



June 5, 2006

Honorable Kenneth J. Blackwell
Ohio Secretary of State
Attn: Legal Services – 16th Floor
180 East Broad Street
Columbus, OH 43215

RE: Comments on Proposed Rules 111-12-01 through 111-12-06

Dear Secretary Blackwell:

Please accept these comments on behalf of Advancement Project on the proposed new rule interpretation that incorporates H.B. 3. Advancement Project is a non-partisan, national civil rights and racial justice organization. Advancement Project's Voter Protection Program is actively involved in a partnership with local and national organizations that conduct voter registration drives in Ohio. Our experience in Ohio gives us concern about the proposed interpretation and its impact on voters and third parties receiving compensation to assist prospective voters with registration.

Currently, our Voter Protection Program has staff members focusing on voter registration activities in Ohio, including two natives of Ohio: Donita Judge, an Advancement Project staff attorney, and Deborah Barksdale, an Advancement Project local voter protection advocate, who is a resident and registered voter in Columbus, Ohio. For these Ohio natives, Problems of Democracy, (P.O.D.) was more than a required course in high school; it was an introduction to the essential values of good citizenship, including our right to vote in Ohio. Though that class is no longer in the curriculum, we have never forgotten its lessons, including the role of government in protecting the right to vote.

Additionally, both staff members were on the ground in Ohio in 2004, partnering with the Ohio Voter Protection Coalition to protect the rights of Ohio voters and to minimize voter disenfranchisement. We observed first-hand the disenfranchisement of Ohio voters in the 2004 November general election. I am here today to offer help in preventing disenfranchisement in upcoming elections.

In compliance with the newly enacted H.B. 3, the Secretary of State produced the Compensated Registrars Manual for use in training compensated third parties engaged in voter registration activities in Ohio. In this training manual, the Secretary of State provides specific instructions

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for third parties assisting with voter registration in Ohio. The language provides, in pertinent part:

If you have been entrusted with a completed voter registration form, you must return the applicant's voter registration form *directly* to the office of a county board of elections or the Secretary of State. You shall not, under penalty of law, return the completed form to any other person, group, organization, office or entity. R.C. 3599.11(C) (emphasis added).

You must submit the completed voter registration form(s) not later than the 10th day after the applicant has completed the form, or before the 30th day before the election, whichever is earlier. If you receive the form on the 31st day before the election, you must submit the form within 10 days.

The voter registration training materials produced by the Secretary of State do not further the intent of the legislature in passing H.B.3. In fact, the materials are clearly inconsistent with the law in a manner that creates public confusion with it.

Relevant Statutory Provisions

Chapter 3503.19, Methods of Registration or Changing Registration

Compensated Third Parties Returning Another Person's Application.

A person who receives compensation for registering a voter shall return any Registration form entrusted to that person by an applicant to any board of Elections or to the office of the secretary of state.
O.R.C. § 3503.19(B)(2)(c).

Chapter 3599, Offenses & Penalties

Compensated Third Parties Returning Another Person's Application

[N]o person who receives compensation for registering a voter shall knowingly return any registration form entrusted to that person to any location other than any board of elections or the office of the secretary of state.

Whoever violates this division is guilty of election falsification, a felony of the fifth degree . . .

O.R.C. § 3599.11(C)(2)(2005).

Interpretation

Our review of the relevant statutes and the Compensated Registrars Training Manual reveals a disconnect between the language in the training manual and the statute it purports to interpret. Based on the language in the training manual, a third-party assisting a person to register to vote

is required to return the completed voter registration application to the secretary of state or board of elections “directly,” the implication being that the form must be returned immediately after it is completed. Yet, in the same section, the rule requires the completed forms to be submitted *not later than the 10th day after the applicant has completed the form, or before the 30th day before the election, whichever is earlier*. If the form must be returned directly, then the 10-day limit becomes meaningless.

Rather, we submit that the correct understanding of the statutes and training manual when read together is that they simply limit the locations where compensated persons can turn in voter registration applications and penalizes persons who fail to adhere to these rules. The applications must be turned in “directly” to official election-related sites, limited to board of election offices or the Secretary of State’s office, not to the motor vehicles, social service agencies, or libraries that are available to individual voters or non-compensated registrars. The submission of the applications must be within ten days.

