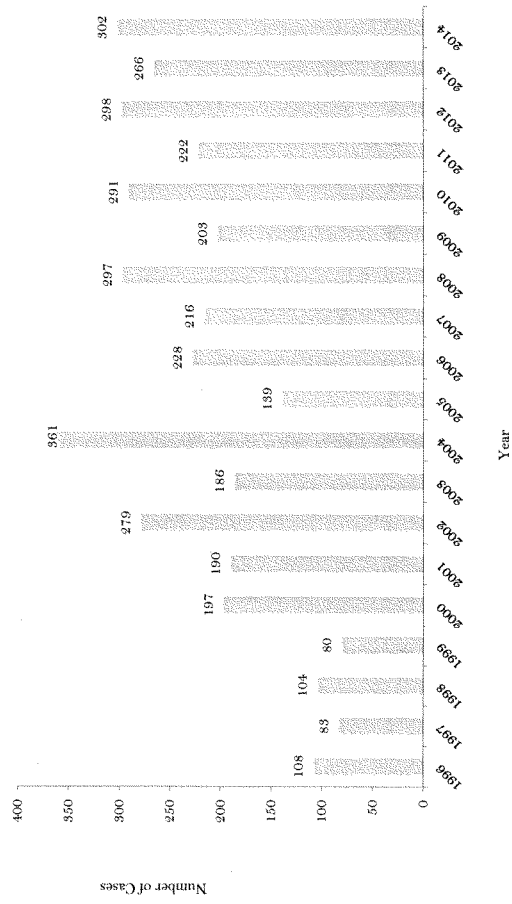
Harper v. Virginia (1966)

1932	\$1.50	POLL TAX RECEIPT	No. 286
COUNTY OF SUMTER, ALA. 1932			
RECEIVED OF <i>W. L. Williams</i>			
the sum of ONE DOLLAR AND FIFTY CENTS, for Poll Taxes due by him for 1932.			
District or Ward No. <i>1</i>		Color <i>White</i>	Precinct No. Last Year <i>1</i> This Year <i>1</i>
COUNTERSIGNED BY <i>John Brantley</i>		Tax Collector.	
State Auditor.			

- 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

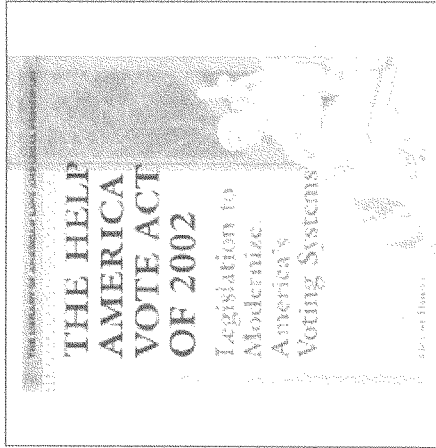
Pre-2000 Average: 94/yr Post-2000 Average: 246/yr



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).

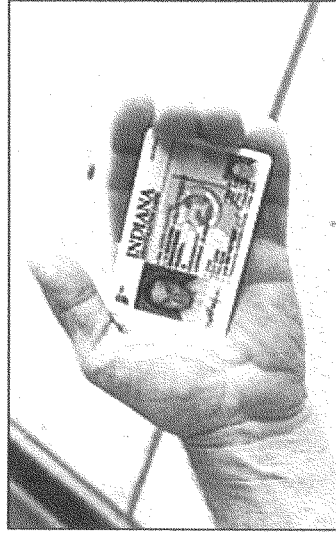
Bush v. Gore (2000)

“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)

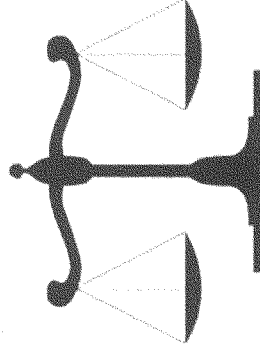


Upheld Indiana's law requiring most voters to present photo ID against a facial challenge under the Equal Protection Clause.

