

**Statement of Shaun Tucker, African American Outreach Coordinator,
People For the American Way, in opposition to H.B. 3
December 6, 2005**

Good Afternoon. Thank you Mr. Chairman. I want to thank the Committee for allowing me to speak to you today. My name is Shaun Tucker, and I am the African American Outreach Coordinator for People For the American Way (PFAW), a national non-partisan, nonprofit organization formed over 20 years ago to promote the civil rights and civil liberties of all Americans. Our founders were religious, civic and business leaders who were dedicated to the values of fairness and tolerance. They believed passionately that every American enjoys the same rights and responsibilities in our democratic society, and that every American deserves equal justice, equal opportunity, and equal access to ballot box. I am speaking today on behalf of our 24,000 members in Ohio.

While we applaud election reforms efforts in general, and attempts to correct problems with the voting system that resulted in the disenfranchisement of Ohio voters in November 2004 in particular, we do not believe that H.B. 3 effectively meets these goals. Effective election reform legislation requires a comprehensive discussion of all of the problems and proposed solutions, and should not be rushed through the Senate for the sake of expediency.

For this reasons and those outlined in detail below, People For the American Way, along with our allies, the Lawyers' Committee for Civil Rights Under Law, Common Cause Ohio, COHHIO, and the Ohio League of Women Voters and others, oppose H.B. 3. However, we welcome the opportunity to work with the legislature to correct some of the problems with the bill.

Voter Identification

In order for an electoral system to have integrity and have the confidence of Ohio voters, People For the American Way believes that ALL eligible voters and ONLY eligible voters must have the opportunity to vote and to have their votes counted as cast. In a disturbing trend, some legislatures around the country are enacting laws that unnecessarily require all voters to show photo ID at the polls, purportedly for the purpose of preventing voter fraud. While we are pleased that H.B. 3 does not propose requiring all voters to show photo ID at the polls, the identification provisions in the legislation are problematic, because they are complicated and will result in the increased use of provisional ballots unnecessarily which, as evidenced by the most recent federal election in Ohio, stand a significant chance of being thrown out as invalid. Following the November, 2004 election, more than 22% of the provisional ballots cast statewide were discarded by election officials. H.B. 3 would require voters to present a current and valid photo ID or a copy of a current utility bill, bank statement, government check, paycheck, or other government document showing the voter's name and address. Voters without the required ID would be allowed to vote – after providing the last four digits of their social security number or signing an affidavit – but would be required to vote provisionally. If enacted, these voter ID provisions would represent a significant roll back on voter rights compared to current law, which provides that properly a registered voter whose signature matches that on the poll books can vote without

providing any ID. Instead, H.B. 3's voter ID provisions could potentially disenfranchise thousands of properly registered voters.

Even if voter fraud were a significant problem in Ohio, we believe that enacting more onerous voter identification provisions would not be an effective way to address them – and that the implementation of a dynamic and interactive statewide voter registration database, which would allow election officials to immediately verify the eligibility of voters, would go a long way toward alleviating any potential problems.

Provisional Ballots

H.B. 3 has provisions that would relegate potentially thousands of registered voters to voting by provisional ballot, which would put perfectly valid and legitimate votes at risk of having their votes tossed out. For instance, Section 3501.19 outlines the process by which boards of elections must send to each registered elector in a precinct in which an election is to be held a non-forwardable notice identifying the date of the election and the voter's polling place and precinct location. If the notice is returned to the board of elections as undeliverable, the voter's name will be specially marked on the registration list and, at the first election at which the voter appears to vote after the notice was returned, s/he will be required to provide identification before s/he can vote and will only be permitted to vote by provisional ballot.

We strongly oppose this provision.

The fact that a piece of mail is returned does not provide a reasonable justification for denying a registered voter the opportunity to vote by a regular ballot, especially if the voter shows identification on Election Day. There are numerous reasons why a notice may be returned – for instance, the notice could mistakenly have been picked up by a neighbor without the knowledge of the voter, or it could simply have gotten lost in the mail. We do not see any reason why these pre-election notices cannot be treated like the National Change of Address notices that election officials typically send to voters who are believed to have moved out of their jurisdictions. The election officials' records could still indicate that a notice sent to a particular voter was returned, but when the voter appears to vote, s/he can confirm her/his address and vote by regular ballot. **As written, this provision threatens to penalize properly registered voters because of their failure to respond to a notice that they may never have even received. Furthermore, this provision threatens to run afoul of federal law including the National Voter Registration Act (NVRA) and the Equal Protection Clause of the Fourteen Amendment.**

