

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO ex rel.
RHONDA L. COLVIN, *et al.*,

Relators,

vs.

JENNIFER BRUNNER, SECRETARY OF
STATE OF OHIO,

Respondent.

Case No. 08-1813

Original Action in Mandamus

Expedited Election Matter

Under S.Ct. Prac. R.X. § 9

**MEMORANDUM OF *AMICI CURIAE* THE OHIO AFL-CIO
AND DISTRICT 1199 SEIU IN SUPPORT OF RESPONDENT**

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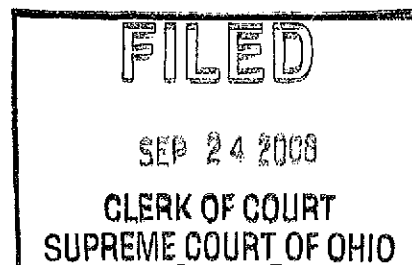
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STATEMENT OF PUBLIC INTEREST

Amici curiae submit this brief in support of the Secretary of State's position that all citizens who are qualified to vote in the upcoming general election should be permitted to vote by absent voter's ballots, and specifically that citizens should be permitted both to register to vote and to vote by absent voter's ballots during the period of September 30, 2008 to October 6, 2008. This is an interest of great concern to *amici* and to the public at large, as Relators' Petition threatens to disenfranchise significant numbers of Ohio citizens.

Amicus curiae the Ohio American Federation of Labor-Congress of Industrial Organizations ("AFL-CIO") represents 1,600 local unions across Ohio from 48 different international unions. The local unions that comprise the Ohio AFL-CIO represent approximately 650,000 working men and women, and some 300,000 union retirees. The Ohio AFL-CIO works to bring economic and social justice to the workplace and to the lives of working Ohioan men and women. To this end, the Ohio AFL-CIO engages in voter registration, education and other election-related activities.

Amicus curiae District 1199, the Health Care and Social Service Union, SEIU ("District 1199") is a local union affiliated with the Service Employees International Union. District 1199 represents approximately 28,000 health care and social service workers in Ohio, Kentucky, and West Virginia. District 1199's Constitution expressly provides that one of the organization's purposes is "to maintain, preserve and extend the democratic process and institutions of our country." District 1199 engages in voter registration, education and other election-related activities within the State of Ohio on behalf of its members.

Amici represent members who will be registering to vote in Ohio in the upcoming general election, and *amici* therefore have an interest in ensuring that their members are permitted to exercise the right to vote by absentee ballot. Additionally, *amici* will be assisting citizens to register to vote, including during the period of September 30, 2008 to October 6, 2008, and thus have an interest in ensuring the integrity of that process.

INTRODUCTION

Ohio law entitles all qualified electors to cast absent voter's ballots provided that their applications and ballots are delivered on time, and makes these absent voter's ballots available 35 days prior to the general election. And it defines qualified electors to include those persons who have met other requirements and been registered to vote no less than 30 days at the time of the next election. Thus, there is an "overlap period" during which voters may both register to vote and may obtain and cast absent voter's ballots: September 30, 2008 to October 6, 2008.

Relators urge this Court to adopt a hyper-technical and nonsensical interpretation of the applicable statutes and to hold that a person who will, without dispute, be eligible to vote at the November 4 election is nonetheless precluded from voting absentee in that election if he or she registered too close to the voter registration deadline. That interpretation is unreasonable, makes no sense in light of the applicable statutory scheme, fails to effectuate any legitimate purpose, would lead to absurd results, and would raise serious constitutional questions. As such, and in light of the deference to which the Secretary of State's interpretation is entitled, it should be rejected.

In addition, although the Secretary of State's Directive that Relators challenge has been in effect since August 13, 2008, and the overlap period has itself existed for decades, Relators

delayed the filing of the instant Petition until less than three weeks before the beginning of the overlap period. The pendency of this late filing has cast a cloud of dubious legality over the right of voters to register and vote absentee during this window period. Therefore, this Court should promptly deny the Petition and affirm the right of all Ohio voters to vote by absent voter's ballot even if they have registered to vote close to the deadline for the upcoming general election.

BACKGROUND

In accordance with state and federal law, in order to vote in the November 4, 2008 general election, a person must register to vote by no later than 30 days before the election, or by October 6, 2008. R.C. 3503.06; 42 U.S.C. §§1973gg-6(a). All qualified electors are entitled to cast absent voter's ballots (R.C. 3509.02), and absent voter's ballots are made available beginning 35 days before the general election, or on September 30, 2008. R.C. 3509.02(A). Thus, there is a short "overlap period" during which citizens may both register to vote and vote by absent voter's ballot.

