



TESTIMONY
Substitute H.B. 3

COMMON CAUSE
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Common Cause Ohio Advisory Board

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

May 10, 2005

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Common Cause is 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 over 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.

We appreciate this opportunity to submit testimony regarding substitute H.B. 3. Our philosophy for improving elections is simple; we support easing barriers to voting, election administration designed for the voters, openness throughout the process, nonpartisan supervision of elections and making the way we vote a higher priority at all levels of government. We commend Mr. DeWine and this committee for its continued interest in election reform. However, as we stated in our testimony of April 27th, the sheer length and breadth of this legislation presents an immediate obstacle to public understanding and comment and makes effective analysis of its impact difficult. For this reason, today we will focus on key provisions of the bill that must be changed and additional provisions that must be added if you are to enact real reform this year.

Key Provisions of the Bill That Must Be Changed

We begin with the premise that elections in Ohio should be administered in ways that make the voting process as accessible and easily navigated as possible. To that end, we recommend that information given to the voters be clear and comprehensive. It should be incumbent on election officials and poll workers to help voters who lack information, are misinformed, or are confused; a

lack of information should not penalize the voter or jeopardize that voter's ability to cast a vote that is counted.

We continue to see problems in critical areas – problems that, if left unchanged, may do more harm than good for Ohio voters. While we have raised a number of issues over the last few weeks, our comments today center around two key issues that present some special problems: provisional voting, and voter registration and the confirmation process.

Provisional Ballots

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. We also strongly believe that every provisional ballot cast by an eligible voter should be counted. Substitute H.B. 3 currently defines “jurisdiction” as the precinct in which one is qualified to vote. This definition is too narrow and would cause qualified voters who show up at the wrong precinct – often through no fault of their own – to cast a provisional ballot that will not be counted, regardless of the reason they appeared at the wrong precinct. We feel strongly that, for purposes of processing provisional ballots, “jurisdiction” should be defined as the *county* in which one is registered to vote, instead of the *precinct* in which one is registered.

In addition to this critical change, it is important 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, including establishing the definition of “jurisdiction.” However, making the counting of provisional ballots cast by registered voters more restrictive violates the spirit and intention of the Help America Vote Act and creates a false promise of a vote counted.

Related to this correction is the need to make it clear in substitute H.B. 3 that poll workers must inform voters of where they are registered to vote. The current language states that poll workers “may inform” voters who appear in the wrong precinct of where they should vote and their right to a provisional ballot. We feel strongly that this should say “shall inform” voters of this information and these rights. Clear expectations and requirements regarding voters’ access to provisional ballots and correct information about their own registration should be a basic component of the elections system.

Voter Registration

Voter registration is a second critical area where at least three specific changes are needed if substitute H.B. 3 is to constitute solid election reform. First, substitute H.B. 3 specifies criminal charges for *paid* workers who fail to turn in voter registration cards within ten days, but apparently requires no accountability for unpaid workers or volunteers who fail to turn in registration cards. Substitute H.B. 3 should establish a standard requirement turnaround time for all election workers handling voter registration cards, not just a selected group.

Second, the new burdens that would be placed on groups doing voter registration drives, such as the requirement that any person being paid to do voter registration work must register with election officials in each county where s/he will be working, could have a chilling effect on activities that increase the number of voters participating in the political process and should not be included in this bill. The 2004 elections saw the greatest increase in voter participation since 1968, due, in significant part, to organizations doing non-partisan voter registration work around the country. The very important work that these organizations have done to increase citizen participation, especially among historically underrepresented communities, strengthens democracy and benefits everyone. These organizations' work should be encouraged, not discouraged.

Third, substitute H.B. 3 requires that if change of address or change of name forms are returned to boards of elections as undeliverable, the voter is required to vote by provisional ballot even if the voter produces the proper identification and proof of residence at the polling place on Election Day. Voters that have the required identification should be allowed to vote with a regular ballot.

