

## **Testimony on Senate Bill No. 380**

*Submitted by Ohio Secretary of State Jennifer Brunner*

Chairman Cates, ranking member Fedor, and distinguished members of the Senate Committee on State and Local Government. I appreciate the opportunity to provide input regarding Senate Bill 380. To date, there has been comprehensive interested party and opposition testimony presented by a diverse group of stakeholders regarding this bill. Rather than take up the committee's time with duplicative oral testimony, I submit the following written testimony herein.

### **THE 2008 ELECTION**

Ohioans have many reasons to be proud of our bipartisan elections system. The Secretary of State's office and local election officials ran what many consider to be the most successful presidential election in Ohio for decades. This result is directly attributable to the partnership between the Secretary of State's office and Ohio's local election officials and almost two years of preparation.

To build on this success, I immediately convened the Ohio Elections Summit to solidify the best practices that led to this success, as well as new best practices that could be implemented to enhance our voting system. Numerous interested parties were in attendance. They included election officials, election experts, advocates, legislators, county commissioners, election law attorneys, and election law academics from across the political spectrum.

This is only the beginning of the discussion. Following the robust and thoughtful deliberations at the Summit, a bipartisan panel and I will work together to create a report with recommendations concerning the administration of Ohio's elections. This report will be submitted to the Governor and the General Assembly for consideration.

### **ELECTIONS ENHANCEMENT PROCESS**

Ohioans deserve a careful, comprehensive deliberation on the issues coming out of the 2008 presidential election. And everyone involved should have time to fully consider any recommendations that result. I believe Senate Bill 380 falls short in this regard. The issues raised by Senate Bill 380 have not been well-vetted in the court of public opinion. In fact, several editorial boards across the state opined that any election reform should go through a deliberative, bi-partisan process<sup>1</sup>. Given the nature of the lame duck session, it would be impossible to fully consider the implications of this bill, the unintended consequences, or the costs associated with administering these sweeping changes to Ohio election law.

### **SUBSTITUTE SENATE BILL 380**

SB 380 is a bill that does more than make mere corrections or tweaks. It makes sweeping changes to very complex issues, and addresses these multi-layered issues in a piecemeal way. It is clear from the comments of the bipartisan participants at the Ohio Elections Summit and the volume of opposition and interested party testimony on this bill thus far, that these purported legislative tweaks are highly controversial and, in their current and anticipated forms, will result in more litigation that will cost Ohio taxpayers money.

### **STATEWIDE VOTER REGISTRATION DATABASE**

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<sup>1</sup> See editorials from the Toledo Blade, Plain Dealer, Akron Beacon Journal, Lima News, Columbus Dispatch, The Courier (Findlay), Dayton Daily News, and The Vindicator (Youngstown).

On the first issue of the statewide voter registration database, SB 380 is premature and problematic. Senate Bill 380 attempts to direct the Secretary of State to operate the Statewide Voter Registration Database in a way the database was not designed to perform. Unfortunately, this bill includes overly-broad and simplified language that could be construed as violating federal law.

Currently, the Ohio Statewide Voter Registration Database (SWVRD) consists of a central database populated by voter registration form data entered by county boards of elections. This is sent as an electronic voter registration packet to the SWVRD and is automatically checked against relevant Ohio BMV and, if necessary, Social Security Administration, information. Any database errors are flagged in the SWVRD. An indication of whether this information matched is available to boards of elections on the SWVRD's Voter Query system. The system currently has been in use since 2006 and is substantially identical to the system developed by the previous administration.

SB 380 requires the Secretary of State to enter into an agreement with the director of the Ohio BMV "to match information in the statewide voter registration database with motor vehicle records for the purpose of verifying the accuracy of the information provided on voter registration applications, as required under 42 U.S. [sic] 15483."

As written, this section is overly broad and could fundamentally alter the relationship between the SWVRD and the Ohio BMV. The current system is active on the Secretary of State side, but passive on the Ohio BMV and SSA sides. This legislation could create an active data checking system, where any change in a state database could trigger a mismatch in the SWVRD.

