IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

OHIO STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED
PEOPLE, et al.

Plaintiffs,

v.

JON HUSTED, et al.

Defendants.

Case No. 2:14-cv-00404

Judge Peter C. Economus

Magistrate Judge King

DECLARATION OF WILLIAM J. SEITZ

1, William J. Seitz, declare under penalty of perjury that the following is true and
accurate:

1. I currently serve as State Senator for the 8th District of the Ohio Senate. I have
served in that capacity since January 2007.

2. As Senator for the 8th District in 2009, I received a letter dated May 7, 2009 from
then-Ohio Secretary of State Jennifer Brunner. Attached as Exhibit 1 is a true and accurate copy
of that letter.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true
and correct.

Executed on: August 8, 2014

[Signature]

WILLIAM J. SEITZ
EXHIBIT 1
May 7, 2009

The Honorable Bill Seitz
Senate Building - Room 143
Columbus, OH 43215

Dear Senator Seitz:

Thank you for the opportunity to provide additional, specific recommendations regarding Senate Bill 8. I agree with your statement in the Springfield News-Sun that “There’s a framework in which we can operate” as we move forward on vital elections enhancements for Ohio. To that end, please see below our constructive recommendations for SB 8 – recommendations informed by a several months-long bipartisan process of elections considerations.

Please note that we have made suggested changes to the language in SB 8 below. Our recommended additions are double underline and our recommended deletions are double strikethrough.

Board of Elections Appointments

We agree that, given the Supreme Court interpretation of R.C. 3501.07,¹ there is a need to amend the appointment process to allow successive nominations and decisions by the Secretary of State. However, the ability of the Secretary of State to act as a counterbalance for an otherwise purely partisan appointment process should not be limited to those cases where a person has been adjudicated mentally incompetent or convicted of a felony.

We recommend the following amendments to SB 8:

- Retain the current standard that the secretary may fail to appoint a nominee if he/she is found to be incompetent, rather than severely limiting the secretary’s ability to act as a counterbalance for partisan political appointments.²

² R.C. 3501.091 requires a super-majority for replacing a chair or director with someone of a different political party. R.C. 3501.161 mirrors this for filling a vacancy for chair or director with someone of a different political...
- Remove the "clear and convincing evidence" standard.

Recommended language:

Sec. 3501.07. At a meeting held not more than sixty nor less than fifteen days before the expiration date of the term of office of a member of the board of elections, or within fifteen days after a vacancy occurs in the board, the county executive committee of the major political party entitled to the appointment may make and file a recommendation with the secretary of state for the appointment of a qualified elector. The secretary of state shall appoint such elector, unless he has reason to believe the secretary of state finds that the elector would not be a competent member of such board as a result of either the elector's adjudication of incompetence by a court of competent jurisdiction or the elector's prior conviction of or plea of guilty to a felony. In such cases the secretary of state shall be in writing to the chairman or chairperson of such county executive committee, with the reasons therefor for the secretary's refusal to appoint the individual, and such committee may, with respect to each refusal of the secretary of state, either recommend another elector or may apply for a writ of mandamus to the supreme court to compel the secretary of state to appoint the elector so recommended. In such action, the burden of proof to show the qualifications prove the lack of competence of the person so recommended by clear and convincing evidence shall be on the committee making secretary of state who refused the recommendation. Upon the dismissal of an action in mandamus filed by such county executive committee, the county executive committee shall have fifteen days to make and file another recommendation with the secretary of state for the appointment of a qualified elector. If no such recommendation is made within fifteen days after either the secretary of state refuses the appointment of the county executive committee or the dismissal of an action in mandamus filed by such committee, the secretary of state shall make the appointment. This process shall be repeated, as needed, after each refusal of the secretary of state, until the appointment is made.