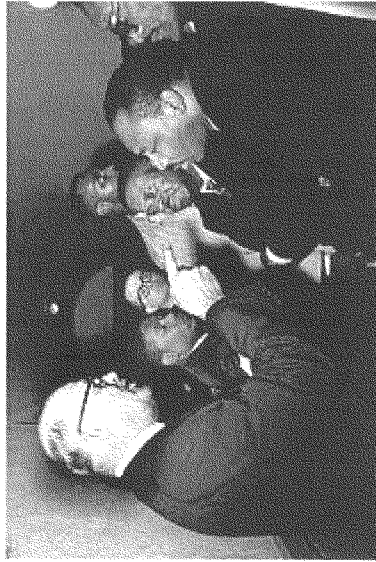
The Equal Protection Standard

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:** 4th Circuit enjoined law imposing ID, limiting the means of voting, finding that it was intended to discriminate based on race. *NAACP v. McCrory*
- **Wisconsin:** 7th Circuit upheld WI voter ID law, as well as an order making it easier to get ID. *Frank v. Walker*
- **Texas:** 5th Circuit invalidated TX voter ID law as racially discriminatory in violation of Voting Rights Act. *Veasey v. Abbott*

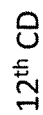
factor and VRA didn't justify.

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.

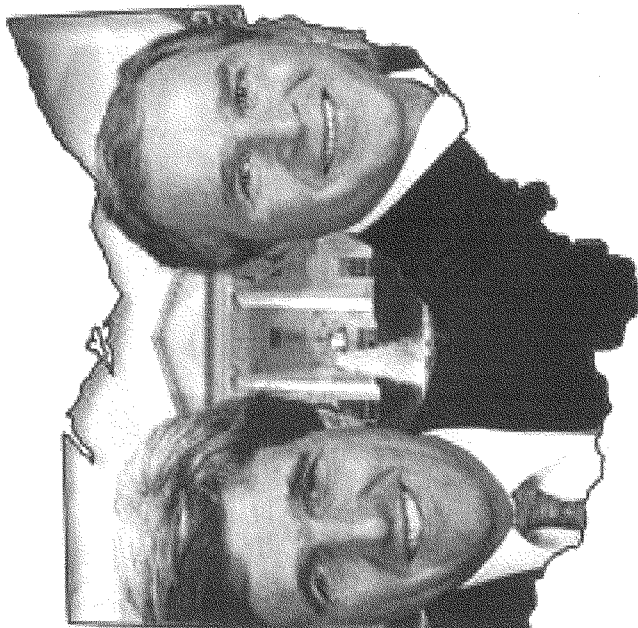
Appendix E.b: 2018 Hearing Record, Panelist Presentations I



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 6th Cir. reversed. *NEOCH*

Ohio: Early & Absentee Voting

- 2011: Ohio legislature eliminated in-person early voting Fri-Mon before Election Day.
- 2012: 6th 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: 6th Cir. enjoined restrictions on same day registration and early voting but SCOTUS stayed. *NAACP v. Husted*
- 2016: USDC enjoined restrictions on early voting but 6th 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**