SB 380 also instructs the Secretary of State to notify boards of "mismatches." Without adequate safeguards in place, this section could lead to eligible voters being challenged or purged for simple database errors. Furthermore, this would place an incredible administrative burden on county boards of elections.

The bill directs the boards of elections to notify voters of mismatches and provide them with the opportunity to correct the mismatched information. This provision does not take into account that "mismatches" may be due to any number of reasons, some of which are outside of voters' control.

#### **ABSENTEE BALLOTS – STYLE AND ELIGIBILITY**

SB 380 attempts to close the overlap between early voting and voter registration in a piecemeal fashion. It looks to hastily end the 5- day overlap period without consideration for the numerous other factors involved with early voting.

SB 380 would make significant changes to how absentee ballot identification envelopes are handled. These changes will lead to a significant increase in the number of absentee ballot requests and absentee ballots cast that are rejected for purely technical reasons. Furthermore, these changes will not enhance efforts to prevent voter fraud. Boards of Elections already have the tools they need to determine the eligibility of ballot requests and ballots cast.

SB 380 changes the form for the absentee ballot ID envelope from substantial compliance to mandatory compliance. The bill also mandates complete compliance with the form on the part of the voter. Under this change, a voter must provide all the information on the envelope and that information must be an identical match with board of elections records. As a result, there is a strong probability of many more absentee ballots being rejected for technical, rather than substantive, reasons.

The bill adds “incomplete” absentee ballot ID envelope statements to the list of items that may be used to challenge a person’s right to vote. It also adds “incomplete” to “insufficient” ID envelope statements to the reasons a board must not accept or count an absentee ballot. This puts form over substance; any omission on the ID envelope, even if immaterial to determining a voter’s eligibility, would result in the ballot being challenged and/or rejected, creating the potential for the needless disfranchisement of a significant number of voters on a mere technicality.

## **OBSERVERS**

Currently, observers are allowed during early voting and on Election Day. The Ohio Supreme Court has ruled that observers must be allowed anytime and anywhere in-person voting is taking place.

One provision in SB 380 redefines “during the casting of ballots” to include any time a person “votes” an absentee voter’s ballot in-person. Article XVII, §1 of the Ohio Constitution defines the dates on which elections shall be held.<sup>2</sup> Absentee ballots are not “cast” until they are “counted”, and no ballot is counted until Election Day.<sup>3</sup> SB 380 redefines when the casting of ballots occurs and thereby, redefines when the election takes place. SB 380’s redefinition of the timing of elections is likely an unconstitutional provision that will lead to costly litigation.

Changes made to Ohio’s observer laws in SB 380 instruct that observers are only permitted to “watch and listen.” The bill explicitly prohibits observers from “interacting” with voters or precinct election officials. This provision very well could have First Amendment implications.

## **CONCLUSION**

The proposed changes in SB 380 are not minor corrections of purportedly ambiguous laws. SB 380’s provisions impact a great many other issues and sections of Ohio’s elections laws. The bill has the potential to negatively impact the entire elections process.

As the chief election officer of the state, the concerns raised in SB 380 weigh heavy in light of our successful elections cycle. I respectfully request that any election legislation be introduced after careful thought and deliberations so that we may offer comprehensive, bipartisan solutions to any issues that we may find.

Thank you for the opportunity to provide interested party testimony on Senate Bill 380.

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<sup>2</sup> Ohio Constitution Article XVII, Section 1 provides that “[e]lections for state and county officers shall be held on the first Tuesday after the first Monday in November in even numbered years; and all elections for all other elective officers shall be held on the first Tuesday after the first Monday in November in the odd numbered years.” Ohio Const. Art. XVII, Section 1.

<sup>3</sup> See *R.C. 3509.06*; see also, *State ex rel. Colvin v. Brunner*, Slip Opinion No. 2008-Ohio-5041.