In-person early voting

While we agree in principle that counties should have the ability to establish additional early voting locations, we suggest a different process than that outlined in SB 8. In particular, the current bill, like its predecessor, severely limits the Secretary of State's traditional role in breaking tie votes by requiring a super-majority for operational decision-making by a county board of elections. We note that neither the report from Larry Norden at the Brennan Center nor our consensus-based report on elections enhancements offers support for this change in procedure.

party. R.C. 3501.14 expressly states that a tie vote or disagreement regarding director or deputy director compensation may not be submitted to the Secretary of State. In each instance where a board decision cannot be reviewed by the Secretary, the board action is purely operational and has no bearing on who may serve on the board or work for the board.
The Secretary of State serves as the elected counterbalance for appointed boards of elections. The Secretary provides a crucial role in assisting local boards when, after thoughtful deliberation and decision-making, they have been unable to reach a majority vote on an issue.

As matters of policy, the Secretary of State supports limiting in-person early voting to the period of time starting 20 days prior to the election and ending no earlier than 5 p.m. Sunday prior to the election.

We recommend the following amendments to SB 8:

- Require a simple majority vote to establish up to four in-person early voting locations, with tie votes to be submitted to the Secretary of State.
- Require the board to vote on and submit to the Secretary of State a plan for the location of the additional in-person early voting locations.
- Require the Secretary of State to promulgate rules governing the content and form of the plan for in-person early voting locations.
- Require absentee ballots to be printed and ready for use 35 days before an election, except for presidential primaries (25 days) or special elections (as soon as reasonably possible).
- Maintain substantial compliance with absentee ballot envelope information.
- Allow up to 10 days after the election for correction of absentee ballot deficiencies.

Recommended language:

Sec. 3501.10. (C) 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. The board shall not employ more than three four such locations, including the office of the board of elections and all branch offices of the board of elections, for the purpose of allowing voters to cast absent voter's ballots in person during the in-person early voting periods established by [INSERT R.C. CITATIONS] at an election.

An affirmative vote of three members of the board is required to establish more than one location at which voters may cast absent voter’s ballots in person during the in-person early voting periods established by [INSERT R.C. CITATIONS] at an election; and in all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the board shall submit the matter in controversy to the secretary of state, who shall summarily decide the question, and the secretary of state's decision shall be final.

If the board votes to establish more than one location at which voters may cast absent voter’s ballots in person is established, the board shall submit to the secretary of state a plan for the location of in-person early voting locations, selecting locations in the county that are geographically diverse. If at least three members of the board do not agree to establish additional locations or do not agree on the
appropriate locations within the county, the board shall only permit absent voter's ballots to be voted in person at the office of the board of elections for that election.

(D) The secretary of state shall establish, by rule adopted under Chapter 119 of the Revised Code, the content and form of plans to be submitted for the location of additional in-person early voting locations other than existing board of elections offices.

Sec. 3509.01. (B) The rotation of names of candidates and questions and issues shall be substantially compiled with on absent voter's ballots within the limitation of time allotted. Those ballots shall be designated as "Absent Voter's Ballots," and except as otherwise provided in division (C) or (D) of this section, those ballots shall be printed and ready for use on the thirty-fifth day before the day of an election, as follows:

(1) For overseas voters and absent-uniformed service voters eligible to vote under the Uniformed and Overseas Citizens Absentee Voting Act, Pub.L. No. 90-410, 100 Stat. 924, 42 U.S.C. 4073ff, as amended, ballots shall be printed and ready for use on the thirty-fifth day before the day of any election other than a presidential primary election, except that those;

(2) For all voters, other than overseas voters and absent-uniformed service voters, who are applying to vote absentee voter's ballots other than in-person ballots shall be printed and ready for use on the twenty-eighth day before the day of any election other than a presidential primary election;

(3) For all voters, other than overseas voters and absent-uniformed service voters, who are applying to vote absentee voter's ballots in person, ballots shall be printed and ready for use beginning on the twentieth day before the day of the election and shall continue to be available for use through five p.m. on the day before the day of the election;

(4) For all voters who are applying to vote absentee voter's ballots other than in-person, (C) Absentee ballots shall be printed and ready for use on the twenty-fifth day before the day of a presidential primary election.