Finally, how voter registration is handled is a crucial part of the voting experience and at the heart of many Election Day problems. In 2000, a MIT/CalTech study estimated that 3 million voters were disenfranchised because of registration problems. Registration problems appear to have been the most frequently encountered problem in 2004 – phone hotlines such as Common Cause's received thousands of calls about registration problems.

Simply put, registration issues continued to prevent people from voting and it is critical that this committee address the various problems with registration in a careful and thorough manner. The voter registration process, from the time a voter completes an application to the time he or she appears at the polling place, should be reviewed in its entirety, particularly as Ohio develops its statewide voter registration database. The process should be designed to foster greater voter participation and removing obstacles voters' face should be a primary goal.

Key Provisions That Should Be Added

In addition to these crucial changes to the existing text of substitute H.B. 3, there are three important reforms that should be enacted as soon as possible.

First, poll worker training, like voter registration, is at the heart of voters' experience on Election Day, and all too often we ask too few people to do too much without adequate training or resources on Election Day. Improved and standardized poll worker training should be included in substitute H.B. 3 and the legislature should make available the resources needed to carry out such a program.

Second, government officials in charge of running elections should not be engaged in partisan political campaigns if we are to have elections voters can trust. We would like to see Ohio prohibit non-elected election administrators from participating in partisan political campaigns and limit elected officials to participation in their own campaigns.

Third, ex-felons should be educated about their right to register and vote upon being released from prison. Although voting rights for Ohioans convicted of felonies are automatically restored after

release from incarceration, a recent survey by the Prison Reform Advocacy Center showed that almost 25% of Ohio's county election boards misinformed callers inquiring about the right to vote, mistakenly telling them that ex-felons could not vote while on probation or parole. To help address this problem, substitute H.B. 3 should include a provision that would require government officials to inform ex-offenders that their voting rights have been restored and to provide them with a postage prepaid voter registration application during the release process.

Final Considerations and Closing

There are some provisions that have been rumored to be under consideration for inclusion in substitute H.B. 3 and there are two provisions in particular that we hope you will not add to this bill. Common Cause applauds Ohio's law, as passed a year ago in H.B. 262, that requires, beginning with the first federal election occurring after January 1, 2006, all direct recording electronic voting machines to include a voter verified paper audit trail. This provision helps give voters confidence that their votes will be counted as the voters cast them. Elections are only successful when the electorate has confidence in the accuracy of the results; this measure goes toward ensuring that confidence. While Ohio was one of the first states to pass such legislation, there are now some 18 states that have passed similar laws, and another 18 states have such laws under consideration. We hope that you will not repeal or otherwise weaken this important requirement.

With the aim of increasing the accessibility of Ohio's elections to voters, we also hope that overly stringent ID requirements will not be adopted. There have been few instances of documented

voter fraud, and harsh ID requirements, such as those requiring all voters to show a photo ID every time they vote, place a burden on older people who don't drive and others who don't require a driver's license. Even if a no-cost photo ID program is offered, there is still the issue of convenience; many people who don't drive would find it difficult to get to a central processing place where such IDs would be provided. In addition, privacy advocates are concerned about the ramifications of such a requirement. Once a voter has legally registered, it is unnecessary to continue to ask that an ID be presented. With the difficulties experienced on November 2, 2004, in processing voters under the current system, an additional ID requirement would only increase the lines and further alienate voters. Therefore, we strongly urge you not to amend H.B. 3 to include additional ID requirements.

We believe there are many improvements that must be made to Substitute H.B. 3, but we have focused on the most glaring omissions and the areas most in need of improvement to achieve a comprehensive election reform proposal. Thank you for your time today and for considering these important issues. After reviewing this sixth version of this substitute legislation, we are unable to support enactment of the bill in its current form, but Common Cause looks forward to working with you to ensure that Ohio becomes a model for elections in the nation.