

**BRENNAN  
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FOR JUSTICE**

**Testimony of  
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**Before the  
The Ohio House of Representatives  
Elections and Ethics Committee**

**Regarding  
H.B. 260, the “Elections Enhancement Bill”**

**October 14, 2009**

I am Senior Counsel at the Brennan Center for Justice at New York University School of Law. The Brennan Center is a nonpartisan think tank and advocacy organization that focuses on issues related to democracy and justice, including within the context of election administration. During my tenure at the Brennan Center, I have authored several national reports and articles related to election administration, voting systems, and state election law.

At the request of Secretary Brunner, I chaired the bipartisan Elections Summit and Conference she called in December 2008 and March 2009. The Summit and Conference were open to the public and focused on a wide variety of election related topics. Discussions were led by election officials, voting rights advocates, academics and legislators. As part of my duties as Chair, I reviewed written testimony and research provided by academics, the Secretary of State’s office and members of the public in advance of both convenings, and interviewed dozens of election officials, other Ohio public officials, voting rights advocates, members of the media, and Ohio voters who participated in the Summit. At the conclusion of this work, I authored a report summarizing the data, opinions and recommendations provided by Summit participants.

The primary purpose of my report was to build on the Summit and Conference, and assist the Secretary and General Assembly in crafting a consensus-based elections policy that would rely on systematic factual analysis and take into account the many different perspectives of summit participants and other experts and practitioners on voting rights and elections. In that spirit, I offered a “Framework for Reform,” after consulting with the many stakeholders involved in the Summit and Conference. This Framework was

supported by many of the State’s leading voting rights groups, academics and the Ohio Association of Election Officials.<sup>1</sup>

Although there were very real differences relating to election policy stated at both the Summit and Conference and detailed by participants in subsequent interviews, there was broad consensus that there are several priority issues in need of immediate action.<sup>2</sup> Among these were the following issues:

- improving the Statewide Voter Registration Database and system to ensure more accurate voter information;
- amending early voting procedures, to decrease burden on election officials, increase options for voters and ensure more votes are counted;
- simplifying the provisional voting and voter ID laws to avoid confusion at the polls; and
- modifying laws related to design and language requirement for ballots and other election forms to reduce voter error.

The Framework outlined the problems in each of these issue areas and, with respect to each identified reforms that seemed to have the most broad-based support.

The Elections Enhancement Bill and subsequent amendments suggested by Secretary Brunner after consulting with her Elections Enhancement Workgroup fall squarely within the Framework detailed in my report. While there are legitimate issues to be debated and considered, there is no question in my mind that this bill addresses many of the main concerns expressed by Summit participants.

I think it is worth highlighting some of the problems and solutions that nearly all Summit participants agreed were most important for improving election administration in Ohio.

#### 1. Improving the Registration Database: Ensuring More Accurate Information

There was widespread agreement among election officials, advocates and academics that maintenance of the Statewide Database is among the most important issues that must be addressed in Ohio in the coming months. A functioning database is critical to elections: under Ohio law, citizens’ ability to vote and have their votes counted depends on whether their current names and addresses are properly added to the list and updated as information changes, and whether only ineligible individuals are moved to “ineligible”

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<sup>1</sup> The Ohio Association of Election Officials stated that it “concur[s] with the report’s identification of several broad categories of election administration, which are ripe for review and reform prior to the 2010 election year, and the framework . . . should serve as the basis for future election reforms in Ohio.” The report’s Framework for Reform was also endorsed by Advancement Project, Advocates for Basic Legal Equality, Citizens Alliance for Secure Elections Ohio, Common Cause National, Common Cause Ohio, Professor Edward B. Foley of Moritz College of Law, Professor Candace Hoke of Cleveland-Marshall College of Law, Professor David Kimball of the University of Missouri –St. Louis, Lawyer’s Committee for Civil Rights Under the Law, League of Women Voters Ohio, The Miami Valley Voter Protection Coalition, Professor J. Quin Monson of Brigham Young University, NAACP National Fund, Ohio Citizen Action, Professor Daniel Tokaji of Moritz College of Law, and Verified Voting.

<sup>2</sup> The Framework for Reform is annexed to this testimony as Exhibit A.

status. Election officials report that maintaining and updating their databases are among their most labor intensive and costly tasks.

Voting rights advocates, election officials and academics all pointed to the need to have more accurate and consistent information in the county and state systems. A number of their suggestions can be found in the Elections Enhancement Bill and in Secretary Brunner's recent recommendations for amendments to that bill. Among these are the creation of an on-line voter registration system, giving voters the ability to request changes to their registration information, and automatic voter registration, both of which represent important advancements to Ohio's registration system, and of which I will discuss in greater detail in later testimony.<sup>3</sup>

One change that should not be controversial is ensuring that the Ohio Bureau of Motor Vehicles complies with the National Voting Rights Act, which states in relevant part that:

“[a]ny change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.”<sup>4</sup>

Through discussions at the Summit as well as subsequent interviews I conducted with participants and the Ohio BMV, it became apparent that Ohio has violated this federal mandate for several years, making it more difficult for counties to keep up-to-date voter registration lists. Specifically, rather than requiring the voter to state, *on his change of address form*, that the change of address is *not* for voter registration, BMV instead appears only to require that employees “make available” to voters a *separate* change of address form. If a BMV employee does not specifically offer such a form, or a voter says he does not want the extra form, his address will not be changed for voter registration purposes. By putting an extra burden on the voter to fill out an extra form, in apparent contradiction with federal requirements, this policy makes it far less likely that voters who have changed their permanent address will also change their registration records.

Moreover, it is not clear that the official BMV policy is even followed in many BMV offices. Summit participants who have changed their driver's license addresses reported to me that employees failed to ask them whether they wanted the extra change of registration address form. That is not particularly surprising; BMV employees probably do not view updating the voter rolls as one of their primary responsibilities. It is for this

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<sup>3</sup> Separate from my work in Ohio, the Brennan Center has conducted extensive study on both automatic and on-line registration. Much of this research can be found at [http://www.brennancenter.org/content/pages/voter\\_registration\\_modernization](http://www.brennancenter.org/content/pages/voter_registration_modernization). Next week, I will present separate written testimony highlighting the relevance of some of this work to the current proposals for automatic and on-line research in Ohio.

<sup>4</sup> Editorial, Shut Out At the Polls, Wash. Post, Mar. 16, 2009, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/15/AR2009031501668.html>.

very reason that the federal mandate is preferable to Ohio's current policy: it does not rely on BMV employees to ensure that registration information is updated.

The failure of the BMV to comply with the NVRA creates extra work and costs for election officials already strapped for time and money. It also means more problems on Election Day, with voters who have moved showing up to polling places where they are not already registered, leading to more provisional ballots cast, creating even more work for election officials and poll workers and inserting more uncertainty into the process.

The Elections Enhancement Bill changes Ohio law to make it consistent with the Federal mandate, and empowers the Secretary of State to enter into a memorandum of understanding with the Ohio BMV and other designated agencies, so that the Secretary can ensure that her office and these agencies comply with the NVRA.

## 2. Making it Easier to Ensure Legitimate Absentee (and Provisional) Votes Are Counted

Few areas of election administration have seen bigger changes in Ohio over the last few years than early in-person and mail-in voting, and few changes have had a bigger impact on the entire electoral process. Both voting rights advocates and election officials generally see the recent reforms to Ohio's absentee voting laws in a positive light. Most importantly, many credit the expansion of absentee voting with keeping Ohio generally free of long lines at the polls on Election Day in 2008.

Most summit participants who discussed early absentee voting also felt that the last few elections raised serious questions about some aspects of current absentee voting practices in Ohio. Both advocates and election officials argued that further changes to Ohio's laws and practices in this area were necessary. I discuss many of the suggestions in great detail in my report. Several of those suggestions have found their way into the Elections Enhancement Bill. I would like to focus on an important recommended change that garnered widespread support and is included in the bill: making it easier to correct and count absentee ballots with technical deficiencies.

There was widespread agreement that despite important efforts from the Secretary of State to provide guidance, it was too difficult in 2008 to correct and count absentee ballots with technical defects. Specifically, election officials were forbidden from counting ballots with certain technical deficiencies unless voters physically came to the board of elections to correct them.