This overlap period has existed since at least 1981. *See Answer of Jennifer Brunner, Secretary of State ("Answer") ¶¶29, 45 (filed Sept. 22, 2008)*. However, many more voters are now entitled to vote absentee as a result of amendments made to the absentee voter law in 2005. Prior to these amendments, only voters who fell within one of eight enumerated categories, including electors over the age of 62, full-time fire fighters, peace officers and emergency medical service providers, members of the organized militia on active duty, and electors with disabilities, could cast absent voter's ballots. *See Sub. H.R. 234 (2004), amending R.C. 3509.02*. As amended by the Ohio Legislature, the statute now guarantees "[a]ny qualified elector" the right to vote by absentee ballot. R.C. §3509.02(A) (emphasis added).

Relators challenge the Secretary of State's Directive No. 2008-63, issued on August 13, 2008, which provides that during this window period voters "may appear at the board of elections office and simultaneously submit for that election applications to register to vote or to update an existing registration and to request an absentee ballot" and requires boards of election "to develop procedures to immediately register the applicant and issue an absentee ballot to the newly registered elector at the time of registration." RE 005. The Directive requires that "[a] board of elections must register a person as an elector before issuing an absentee ballot to that person," but permits the board to "reserv[e] the right to delay registration and immediate absentee voting if a board is not satisfied as to validity of the application and the applicant's qualifications." RE 004, 005. And by subsequent directive, the Secretary of State set forth measures to protect the ability to challenge absentee ballots, by requiring "'overlap' voters . . . [to] vote a paper absentee ballot with an identification envelope" so that challenges could be made and adjudicated before challenged ballots are opened and counted. RE 008-009.

Relators filed their Petition for Writ of Mandate on September 12, 2008, asking that the Secretary of State be required to instruct boards of election to "void any applications for absent voters' ballots" accepted during the overlap period, and also to instruct the boards that 30 days must lapse after a person registers before that person can apply to vote by absent voter's ballot. Relators' Verified Petition ("Petition") 12-13.

STANDARD OF REVIEW

The Secretary of State's interpretation of Ohio election law is entitled to deference so long as it is reasonable. *See Whitman v. Hamilton Cty. Bd. of Elections* (2002), 97 Ohio St.3d 216, 217 ("[O]ur duty [is] to defer to the Secretary of State's interpretation of election law if it is

subject to two different, but equally reasonable, interpretations”); *State ex rel. Chance v. Mahoning Cty. Bd. of Elections* (1996), 75 Ohio St.3d 42, 43 (same); see also R.C. 1.49(F) (where statute is ambiguous, courts should consider “administrative construction of [a] statute,” among other factors, in determining legislature’s intent).¹

In determining whether the Secretary of State’s interpretation of the applicable statutes is reasonable, the Court is guided by well established rules of statutory construction. These include the presumption that a “just and reasonable result is intended” by the Legislature in “enacting a statute,” R.C. 1.47, and that statutes should be read to avoid absurd or unreasonable results. See *O’Toole v. Denihan* (2008), 118 Ohio St.3d 374, 383 (citing *State ex rel. Haines v. Rhodes* (1958), 168 Ohio St. 165); *State ex rel. Dispatch Printing Co. v. Wells* (1985), 18 Ohio St.3d 382, 384.

Further, statutes should be harmonized where possible and the purposes of provisions that operate in the same arena must be considered. “[A]ll statutes which relate to the same general subject matter must be read *in pari materia* And, in reading such statutes *in pari materia*, and construing them together, this court must give such a reasonable construction as to give the proper force and effect to each and all such statutes.” *Johnson’s Markets, Inc. v. New Carlisle*

¹ Because Relators effectively ask the Court to overturn Directive 2008-63, the Secretary should be afforded an even greater level of deference here. “In extraordinary actions challenging the decisions of the Secretary of State and boards of elections, the standard is whether they engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions.” *Whitman*, 97 Ohio St.3d at 217; *State ex rel. Kelly v. Cuyahoga Cty. Bd. of Elections* (1994), 70 Ohio St.3d 413, 414 (same); *State ex rel. Herman v. Klopfleisch* (1995) 72 Ohio St.3d 581, 583 (same). Although this standard typically applies after the Secretary has resolved a dispute within a county board of election under R.C. 3501.11, a lesser standard should not apply simply because the Secretary had the foresight to issue a directive that resolves such disputes prospectively.

Dep't of Health (1991), 58 Ohio St.3d 28, 35. When interpreting and applying related statutes, courts must attempt to “harmonize and give full application to all such statutes unless they are irreconcilable and in hopeless conflict,” and “to carry out the legislative intent of the sections.” *Id.*

Notably, “[a]ll election statutes should be liberally interpreted in favor of the right to vote according to one’s belief or free choice, for that right is a part of the very warp and woof of the American ideal and is a right protected by both the constitutions of the United States and of the state.” *Wilson v. Kennedy* (1949), 151 Ohio St. 485, 493 (quoting *State ex rel. Beck v. Hummel* (1948), 150 Ohio St. 127, 139).

