

Greater Cleveland Voter Coalition
POSITION PAPER ON PROVISIONAL BALLOTS
(March 4, 2007)

Issue: Rejection of total vote if cast in the “wrong precinct”

Problem (research findings bolded):

The Help America Vote Act states that provisional ballots shall be counted if the voter is in the "correct jurisdiction." In November 2004, Ohio interpreted "correct jurisdiction" to mean "correct precinct" and in 2006, HB3 codified this interpretation as Ohio law. **Because the state only counted provisional ballots cast in the correct precinct, about 10,500 provisional ballots were rejected in 2004 and an estimated¹ 11,600 ballots in 2006. In Cuyahoga County in 2004, about 52% of this group of rejected provisional ballots were cast in the correct polling place², and, in the 2006 General Election, 909 of the 2,541 or 36% fell into the same category. Statewide, in 2006, 32% were in this same category** using data from 12 counties that determined this class of voter. Most of these cases were probably due to poll worker failure to inform the voter. Many of the remainder were likely due to registration errors on the part of the BOE or the voter, as detailed in the GCVC white paper on Registration problems. In addition, occasional failures of the BOE poll-locator website gave voters erroneous polling places. Address errors may account for many of the remaining rejected ballots.

In states that have a broader definition of "jurisdiction" than Ohio, about 10% more provisional ballots were counted (election.org study). This percentage fits with Ohio's 10,500 rejected ballots in 2004 and 11,600 in 2006, which constitute about 7.5% and 9%, respectively, of all provisional ballots cast.

If Ohio interpreted "jurisdiction" to mean "county," (as is the practice in Pennsylvania) rather than "precinct," many of the 10,500-11,600 disenfranchised Ohio voters would have had their votes count. **In Pennsylvania's 2004 General Election, about the same number of presidential votes were cast statewide as in Ohio, but 11,700 provisional ballots cast in the wrong precinct were “partially counted” (for all but precinct-specific issues).** This state-to-state comparison shows that Ohio's law, which denies the **total** provisional vote to those who cast their votes in the wrong precinct, does not prevent voters from making this mistake: the same percentage of voters make this mistake in Pennsylvania, where the penalty is only a loss of precinct-level races or issues.

¹ Telephone survey of results from the 2006 General Election in 56 counties in which 91,764 provisional ballots (70% of the 129,432 total provisional ballots cast statewide). Estimates of rejected provisional ballots for “wrong precinct” for the entire state were made by multiplying the number of such rejected ballots reported in the 56 counties (8,220) by the factor (129,432 / 91,764).

² <http://ohiovigilance.org/Counties/Cuyahoga/Analysis/CuyWrongPrecinctSummary.pdf>

Proposal:

- A change in Ohio law is necessary. As in 17 other states, Ohio should accept “partial” provisional ballots cast in the correct county, even if cast in the wrong precinct. The Board of Elections can eliminate votes on precinct-specific issues if a voter casts their provisional ballot in the wrong precinct.
- Voters choosing to vote in a precinct other than their home precinct must be informed that votes will be counted only in those contests for which they are eligible to vote (all statewide and countywide contests, and all appropriate district contests).
- Establish accountability of poll workers to be sure:
 - Voters are directed to the correct precinct;
 - Voters are informed that under present law, their votes will not be counted if they do not vote in the correct precinct. There must be a check-off indicating that the voter has been so informed.
 - Poll workers who allow a voter to cast a provisional ballot in the wrong precinct without directing them to the correct precinct or without informing them that their ballot will not count (under current ORC) should be given a warning the first time this happens and should be dismissed the second time.

Issue: Provisional ballots rejected because voter is deemed “not registered”

See Voter Coalition white paper on Voter Registration for issues and proposals related to improper data base entry of voter registration applications, and incomplete or inadequate search protocols, both of which can cause inappropriate rejection of provisional ballots.