The new bill, together with the Secretary's suggested amendment, would make it easier for voters to correct ministerial mistakes to ensure that legitimate votes are counted. The bill allows boards to contact voters whose ballot envelopes had not been properly signed, and allows voters to provide correct information over the telephone. This is particularly important for home-bound voters, or military and overseas voters, who may not be able to visit board offices to personally correct their envelopes.

For similar reasons, the bill makes it easier for boards to contact Ohioans who have made mistakes on their registration forms, and for those Ohioans to correct these mistakes.

Secretary Brunner has recommended giving provisional voters these same protections in her Final Report on House Bill 260.

### 3. Simplifying Provisional Ballot Procedures to Avoid Confusion at the Polls

There was universal agreement among the summit participants I interviewed that the rules and procedures governing both provisional voting and voter ID are too complex, making poll worker's jobs extremely difficult, leading to confusion and error. Even the Ohio Supreme Court in *Skaggs v. Brunner* noted that Ohio's "generally murky" provisional ballot statutes "present a quagmire of intricate and imprecisely stated requirements, including internal inconsistencies and multiple affirmations and declinations."<sup>5</sup>

The Elections Enhancement Bill does much to simplify these rules. In particular, with regard to provisional ballots, it greatly simplifies the requirements for who must vote provisionally. As one election official noted to me in an interview, current provisional ballot laws are too complex to explain to poll workers and even harder for poll workers to explain to voters. The current statutory list of specific circumstances requiring provisional voting would be hard for anyone to commit to memory.

The Elections Enhancement Bill limits the list of who must or may cast a provisional ballot to the following:

- individuals who say they are registered, but are not in the poll book or supplemental poll lists;
- individuals who do not have or who decline to show ID;
- individuals marked in the poll book as having requested an absent voter's ballot; and
- individuals not eligible for any reason to cast a regular ballot.

This simple list should make it much easier for poll workers to know when to issue provisional ballots, and for voters to understand why they have been given a provisional ballot.

Additionally, the proposed changes to the ballot affirmation, which eliminate unnecessary language and greatly reduce the information requested from the voter, should make it much more likely that the affirmation is filled out correctly.

### 4. Amending laws related to design and language requirements for ballots and other forms to reduce voter error.

In previous work unconnected to the Summit and Conference, the Brennan Center concluded that Ohio's laws related to ballot design are among the worst in the country, directly conflicting with best practices and impeding the ability of election officials to

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<sup>5</sup> State ex. rel. *Skaggs v. Brunner*, 2008 WL 5157872 (Dec. 5, 2008), at 10.

ensure that ballots are easily understood by the largest number of voters.<sup>6</sup> After reviewing Ohio's laws related to design requirements for ballots, registration forms, and provisional and absentee ballot envelopes and applications as part of our work for the summit, we concluded that these laws were similarly flawed. The Summit and Conference produced widespread agreement among election officials and voting rights groups on this point.

Tens of thousands of registration forms, absentee ballots and provisional ballots were rejected in 2008, often for technical defects that might have been avoided if forms used plain language and more usable designs.<sup>7</sup> The Framework for Reform recommends using simple, non-legalistic language and reducing the number of fields that voters must complete to the bare minimum. It also recommends eliminating as many rules as possible that affect design, and giving the Secretary of State broad discretion to recommend designs and language that will make forms and ballots as usable as possible.<sup>8</sup> This is generally recognized by usability experts as best practice.<sup>9</sup>

The Elections Enhancement Bill accomplishes many of these goals. Required ballot instructions are simplified and ballot issue language is limited to no more than 300 words per issue. Similarly, the bill eliminates requirements for unnecessary fields and overly technical language referencing the Ohio election code for absentee ballot envelopes and provisional ballot affirmations. All of these changes should make voter error less likely.

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The Summit and Conference were unique events in Ohio and the nation: a public convening of ideologically diverse election officials, academics, voting rights groups, public servants and other members of the public to review data from previous Ohio elections, with an eye towards improving elections in the future. By working cooperatively, Summit participants were largely able avoid the partisan rancor that so often defines discussions about election administration, and to identify key areas of Ohio election law that were ripe for reform.

I have focused my testimony on the recommendations for reform that had the broadest support among Summit participants. The Elections Enhancement Bill adopts all of these

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<sup>6</sup> LAWRENCE NORDEN, ET. AL., THE BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW, *BETTER BALLOTS 64* (2008), available at [http://www.brennancenter.org/content/resource/better\\_ballots/](http://www.brennancenter.org/content/resource/better_ballots/) [hereinafter *Better Ballots*].

<sup>7</sup> For instance, Brown County rejected 44.2% of provisional ballots cast, while only eight counties rejected provisional ballots at a higher rate than Cuyahoga County, which disqualified 27.5% of its provisional ballots. Statewide, 27,763 mail-in absentee ballots were not counted, and in some counties, more than 4% of absentee ballots sent by mail were not counted. At least 1/3 of rejected registration forms in Cuyahoga County were because voters failed to fill-in information required under state law. Problems that have been noted with the current laws are inconsistent address requirements, complex documentary ID requirements, and the "wrong precinct" rule.

<sup>8</sup> LAWRENCE NORDEN WITH JESSIE ALLEN, 2008-2009 OHIO ELECTION SUMMIT AND CONFERENCE FINAL REPORT 20 (2009), available at [http://www.brennancenter.org/content/resource/final\\_report\\_2008\\_2009\\_ohio\\_elections\\_summit\\_and\\_conf](http://www.brennancenter.org/content/resource/final_report_2008_2009_ohio_elections_summit_and_conf) erence.

<sup>9</sup> *Better Ballots*, *supra* note 5.

recommendations. It is also noteworthy that for the vast majority of issues where there was agreement among participants on the critical need for reform without overwhelming support for a particular solution, the bill adopts at least one of the suggestions offered by Summit participants.

It is my belief that the Elections Enhancement Bill represents an important step toward further improving Ohio's elections. I hope that as you consider additional changes to the bill, you will consult the thorough and thoughtful work of the Summit and Conference participants.

# Appendix A: Framework for Reform

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## **Executive Summary and Framework for Reform**

This final report on the 2008 and 2009 Ohio Election Summit and Conference (the “Summits”) was drafted at the request of Ohio Secretary of State Jennifer Brunner, and follows a “preliminary report” originally published on March 9, 2009.<sup>1</sup> It is the product of two historic summits<sup>2</sup> called by Secretary of State Brunner to review the 2008 election and to study ways to improve Ohio’s elections going forward. The Summits were open to the public and focused on a wide variety of election related topics.<sup>3</sup> Discussions were led by election officials, voting rights advocates, academics, and legislators.

The primary purpose of this report is to assist Secretary Brunner, the State Legislature, election officials, voting rights groups, and other Ohio citizens with framing issues and topics for election reform agendas in 2009. More generally, we hope the report will be a useful tool to anyone in Ohio — or elsewhere — who is interested in crafting a consensus-based elections policy that springs from systematic factual analysis and takes into account many different perspectives on voting and elections.

The sources for the information and ideas in the report include statements offered during the Summits; written testimony provided in advance of each of the Summits; post-summit interviews conducted by Brennan Center staff with election officials, other Ohio public officials, voting rights advocates, members of the media, and Ohio voters who participated in the Summits;<sup>4</sup> and figures and analyses supplied in response to requests made by the Brennan Center to the Ohio Secretary of State’s office,<sup>5</sup> the Early Voting Information Center, the Pew Center on the States, and Professors Edward Foley, Paul Gronke, Candice Hoke, David Kimball, Quin Monson, Norman Robbins, and Daniel Tokaji, among others.

### **Next Steps to Reform**

There are many ideas for election policy reform in this document. Given that these ideas come from such a diverse set of participants, it should surprise no one that they sometimes contradict one another. Just as there has been no shortage of disagreement in Ohio when it comes to election policy, there was also no shortage of disagreement on this subject at the Summits, and in our post-summit interviews with summit participants and election experts.

Without papering over these differences, we have been somewhat surprised at the level of agreement on a number of topics, from the general to the specific. On a general level, as already discussed in the preliminary report, participants embraced at least four themes for future policy development: decisions about election policy and practice should be based on systematic data analysis, including analysis of the cost and funding of such decisions; development of policy must include consideration of its impact on the real world of election administration; all election policies should aim to ensure that every vote cast by a qualified voter is counted; and all policies should implicitly or explicitly recognize that election officials, including poll workers, take seriously their duty to make sure that all eligible voters — and only eligible voters — are allowed to vote. Election officials added, and voting rights groups did not disagree, that regardless of policy changes made in the coming year, there should also be greater public education about what voters should do — from confirming

their correct polling locations, to reviewing their ballots and paper trails before casting their votes — to ensure that their votes were correctly counted.