We also oppose the definition of jurisdiction in H.B. 3 as the precinct and not the county. Limiting this definition to precinct restricts the ability of eligible voters to cast a meaningful ballot. In light of the fact that – via this bill – each county will have access to the statewide voter registration database, we see no need to define jurisdiction so narrowly. Presumably, the statewide database would enable election officials to verify the registration of voters and determine their proper county and voting precinct. **In a situation where a voter is unable to make it to her/his proper precinct before the polls close, we see no reason to not at least permit provisional ballots to be cast and counted for county, statewide and federal races.**

Notification of Restoration of Voting Rights

Voters in Ohio who have been convicted of a felony cannot vote while they are incarcerated, but are re-enfranchised and able to participate in the political process once they are released from prison. We applaud Ohio for its dedication to an open franchise and a spirit of democracy, but it can do better. Ohioans who have committed felonies and served time in prison must be engaged in order to be rehabilitated. Civic participation is one of the many ways to begin this process. Ohio has the structure to allow people with felony convictions to begin rehabilitation through political participation, but it could do even better by providing registration opportunities and voter educational materials to people with felony convictions when they leave prison. A Prison Reform Advocacy Center (PRAC) survey conducted in August of 2004 revealed that 21 of Ohio's 88 county boards of elections misinformed callers inquiring about the right to vote, mistakenly telling callers that ex-felons could not vote while on probation or parole. **Hence, this legislation should require county board of elections to provide voter rights restoration information to felons both at the time of conviction and sentencing and before their release from prison.**

Other Concerns

Registration Drives

We have reservations about a number of the requirements in H.B. 3 that attempt to exercise more control over registration drives in order to better monitor the collection of applications and ensure their timely processing. While we are supportive of the motivation behind these provisions – to better facilitate the collection of registration applications and prevent fraudulent activity, we are concerned about the overreaching and burdensome aspects of these provisions. **These provisions could have a chilling effect on the perfectly legitimate efforts of organizations dedicated to increasing civic participation and engaging historically disenfranchised communities in the political process.**

In particular, Section 3503.14 would require any person who is employed to register people to vote to sign her/his name on each voter registration application gathered and to provide the name of the person/entity who has employed her/him to register voters. We know from experience that this requirement will present a problem in people of color, poor, and other underrepresented communities because of the history of state-sponsored abuse, harassment and discrimination there. Many people in these communities are skeptical of – and reluctant to relinquish personal information to – the government, and would likely choose not to be involved in voter registration activities at all rather than register with the government. While we are relieved that Section 3503.14 provides that the failure to include any of this personal information could not provide the sole basis for rejecting a voter registration application, we are concerned that an overzealous election official might use this provision as justification to challenge otherwise properly completed registration applications, which could unnecessarily delay the timely processing of applications.

Furthermore, the requirements in Section 3503.29 and 3599.11 that every person who receives, or expects to receive, compensation for registering voters must register with every potential county for which s/he might collect voter registrations and return all registration forms to the correct county under penalty of law is unnecessary. Again, we appreciate the apparent intent to limit potential voter fraud, and even support other requirements that those participating in voter registration drives satisfy mandatory training as stipulated by the board of elections. However, we believe that requiring all registration forms to be returned in the correct county is excessive and could have a chilling effect on perfectly legitimate activity.

Challengers

We also question the effectiveness of the challenger provisions in H.B. 3. For instance, Section 3503.24 requires that any challenges brought against a registered voter by anyone other than an election official be made at least 20 days before the election and resolved within ten days of when the challenge is made. We support the limitation that this section places on the ability of any random voter to challenge the right of another voter on Election Day. Yet, we are deeply troubled that this provision creates an opportunity for the due process rights of challenged voters to be denied because of a lack of notice of the challenge hearing by the board of elections. We recommend that this provision be amended to require “*actual notice*” to all challenged voters, so that this situation is avoided and the rights of voters are protected.

Additionally, we have serious reservations about the discretion given the boards of elections to delay a challenged voter’s hearing until after an election, which would require them to vote by provisional ballot on Election Day. The discretionary nature of this provision lends itself to potential abuse. **We recommend either the inclusion of specific guidelines outlining the circumstances under which boards of elections can delay a hearing or simply removing this provision altogether.**

Conclusion

Like Florida’s in 2000, the electoral process in Ohio has been scrutinized in excruciating detail because of the glaring irregularities experienced by voters and the close election results. We in the civil rights community encourage efforts to correct these problems and rebuild the integrity of the electoral process in Ohio. However, the aforementioned proposals in House Bill 3 do little to help us achieve these important goals. We urge this Committee to reconsider these proposals with the goal of enfranchising voters and encouraging civic participation, not restricting this most cherished right to citizens in Ohio. Thank you.