

August 29, 2024

Honorable Matt Huffman  
President, Ohio Senate  
Ohio Statehouse  
Columbus, Ohio 43215

Honorable Jason Stephens  
Speaker, Ohio House of Representatives  
77 South High Street, 14th Floor  
Columbus, Ohio 43215

Re: Potential Election Legislation

Dear President Huffman and Speaker Stephens,

I write to make you aware of three policy matters that have recently come to light. To ensure the ongoing integrity of Ohio's elections, I suggest urgent legislative attention to each of them.

1. A federal court's decision in a recent case impacts Ohio's ban on ballot harvesting, likely requiring a re-examination of voting assistance protocols and the security of drop boxes.
2. A new decision by the Supreme Court of the United States gives us an opportunity to better enforce Ohio's constitutional citizenship requirement for participating in elections.
3. The General Assembly should consider adopting a new provisional ballot voting requirement for voters with mismatched registration records.

### **Protecting Ohio's Election Integrity**

First, a federal court's recent decision in a lawsuit brought by the League of Women Voters ("the LWV") impacts Ohio's prohibition on ballot harvesting. Although the decision is limited in scope, it could nonetheless have a broader effect on ballot security.

The LWV sought to challenge certain provisions of House Bill 458, adopted by the General Assembly and signed into law by the Governor in 2023. While the court declined to act on most of the LWV's claims, it issued an order limited in scope to disabled voters who wish to utilize someone other than a relative as defined by R.C. 3509.05 to assist them with the return of an absentee ballot. Specifically, the court prohibited the state from administering, implementing, or enforcing R.C. 3599.21(A)(9) and (A)(10) "against any disabled voter or against any individual who assists any disabled voter."<sup>1</sup>

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<sup>1</sup> See Op. at 38, 42

The law adopted by the General Assembly in 2023 defined the type of person legally eligible to assist a voter with the return of an absentee ballot as either a qualified relative or a mail carrier. The court determined that this restriction violates Section 208 of the federal Voting Rights Act, which allows a disabled voter to be assisted by “a person of the voter's choice.” Unfortunately, this decision does not provide relief to a family who believes their disabled relative is receiving ballot assistance without their knowledge, approval, or input, or who may have been coerced or misguided by individuals attempting to “assist” their voting decisions.

The court’s decision is limited in scope. However, it highlights a need for additional steps to enforce Ohio’s ban on ballot harvesting. Without the appropriate safeguards, a person could return any number of ballots to an unattended drop box simply by claiming (whether truthfully or not) the permissive authority granted under Section 208. This effectively creates an unintended loophole in Ohio’s ballot harvesting law that we must address. I suspect this is exactly the outcome the LWV intended. Under the guise of assisting the disabled, their legal strategy seeks to make Ohio’s elections less secure and more vulnerable to cheating, especially as it relates to the use of drop boxes. The security of the delivery of absentee ballots remains paramount, so this leaves us with the obvious question of a remedy.

Pending legislative action to address enforcement of Ohio’s prohibition on ballot harvesting I will direct boards to post a notification on each drop box indicating that voter-assisted ballots must be returned inside the board office, where the voter assistant will be asked to complete an attestation form confirming that they are complying with applicable state or federal law. This effectively means ONLY A VOTER’S PERSONAL BALLOT may be returned via drop box. I am acting under my statutory authority to compel the observance of election laws (*see* R.C. 3501.05), in this case Ohio’s ban on ballot harvesting. However, I strongly encourage you to consider codifying any additional safeguards that might be necessary due to attempts to erode the integrity of our elections, including possibly banning drop boxes as a result of this court decision which makes it harder to guard against ballot harvesting.

### **Enforcing Ohio’s Citizenship Requirement**

Second, the Supreme Court of the United States granted last week a request by Arizona’s Republican legislative leaders and the Republican National Committee to reinstate a law requiring proof of citizenship to register to vote. The court’s decision limits the application of the law only to voter registration forms prescribed by the state, but this ruling effectively gives the Ohio General Assembly the option to adopt a similar requirement. I recommend that we do so. As the prescriptive authority for election-related forms in Ohio, I ask that you consider codifying a proof of citizenship requirement that can be incorporated into the state-issued voter registration applications prescribed by my office. I also propose the addition of a clearly disclaimed warning that states: “The Ohio Constitution prohibits a noncitizen of the United States from registering and voting at any state or local election held in this state. It is illegal for a noncitizen to register and vote in Ohio.” Unfortunately, the court’s order does not preclude use of a longstanding federally-prescribed voter registration form that does not require proof of citizenship, so this remedy is not infallible; however, any incremental step we can take in the adoption of election integrity safeguards is a step worth taking. Upon the General Assembly’s action, I will immediately require front-end citizenship verification for all state-prescribed forms, and I will

direct all boards of elections to add additional steps to check citizenship status for registrants using the federally-prescribed form.