Keeping these themes in mind, there was also a fair amount of agreement on the need for specific reforms, including what a majority of participants identified as high priorities for election reform in the next year. For the purpose of facilitating the next steps in developing a reform agenda, we offer the following “framework” which aims to distill and organize the different points of view on specific policies, and to assist all stakeholders by (1) prioritizing issues based on the need for reform, as stated by the election officials, advocates and academics we interviewed; (2) pointing to places of agreement among election officials and advocacy groups for addressing those issues (as well as places where agreement has not yet been reached); and (3) identifying research that would help develop a reform agenda for these issues.

### **Framework for Reform: Priority Issues**

The Summits covered a wide range of issues, from ballot access for minor parties to campaign finance enforcement to voting technology. Based on our post-summit interviews, there was broad (though not complete) agreement that while all of the issues covered at the Summits were important, some cried out for immediate action. Among those were, first:

- **early voting timeframe and procedures;**
- **the Statewide Voter Registration Database;**
- **provisional voting and voter ID laws; and**
- **poll worker recruitment and training;**

and second:

- **post-election audits**

By providing this context, we do not presume to suggest that action should not be taken on other matters discussed at the conference, or, for that matter, that the reform agenda should be limited to the topics discussed there. In fact, a number of interviewees suggested that there were several issues that were at least as important to election policy reform as any covered in the Summits. These interviewees suggested a number of changes, including: redistricting reform, reforming state oversight of elections administration, clarifying the rules on challenges to voters’ eligibility, and streamlining election litigation.

However, because so many interviewees discussed the importance of the five broad topics covered below, we undertook to produce an organized framework distilling those discussions – noting consensus or the promise of consensus where it seems to exist. At the end of this section, we add two more ideas — (1) **amending laws related to design and language requirements for ballots, registration forms, and provisional and absentee ballot envelopes and applications, and** (2) **reviewing the state’s back-up paper ballot policy** — that appear to have widespread support, but do not fit neatly into the discussion of any one of these five priority issues.

## A. Statewide Voter Registration Database

**The Issue:** There appears to be agreement among election officials, advocates, and academics that adequate design and maintenance of the Statewide Database is among the most important issues that must be addressed in Ohio in the coming months. A functioning database is critical to elections: under Ohio law, citizens' ability to vote and have their votes counted depends on whether their current names and addresses are properly added to the list and updated as information changes, and whether ineligible individuals are the only individuals moved to "ineligible" status. Election officials report that maintaining and updating their databases are among their most labor intensive and costly tasks.

**Reform Proposals:** Academics, advocates, and county election officials identified at least three general areas where they would like to see improvement to the Statewide Voter Registration Database and the state's registration system. They are detailed below:

### 1. *Implement better procedures and technology to ensure accuracy and integrity of voter information and consistency across county and state systems.*

Voting rights advocates, election officials and academics all pointed to the need to have more accurate and consistent information in the county and state systems. There was broad agreement on a number of steps that could be taken to accomplish these goals:

#### a. *Develop better design to minimize voter error*

Interviewees pointed out that the Ohio driver's license (which has a number directly above the picture which is NOT the driver's license number) makes it easy for voters or registrars to list the wrong number on registration forms. They also noted that the forms themselves may confuse some voters — too many voters fail to fill-in information required under state law. To address these problems, they offered the following solutions, which they encouraged the Secretary to explore:

- Make the driver's license number the sole number on the face of the license (or print it in a more prominent size and location, if the other number must be kept);
- Increase awareness among new registrants and registrars of the design problem with the current license;
- Work with usability and design experts to redesign registration forms with the goal of minimizing voter error;
- On registration forms, next to the request for a phone number to contact voters in the event of errors or omissions on the form, add the word "encouraged" in a color-highlighted box next to the existing "optional" notation; and
- Ask for the voter's e-mail address on registration form, so that there is an additional method for contacting voters in case there are mistakes on forms.

Additional details on suggestions for improving design can be found on page 25 of the full report.

b. *Adopt better procedures for minimizing “no matches”*

Academics, advocates and election officials also endorsed the idea of establishing protocols at the state and local levels for flagging and addressing problems with registrations, before attempting to match them with Social Security or Bureau of Motor Vehicle (“BMV”) databases. This included using the Statewide Database to flag potential typos and to prepare data for matching, so as to decrease the matching error rate.

While there was substantial dispute that the large number of “failed matches” indicated anything other than problems with the matching protocol or the databases themselves, all parties agreed that the amount of attention given to such failed matches undermined voter confidence in the integrity of Ohio’s elections. For this reason, regardless of political affiliation or profession, all interviewees agreed that developing a protocol that would minimize mismatches was a worthwhile investment. Further suggestions for the development of these protocols are discussed in greater detail at page 32 of the full report.

c. *Use the U.S. Postal Service and other resources to provide voters with opportunities to update voter information*

Across the board, our interviewees saw the United States Postal Service and the BMV and Social Security Administration as potential sources of opportunities for voters to update their registration information. In particular, there appeared to be broad support for notifying voters of the opportunity to update their voter information when they changed addresses with the postal service through the National Change of Address (“NCOA”) program, and providing them with the appropriate form to do so. Additional suggestions for using the Postal Service and other resources to update voter information can be found at page 26 of the full report.

The full set of suggestions for increasing accuracy and consistency of voter information can be found at page 25 of the full report.

d. *Change the policy for updating registration addresses at BMV to comply with federal law*

The National Voting Rights Act states:

“[a]ny change of address form submitted in accordance with State law for purposes of a State motor vehicle driver’s license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.”<sup>6</sup>

Ohio appears to violate this federal mandate, and in the process makes it more difficult for counties to keep up-to-date voter registration lists. Specifically, rather than *requiring the voter to specifically state, on his change of address form*, that the change of address is *not* for voter registration forms, BMV instead appears only to require that employees “make available” to voters *separate* change of address registration forms. If a BMV employee does not specifically offer such a form, or a voter says he does not want the extra form, his address will not be changed for voter registration purposes. This appears to be consistent with

Ohio law — which only requires that BMV provide an applicant with the “opportunity to . . . update [her] registration”<sup>7</sup> — but not with the mandate imposed by the NVRA. By putting an extra burden on the voter to fill out an extra form, in apparent contradiction to federal requirements, this policy makes it far less likely that voters who have changed their permanent addresses will also change their registration forms.

Moreover, it is not clear that the official BMV policy is even followed in many BMV offices. Summit participants who have changed their driver’s license addresses report that BMV employees failed to ask them whether they wanted the extra change of registration address form. That is not particularly surprising; BMV employees probably do not view keeping voter rolls up-to-date as one of their primary responsibilities. It is for this very reason that the federal mandate is preferable to Ohio’s current policy: it does not rely on BMV employees to ensure that voters update their registration information.

In an interview with the Brennan Center, the Office of Legal Services for the Ohio Department of Public Safety (which oversees the BMV) acknowledged the NVRA requirement and has informed us that the BMV will be working with the Secretary of State’s office to ensure that, in the future, when a voter fills out a change of address form for her driver’s license, it will also serve to change her address for voter registration purposes, unless the voter has specifically indicated on the form that it should not.

This issue is discussed in greater detail at page 26 of the full report.

**2. *Develop a more transparent Statewide Database that will permit user-friendly searches, queries, exports and report-writing***

There was agreement among all we interviewed that the Statewide Database was not as easy to use as it might be. Election officials and voting rights advocates urged the creation of a more user-friendly database with the following suggestions:

*a. Ensure that the Statewide Database has all the characteristics of a modern database*

Among other things, election officials and advocates believed that the database should include the capacity to handle user-defined searches, queries, “soft searches,” exports and reports, and should make it possible for both the Secretary’s office and the county boards to use these functions.

*b. Create a more user-friendly database for voters*

Advocates and election officials complained that the current website that voters use to check their registration is both hard to find and difficult to use. These interviewees noted that the easier the system is for voters to use — to check information and to notify officials of the need to correct mistakes — the less likely there will be errors in the system. They recommend that the state and counties refer to Pew’s *Being Online is Not Enough*<sup>8</sup> for ways to increase the usability of their sites.

c. *Provide counties with “no match” information*

Several county election officials want the Secretary to create a system for notifying boards of elections when information in the Statewide Database does not match records maintained by the BMV, so that they could attempt to contact the voters to update and/or complete their records. Academics and advocates generally supported this idea, though they wanted procedures put in place to ensure that this information was not improperly used and did not lead to improper removal of voters from eligible status. All parties agreed that given the unreliability of database information at the BMV and Social Security Administration, the mere existence of a “no match” alone should not be the basis for removing a voter from eligible status.