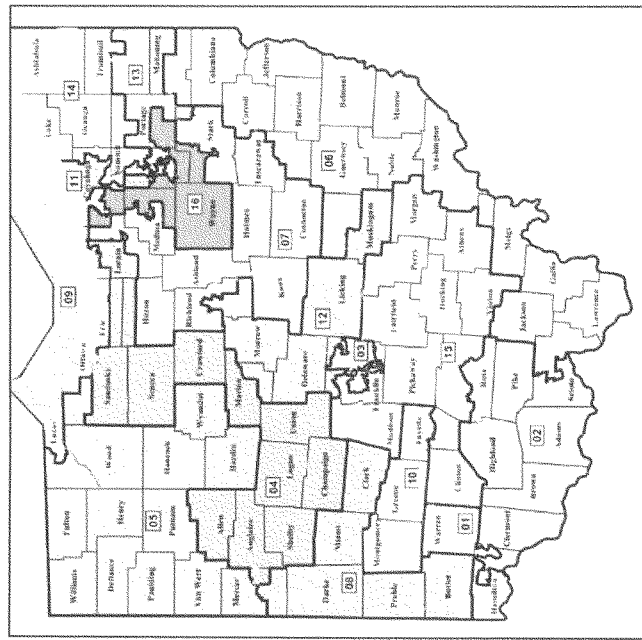


- If a voter hasn't voted in prior two years, Ohio initiates the process of removing them from the rolls.
- 6 Cir. held that this process violates NVRA.
- SCOTUS heard argument in Jan. 2018

* I'm one of the attorneys for plaintiffs.

Voting Rights in Ohio

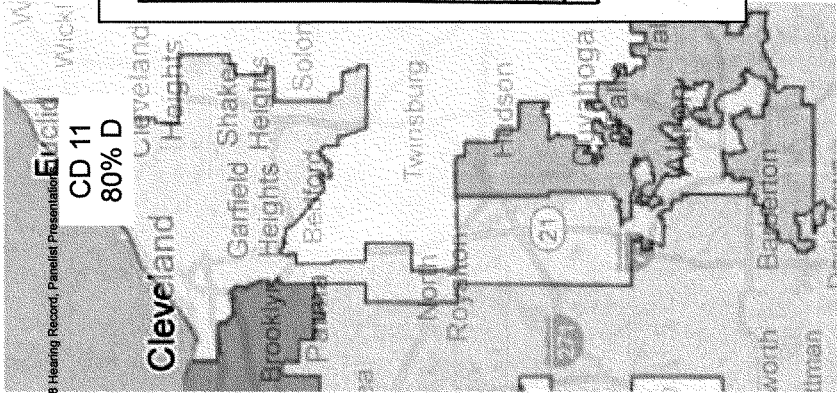
- National Context
- Vote Denial in Ohio
- **Vote Dilution in Ohio**



Appendix E.b: 2018 Hearing Record, Panelist Presentations 1

Ohio U.S. House Districts 2012-2020

16 Districts:
12 Republican
4 Democratic



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

@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.

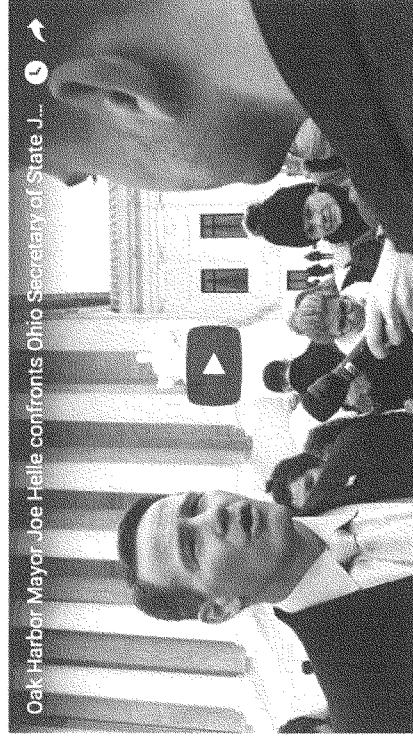
Purging Ohio's Voter Rolls



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.



Oak Harbor Mayor Joe Helle confronts Ohio Secretary of State J...

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)

- 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



**Disability
Rights OHIO**

- “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



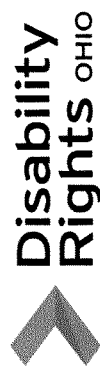
- Costs of photo identification
- Lack of access to affordable transportation
- Lack of permanent housing/homelessness
- Impact of Ohio's recent voter purge efforts

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

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 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/ray86wto2gi&eom>

To submit additional testimony in writing please email
Melissa Wojnaroski at mwojnaroski@usccr.gov by April 9, 2018



Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 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 they 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,

Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 9, 2018

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

Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 9, 2018

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,

Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 9, 2018

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

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.

Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 9, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 9, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 9, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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's 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

Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 9, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 9, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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: Thank you Kathleen Clyde, Representative Clyde, we really appreciate that
37 testimony, and with that we are going to open this up to our committee
38 members, each of the committee members on this call are going to get one
39 question, plus a follow up if necessary. So, I would like to ask our committee
40 members to let me know if you have a question for either Edward Leonard, the
41 director of the Franklin County Board of Elections, or Representative Kathleen
42 Clyde of the Ohio House of Representatives. I will remind the public that they

Appendix E.c: 2018 Hearing Record, Transcript II
 Voting Rights in Ohio: March 9, 2018
 Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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?

Appendix E.c: 2018 Hearing Record, Transcript II
 Voting Rights in Ohio: March 9, 2018
 Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

- 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?

Appendix E.c: 2018 Hearing Record, Transcript II
 Voting Rights in Ohio: March 9, 2018
 Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 9, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

Appendix E.c: 2018 Hearing Record, Transcript II
 Voting Rights in Ohio: March 9, 2018
 Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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 from 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 from 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 from 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.

Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 9, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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?

Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 9, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 9, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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

Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 9, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

Appendix E.c: 2018 Hearing Record, Transcript II

Voting Rights in Ohio: March 9, 2018

Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

Appendix E.c: 2018 Hearing Record, Transcript II
 Voting Rights in Ohio: March 9, 2018
 Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

Appendix E.c: 2018 Hearing Record, Transcript II
 Voting Rights in Ohio: March 9, 2018
 Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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.

Appendix E.c: 2018 Hearing Record, Transcript II
 Voting Rights in Ohio: March 9, 2018
 Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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,

Appendix E.c: 2018 Hearing Record, Transcript II
 Voting Rights in Ohio: March 9, 2018
 Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights

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



[1]

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)



Appendix E.4: 2018 Hearing Record, Panelist Presentations II



Franklin County
Board of Elections

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



Franklin County
Board of Elections

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



Franklin County
Board of Elections

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



Franklin County
Board of Elections

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



Franklin County
Board of Elections

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



Franklin County
Board of Elections

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

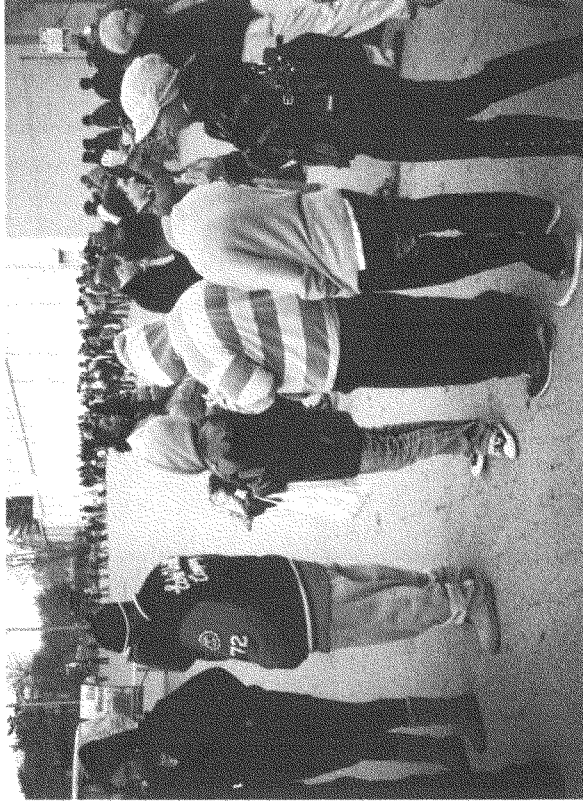
District 75, Ohio House of Representatives

Ranking Member, Government Accountability and Oversight Committee
4th 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 by April 9, 2018



Appendix F.a: Written Testimony, Wimbish Statement

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 inactive¹. Many voters are accustomed to only voting every 4 years during

¹ "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.