Finally, statutes should be construed to avoid constitutional problems. *Hughes v. Ohio Bureau of Motor Vehicles* (1997), 79 Ohio St.3d 305, 307-09.

ARGUMENT

Amici Curiae’s Proposition of Law No. 1:

The Secretary of State’s August 13, 2008 Directive properly and reasonably interprets Ohio law to permit citizens to vote absentee if they register to vote by the voter registration deadline.

Ohio law grants the right to vote absentee to “[a]ny qualified elector,” R.C. 3509.02(A), and provides that “any qualified elector desiring to vote absent voter’s ballots at an election shall make written application for those ballots to the director of elections of the county in which the elector’s voting residence is located,” R.C. 3509.03. A registered voter who applies to vote absentee must state in the application that he or she “is a qualified elector.” R.C. 3509.03(G).

Relators contend that Ohio law prohibits voters from requesting an absentee ballot or casting an absentee ballot until they have been registered for 30 days. *See* Merit Brief of Relators Rhonda L. Colvin & C. Douglas Moody (“Relators’ Br.”) 12.

But Ohio law does not require a registered voter to wait 30 days to request or cast an absentee ballot. It is apparent from the terms, context, and purpose of the applicable statutes that Ohio law permits *all* electors who will be qualified to vote in the November 4, 2008 election to apply for and cast absentee ballots so long as they meet the requirement of being registered to vote by the October 6, 2008 deadline – 30 days in advance of the election – regardless of whether they registered 30 days prior to requesting or casting such absentee ballots.

- A. The term “qualified elector” refers to the eligibility of a citizen to vote at an election and must be assessed at the time of the election at which the elector seeks to vote.**

Ohio law defines “[q]ualified elector” to mean a “person having the qualifications provided by law to be entitled to vote.” R.C. §3501.01(N). These qualifications are found both in Ohio’s Constitution and in the Revised Code’s election provisions. The Constitution provides the following description of the “qualifications of an elector . . . entitled to vote”:

Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections.

Ohio Const., Art. V, §1.

Similar qualifications are set forth in Revised Code Section 3503.01: Every citizen of the United States who is of the age of eighteen years or over and who has been a resident of the state thirty days immediately preceding the election at which the citizen offers to vote, is a resident of the county and precinct in which the citizen offers to vote, and has been registered to vote for thirty days, has the qualifications

of an elector and may vote at all elections in the precinct in which the citizen resides.

R.C. 3503.01(A).

The Secretary reasonably interprets the statute granting “[a]ny qualified elector” the right to vote absentee as meaning that a registered voter who is qualified to vote in a particular election may vote absentee so long as he or she requests and casts that absentee ballot by the applicable deadlines. Relators, by contrast, urge this Court to interpret R.C. 3509.02(A) to grant the right to vote absentee *only* to those registered voters who have met the applicable qualifications not by the date of the election, but rather by an earlier, artificial date – the time they apply to vote absentee. *See* Relators’ Br. 13. That is, Relators ask the Court to insert the following words into the statute: “Any qualified elector who has been registered for 30 days before requesting a ballot may vote by absent voter’s ballots at an election.” R.C. 3509.02(A) (underlined words added).

Similarly, the Secretary reasonably construes R.C. 3509.03, which authorizes applications for absentee ballots by a “qualified elector desiring to vote absent voter’s ballots *at an election*” (emphasis added), to mean that any person who will be qualified to vote in the upcoming election may request an absentee ballot for that election. By contrast, Relators construe that statute to mean that someone who unquestionably will be qualified to vote in an election may apply to vote absentee only if the person has been registered for 30 days before making that application. *See* Relators’ Br. 13.

The qualifications provisions themselves support the Secretary’s interpretation. Both the Constitution and the Revised Code define the qualifications at issue as for “vot[ing] at . . . elections.” Const., Art. V, §1; R.C. 3503.01(A). This is consistent with the definition of a

“qualified elector” as a person having the requisite qualifications “to be entitled to vote.” R.C. 3501.01(N). And Revised Code Section 3503.06, which Relators completely ignore, further supports the Secretary’s position that the registration requirement for “qualified electors” runs from the date of the election:

No person shall be entitled to vote in any election . . . unless the person is registered as an elector and will have resided in the county and precinct where the person is registered for at least thirty days at the time of the next election.

R.C. 3503.06(A). Similarly, Section 3503.19(A) provides that a voter registration application “must be postmarked no later than the thirtieth day preceding a primary, special, or general election in order for the person to qualify as *an elector eligible to vote at that election.*” (Emphasis added). Thus, again, the notion of voter eligibility or qualification is treated in relation to the election in which the elector seeks to vote.