These suggestions are more fully discussed at page 30 of the full report.

3. ***Ensure the security and privacy of the Statewide Database***

A number of election officials and advocates expressed concerns about ensuring the security and privacy of information on the Statewide Database. In particular, they noted that without adequate security, a wrongdoer could wreak havoc on an election, moving voters to inactive status or changing information, and disenfranchising voters. Interviewees also expressed concern that, in the wrong hands, personal information on the database could lead to identity theft and other abuses. Several expressed frustration at not having a clear understanding of the current policies in place. Accordingly, they recommended the public announcement of several measures for the purpose of reassuring security advocates and members of the public about the integrity of information on the database. The full list of recommendations is detailed on page 30 of the full report. Among the suggestions with broad support were the following:

a. *Promulgate a rule limiting access to the Statewide Database*

To varying degrees, election officials and advocates supported the promulgation of a rule detailing the requirements for the clearance of employees authorized to view, search, enter, edit and delete information in the county and Statewide Databases, as well as security measures for the protection of all information in these databases.

b. *Preserve archives of deleted and modified records*

Many advocates and election officials supported the preservation of archives of deleted and modified records, which would allow quality assurance and auditing to ensure that voter information was not improperly modified or flagged as removed.

**Future Study:** Designate a public study group to examine the registration process. Several academics, advocates and election officials urged further study of the Statewide Database and voter registration system in Ohio to assist in making additional changes. The full list of suggested research can be found at page 31 of the full report. Of particular note was the suggested designation of a public study group — convened by the Secretary of State — to review current practices and make recommendations to the General Assembly on possible

legislative improvements to the statewide voter registration system. Among other topics that might be explored by such a group are:

- Development of better voter registration data entry and management practices, which many election officials and advocates believe could make reconciling and maintaining the various county and state databases easier;
- Adoption of automatic registration and improvement of the state's portable registration system (also referred to as "voter registration modernization" by several advocacy groups), which some advocates and election officials believe will eliminate the need for election officials to process paper registration applications, eliminate or reduce the role of third-party groups in registering voters, ensure a more complete and accurate voter registration list, increase voter participation, and reduce the opportunity for fraud; and
- Consideration of Election Day registration, which many advocacy groups and academics note is permitted in nine other states, and has a strong track record of increasing voter participation.

In light of the fact that there is growing momentum in Washington, D.C. to establish a federal mandate for voter registration modernization,<sup>9</sup> such a study seems particularly important. As more than one summit participant noted, there is a real possibility that, at the very least, automatic and improved portable registration will be one component of a federal modernization mandate.<sup>10</sup> Accordingly, it seems well worth the state's time to begin to investigate, in a public way — with all relevant stakeholders — whether these reforms might work in Ohio, and how they would affect the current registration system.

The Secretary of State's office reports to the Brennan Center that they believe they have addressed the first of the three points listed in this proposed study, through the Summits and consultations with various experts, and that they will publicly release a plan that covers this point shortly. They report that this plan will not address the second and third points, however.

## **B. Provisional Voting and Voter ID Laws**

**The Issue:** Ohio's provisional voting and voter identification policies have been fraught with controversy. Unsurprisingly, then, there are some divisions among summit participants and interviewees on exactly what reforms are needed. Interviewees emphasized different aspects of provisional voting, producing the election policy equivalent of the proverbial glass half empty v. glass half full. For some, widespread provisional balloting is primarily an increased voting opportunity. Others look at it as an opportunity for uncertainty and error. Some election officials emphasized that many Ohioans cast provisional ballots as a way of updating their addresses. They pointed out that over 80% of Ohio's provisional ballots were counted, that the most common reason for rejecting provisional ballots statewide (47%) was a finding that the voters who cast them were not registered, and that voters must take some responsibility for registering properly. Other interviewees focused on the dangers of disqualification that come with provisional balloting, pointing, for example, to the 36% of provisional ballots not counted because they were cast outside the voters' assigned precinct locations, and the variation among counties in ballots disqualified for lack of proper ID.

Despite these differences, there was broad agreement on some aspects of provisional voting and identification policies that need to be studied, and even on the direction some reforms should take. Four broad areas of concern are:

- The confusing complexity of current provisional balloting and ID rules;
- The comparatively high rate of provisional balloting in Ohio (which all parties agree leads to more work after the polls have closed, and increases opportunities for post-election litigation in close contests);
- Local inconsistency in the rate and administration of provisional balloting, including the validation rate of provisional ballots cast; and
- Disqualification of procedural ballots cast outside voters' assigned voting locations.

**Reform Proposals:** Election officials, voting rights advocates, and academics offered a range of suggestions for potential reform, which are described in detail at page 44 of the full report. Below we highlight reform proposals that generated the broadest consensus. Note that the reforms listed below are not intended as a single coherent agenda for change. Rather, the goal is to offer a “menu” of some (though not all) of the different proposals offered by summit participants as options to address the issues they agreed should be on the table.

## 1. *Simplify provisional ballot procedures and voter ID requirements*

Summit participants declared repeatedly that provisional balloting and voter ID rules are confusing and need to be clarified and simplified so that poll workers can administer them properly. To be sure, there are differences of opinion on the direction simplification should take and whether it should expand or limit the use of provisional ballots and documentary identification. Some summit participants see provisional voting as a tool for enfranchising voters at risk, while others believe that, at least in its current form, provisional voting is less a “fail safe” voting protection than a “trap door to disenfranchisement.”<sup>11</sup> For some, Ohio’s new voter ID requirements are a reasonable reflection of twenty-first century technology and culture; others consider them an unneeded voting obstacle and administrative burden. Nevertheless, from all of these divergent perspectives, everyone agrees that some changes are needed in the rules, procedures and forms that administer provisional voting and voter identification. Three proposals had particularly broad support.

### *a. Reform voter ID law to focus on identification rather than address*

Some summit participants were in favor of going back to poll book signatures as the simplest way of establishing voters’ identity at the polls, while others felt that documentary ID was a positive development. Nevertheless, across both of these camps there was widespread support for reforms that would make voter identification requirements easier for voters to understand and meet and easier for poll workers to administer.

Many summit participants agreed that a particularly confusing aspect of the current ID law is its inconsistent address requirements. There was wide consensus that — assuming personal identification was the goal — the law’s address requirements should be scrapped and the law should be expanded to include, among other things, the usual gold standard of ID, a U.S. Passport. One election official suggested that the statute spell out the focus on identity to

make it easier for poll workers to understand that a driver's license with an obsolete address is sufficient. Moving away from the address requirement would also allow voters to use another common form of identification that is currently excluded, the standard student ID. Some summit participants advocated shifting to a single required ID document — an identification card issued by the voter's election board. Voting rights advocates, however, questioned how voters would obtain these cards and how accessible they would be, voicing concerns that it would be burdensome if voters had to appear at an office to have a photo taken, particularly for voters who do not drive, and noting that some voters may not have a reliable way to receive mail.

*b. Simplify the provisional ballot envelope*

There was very widespread agreement that the forms used for provisional voting need to be redesigned. Election officials and voting rights advocates agreed, that as it is, the envelope is confusing and difficult for poll workers and voters to follow and complete. Some officials indicated that the design also made it difficult for staff counting provisional ballots.

*c. Clarify rules for counting provisional ballots*

Summit participants agreed on the need to set clear, uniform statewide standards for deciding which provisional ballots to count. Both election officials and advocates emphasized that the goal of those rules should be to count as many eligible votes as possible. There was some tension between the recognized need for uniformity, in order to assure equal protection, and the need to give local boards room to respond to problems that arise in a common sense manner. Some election officials emphasized the need to clarify and standardize the approach to remaking paper ballots in general.