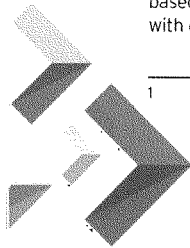
Disability Rights Ohio's voting activities

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.¹ The ADA embodies in the

¹ See 42 U.S.C. § 12131 *et seq.*



Disability Rights Ohio
200 Civic Center Dr.
Suite 300
Columbus, Ohio 43215-4234

614-466-7264 or 800-282-9181
FAX 614-644-1888
TTY 614-728-2553 or 800-858-3542
disabilityrightsohio.org

**Ohio Disability Rights Law
and Policy Center, Inc.**

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.² But the Constitution also contains antiquated and discriminatory language that “No idiot, or insane person, shall be entitled to the privileges of an elector.”³ 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.⁴ 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

² Ohio Const. Art. V, § 1.

³ Ohio Const. Art. V, § 6.

⁴ 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,⁵ 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.⁶

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.⁷ 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.⁸ Finally, capacity is not a valid challenge to a person's ability to vote at the polls.⁹

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; 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.¹⁰ 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.¹¹

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.¹²

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.¹³ 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.¹⁴

¹⁰ 52 U.S.C. § 20901 *et seq.*

¹¹ Ohio Rev. Code § 3505.24.

¹² 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>.

¹³ See also SABE Report n. 12, which also identified poll worker training as a need to increase voter access.

¹⁴ 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.¹⁵ 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.¹⁶ 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

¹⁵ *Hindel v. Husted*, Case No.: 2:15-cv-3061 (S.D. Ohio).

¹⁶ *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.¹⁷

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.¹⁸ 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,¹⁹ 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

¹⁷ *Id.* n. 12.

¹⁸ Ohio Rev. Code § 3509.08(B).

¹⁹ 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.²⁰

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]."²¹ 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.

²⁰ *Mooneyhan v. Husted*, 2012 WL 5834232 (S.D. Ohio Nov. 16, 2012).

²¹ 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.²² 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.²³ 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.

²² See Ohio Rev. Code § 3503.21

²³ *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.¹ 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.”² This finding is consistent with prior research on the subject, which the article reviews.³ 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.⁴

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.⁵ After interviewing people in 42 electoral jurisdictions collectively encompassing 23.5 million 2016 voters, the researchers found

¹David 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).

² *Id.* at 124.

³ *Id.* at 125, 138.

⁴ *Id.* at 125.

⁵ 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.⁶ 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).⁷ 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.⁸

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.⁹ 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 2010.¹⁰ Other scholars have severely criticized the methodology used in that study and on that basis expressed doubt about the reliability of its findings.¹¹ 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."¹² 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."¹³

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."¹⁴ He goes on to say that "our results suggest that almost all elections in the US are not determined by non-citizen participation, with

⁶ *Id.* at 1.

⁷ *Id.*

⁸ 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."

⁹ Jesse T. Richman, Gulshan A. Chattha & David C. Earnest, *Do Non-Citizens Vote in U.S. Elections?*, 36 *Electoral Studies* 149 (2014).

¹⁰ *Id.* at 154.

¹¹ 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).

¹² *Id.* at 409.

¹³ *Id.*

¹⁴ 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.”¹⁵ 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.”¹⁶

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.¹⁷ 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.”¹⁸ More recent surveys are consistent with this study. A 2017 Rasmussen survey found that 27% say that vote fraud is a “very serious” problem.¹⁹

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

¹⁵ *Id.*

¹⁶ Koerth-Baker, *supra*.

¹⁷ 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).

¹⁸ *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.

¹⁹ 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 (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.”²⁰ 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.

²⁰ *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

USCCR Contact	Regional Programs Unit U.S. Commission on Civil Rights 230 S. Dearborn, Suite 2120 Chicago IL, 60604 (312) 353-8311
---------------	---

This advisory memorandum is the work of the Ohio Advisory Committee to the U.S. Commission on Civil Rights. The memorandum, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. State Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this memorandum and the findings and recommendations contained herein are those of a majority of the State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.