These provisions do not define an elector’s qualifications in the abstract; rather, an elector is qualified when the elector is entitled to vote at an election. A citizen who is qualified to vote at an election is a qualified elector. Thus, in assessing whether an elector “ha[s] the qualifications provided by law to be entitled to vote,” the question should be whether the elector is qualified “to vote at . . . elections.” *See In re Protest filed by Citizens for Merit Selection of Judges, Inc.* (1990), 49 Ohio St.3d 102, 106 (“An elector must be ‘registered’ in order to either vote or sign such petition *on the day* that he or she decides to exercise such right.”) (emphasis in original); *see also* R.C. 3503.011 (permitting “qualified elector who is or will be on the day of the next general election eighteen or more years of age” to vote at primary election). Thus, whether a citizen is “qualified” to vote turns on whether the person will have satisfied the registration requirement at the time of the election.

There can be no argument that a person voting by absent voter's ballot actually votes on a day other than the date of the election. An absentee ballot is voted on the day of the election, not the day the ballot is completed or is received by the Board of Elections. *See State ex rel. Lorenzi v. Mahoning Cty. Bd. of Elections* (Ohio Ct. App. Oct. 25, 2007), Case No. 07 MA 127, 2007 WL 3227667, at *6 ("An absentee vote is not actually 'cast' until it is counted . . ."). And there can only be one date for a federal election, the Tuesday after the first Monday in November. 2 U.S.C. §§1, 7; 3 U.S.C. §1; *see also Foster v. Love* (1997), 522 U.S. 67, 71 (defining "election" as "the combined actions of voters and officials meant to make a final selection of an officeholder"); *Millsaps v. Thompson* (6th Cir. 2001), 259 F.3d 535, 546 (recognizing requirement for single federal election day).

B. Relators' statutory construction would lead to absurd and unreasonable results.

Relators' definition of "qualified elector" as a status that changes from time to time, with respect to different acts, must be rejected because it would lead to absurd results. For example, the term "qualified elector" is used throughout the statutory provisions governing the absent voter ballot process:

- *Voting.* "Any qualified elector may vote by absent voter's ballots at an election." R.C. 3509.02(A).
- *Applying for Absent Voter's Ballot.* "Any qualified elector desiring to vote absent voter's ballots at an election shall make written application for those ballots to the director of elections of the county in which the elector's voting residence is located." R.C. 3509.03; *see also* R.C. 3509.031 ("Any qualified elector" who is member of state militia on active duty may make written application of absent voter's ballots).
- *Processing of Application.* "Upon receipt by the director of elections of an application for absent voter's ballots . . . , the director, if the director finds that the

applicant is a qualified elector, shall deliver to the applicant in person or mail . . . proper absent voter's ballots." R.C. 3509.04.

- *Processing of Absent Voter's Ballot.* If, upon receipt of an absent voter's ballot, "elections officials find . . . that the applicant is not a qualified elector in the precinct, . . . the vote shall not be accepted or counted." R.C. 3509.07.

Thus, with respect to the absentee ballot process alone, Relators' contention that each statutory provision that uses the term "qualified elector" creates a different 30-day period that must be considered would mean the following: (a) for purposes of voting by absentee ballot, an elector must register 30 days before voting; (b) for purposes of making an application for an absentee ballot, an elector must register 30 days before applying for an absentee ballot; (c) for purposes of having an application for absentee ballots processed by elections officials, an elector must register 30 days before the election officials receive and make findings as to the application; and (d) for purposes of having an absentee ballot considered, an elector must register 30 days before the ballot is considered. But each of these steps relates to a single procedure – *voting* by absentee ballot. It makes no sense that the Legislature would have incorporated a fluctuating definition of "qualified elector" within this single procedure.

Moreover, such a reading necessarily would give rise to internal inconsistencies. For example, this reading would mean that a person could be a "qualified elector" on the date of an election, and thus qualified to vote by absent voter's ballot, but nonetheless ineligible to receive an absent voter's ballot. Similarly, it would mean that a person might not be a "qualified elector" at the time the person fills out an application to vote by absent voter's ballot, but at the time the election officials consider the application, the person could be "qualified." *See* R.C. 3509.04 (turning on whether "the director finds that the applicant *is* a qualified elector") (emphasis

added); *see also* R.C. 3509.07 (turning on whether, after submission of ballot, election officials find “that the applicant *is* not a qualified elector”) (emphasis added).²

Relators’ interpretation also raises substantial practical problems for local boards of election, in that it would require them to test whether 30 days have elapsed after each action carried out by a qualified elector. Relators present no evidence that procedures exist that would permit all the county election boards to test whether there is a 30-day gap between when citizens register to vote and when they apply for, complete, and cast an absentee ballot.

Finally, Relators’ interpretation presents a significant danger of disenfranchisement of those electors who registered to vote *before* the overlap period, but who may have applied for or submitted absentee ballots before waiting a full 30 days. Relators’ construction of the registration requirement would lead to the absurd consequence that election officials would be tasked with reviewing all applications for absentee ballots and disqualifying ballots of electors who are indisputably qualified to vote at the election.