**2. *Conduct research to provide a better understanding of Ohio's high rates of provisional voting***

One point of consensus is the need to know more about the use of provisional ballot, in order to set informed policy. Ohio both uses and counts provisional ballots at higher rates than most other states. Statewide provisional ballots made up 3.6% of ballots cast in November 2008; 81% were counted. Use and counting rates, however, vary substantially from county to county. In most large urban counties, close to one in twenty voters cast a provisional ballot, while in many other counties that number is more like one in fifty — or less. Despite the attendant costs and risks, not everyone agrees that heavy use of provisional ballots is necessarily a bad thing. Some election officials see high provisional voting rates (coupled with high rates of counting provisional ballots) as a success story. They interpret the growing use of provisional ballots to mean that many Ohioans who would otherwise be turned away from the polls altogether are now getting the opportunity to vote. Advocates and academics pointed out, however, that in states with lower provisional voting rates, there is no evidence that would-be voters are being disenfranchised. They tend to see high provisional voting and counting rates as indicating that many voters who could and should vote on regular ballots are instead voting provisionally. In the absence of specific studies, nobody really knows for sure. Summit participants generally agreed, therefore, that the causes of the state's high and divergent rates of provisional voting need to be investigated in

order to base policy reforms on facts rather than speculation. Specific recommended research includes:

- a. *Fund and conduct studies to find out why provisional voting rates are so high in some parts of the state*

Some interviewees suggested that counties and precincts with particularly high provisional ballot rates should be studied in order to determine what was causing the high rates. Without such studies it is impossible to know whether the differences are a product of different social and demographic factors in the counties, or administrative differences, or both. In addition to collecting and analyzing data from the provisional ballot envelopes, counties on either end of the use and counting spectrum could be asked to detail the procedures and practices they employ regarding provisional voting. Correlations between provisional balloting and other election practices should also be examined — for instance, a county’s use of multi-precinct polling places and different ways of organizing those polling places.

- b. *Make provisional voting data available at the precinct level*

Summit participants pointed out that because Ohio counties are likely to encompass diverse populations in terms of population density, economic and social indices, and mobility, data at the precinct level is needed in order to investigate the demographic and social correlates of provisional ballot use and counting.

- c. *Provide data on reasons why provisional ballots are used and counted or rejected*

The Secretary’s office provided data, collected from all counties, on why provisional ballots were rejected in November 2008. To determine the overall effect of provisional voting in Ohio, it is also necessary to understand why voters are given provisional ballots in the first place. For instance, were provisional ballots issued because voters failed register, moved and did not update their addresses, failed to produce required ID, changed names or failed to appear on the rolls for some other reason. In order to collect this information, it will be necessary to devise a standardized way of identifying the reasons provisional ballots were cast.

Public access to individualized provisional ballot data is an issue with a complex legal and policy background. Some officials, including Secretary Brunner, interpret HAVA (and its Ohio implementing statutes) to allow the public release of provisional voters’ names, along with collective data on the numbers of provisional votes cast and the reasons for the rejection of provisional ballots, but to prohibit making public the counting or invalidation of an individual voter’s provisional ballot and the reasons for its acceptance or rejection. The unavailability of this kind of individualized data for academic and advocacy researchers puts more emphasis on the need for government studies. Protocols for data collection should be conveyed to county boards in time to incorporate necessary record keeping procedures in poll worker and staff instructions before the election.

3. *Clarify, and consider reforming, rules against counting provisional votes cast somewhere other than the voter's assigned precinct location*

Many election officials and advocates we interviewed believe that the current practice of rejecting provisional ballots cast by properly registered voters at the wrong polling place — or the wrong table at the right polling place — needs to be re-examined. Some Summit participants think the “wrong precinct rule” should be changed to count votes in contests for which the voter was eligible to participate, regardless where in the county or on what style ballot those votes are cast. Thus, if a ballot cast in the wrong precinct included precinct-specific school board issues, votes on those issues would not be counted, but votes on statewide contests and issues at the “top of the ticket” would count. Other summit participants would support at least counting such votes on ballots cast in the correct polling place but at the wrong table or on the wrong style ballot. Many election officials and advocates view voting in the wrong precinct as intertwined with poll worker error. Under the Ohio election code, and the decisions of the Ohio Supreme Court interpreting that code, it is less than clear when to count or disqualify provisional ballots cast on the wrong ballot style or at the incorrect location because of various types of action or inaction on the part of poll workers. Some approaches to reform suggested include:

- a. *Change the law to allow election officials to count the top of the ticket on provisional ballots cast outside the voter's assigned precinct location*

Some election officials we interviewed supported the legislative removal of the wrong precinct rule. They pointed out that prior to litigation in 2004 upholding the statutory requirement, many county election officials would count votes on provisional ballots for contests in which the voter was eligible to participate — regardless whether the ballot was cast at the voter's assigned polling place — so long as the voter was in the correct county. Most advocates and academics we interviewed support Ohio's return to rules that would count such provisional votes.

- b. *Change the wrong precinct rule to a wrong polling place rule*

Some election officials suggested that a compromise position would be to mandate counting all provisional ballots cast in the correct polling place, whether or not they were at the assigned precinct table or on the assigned precinct ballot style. This is the policy followed in Missouri.

Here, too, there were calls for more access to information about provisional ballot practices. Currently, the state does not publish data on the numbers of provisional ballots rejected because they were cast in the correct polling place but “in” the wrong precinct. Data provided by two of Ohio's largest counties, however, indicate that in the 2008 primary and general elections, approximately a third of wrong precinct ballots were cast in the right polling place.

c. *Allow voters to vote provisionally at satellite offices in addition to their home precincts*

For voters who cannot get to their assigned precinct polling place, some election officials suggested allowing additional provisional voting at the election board or another established central location.

d. *Adopt a straightforward method for identifying when ballots are cast in the wrong precinct due to poll worker error, and count the top of the ticket on such ballots*

Many interviewees agreed that if the wrong precinct rule remained in force, statewide votes on provisional ballots should be counted if they were cast in the wrong precinct because poll workers failed to issue the proper instructions. (In the view of at least one election official and some advocates, this is the rule already imposed by the complete Ohio election code and the *Homeless Coalition* court order.) Election officials pointed out that there are instances when voters are warned that they must go elsewhere to vote and nevertheless choose to vote provisionally in the wrong precinct. At the same time, however, many election officials agreed that when voters cast provisional ballots at the wrong voting location because poll workers directed them there, or failed to identify and direct them to the correct location, the lost opportunity to vote on precinct-specific contests should not be compounded by disqualifying votes on statewide issues.

The concern, however, is how to identify when poll worker error is the cause of voting in the wrong location. Advocates suggested adopting a presumption of poll worker error, asserting that few voters upon being informed that they were at the location where their ballots would be disqualified would nevertheless choose to vote there. But some officials were troubled by the idea that even votes cast deliberately in the wrong precinct could be characterized after the fact as poll worker error. A possible solution, particularly since there is broad support for redesigning the provisional ballot envelope, see page 45 of the full report, would be to use the provisional ballot envelope to record the poll worker's identification of the voter's precinct. There could be a simple line or checkbox on the envelope — or perhaps on a sticker to be attached — where the poll worker assisting the provisional voter would record the voter's correct precinct and voting location. Then, when provisional ballots are counted, it would be easy to identify which ones were cast in the wrong location because poll workers failed to correctly direct voters. If the form was filled in correctly, that would show that the poll worker did his or her job, and the ballot would be disqualified. If the wrong precinct or voting location was recorded, or if the space was left blank, that would indicate poll worker error, and the votes at the top of the ticket could be salvaged. One additional benefit of this system would be the feedback it would provide to election officials, allowing them to identify problems that could be addressed in subsequent poll worker training or by pointing out errors to presiding judges in precincts that had high error rates.

### C. Early In-Person and Mail-In Voting Procedures

**The Issue:** Few areas of election administration have seen bigger changes in Ohio over the last few years than absentee voting, and few changes have had a bigger impact on the entire electoral process. Both voting rights advocates and election officials generally see the recent reforms to Ohio's absentee voting laws in a positive light. Most importantly, many credit the expansion of absentee voting with keeping Ohio generally free of long lines at the polls on Election Day in 2008.

Most summit participants and interviewees who discussed early absentee voting also felt that the last few elections raised serious questions about some aspects of current absentee voting practices in Ohio. Both advocates and election officials argued that further changes to Ohio's laws and practices in this area were necessary. In particular, interviewees raised the following concerns:

- for in-person absentee voting, long lines in 2008, particularly in large counties like Franklin and Cuyahoga;
- for mail-in absentee voting, the relatively high number of ballots and votes not counted;
- for all absentee voting, the long lead time (35 days) prior to the Election Day;
- for all absentee voting, the security and the integrity of elections.