If the contrary interpretation of the training manual were operative, then quality control procedures routinely engaged in by third-party voter registration organizations would be impossible. Returning the forms to the county or state offices “directly”, meaning immediately after their collection, would preclude double-checking for completeness and/or contacting the applicant for clarification or confirmation of any ambiguous information—the kinds of procedures that are of invaluable help to election officials as they provide another layer of review before the forms even get to them. This statute was clearly never intended to limit quality control activities, but unfortunately its vague language has led to a strained and irrational interpretation by some state officials.

Furthermore, under the statute’s penalty section, compensated third-party persons who fail to comply with the rules as set forth in the statute and/or the Compensated Registrars Training Manual are guilty of election falsification, a fifth degree felony. This is a severe penalty. It could only be intended to reach those criminal actions that deny people an opportunity to vote. It would be unjust and unwise for any interpretation of this section to apply to the well-intended quality control activities that assist eligible people in submitting competently completed voter registration applications.

Left standing, these misinterpretations will have a negative impact on the registration of voters, especially minority and low-income voters. Thus, it is important that the Secretary of State address the interpretations and implications of the proposed administrative rule and clarify its relationship to the return of completed voter registration applications by compensated persons.

The Secretary of State should set forth clarifying amendments that will not overly burden minority and low-income voters who disproportionately attempt to register to vote through third party registration efforts. The rules and requirements should not have a chilling effect on the proper, effective, activities of persons assisting voters registering to vote. We urge the Secretary of State to issue a new proposed rule that will eliminate the combined ill effects of ambiguity and limitations placed on voters and third-parties assisting with voter registration under current interpretations of the law.

Consequences to Voters and Compensated Third-Parties Assisting with Registering Voters

In 2004, on the eve of the close of voter registration for the November general election, a significant number of voter registration applications were deemed incomplete by local election officials in six of Ohio's heavily minority-populated counties: Cuyahoga, Franklin, Hamilton, Lucas, Montgomery, and Summit, when the citizenship box was not checked even though the applicant had sworn under penalty of perjury that she is a citizen. Without intervention from Advancement Project and our volunteers on behalf of thousands of voters, undoubtedly, a significant number of these voters would have been left off the rolls and disenfranchised. This experience taught us that quality control of voter registration applications *before* the forms are submitted to election officials will prevent these types of problems from occurring.

Likewise, the quality control procedures adopted by our election administration partner, Project Vote, for example, which guarantee that applications are completed correctly, is in jeopardy. These procedures require:

[T]he Quality Control team should take each batch of cards through two phases of quality control – the initial phase to check that cards are filled out completely and accurately, and a second phase to call a sample of voters and verify the information on the card. However, before cards reach this stage in the quality control process, there must first be a system that allows the managers of the program to know which volunteer or employee gathered which application.

Ensuring Integrity in Voter Registration Drives, 2, Project Vote, Policy Brief No. 4.

Our Voter Protection Program assists local and national organizations with verification quality control to alleviate the problems of 2004, but only if completed voter registration applications can be scrutinized and followed up at the offices of the organization conducting the voter registration before submission to the secretary of state's offices or the boards of elections.

Recommendation

We respectfully recommend that the Secretary of State clarify the proposed rules. Moreover, we respectfully recommend that the Secretary of State adopt a rule that would permit groups participating in voter registration to conduct quality control through a verification process that can only be achieved once the completed voter registration forms are returned to the organization for review.

On behalf of Advancement Project, we thank you for permitting us to provide testimony and comments on these proposed rules. We sincerely hope that you will act immediately to adopt a Rule that clarifies the legislator's intent in enacting Rule 3599.11(C)(2). Your immediate response is required to guarantee that Project Vote and other organizations engaged in voter registration will be able to revive their voter registration programs and not suffer any further undue burden. More important, immediate action is needed to prevent overly burdening minority and low-income voters who attempt to register to vote with the assistance of organizations engaged in voter registration.

In conclusion, we are aware that the Brennan Center for Justice at New York University School of Law has submitted comments, and we fully subscribe to the legal arguments set forth in their testimony.

Respectfully submitted,

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