In short, the only reasonable definition of “qualified elector” in relation to a person’s entitlement to apply to and to vote by absent voter’s ballot is one that assesses an elector’s qualifications at the time of the election at which the elector seeks to vote. *See O’Toole*, 118 Ohio St.3d at 383 (statutes should be construed to avoid unreasonable results).

² Relators’ proposed definition would also affect numerous other statutory provisions. For example, a “qualified elector” who has mistakenly registered in the wrong precinct is entitled to apply to correct his registration form. R.C. 3503.30. And only qualified electors may challenge the registration of other electors, and may apply to correct a precinct registration list. R.C. 3503.24(A), 3505.19. Nothing in the Revised Code’s election provisions, however, supports the notion that election officials are tasked with enforcing such a fluctuating 30-day period, which would shift with each action carried out by a qualified elector.

C. The Secretary of State's interpretation preserves the right to vote absentee as guaranteed by Ohio law.

Revised Code Section 3509.02(A) guarantees the right of “[a]ny qualified elector” to “vote by absent voter’s ballots at an election.” It does not make this right contingent on when the elector registered to vote or attained any of the other qualifications at issue.

Even assuming that Relators are right in measuring whether someone is a “qualified elector” at particular points in time, rather than in relation to the election at issue, their construction of the absentee voter scheme would deprive voters *who Relators would acknowledge to be qualified electors* of this statutorily guaranteed right to vote absentee.

That is, under Relators’ definition of “qualified elector,” a person could register on the thirtieth day before an election, and thus be a “qualified elector” on the day of the election. As a “qualified elector,” Section 3509.02(A) guarantees that person the right to vote by absentee ballot at the election. However, this qualified voter will be unable to vote by absentee ballot because absentee ballots must be delivered to election officials by the third day before the election or, if delivered in person, by “the close of regular business hours on the day before the day of the election at which the ballots are to be voted” R.C. 3509.03. Similarly, any qualified elector who registers during the overlap period, but who will not be present in the county during the week of the election or cannot make it to the polls, and so needs to request and cast an absentee ballot via mail, would be unable to vote by absentee ballot.

The Court must read the statutory provisions governing voter qualifications and absentee ballots to avoid this conflict. *See Hughes*, 79 Ohio St.3d at 307-09 (courts should harmonize

and give full application to statutes unless they are irreconcilable). The Secretary's interpretation does so.

D. No legitimate purpose would be served by denying absentee ballots to individuals who register during the window period.

1. The Secretary of State's Directive adequately protects the integrity of the voting and registration process.

Although Relators suggest that they have “[c]oncerns [a]bout [m]assive [v]oter [f]raud,” Relators’ Br. 5, they intentionally blur the lines between an act that is perfectly legitimate and would violate Ohio law only if Relators are correct in their strained statutory interpretation – that is, applying for an absentee ballot without having yet been registered for 30 days – and other, *real* forms of fraud in voter registration and absentee ballot application. *See, e.g.*, Relators’ Br. 20-23 (discussing harms posed by “[v]oter fraud” and “dilut[ion] by unlawful votes” without making clear the specific conduct at issue). Relators seek to confuse this distinction because they can point to no reason why the Secretary of State’s Directive fails to provide adequate safeguards against *real* fraud.

Initially, the only evidence Relators point to as support for their concerns about fraud are two newspaper articles that report hearsay statements that organizations plan to assist college students and homeless shelter residents in registering to vote and casting absentee ballots. Relators’ Br. 5. Relators warn that this amounts to evidence of “intent for various public interest groups to use the ‘same day’ registration provisions set forth in Directive 2008-63 to register nearly half a million people to vote on November 4, 2008 without regard to their actual residence or their qualified elector status. . . .” *Id.* But evidence of get-out-the-vote efforts to enfranchise individuals who have every right to vote in no way shows that such individuals plan to register

“without regard to their actual residence.” Ohio does not disqualify residents who intend to make the State their permanent home from registering to vote simply because their place of residence is a college campus or homeless shelter. *See* R.C. 3503.02(A)-(C) (defining residence based on person’s intent); R.C. 3503.02(I) (“If a person does not have a fixed place of habitation, but has a shelter or other location at which the person has been a consistent or regular inhabitant and to which the person has the intention of returning, that shelter or other location shall be deemed the person’s residence for the purpose of registering to vote.”); *State ex rel. May v. Jones* (1968), 16 Ohio App.2d 140, 144 (“Courts have generally recognized a student’s right to vote at his college residence when the student’s actions and conduct in the school town manifest an intent to make that place his new home.”). Evidence of such registration and get-out-the-vote efforts is certainly not evidence of “massive voter fraud.” To the extent Relators mean that the “fraud” that is prevented through their proposed statutory interpretation is a registered voter casting an absentee ballot without having been registered for 30 days, their argument is entirely circular and obviously must be disregarded.