**Reform Proposals:** Summit participants and interviewees offered a number of proposals to reform both early in-person and mail-in absentee voting. We detail the proposals with the broadest support below. The full range of suggestions relating to early absentee voting can be found at pages 50-61 of the full report.

#### 1. *Expand in-person absentee voting and adjust the early voting time period*

There was general, though by no means universal, support for expanding the number of in-person absentee voting sites, at least in those counties where there were long lines in 2008 during the early voting period. At the same time, for cost and philosophical reasons, most also supported (or at least were not necessarily opposed to) shortening the early voting period, which is presently 35 days.

##### a. *Expand the number of in-person early voting locations*

Many interviewees suggested a change in Ohio law to allow for multiple in-person early voting locations, depending upon each county's number of registered voters. A wide range of election officials, advocacy groups and academics supported this idea. While few objected to this expansion per se, a number of interviewees mentioned potential problems that could arise. Most prominently, these interviewees raised three questions: What will be the procedure for determining which counties set up additional early voting sites? How will counties or the state determine where those sites will be located? How will counties pay for additional locations, which can be very expensive to run? There was no agreement on how to answer these questions, though interviewees offered a number of suggestions, ranging from developing mathematical formulas for the placement of sites to requiring a super-

majority of each county board to determine whether and how many sites should be added. The full range of suggestions is discussed in greater detail on page 52 of the full report.

As for addressing the cost of in-person early voting, there were a number of suggestions (*see* page 53 of the full report), but many summit participants and interviewees embraced the idea of shortening the early voting period.

*b. Shorten the voting period for in-person absentee voting*

Several election officials and academics expressed the view that the current period for in-person absentee voting was probably too long. Election officials noted that staffing a polling place for 35 days was very costly, while some academics questioned the rationale for allowing voters to cast votes so early. (Did these voters have time to inform themselves fully about all of the contests and issues? Would they have “buyer’s remorse” weeks later, when the candidates and initiatives received greater scrutiny?) Some election officials hoped for a day or two before Election Day to shut down early voting and gear up for Election Day itself. Some advocates and academics opposed this, citing high usage of early vote centers on these days in 2008.

A number of interviewees also acknowledged objections to what is sometimes referred to as the “Golden Week,” the first seven days of absentee voting before a general election when the 35-day in-person absentee voting period overlaps the period before the voter registration deadline, and during which voters may register and vote on the same day. Some have expressed concerns that this could lead to voter fraud, because county boards cannot use the same verification methods employed for other new registrants to check registration information before allowing newly registered Golden Week voters to vote. Many advocates pointed out that there was little evidence of fraud during the 2008 Golden Week. These advocates believed the overlap between voter registration and the absentee voting period resulted in increased voter participation and hoped that the state would continue the practice, examining data from this period (including allegations of voter fraud and the effect on voter turnout) before considering whether to end the practice.

These different views of the overlap period are at the crux of the dispute over the optimal length of the early voting period. While many advocates stated they were not opposed to shortening the early voting period, they would only support such a reduction if the state adopted an early voting program that allowed voters to register during that period, as is done in North Carolina. Some county election officials we interviewed were opposed to this idea.<sup>12</sup>

**2. Refine early mail-in voting procedures**

Suggestions for refining Ohio’s early mail-in voting procedures fell into four main categories: make it easier to correct and count absentee ballots with technical defects, take steps to reduce the number of residual votes, explore further expansion of mail-in voting, and develop best practices for vote by mail security.

a. *Make it easier to correct and count absentee ballots with technical deficiencies*

There was widespread agreement that despite important efforts from the Secretary to provide guidance, it was too difficult in 2008 to correct and count absentee ballots with technical defects. Several election officials believed that a 2008 directive imposed restrictions that made it more difficult to process ballots that they previously would have corrected and counted, by forcing voters to come into board headquarters to make corrections. The Secretary of State's office viewed that directive as reflecting the current Ohio law which forbade the counting of ballots with these technical deficiencies and required voters to come into the board of elections to correct their mistakes. At the same time, a representative from the Secretary's office indicated a desire to see the law changed.<sup>13</sup>

Some election officials believe that they should have more discretion to find ways to count ballots with technical defects. Most advocates and academics we interviewed agreed, but they added that they were in favor of clear and uniform statewide standards for accepting or rejecting ballots, to ensure equal protection to all voters. Regardless, all parties we interviewed agreed that the best policy was one "which recognizes that voters will make inadvertent errors and omissions," and that there should be "a routine method, to the extent possible, to contact voters to attempt to correct the deficiency as quickly as possible, thereby improving the odds that the ballots will count."<sup>14</sup> Of course, it should not be necessary to contact voters if the vote can be counted absent correction of the technical defect.

Summit participants agreed that the Secretary of State should work with election officials and advocates to develop these policies, and (where necessary) to request changes to the Ohio Revised Code to allow the use of such policies.

b. *Take steps to reduce residual vote rates on mail-in ballots*

As greater numbers of Ohio residents vote by mail, some advocates and election officials expressed concerns that voter errors will increase. Professor David Kimball has noted that in 2008, counties with higher rates of absentee voting also had higher rates of overvotes.<sup>15</sup> We discuss this potential problem, as well as relevant research on the subject in page 58 of the full report.

There was widespread support for working with usability and design experts to determine whether a redesign or rewording of ballots, ballot instructions, and other materials sent to voters would reduce voter error rates, taking into account that voters who vote by mail will not have the advantage of using machines that will notify them of certain errors. There was also support among academics and advocates for the state to adopt a practice of manually reviewing absentee ballots before they are run through scanners, to separate out ballots that might not be read by machines, and to remake these ballots for voter intent when there is bipartisan agreement.<sup>16</sup> This is done in Oregon. (Regarding remake practices in general, some election officials and advocates felt that greater direction from the state is needed to create consistent statewide standards.)

A more detailed discussion of steps that the state could take to reduce residual vote rates on mail in ballots can be found on page 58 of the full report.

c. *Explore expansion of mail-in voting through pilots in special elections*

Interviewees offered many ideas for expanding mail-in voting — from allowing voters to apply for “permanent” mail-in voting status, to paying for the postage for all absentee ballots. Those concerned about the potential for greater voter error, as well as potential equity issues raised objections about rushing to adopt any of these proposals. A full discussion of this debate can be found at page 59 of the full report.

Nevertheless, there seemed to be widespread support for holding one or two special elections only by mail in a specific location, to study the concerns raised by those worried about the negative effects of expanding mail-in voting. These pilots could study a number of issues, such as the cost, impact on voter turnout, and effectiveness of the United Postal Service in delivering ballots to rural and densely urban areas.

d. *Develop best practices for vote by mail security*

Most election officials and advocates we interviewed supported the suggestion that the Secretary of State develop “best security practices” for absentee ballots, which could then be adapted to particular counties and their systems.

**Future Study:** There is a great need for additional data to support informed policy decisions about early voting. We detail the types of studies that would be useful in page 60 of the full report. For such research to be effective, it is critical that the state consider *requiring reporting of data for vote by mail and in-person early voting separately*, even though these ballots are both deemed “absentee.” Separate data collection would allow careful monitoring of whether different balloting methods, styles and the like to determine their effects on the franchise, and whether these methods operate differently in different parts of Ohio and for different segments of the population. Because this data is not currently available for the 2008 election, much of the discussion of the potential impact of changes to early voting laws is driven by speculation, or is based on the experiences of other states where such data is kept.

## D. **Poll Worker Recruitment and Training**

**The Issue:** Ohio has been ahead of the curve in recognizing the importance of poll workers’ job and training, in part because of the extraordinary challenges Ohio poll workers have faced in recent elections. Voting technology has changed, and so has the law — multiple times — so that even veteran poll workers recently have had to learn election procedures and standards from the ground up. As one election official remarked, in the past four years poll workers have not had the same training twice. Moreover, many aspects of voting in Ohio have grown more complex — including the provisional balloting process and the introduction of voter ID laws. Secretary Brunner responded by making available online poll worker training. A number of county election boards have experimented with innovative methods of recruiting poll workers and developing new training initiatives, including the use of that online training and creating hands on training to focus on perceived problem areas, such as provisional ballots. There was strong support among summit participants for increased resources to support these efforts and to improve poll worker

compensation, and research and funding to identify and support effective training programs. At the same time, participants noted that there were a number of potential reforms that would cost nothing.

