

June 13, 2006

Honorable Kenneth J. Blackwell
Ohio Secretary of State
Attn: Legal Services – 16th Floor
180 East Broad Street
Columbus, OH 43215

Joint Committee on Agency Rule Review
Vern Riffe Center for Government and the Arts
77 South High Street, Concourse Level
Columbus, Ohio 43215

Re: Proposed Rules 111-12-01 through 111-12-06

Dear Secretary Blackwell and JCARR Committee Members:

This letter is written on behalf of People For the American Way Foundation regarding the proposed rules addressed at the hearing on Monday, June 5th, which were intended to incorporate the newly enacted voter registration laws contained in Amended Substitute House Bill 3 of the 126th General Assembly. As discussed below, the rules and associated guidelines improperly implement H.B. 3 and in fact create significant obstacles to the work of third-party voter registration groups that focus in traditionally disenfranchised communities and will result in widespread voter disenfranchisement. Because of the threats that the rules presently pose to the citizens of Ohio, and non-partisan voter registration groups seeking to help bring those citizens into the democratic process, we urge you to halt implementation of the rules immediately and take other corrective action.

People For the American Way Foundation (PFAWF) is a national non-partisan public interest organization that seeks to protect the rights and liberties of all Americans. Among its other activities, PFAWF operates a national non-partisan voter registration and education program through its African American Ministers Leadership Council (“AAMLC”) known as Victory Through Voting (“VTV”) designed to register and turn out African American voters. Part of VTV’s mission is to promote civic engagement by helping church and other religious leaders conduct non-partisan voter registration drives using volunteers and paid staff when necessary. VTV launched its 2006 work in Ohio in May, and a number of Ohio churches and ministers—including Dr. Marvin McMickle (Chair, United Pastors in Mission), Dr. Tony Minor (Ohio Representative, AAMLC), Dr. C.J. Matthews (President, United Pastors in Mission), and Dr. E.T. Caviness (President, Cleveland Chapter of the Southern Christian Leadership Conference)—intend to work on these efforts.

The proposed rules, however, will obstruct voter registration efforts by VTV and similar groups that work to help the citizens of Ohio become engaged in the electoral process, especially traditionally disenfranchised citizens from low-income or minority communities. As discussed in more detail below, the rules would place excessive burdens on third-party voter registration groups when any person involved in the process is lawfully receiving compensation for their work and make it impossible to conduct such registration activity effectively. As a result, VTV

and the churches interested in working on the program have been forced to halt their activities in Ohio altogether, and we understand that a number of other groups have done the same.

Subsection 3503.19(B)(2) of the Ohio Revised Code, as amended by H.B. 3, places limitations on the manner in which an individual can return a completed voter registration form through third-parties, including voter registration groups. The subsection states:

- “(b) . . . [A]n applicant may return the applicant’s completed registration form through another person to any board of elections or the office of the secretary of state;
- (c) A person who receives compensation for registering a voter shall return any registration form entrusted to that person by an applicant to any board of elections or the office of the secretary of state.”

Subsections 3599.11(B)(2)(b) and (C)(2) of the Ohio Revised Code, as amended by H.B. 3, requires that no person who helps another person register to vote “shall knowingly return any registration form entrusted to that person to any location other than any board of elections or the office of the secretary of state.” Read together, the statutes seem to require that third-parties, including voter registration groups, return completed voter registration forms to the Secretary of State or election offices, rather than to government offices, schools, libraries, or other broader designated areas where ordinary individual voter registrants may return their applications.

The new rules, however, place much more burdensome limits on returning completed registration forms, seriously harming voter registration efforts. Initially, the rules appear to require that anyone who receives any gift or payment for registering voters “return” a completed voter registration application “to the Secretary of State or Board of Elections” in a manner that does not involve “any service or act of the U.S. postal service or employees of the U.S. postal service or a common carrier acting in an official capacity.” (11-12-02(D)). In essence, a compensated individual who is participating in a voter registration drive by registering eligible voters must physically hand-deliver completed applications to the Secretary of State’s office or the Board of Elections. This is particularly burdensome to the disabled and many members of VTV’s church partners who want to be involved in assisting eligible Ohioans to vote but may not have easy access to transportation. It also violates state and federal law. Ohio law does not require that voter registration forms be hand-delivered to the Secretary of State or election offices, even if done so by a third-party. Section 3503.19(A) provides for the return of voter registration forms by mail. Moreover, the federal National Voter Registration Act, 42 U.S.C.S. § 1973gg-4(a)(1), requires that all states accept voter registration cards that are returned by mail.

In addition, the Compensated Registrars Training Manual, produced by the Secretary of State for use in training third-party compensated persons engaged in voter registration, states that third-parties “must return the applicant’s voter registration form directly to the office of a county board of elections or the Secretary of State” and cannot “under penalty of law, return the completed form to any other person, group, organization office or entity.” (emphasis added). See Ohio Secretary of State’s Compensated Registrars Training Materials at 1, *available at* <http://www.sos.state.oh.us/sos/electionsvoter/cvrTraining.pdf> (visited June 13, 2006). Although this language remains vague, it appears to forbid such registration workers from giving completed registration applications to their supervisors to be returned in batches to the state. This would preclude important quality control procedures by VTV and other registration programs such as double-checking forms for completeness, which help voters as well as election officials. It would make it difficult or impossible for churches and others to follow-up to ensure that voters are actually registered and make sure they get out and vote. Precluding such coordinated voter

registration and related efforts improperly infringes on the First Amendment rights of voters as well as registration workers.

Finally, we are concerned that the compensated voter registrars training which can only be completed through an interactive online program, is an unnecessary barrier for law-abiding groups and citizens that cannot afford or do not otherwise have access to a computer, the internet, and a printer. Many citizens in traditionally disenfranchised communities may not have access to such technology and equipment. Others may only have some access such as dial-up Internet access and may not have sufficient bandwidth to download the required affirmation. Moreover, if there are no alternative means of completing the program, the rule would prevent certain disabled individuals from participating in voter registration entirely. Whatever the intent behind the rules, these limitations seem designed to prevent good citizens—especially low-income or disabled citizens—from having the opportunity to encourage and assist other Ohio citizens, particularly those in traditionally disenfranchised communities, to register and go to the polls.

We are aware that other voter protection groups—specifically, the Advancement Project and the Brennan Center for Justice at New York University School of Law—have previously submitted comments to the third-party registration rules, and we fully subscribe to the legal arguments and concerns that were set forth by these groups.

We urge the Secretary of State to take corrective action as soon as possible to eliminate these obstacles and encourage voter registration in Ohio for every eligible citizen. Please do not hesitate to contact me at 202-467-4999 if you have any questions or would like further information. We urge that prompt action be taken on this matter for the sake of Ohio's citizens.

Sincerely,

Elliot Minberg
Senior Vice-President and General Counsel
People For the American Way Foundation