Relators point to no reason why a requirement that voters register 30 days before requesting an absentee ballot is needed in order to address *real* fraud – that is, people who have registered despite their failure to satisfy requirements for voting eligibility. Ohio law already sets forth procedures for verifying and challenging eligibility of registered voters. *See, e.g.*, R.C. 3503.13, 3503.19, 3503.24. And absentee ballot applicants must set forth sufficient information to determine whether they will be qualified to vote in the election at issue, and their ballots may

be challenged for cause. *See* R.C. 3509.03, 3509.07.³ The Secretary of State has further guarded against any potential fraud by issuing Directive 2008-91 which requires voters who register and vote during the overlap period to vote paper absentee ballots in identification envelopes, so that challenges may be made and resolved without compromising the secrecy of those votes. RE 008-009. Relators make no effort to explain why these long-established statutory procedures and the Secretary's clarification of how they may be followed in relation to the overlap period would fail to guard against voter fraud. As such, their argument is specious at best.

In sum, Relators identify no legitimate purpose that would be served by denying a subclass of qualified voters the right to vote by absent voter's ballots.

2. Several states permit citizens to register to vote and cast a ballot on the same day.

Ohio is not unique in permitting electors to register to vote and to cast absentee ballots on the same day. The experience of other states confirms that there are no serious concerns about fraud raised by the mere fact that citizens are permitted to register and to vote absentee on the same day. Many states permit citizens to register to vote on the same day as they cast their ballots. For example, in eight states – Idaho, Iowa, Maine, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming – citizens may register to vote on election day itself and cast a ballot. *See* Demos Policy Brief, "Voters Win with Election Day Registration," available at www.demos.org/pubs/Voters%20Win.pdf (last visited September 22, 2008). Additionally, North Carolina has a "one-stop" early voting procedure where "an individual who is qualified to

³ Notably, the information required to be included in an absentee ballot application does *not* include the date that the applicant registered to vote, showing that the Legislature saw no reason that election officials would need the information that would permit them to ascertain whether an absentee ballot applicant has been registered for 30 days.

register to vote may register in person and then vote at a one-stop voting site in the person's county of residence during the period for one-stop voting." N.C. Gen. Stat. §163-227.3. Illinois similarly provides voters with a "grace period," where voters who missed the registration deadline may nonetheless vote in the election so long as they register and vote simultaneously during the grace period at the office of the election authority. *See* 10 Ill. Comp. Stat. 5/4-50; 5/5-50 ("If a voter who registers . . . during this grace period wishes to vote at the first election or primary occurring after the grace period, he or she must do so by grace period voting, either in person in the office of the election authority or at a location specifically designated for this purpose by the election authority, or by mail.").

Amici also have confirmed that at least another eight states have overlap periods between the beginning of absentee voting and the end of voter registration, and permit citizens both to register to vote and to cast absentee ballots during these overlap periods. *See* Affidavit of Scott Stillman, ¶¶2-8.⁴ That these states permit voting during the overlap period indicates that state

⁴ The length of the overlap periods in these states varies: Arkansas (5 days), Connecticut (17 days), Michigan (15 days), Missouri (15 days), Nebraska (22 days), South Dakota (27 days), Vermont (23 days), Virginia (16 days). The period of overlap between the beginning of absentee voting and the end of voter registration represents the time between each state's registration deadline and that state's deadline for providing absentee ballots:

Arkansas. *Compare* Ark. Code Ann. §7-5-407 (absentee ballots must be available not later than 35 days before election) *with* Ark. Code Ann. §7-5-201(a) (voters must be registered 30 days before election).

Connecticut. *Compare* Conn. Gen. Stat. §9-140(f) (absentee ballots be issued 31 days before election) *with* Conn. Gen. Stat. §9-23g(d)(2) (voters must be registered 14 days before election).

Michigan. *Compare* Mich. Comp. Laws §168.714 (absentee ballots must be available 45 days before election) *with* Mich. Comp. Laws §168.497 (voters must be registered 30 days before election).

Missouri. *Compare* Mo. Rev. Stat. §115.281 (absentee ballots must be available no later than the sixth Tuesday before election) *with* Mo. Rev. Stat. §115.135(1) (voters must be registered no later than the fourth Wednesday before election).

legislatures have determined that there are no significant risks associated with such voting, and that such procedures are reasonable.

Amici Curiae's Proposition of Law No. II:

The Secretary of State's August 13, 2008 Directive, unlike Relators' proposed statutory construction, avoids federal and state constitutional problems.

“Courts have a duty to liberally construe statutes in order to save them from constitutional infirmities.” *State v. Carswell* (2007), 114 Ohio St.3d 210, 212 (quoting *Desenco, Inc. v. Akron* (1999), 84 Ohio St.3d 535, 538); *see also* R.C. 1.47 (“In enacting a statute, it is presumed that . . . [c]ompliance with the constitutions of the state and of the United States is intended”).