**Reform Proposals:** One basic — no cost — change received virtually unanimous support from summit participants, who believed it would address problems in both poll worker recruitment and training: *simplify the rules on provisional balloting and voter identification.*

Election officials and advocates repeatedly expressed the view that complex and changing election rules and practices put too much pressure on poll workers and made it extremely difficult to produce competent poll workers with the current training commitments. Moreover, officials believe that poll workers' frustration with constantly changing and increasingly complicated election procedures led to problems with recruitment and retention. Streamlining procedures for administering provisional ballots and voter identification was by far the most frequently mentioned reform to improve both poll worker recruitment and performance. In particular, officials and advocates agreed that the provisional ballot forms need to be redesigned, to make them less wordy and easier for voters — and poll workers — to follow.

In addition, the following proposals garnered broad support:

**1. Recruitment**

*a. Increase recruitment from schools*

Many officials spoke of the success they have had integrating high school seniors into the poll worker ranks. There was strong support for increased recruitment from both high schools and colleges to build this new source of poll workers. A call to close schools to make it easier to recruit both students and teachers was met with enthusiastic support. It was pointed out that the most successful college recruitment program involved professors who built election administration into lesson plans and school administrators who gave students the day off to work at the polls. The EAC provides a guide to college recruitment, available at [http://www.eac.gov/files/BPPollWorker/College\\_Guidebook.pdf](http://www.eac.gov/files/BPPollWorker/College_Guidebook.pdf).

*b. Recruit through direct mail*

A number of counties reported good results using direct mailings to voters as a way to recruit new poll workers. Butler County sent recruitment post cards to voters in areas identified as at risk for poll worker shortages due to the aging poll worker pool there, producing a large group of back-up poll workers. Franklin County enclosed an application to serve as a poll worker in its mandatory notice mailing to voters. The result was the first ever surplus of poll workers. In Clermont County, officials combined a cable advertising campaign with flyers mailed to all residents with their water bills, producing about 200 potential poll workers in a week and a half. At least one official, however, expressed the view that poll workers obtained through broad direct mail campaigns may not stay as long as workers who know more about election administration before getting into it. One possible solution, if there is such a retention problem, would be to target frequent voters, as people

who already have some commitment to the election process and know more what they will be getting into by becoming poll workers. In Summit County, officials sent recruitment post cards to 1,000 Democrats and 1,000 Republicans who they identified as frequent voters and netted about 150 new workers.

*c. Improve poll worker compensation and recognition*

Many interviewees agreed that poll workers should be better compensated. Officials pointed out that despite the ever increasing demands made on them, poll workers have received only a small increase in compensation to a pay scale that one county official characterized as “dismal.” Officials and advocates agree that increasing poll worker pay and finding other ways to recognize poll workers’ service would make it easier to recruit and retain high-quality poll workers. Summit participants pointed out that many, if not most, poll workers serve primarily out of a sense of civic duty. Thus, in these tight economic times, there may be ways to boost poll workers’ rewards, other than by increasing pay rates. For instance, counties might consider certificates, awards, published honor rolls or other ways to show appreciation for poll workers’ service.

**2. Training**

*a. Collect data on successful training programs and techniques*

County officials appreciated the Secretary’s online training materials. A study of two counties’ incorporation of the new online materials into their poll workers’ training showed that voters were more satisfied with their experience at polling places staffed by workers who had taken the additional training. It was pointed out, however, that more research was needed to determine whether that beneficial effect was attributable specifically to the online training, or simply to additional training. Similarly, officials believed that the addition of some new hands on and roll playing training segments improved poll worker performance, but studies are needed to confirm these benefits and to determine the relative importance of training in different settings — individual online, interactive hands on, and traditional lecture format.

*b. Develop on-the-job informational aids for poll workers*

County election officials praised the flip charts created by the Secretary’s office for use at the polls. Other possible aids include palm-sized reference cards and easy-to-read posters with answers to common questions about state voting guidelines. Along these lines, one academic pointed out that there is a well-developed literature in the medical world about the utility of check lists as aids for preventing errors. Those studies indirectly support summit participants’ belief that these types of aids were effective supports for reducing errors in the election context. The importance of clear, simplified instructional tools further highlighted the need for overall simplification in the administration of provisional ballots. Unlike the flip charts, summit participants felt the flow chart provided by the Secretary on administering provisional voting was not helpful, because it was so complex that it was too hard to follow. But participants agreed that the problem was not so much with the chart as with the rules and procedures themselves, which had become so tangled and confused that it was not possible to render them in straightforward, instructional terms.

## **E. Post-Election Audits**

In 2008, Secretary Brunner published two directives that led to the first post-election audits of paper records in Ohio. Secretary Brunner has received substantial praise from advocacy groups and some election officials for advancing the use of post-election audits in Ohio. In fact, it appears that at least two previously unknown problems with Ohio voting equipment were discovered as a result of these audits. For the most part, however, the audits showed that Ohio's machines were working remarkably well, accurately recording and tallying the intent of voters.

Several election officials and advocates we interviewed would support legislation requiring post-election audits after major elections. One suggestion was a law that laid out broad principles (such as a requirement to compare a certain percentage of paper records to electronic tallies), and gave the Secretary of State with room to develop the details of the audit through directive. Some interviewees thought that at least some details in the law (types of ballots to be audited, which contests to audit, percentage of ballots to audit; reporting requirements) would be helpful, both in allowing county boards to develop regular procedures ahead of each election and to ensure that each audit met minimum standards of effectiveness.

There was widespread agreement that the more information election officials and the public had about the audit ahead of an election, the more likely the audit would be effective and efficient, and serve the goals of increasing transparency and public confidence in election results. Most Summit participants we spoke to also agreed that it would be helpful to get a report from the Secretary of State's office detailing the information they received from counties about the post-election audits conducted in 2008, as well as what lessons were learned from those audits.

Discussion of various proposals for a post-election audit law can be found on page 73 of the full report.

## **F. Additional Ideas**

Election officials, voting rights groups and academics also gave high priority to other issues that did not neatly fall into any of the five areas detailed above. Below we note two suggestions that appeared to have support across these groups.

- 1. For the purpose of reducing voter errors, amend laws related to design and language requirements for ballots, registration forms, and provisional and absentee ballot envelopes and applications***

The Brennan Center has previously concluded that Ohio's laws related to ballot design are among the worst in the country, directly conflicting with best practices, and impeding the ability of election officials to ensure that ballots are easily understood by the largest number of voters.<sup>17</sup> After reviewing of Ohio's laws related to design requirements for ballots, registrations forms, and provisional and absentee ballot envelopes and applications, we conclude they are similarly flawed.<sup>18</sup> Tens of thousands of registrations forms, absentee

ballots and provisional ballots were rejected last year, often for technical defects that might have been avoided if forms used plain language and more usable designs.<sup>19</sup> As a general rule, we recommend using simple, non-legalistic language and reducing the number of fields that voters must complete to the bare minimum. We also recommend eliminating as many rules as possible that affect design, and giving the Secretary of State board discretion to recommend designs and language that will make forms and ballots as usable as possible. Unfortunately, in many cases, making these changes will require amending state law. Participants we interviewed strongly recommended that the Secretary and legislature work with design and usability experts, like those at Design for Democracy and the Usability Professional Association, as well as voting system vendors, to develop new requirements.

## **2. *Review the back-up paper ballot policy***

In 2008, in compliance with Secretary Brunner's directive, counties that use DRE machines provided every polling place with a supply of paper ballots equal to 25% of turnout in the 2004 general election.<sup>20</sup> In addition, machine counties were required to use a two-line system to separate paper-ballot voters from those voting by machine.<sup>21</sup> These directives only applied to the 2008 election. Summit participants we interviewed recommended that the Secretary conduct a thorough evaluation of the policy, consulting with election officials, advocates and academics, for the purpose of determining whether, and in what form, she should institute such a policy in the future.

While several advocates, academics and election officials believed that the two-line system reduced waiting times at polling places and liked the fact that it gave voters an extra option, others questioned the utility of offering voters a choice between paper ballots and DREs, when DREs were working and there were no long lines. Specifically, some county election officials criticized the 2008 paper ballot directives in terms of cost, administrative efficiency, and election accuracy. One county election official questioned how counties could afford to support two separate voting systems at every election.<sup>22</sup> He reported that his county spent approximately \$24,000 to provide and administer ballots. Under the required formula, they printed 14,700 ballots. Only 704 were used. While ballot printing would be reimbursed, other costs associated with paper ballot administration, e.g., poll worker time, would not.