(D) If the laws governing the holding of a special election on a day other than the day on which a primary or general election is held make it impossible for absent voter's ballots to be printed and ready for use by the deadlines established in division (B) of this section, absent voter's ballots for those special elections held on days other than the day on which general or primary elections are held shall be ready for use as many days before the day of the election as reasonably possible under the laws governing the holding of that special election.

Sec. 3509.04. (B) Upon receipt by the director of elections of an application for absent voter's ballots that contain all of the required information, as provided by sections 3509.03 and 3509.031 and division (G) of section 3503.16 of the Revised Code, the director, if the director finds that the applicant is a qualified elector, shall deliver to the applicant in person or mail directly to the applicant by special delivery mail, air mail, or regular mail, postage prepaid, proper absent voter's ballots. The director shall deliver or mail with the ballots an unsealed identification envelope upon the face of which shall be printed a form substantially as follows: a the following form substantially as follows:
Sec. 3509.05. (D)1 Except as otherwise provided in division (D)(2) of this section, boards of elections shall notify absentee voters of the presence of any deficiency regarding their absent voter's ballot identification envelope that hinders the ballot contained within from being counted, when the voter is otherwise eligible to vote. Once notified, these absentee voters must be given the opportunity to correct any omission or error regarding their absent voter's ballot identification envelope through the tenth day after the election. Boards of elections shall notify the absent voter by mail, telephone, or email that the voter's absent ballot will be rejected unless the voter corrects the deficiency, completes the statement prior to the close of the polls on the day of the election.

(2) A board of elections shall not be required to notify voters under division (D)(1) of this section for any absent voter's ballots that the board receives after the eighth day before the day of the election.

If a board of elections chooses to notify voters under division (D)(1) of this section, if incomplete absentee voter's ballot envelope statements for absent voter's ballots received after the eighth day before the day of the election, the board shall notify all voter whose absent voter's ballot envelope statements are incomplete that their absent voter's ballot envelopes will be rejected unless the voter completes the statement prior to the close of the polls on the day of the election.

Sec. 3509.06. (D) Each of the identification envelopes purporting to contain absent voter's ballots delivered to the presiding judge of the precinct or special judge appointed by the board of elections shall be handled as follows: The election officials shall compare the signature of the elector on the outside of the identification envelope with the signature of that elector on the elector's registration form and verify that the absent voter's ballot is eligible to be counted under section 3509.07 of the Revised Code. Any of the precinct officials may challenge the right of the elector named on the identification envelope to vote the absent voter's ballots upon the ground that the signature on the envelope is not the same as the signature on the registration form, that the identification envelope statement of voter has not been completed, or upon any other of the grounds upon which the right of persons to vote may be lawfully challenged. If no such challenge is made, or if such a challenge is made and not sustained, the presiding judge shall open the envelope without defacing the statement of voter and without mutilating the ballots in it, and shall remove the ballots contained in it and proceed to count them.

Sec. 3509.07. If election officials find that the statement accompanying an absent voter's ballot or absent voter's presidential ballot is incomplete or insufficient, that the signatures do not correspond with the person's registration signature, that the applicant is not a qualified elector in the precinct, that the ballot envelope contains more than one ballot of any one kind, or any voted ballot that the elector is not entitled to vote, that Stub A is detached from the absent voter's ballot or absent voter's presidential ballot, or that the elector has not included with the elector's ballot any identification required under section 3509.05 or 3511.09 of the Revised Code, the vote shall not be accepted or counted. The vote of any absent voter may be challenged for cause in the same manner as other votes are challenged, and the election officials shall determine the legality of that ballot. Every ballot not counted shall be endorsed on its back "Not Counted" with the reasons the ballot was not counted, and shall be enclosed and returned to or retained by the board of elections along with the contested ballots.
Sec. 3511.05. (A) The director of the board of elections shall place armed service absentee voter’s ballots sent by mail in an unsealed identification envelope, gummed ready for sealing. The director shall include with armed service absentee voter’s ballots sent by facsimile machine an instruction sheet for preparing a gummed envelope in which the ballots shall be returned. The envelope for returning ballots sent by either means shall have printed or written a form substantially as follows: on its face the following form substantially as follows:

Sec. 3511.11. (B)(1) Boards of elections shall notify armed service absentee voters of the presence of any deficiency regarding their armed service absentee voter’s ballot identification envelope that hinders the ballot contained within from being counted, when the voter is otherwise eligible to vote. Once notified, these armed service absentee voters must be given the opportunity to correct any omission or error regarding their armed service absentee voter’s ballot identification envelope through the tenth day after the election. Boards of elections shall notify the absent voter by mail, telephone or email that the voter’s armed service absentee ballot will be rejected unless the voter corrects the deficiency.

Except as otherwise provided in division (B)(2) of this section, if a board of elections determines, prior to the close of the polls on the day of the election, that the statement of voter on an armed service absentee voter’s ballot identification envelope is incomplete, the board shall notify the armed service absentee voter by mail or by telephone that the voter’s armed service absentee voter’s ballot will be rejected unless the voter completes the statement prior to the close of the polls on the day of the election.

(2) A board of elections shall not be required to notify voters under division (B)(1) of this section for any armed service absentee voter’s ballots that the board receives after the eighth day before the day of the election.

If a board of elections chooses to notify voters under division (B)(1) of this section of incomplete armed service absentee voter’s ballot envelope statements for armed service absentee voter’s ballots received after the eighth day before the day of the election, the board shall notify all voters whose armed service absentee voter’s ballot envelope statements are incomplete that their armed service absentee voter’s ballot envelopes will be rejected unless the voter completes the statement prior to the close of the polls on the day of the election.

Observers
We agree that the Supreme Court decision to allow observers during in-person early voting creates an elections administration void in Ohio. For that reason, we support efforts to expressly allow observers during that period and to create a clear process for designation of observers. However, this provision must be made in a way that does not violate the Ohio Constitution.

We recommend the following amendments to SB 8:

- Define “during the casting of ballots” to reflect the casting, not voting, of an absentee ballot. Casting of an absentee ballot consists of a voter’s being issued a ballot, filling out the ballot, and
returning the ballot in one transaction. Failure to make this change would likely place
the observer statute in direct conflict with the Ohio Constitution.

- Alter the observers code of conduct to limit interactions with voters, but permit interaction with
  precinct elections officials so long as the interaction does not interfere with the officials' prescribed duties.

Recommended language:

Sec. 3501.90. (A)(1)(c) A violation of division (G)(2)(a) of section 3505.21 of the Revised Code.

Sec. 3505.21. Sec. 3505.21. (A) As used in this section, “during the casting of the ballots”
includes any time during which a board of elections permits an elector to vote receive, fill out, and
return an absent voter’s ballot in person at the office of the board or at another site designated by the
board under division (C) of section 3504.10 of the Revised Code and any time ballots may be cast in a
precinct polling place on the day of an election.

(G)(1) An observer who serves during the casting of the ballots shall only be permitted to do the
following:

(a) Watch and listen to the activities conducted by the precinct election officials and the
interactions between precinct election officials and voters, as long as the precinct election officials are
not delayed in performing the officials' prescribed duties and voters are not delayed in casting their
ballots;

(b) Make notes on the observer’s observations other than by means of a photographic, video, or
audio recording.

(2)(a) No observer who serves during the casting of the ballots shall interact with any precinct
election official or with any voter while the observer is inside the polling place, within the area between
the polling place and the small flags of the United States placed on the thoroughfares and walkways
leading to the polling place, or within ten feet of any elector in line waiting to vote, if the line of electors
waiting to vote extends beyond those small flags.