A. Relators' statutory construction would run afoul of federal statutory protections of the right to vote.

In the Voting Rights Act Amendments of 1970, Congress made findings that durational residency requirements and the lack of opportunity to register and vote absentee violate numerous federal constitutional provisions and further no legitimate state interest. 42 U.S.C. §1973aa-1(a). Therefore, Congress prohibited the denial of the right to vote “because of the

Nebraska. *Compare* Neb. Rev. Stat. §32-808(1) (absentee ballots must be available at least 35 days before election) *with* Neb. Rev. Stat. §32-302 (voter registration ends at 6 p.m. on the second Friday preceding any election).

South Dakota. *Compare* S.D. Codified Laws §12-16-1 (ballots must be in the possession of county auditors not later than six weeks prior to election) *with* S.D. Codified Laws §12-4-5 (voters must be registered 15 days before election).

Vermont. *Compare* Vt. Stat. Ann. 17, Ch. 51, §2479 (ballots must be furnished to the clerk of each town not later than 30 days before election) *with* Vt. Stat. Ann. 17, Ch. 43, §2144 (voters must be registered by the Wednesday preceding election).

Virginia: *Compare* Va. Code Ann. §24.2-614 (ballots must be printed at least 45 days preceding election) *with* Va. Code Ann. §24.2-416 (voters must be registered 29 days before election).

failure . . . to comply with any durational residency requirement,” *id.* §1973aa-1(c), as well as forbidding the deprivation of the right to vote absentee to any voter who is qualified to vote in a Presidential election and will be absent on the day of the election, so long as the voter has applied for an absentee ballot seven days or more prior to the election and has returned the ballot by the date of the election.

[E]ach State shall provide by law for the casting of absentee ballots [in the Presidential election] by all duly qualified residents of such State who may be absent . . . on the day such election is held and who have applied therefor not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

42 U.S.C. §1973aa-1(d); *see also id.* §1973aa-1(c) (“[N]or shall any citizen of the United States be denied the right to vote . . . in such election because of the failure of such citizen to be physically present in such State or political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.”).

If the law were as Relators construe it, Ohio would be in violation of this federal statute. A number of examples illustrate this. First, under Relators’ interpretation, someone who registers to vote on the 30th day prior to the election will simply not be permitted to vote absentee, even if they sought to apply for an absentee ballot seven days before the election. That person would become eligible to apply for an absentee ballot on Election Day, which is too late to request an absentee ballot. *See* Ohio Rev. Code §3509.01 (requiring absentee applications to be delivered by the third day before the election or, if delivered in person, by the day before the election). Some of those individuals may have moved to Ohio the 30th day before the election

and therefore would not have been able to register to vote before that date; thus, the deprivation of the right to vote absentee would be based on the duration of their residency.⁵

Second, people who register 30-45 days before the election (because they moved to Ohio during that time or for some other reason) but who will not physically be present in Ohio the week of the election will not be able to vote absentee, even if they try to submit an absentee ballot application before the federal deadline. Such individuals may not be able to submit a mailed application, receive the absentee ballot by mail, and return that ballot by mail before the third day prior to the election, if Ohio law precludes them from applying until a week or so before the election date.

Under federal law, someone who registers to vote by the applicable deadline, applies to vote absentee seven days or more prior to the election, and will not be present on the day of the election may not be deprived of the right to vote absentee. Relators' interpretation of the applicable election statutes is at odds with the Voting Rights Act, and thus raises significant questions under the Supremacy Clause. Under the teaching of *Carswell* and *Desenco, supra*, the state statutory provisions must be interpreted to avoid those concerns.

B. The Secretary of State's Directive avoids serious federal and state constitutional issues that would result from imposing an additional residential duration requirement.

Relators' proposed reading of the relevant statutes would effectively impose a durational requirement for absentee voting, raising serious constitutional issues that implicate both the Equal Protection Clause and the right to travel. *See Dunn v. Blumstein* (1972), 405 U.S. 330,

⁵ If someone moved to Ohio *less than* 30 days prior to the election, he or she would be entitled under federal law to vote absentee in the state from which he or she moved. 42 U.S.C. §1973aa-1(e).

337-38; *In re Chappell* (2005), 164 Ohio App.3d 628, 633 (“The limits placed upon government action by the Equal Protection Clauses of the United States Constitution and Ohio Constitution are ‘essentially identical.’”) (quoting *Beatty v. Akron City Hosp.* (1981), 67 Ohio St.2d 483, 491). Therefore, strict scrutiny would apply, and the State would need to establish that it has no reasonable alternate means to accomplish its compelling interests. *See Dunn*, 405 U.S. at 342-43.⁶

The effect of Relators’ construction of the Ohio laws as requiring a person to be registered for 30 days before he or she can request and cast an absentee ballot would effectively be to impose a durational residency prerequisite for voting absentee. People who will be absent and therefore unable to vote in person on election day will be able to vote absentee only if they have lived in Ohio for a time period that exceeds the 30-day voter registration period.