On a related note (as discussed in the full report on page 70) because counties that use DREs do not have precinct scanners to notify voters of errors at their polling places, some academics and advocates have expressed concern that having large number of voters choose to vote on paper without precinct based optical scans will lead to problems: higher error rates and — in cases where contests are close and recounts necessary — more disputes about voter intent on ballots that machines can't read.<sup>23</sup>

At least one federal court has held that DRE counties must have back-up paper ballots in case of machine failures, which can cause long lines.<sup>24</sup> One possible compromise in Ohio might be to continue to supply counties with supplemental paper ballots, but to only require their *use* in the event of long lines and/or machine failure. This appears to be the policy in Illinois and Indiana.<sup>25</sup> Such a policy might save most precincts the cost of administering two lines: for the most part, DREs do not fail on Election Day, and because most precincts will not have long lines, it would generally not be necessary to administer and staff a second line. This compromise would also address the concern of many advocates that encouraging voters

to use a system without error notification will lead to higher error rates and more disputes over voter intent.

In fact, this compromise is consistent with what the Secretary of State's office has told the Brennan Center is the primary purpose of last year's back-up paper ballot policy: to serve as a safety valve when machines break-down or long lines might otherwise prevent people from voting.<sup>26</sup>

Unlike the need to amend state laws related to design of election materials, there is little agreement among election officials and voting rights advocates on the best policy for back-up paper ballots. However, most Summit participants we spoke to agreed it made sense for the Secretary to consult with election officials and advocates as she considered what policy the state should employ for back-up paper ballots next year.

A full discussion of recommendations relating to the state's back-up paper ballot policy and polling place resources generally can be found at page 69 of the full report.

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## ENDNOTES

- <sup>1</sup> A copy of the preliminary report can be found at [http://www.brennancenter.org/content/resource/2008\\_ohio\\_elections\\_summit/](http://www.brennancenter.org/content/resource/2008_ohio_elections_summit/).
- <sup>2</sup> Secretary Brunner held the Ohio Elections Summit 2008 on December 2, 2008. On March 12-13, 2009, Secretary Brunner convened the 2009 Ohio Elections Conference.
- <sup>3</sup> Copy of agendas for each summit annexed as Appendix 1.
- <sup>4</sup> A list of individuals we interviewed can be found in Appendix 2 of the full report.
- <sup>5</sup> A copy of our request to the Secretary of State's Office, as well as a list of what data was supplied can be found in Appendix 3 of the full report.
- <sup>6</sup> 42 U.S.C. § 1973gg(3)(d).
- <sup>7</sup> OH REV. CODE ANN. § 3503.11 (West 2009).
- <sup>8</sup> PEW CENTER ON THE STATES, BEING ONLINE IS NOT ENOUGH: STATE ELECTIONS WEB SITES (Oct. 2008), available at [http://www.pewcenteronthestates.org/uploadedFiles/VIP\\_FINAL\\_101408\\_WEB.pdf](http://www.pewcenteronthestates.org/uploadedFiles/VIP_FINAL_101408_WEB.pdf) [hereinafter BEING ONLINE REPORT] (Annexed as Appendix 4).
- <sup>9</sup> Editorial, *Shut Out At the Polls*, WASH. POST, Mar. 16, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/15/AR2009031501668.html>; Editorial, *Still Broken*, N.Y. TIMES, Mar. 17, 2009, available at <http://www.nytimes.com/2009/03/18/opinion/18wed1.html>.
- <sup>10</sup> Remarks of Matthew Damschroder, Deputy Director, Franklin County Board of Elections, at the 2009 Ohio Elections Conference (Mar. 12, 2009) video available at <http://www.ohiochannel.org>; Remarks of Doug Chapin, Director, Electionline.org, at the 2009 Ohio Elections Conference (Mar. 12, 2009) video available at <http://www.ohiochannel.org>.
- <sup>11</sup> See ADVANCEMENT PROJECT, PROVISIONAL VOTING: FAIL-SAFE VOTING OR TRAPDOOR TO DISENFRANCHISEMENT? (Sept. 2008), available at <http://www.advancementproject.org/pdfs/Provisional-Ballot-Report-Final-9-16-08.pdf> [hereinafter *ADVANCEMENT PROJECT REPORT*] (annexed as Appendix 5).
- <sup>12</sup> Marilyn Jacobcik, Deputy Director of the Lorain County Board of Elections, is one official opposed to this proposal and she notes that the Ohio Constitution requires voters to register 30 days before an election (OHIO CONST. ART. V, § 1), which means that it is not legally feasible absent a change to the state constitution. Telephone Interview with Marilyn Jacobcik, Deputy Director, Lorain County Board of Elections (Feb. 10, 2009) [hereinafter *Marilyn Jacobcik Interview*].
- <sup>13</sup> Remarks of Brian Shinn, Assistant General Counsel, Ohio Sec'y of State, at the 2009 Ohio Elections Conference (Mar. 12, 2009), video available at <http://www.ohiochannel.org>.
- <sup>14</sup> Similarly, as discussed in later sections, there is agreement that there should be a routine method, to the extent possible, to correct registration forms, absentee ballot applications and provisional ballots for the purpose of counting the votes of all eligible citizens.
- <sup>15</sup> E-mail from David Kimball, Associate Professor, Political Science at University of Missouri-St. Louis (Mar. 6, 2009).
- <sup>16</sup> Or, at the very least, as one advocate suggested, examine votes with overvotes found by scanner.
- <sup>17</sup> LAWRENCE NORDEN, ET AL., BETTER BALLOTS (Brennan Center for Justice ed. 2008), available at [http://www.brennancenter.org/content/resource/better\\_ballots/](http://www.brennancenter.org/content/resource/better_ballots/).
- <sup>18</sup> *Id.*
- <sup>19</sup> For instance, Brown County rejected 44.2% of provisional ballots cast, while only eight counties rejected provisional ballots at a higher rate than Cuyahoga County, which disqualified 27.5% of its provisional ballots. Statewide, 27,763 mail-in absentee ballots were not counted, and in some counties, more than 4% of absentee ballots sent by mail were not counted. At least 1/3 of rejected registration forms in Cuyahoga County were because voters failed to fill-in information required under state law. Problems that have been noted with the current laws are inconsistent address requirements, complex documentary ID requirements, and the "wrong precinct" rule.
- <sup>20</sup> Ohio Sec'y of State, Directive 2008-59: Optical Scan Ballots for Voters in Counties Using DRE Voting Machines (Jul. 25, 2008), available at <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-59.pdf>.
- <sup>21</sup> Ohio Sec'y of State, Directive 2008-65: Precinct Polling Location Arrangement and Diagram for Counties Using DREs (Aug. 13, 2008), available at <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-65.pdf>.

<sup>22</sup> Remarks of Jeff Wilkinson, Director of the Richland County Board of Elections, at the Ohio Elections Summit (Dec. 2, 2008), *video available at* <http://www.ohiochannel.org>.

<sup>23</sup> E-mail from Candice Hoke, Director, Center for Election Integrity (Feb. 25, 2009) [hereinafter *Candice Hoke E-mail*]; Telephone Interview with Daniel Tokaji, Associate Director, Election Law at Moritz College of Law (Jan. 7, 2009) [hereinafter *Daniel Tokaji Interview*]; Telephone Interview with David Kimball, Associate Professor, Political Science at University of Missouri-St. Louis (Feb. 3, 2009) [hereinafter *David Kimball Interview*].

<sup>24</sup> NAACP-SCP v. Cortes, 2:08-CV-05048 (2009).

<sup>25</sup> Indiana requires emergency paper ballots to be kept at the polling place and allows paper ballots to be used if there are long lines due to machine failure or inadequate allocation of machines. Illinois requires emergency paper ballots be kept at the polling place and allows deployment in the event that *any* machine fails. LAWRENCE NORDEN, ET AL., IS AMERICA READY TO VOTE? (Brennan Center for Justice ed. 2008), *available at* [http://www.brennancenter.org/content/resource/is\\_america\\_ready\\_to\\_vote/](http://www.brennancenter.org/content/resource/is_america_ready_to_vote/).

<sup>26</sup> Telephone Interview with Bryan Clark, Policy & Planning Coordinator, Ohio Sec'y of State (Apr. 2, 2009).