My office just conducted the most comprehensive citizenship verification audit ever performed on Ohio's voter rolls. We have expanded our review of citizenship records provided by the Ohio Bureau of Motor Vehicles and obtained access to the Department of Homeland Security's (DHS) federal Systematic Alien Verification for Entitlements (SAVE) database, which allows government agencies to check citizenship status more effectively. We are working to implement more extensive cross-checks of Social Security Administration records, federal jury pool data, and citizenship records maintained by the justice system. Additionally, my office has asked the Biden-Harris administration to grant access to the Person Centric Query System (PCQS) database, the Person Centric Identity Services database, and the Central Index System 2, also maintained by DHS. I am currently preparing to take legal action to compel the administration to follow the law and make these resources available as our requests continue to go unanswered. Our latest investigation resulted in the recent referral of 597 individuals who registered to vote in Ohio despite not being citizens of the United States, including evidence that 138 of those registrants also cast a ballot. Our citizenship audit is ongoing as we acquire new data. Adopting a proof-of-citizenship requirement on the front end of the registration process would help to reduce our current reliance on these back-end election integrity efforts.

### **Ensuring the Accuracy of Ohio's Voter Rolls**

Finally, I ask that the General Assembly consider codifying a new provisional voting requirement for individuals who provide inaccurate information on a voter registration application. The DATA Act, which became law in 2023, gave my office the authority to conduct more extensive audits and analysis of election data. In compliance with state law, our Office of Data Analytics and Archives has identified numerous voter registration applications containing mismatched data, which differs from information on file with the Bureau of Motor Vehicles or the Social Security Administration (BMV/SSA).

These mismatched voter registration applications are flagged and sent to the relevant county board of elections, which then sends the voter a notice asking that the mismatched information be corrected. If the voter fails to respond and engages in no voter-initiated activity for a specified period, the registration is removed from the rolls. The problem here is what happens when a voter with a mismatched registration record *does* engage in voter-initiated activity while the record is under review. Current law requires that a voter in confirmation status be returned to "active" status upon engaging in a voter-initiated activity, meaning the mismatched record never gets corrected. This leads to inaccurate data on Ohio's voter rolls and erodes public confidence in the integrity of our elections. Further, it complicates our statutory requirement "to ensure that the accuracy of the statewide voter registration database is maintained on a regular basis in accordance with applicable state and federal law" and prevents us from ensuring that individuals who are not eligible to vote are promptly removed from the database. (*See* R.C. 3503.151)

As Ohio's chief election official, I propose adding a statutory mandate that any voter whose registration requires the reconciliation of mismatched data be required to cast a provisional ballot. This forces the voter to cure any mismatched information before a ballot can be counted.

To be clear, the voter registration would not be canceled but rather placed in a “provisional confirmation” status for further action. This approach mirrors current law regarding an unverified voter address. The board of elections sends an acknowledgment notice to new registrants confirming the registration and assigning a voting location. If the notice is returned by USPS as undeliverable, the board must place the registration in confirmation status, and the voter must either correct the mismatched information on file or cast a provisional ballot and correct the information through the cure process. The provisional confirmation status would follow a similar process. This change is essential to maintaining the accuracy of our voter rolls and ensuring the integrity of our elections.

Thank you for the vital role you play in ensuring that Ohio elections are secure, accurate, and accessible. While it may be unrealistic to accomplish these reforms before the upcoming election, they are nonetheless changes that should be considered as soon as possible. In the meantime, as we hope for legislative action as quickly as practicable, we will work with the boards of elections to mitigate each of these concerns to the best of our ability within the current authorities given to us by the Revised Code and the Ohio Constitution. As always, I stand ready to assist you in any way with enactment of these reforms. Consider my office a resource as we continue to build on Ohio’s national reputation as “the gold standard” of election administration.

Yours in service,



Frank LaRose  
Ohio Secretary of State

cc: John Barron, Chief of Staff, Ohio Senate  
Matt Oyster, Chief Legal Counsel, Ohio Senate  
Brittney Colvin, Chief of Staff, Ohio House of Representatives  
Heather Blessing, Deputy Chief Legal Counsel, Ohio House of Representatives