(b) An observer does not violate division (G)(2)(a) of this section as a result of an incidental
interaction with a voter or a precinct election official, such as an exchange of greetings.

Statewide Voter Registration Database

Rather than start from scratch, we rely in the following sections on some of the specific language of
HAVA relative to the interplay between the Ohio Secretary of State and the Ohio BMV.

Sec. 3509.15. (H)(1) The secretary of state and the registrar of motor vehicles shall enter into an
agreement to match information in the statewide voter registration database with motor vehicle
records for the purpose of verifying the accuracy of the information in the statewide voter registration
database and the information provided on voter registration applications. Information in the database of
the registrar of motor vehicles to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration, as required under 42 U.S.C. 15483.

(2) The secretary of state shall establish, by rule adopted under Chapter 119 of the Revised Code, a process for notifying boards of elections of any relevant nonmatch that the secretary of state received under division (l)(1), notify the applicable board of elections of any mismatches between voter registration information and motor vehicle records that the secretary of state received under division (l)(3) of this section regarding persons registered to vote in the applicable county.

(3)(a) Upon notification of mismatches by the secretary of state under division (l)(3) of this section, the board of elections shall notify each affected voter of the mismatch, regarding the voter's information. The board shall provide the voter with the opportunity to verify and correct the mismatched information.

(3)(b) The secretary of state shall establish, by rule adopted under Chapter 119 of the Revised Code, procedures for boards of elections to process relevant nonmatches to notify affected voters of mismatches and to provide those voters with the opportunity to verify and correct the mismatched information under division (l)(3)(a) of this section. Rules adopted under this division shall conform to the extent practicable with the voluntary guidelines for implementing statewide voter registration lists adopted by the United States election assistance commission.

(4) Notwithstanding any provision of the Revised Code to the contrary, a mismatch nonmatch shall not be the sole reason for the removal of a voter from the statewide voter registration database, nor shall it be the sole reason for requiring a person to vote a provisional ballot, nor shall it be the sole reason for failing to provide a regular ballot to an otherwise eligible voter.

(5) As used in division (l) of this section, "mismatch" means any of the following data fields that do not substantially comply with one another with respect to a particular individual: when information in the statewide voter registration database is compared to motor vehicle records when the secretary of state matches information in the database of the statewide voter registration system with information in the database of the registrar of motor vehicles, to the extent required to enable verification of the accuracy of the information provided on applications for voter registration:

(a) Driver's license number (if applicable);
(b) Last four digits of Social security number (if applicable);
(c) Date of birth;
(d) Name (first name or derivative, and last name).

If you have any questions about these recommendations, please contact me or Mike Stinziano, Deputy Assistant Secretary of State, at your convenience at 466-6998. Thanks again for considering these recommendations and for working to enhance elections in Ohio.
Respectfully yours,

Jennifer Brunner, Secretary of State

cc:  
The Honorable Jim Hughes, Chair, State and Local Government and Veterans Affairs Committee  
The Honorable Jimmy Stewart, Vice Chair, State and Local Government and Veterans Affairs Committee  
The Honorable Teresa Fedor, Ranking Minority Member, State and Local Government and Veterans Affairs Committee  
The Honorable John Carey, State and Local Government and Veterans Affairs Committee  
The Honorable Timothy Grendell, State and Local Government and Veterans Affairs Committee  
The Honorable Ray Miller, State and Local Government and Veterans Affairs Committee  
The Honorable Nina Turner, State and Local Government and Veterans Affairs Committee  
The Honorable Mark Wagoner, State and Local Government and Veterans Affairs Committee  
John Barron, Senate Majority Legal Counsel  
Peter Casey, Senate Minority Legal Counsel  
Marilyn Jacobcik, President, Ohio Association of Election Officials  
Jeanette Mullane, Vice President, Ohio Association of Election Officials