



TESTIMONY
H.B. 3

COMMON CAUSE
Cliff Arnebeck, Member Common Cause Ohio Advisory
Board

Before the House Elections and Ethics Committee
The Honorable Jim Hughes, Chair

March 16, 2005

Derek Bok
Chairman

Chellie Pingree
President and CEO

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Chairman Emeritus

John Gardner
Founding Chairman

I am here today on behalf of Common Cause, a nationwide nonpartisan nonprofit advocacy organization founded in 1970 by John Gardner as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest.

Now, with nearly 10,000 members and supporters in Ohio, Common Cause remains committed to honest, open and accountable government, as well as encouraging citizen participation in democracy.

While it appears that the intent of HB 3 is to bring Ohio into compliance with the Help America Vote Act (HAVA), this legislation goes beyond what is necessary with the net result being to further restrict the voting process in at least two specific ways.

Provisional Voting

Common Cause believes that voters should be allowed to cast a provisional ballot for federal or statewide offices even if, for whatever reason, they are not in their own precinct, and that every provisional ballot cast by an eligible voter should be counted. Additionally, it is critical that Ohio fully implements the HAVA-required notification system for voters using provisional ballots and perhaps most importantly, fully trains poll workers on the use of provisional ballots.

In 2004, provisional balloting did not function as the “safety net” that it was intended to be for registered voters whose names did not appear in the registration book. The Help America Vote Act

says that a provisional ballot “shall be counted” if the voter is “eligible under state law to vote,” leaving substantial room for states to establish appropriate regulations regarding the handling and counting of provisional ballots. I am pleased that this body is interested in establishing some of these standards. However, making the counting of provisional ballots cast by registered voters more restrictive violates the spirit of the Help America Vote Act and creates a false promise of a vote counted. As Kay Maxwell, President of the League of Women Voters said at the Moritz College of Law recently, “whether to count the [provisional] vote is a question of eligibility, not one of administrative practice. Eligibility questions go to the status of the individual, such as age and citizenship. It is a mistake to see the physical location from which a provisional ballot is cast as impugning the voter’s eligibility. The physical location is an administrative issue, not an eligibility issue.”

Unfortunately, as currently drafted, HB 3 would allow a voter’s location to determine his or her eligibility, at least in part. HB 3 defines "jurisdiction" as the precinct in which a person is legally qualified to vote for the purpose of determining whether or not one is eligible to cast, and have counted, a provisional ballot. In our opinion, "jurisdiction" should be defined as the county in which one is legally qualified to vote. The county board of elections, not the precinct, is responsible for maintaining and administering voters’ registration records and we should work within this framework in administering provisional ballots.

Our recommendations are to change the definition of jurisdiction in section 3505.181 line 354 to the “county in which a person is a legally qualified elector” and to add clear standards and

procedures for issuing, processing and counting provisional ballots that make it likely more, not fewer, qualified voters will have their votes counted.

Recount Standards

Common Cause supported the Ohio recount as a way to review and audit what was clearly a troubled election process. Through our support of the recount, we learned that the timeline allowed for a recount, after certification and before the safe-harbor date, is inadequate. Slow initial counts and slow recounts created at least the perception of foot-dragging, although the strain on local boards of elections and vote counters was significant. In light of this recent history, it is our preference that the recount process be examined and standardized in a way that allows the process to be meaningful. However, H.B. 3 appears to move in the opposite direction, stripping what recount standards currently exist and failing to correct the moot timeline.

Specifically, H.B. 3 will eliminate existing standards regarding how and when the board of elections determines the cost of a non-automatic recount. The bill would require the applicant for the recount to pay the entire cost of the recount if the results do not change the results of the election, but removes requirements that the cost be determined and the money be posted by the applicant prior to the start of the recount. There is a clear need to reform the recount process, but H.B. 3 removes the current standards regarding how and when costs are assessed, potentially leaving the door open for subjective or punitive charges.

Additionally, H.B. 3 fails to address the timing problem around recounts - namely that for presidential elections, there is just not enough time to complete the recount and contest process before the federal safe harbor date for conclusively resolving controversies about the choice of presidential electors. In 2004 the safe harbor date was December 7th.

We recommend that you reinsert the language requiring that recount cost be determined and posted by the applicant prior to the start of the recount. We also recommend you develop clear standards by which to assess recount fees based on historical data and voting equipment to be recounted. Additionally, we believe you should adjust the recount timeline to ensure that all recounts and challenges can be fully executed in all applicable counties well before the safe harbor date and the meeting of the Electoral College.

Thank you for your time today and for considering these important issues. As a supplement to our testimony on H.B. 3, we are submitted an outline of our election reform agenda which outlines our positions on issues raised in H.B. 3 and other bills before this committee. Common Cause would be pleased to work with you on any of the above recommendations.