

GCVC POSITION PAPER ON PROVISIONAL BALLOTS AND SB3

Issue: Provisional Voting as stated in HB3 and voted out of the House of Representatives

Problems:

- The Help America Vote Act states that provisional ballots should be counted if the voter is in the "correct jurisdiction." In November 2004, Ohio interpreted "correct jurisdiction" to mean "correct precinct." Because the state only counted provisional ballots cast in the correct precinct, about 10,500 provisional ballots were rejected. At least half of the rejected ballots in Cuyahoga County were cast at the correct polling place. (A polling place might include more than one precinct.) Address errors may account for the remaining rejected ballots. Therefore, it is likely that these 10,500 rejected ballots should have been counted. 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. 10,500 are about 7.5% of all provisional ballots cast in Ohio during the November 2004 election.) If Ohio interpreted "jurisdiction" to mean "county," rather than "precinct," many of the 10,500 disenfranchised Ohio voters would have had their votes count.

Current HB3: Provisional Voting as stated in HB3 and voted out of the House of Representatives:

- Creates one provisional ballot affirmation statement requiring the HAVA standards for voting and allows for additional voter information.
- Creates a provisional voting structure under the requirements of HAVA and specifies that elections officials may direct voters to their correct precincts.
- Creates a system of verifying and counting provisional ballots based on election boards' voter information and the information reported in the provisional affirmation.
- Defines jurisdiction as precinct.
- Requires poll workers to sign each provisional ballot form and verify the type of ID provided with provisional ballot if any.
- If a registration confirmation is returned to the Board of Elections, the poll book will be flagged and that voter must vote provisionally.
- Establishes the statewide voter registration database as a public record and adds additional requirements on the database including daily updates by the county Board of Elections.

- As related: The Secretary of State will be required to develop rules for removing ineligible voters and creating a uniform registration list system.

Proposal:

- As in 17 other states, Ohio should accept provisional ballots cast in correct county. The Board of Elections can eliminate votes on precinct-specific issues if a voter casts their ballot in wrong precinct. If a provisional ballot is cast in the correct polling location, but not in the correct precinct line, it should be counted.
- Voters must be given the choice whether to vote a full regular ballot in their home precinct or to vote a partial provisional ballot in any other precinct in their home county. Voters offering to vote in a precinct other than their home precinct must be notified 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). The purpose of provisional ballots is to provide a fail-safe method of assuring that no eligible voter is denied the right to vote because of bureaucratic error.
- Improve procedures, recruitment and training of poll workers and county Boards of Election employees while providing adequate resources. The approach to training poll workers must be revised, taking into consideration the breadth and depth of knowledge required of poll workers. There must also be ongoing professional training of Boards of Election staff members to make sure that they are providing accurate, helpful, up-to-date information to voters and the public in general. Rejection of provisional votes is a bipartisan issue. The number of rejected provisional votes of Republicans was 16,300 (47%) and the number of rejected provisional votes of Democrats was 18,000 (51%).

See attachment "Facts to Ponder About the 2004 General Election in Considering House Bill 3" for more information regarding the provisional ballot issue.

**FACTS TO PONDER ABOUT THE 2004 GENERAL ELECTION
IN CONSIDERING HOUSE BILL 3**

Norman Robbins, nxr@cwru.edu, 8-12-05 version

PLEASE NOTE: This report will be continuously updated as new information is added. Please replace any previous version you may have (note the date) with this current version. Updates will be posted at:

<http://www.clevelandvotes.org/news/reports/facts.html>

WRONG PRECINCT PROBLEM

Number of Ohio voters whose provisional ballots were rejected because they were cast in the wrong precinct¹ **10,500**

Explanation: In Cuyahoga County, about 52% of this group of rejected provisional ballots were cast in the correct polling place², and, therefore, were due to poll worker failure to inform. Many of the remainder are likely due to registration errors on the part of the BOE or the voter, as explained above, and to occasional failures of the BOE website, which gave voters erroneous polling places (3 October cases documented). Designation of “jurisdiction” for voting as “county” rather than “precinct” would restore the vote to a majority of these 10,500 disenfranchised voters.

Number of Pennsylvania voters whose provisional ballots were “partially counted” (for all but precinct-specific issues) because they were cast in the wrong precinct (total presidential votes cast in PA almost the same number as in Ohio) **11,700**

Conclusion: In Pennsylvania, votes cast in the wrong precinct were saved whereas, in Ohio, almost the same number of votes were rejected. Also, it does not appear that Pennsylvanians availed themselves of this option more than Ohioans who voted erroneously in the wrong precinct.

ARE PROVISIONAL BALLOT REJECTIONS IN CUYAHOGA COUNTY SIMILAR TO, OR DIFFERENT FROM, OTHER COUNTIES?

The total provisional ballot rejection rate in Cuyahoga County (34%) was third highest in the state (behind Lucas at 41% and Belmont at 39%) but was trailed closely by 4 other counties with 30% or more rejection (including Hamilton County).

The major reasons for provisional ballot rejection in Cuyahoga County were similar to those of 17 other counties that were polled:

For “not registered”: Cuyahoga.....	69% of rejected ballots
17 other counties.....	61%
For “wrong precinct”: Cuyahoga.....	27% of rejected ballots
17 other counties.....	31%

¹ See reference 1.

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

However, within counties, certain subgroups of citizens are at greater risk of rejection. Change of address problems, triggering provisional ballot usage, are likely to be higher in populations that move more frequently; youth, low income, and minorities³. For instance, in Cuyahoga County, provisional ballot rejection in precincts with over 90% black populations was nearly twice as great as in precincts that are 10% or less black.

Conclusion: Total percent of provisional ballots rejected in Cuyahoga County were in the state's highest group but reasons for rejection were similar to other counties. Therefore, the detailed analysis of reasons for rejection in Cuyahoga County given on pages 1 and 2 are likely to apply to most other Ohio counties; i.e., Cuyahoga County results were not atypical.

DID REJECTED PROVISIONAL BALLOTS LOSE MORE VOTES FOR DEMOCRATS OR REPUBLICANS IN OHIO IN 2004?

Calculated number of rejected provisional votes of Republicans⁴ **16,300 (47%)**

Calculated number of rejected provisional votes of Democrats **18,000 (51%)**

Conclusion: Rejection of provisional votes is a bipartisan issue. Correction of the errors noted above, as well as using "county" as the "jurisdiction" will prevent disenfranchisement of voters of both parties.

Ohio enforced NVRA public assistance mandate as well as Tennessee⁵ ... **up to 180,000**

³ http://www.clevelandvotes.org/news/reports/Analyses_Full_Report.pdf

⁴ For each county, the number of rejected provisional ballots (information from Sec. of State Office) was multiplied by the percent of total votes cast for Kerry or Bush to give the estimated number of rejected provisional votes in that county for each candidate. Next, for each of these two categories, the sum of rejected provisionals for all 88 Ohio counties by Kerry or Bush supporters was determined.

⁵ These numbers were derived by taking 16.3% of Ohio's 2,834,685 applications reported for 2002-2004 (ref. 19), deducting the 1.4% (i.e. 38,821) that were submitted by Ohio public assistance agencies, and then assuming that the percent of these that were new registrations (54%) and changes of address (33%) were the same as those reported overall by Ohio in reference 19. The total number for the 2 years (2002-2004) was divided by 2 to get an annual number of applications. However, many of these applicants could have been registered by Registration groups that were targeting low-income populations.