That durational residency requirement will necessarily be longer than the period between the voter registration deadline and the election.⁷ Yet courts have uniformly held that states and localities may not require voters to have resided in a particular jurisdiction for longer than the

⁶ Relators may argue that a lesser standard of review would apply under *McDonald v. Board of Elec. Comm’ners of Chicago* (1969), 394 U.S. 802. But unlike *McDonald*, the laws as construed by Relators would burden the fundamental right to travel and would actually deprive voters who will be absent on election day of the right to vote. *Compare McDonald*, 394 U.S. at 807-08 & n.6 (explaining that lesser standard applies to depriving inmates of absentee ballots because of absence of indication that they will be unable to vote by other means and because classification does not involve protected class); *id.* at 810 n.8 (pointing out that “any person . . . , including an unsentenced prisoner, presumably can get an absentee ballot if he is outside his resident county”).

⁷ The length of this time period will depend on how long in advance of the election the voter will be absent and whether the voter can present him or herself in person or seeks to apply to and vote absentee by mail. *See supra* at 10-13, 19. But either way, it will be longer than the 30-day period between the voter registration deadline and the election.

voter registration deadline itself without running afoul of the Equal Protection Clause. *See Fisher v. Herseth* (D.S.D. 1974), 374 F. Supp. 745, 747 (180-day durational voter residency requirement, when voter registration deadline was 20 days before election, infringed right to vote, right to travel, and equal protection); *Hinnant v. Sebesta* (N.D. Fla. 1973), 363 F. Supp. 398, 400 (when voter registration deadline is 30 days before election, imposition of additional 30-day residency requirement is unconstitutional); *Meyers v. Jackson* (E.D. Ark. 1975), 390 F. Supp. 37, 43-44 (striking down 30-day residency requirement when voter registration deadline was 20 days before election; “durational residency requirements of any kind cannot be upheld constitutionally, except to the extent that they are realistically related to reasonable registration requirements”); *Jackson v. Bowen* (S.D. Ind. 1976), 420 F. Supp. 315, 318 (invalidating 60-day residency requirement: “Thus the determining factor is the time allowed for voter registration; a durational residency requirement beyond such time is impermissible.”).

Requirements of residence that exceed the voter registration period are unconstitutional because they are “not necessary to promote any compelling state interest, . . . unreasonably restrict[] the exercise of the right of suffrage, . . . unreasonably restrict[] the freedom of people to move from one place to another, and . . . [are] invidiously discriminatory.” *Meyers*, 390 F. Supp. at 43. The statutory interpretation that Relators urge on this Court would result in an infringement upon the right to vote that would not pass constitutional scrutiny. As previously discussed, prohibiting newly registered voters from applying for and/or casting absentee ballots is not necessary in order to prevent fraud. *See supra* at 13-16. In fact, it accomplishes no legitimate state purpose. Therefore, the statutes must be construed to avoid this constitutional problem. *See O’Brien v. Skinner*, 414 U.S. 524, 529-30 (1974) (rule permitting inmates confined

outside county of residence to vote absentee but precluding inmates confined inside county of residence from doing same violates equal protection); *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 733-34 (Minn. 2003) (rule prohibiting mailing of replacement absentee ballots but permitting voters to obtain replacement ballots in person could not be justified based on fraud prevention rationale and therefore violates equal protection).

C. Relators' proposed reading of the law would also produce an unreasonable abridgement of the right to vote in violation of the Ohio Constitution's broad enfranchisement provision.

Article V, section 1 of the Ohio Constitution sets forth a broadly worded, affirmative entitlement to vote: "Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections." Ohio Const., Art. V, § 1. That provision constrains the legislature's power to restrict the right to vote of individuals the Constitution deems eligible:

What the legislature can not do directly it can not do by indirection. It if has no power expressly to deny or take away the right, it has none to define it away, *or unreasonably to abridge or impede its enjoyment by laws professing to be merely remedial*. The power of the legislature in such cases is limited to laws regulating the enjoyment of the right, by facilitating its lawful exercise, and by preventing its abuse.

Monroe v. Collins (1867), 17 Ohio St. 665, 685-86 (emphasis added). In drawing "the true line between laws which take[] away or abridge the right of suffrage, and those which may lawfully be enacted to regulate its exercise," the test is whether the laws are "*reasonable, uniform, and impartial, and . . . calculated to facilitate and secure, rather than to subvert or impede the exercise of the right to vote.*" *Id.* (emphasis added). And even if the object of the Legislature is

not to disenfranchise voters, a law may be deemed “calculated . . . to subvert or impede the exercise of the right to vote” based on its “effect, . . . scope, and spirit.” *Id.* at 686.

Ohio courts have relied upon the *Monroe* rule to invalidate statutes that posed unreasonable barriers to the right to vote and to construe statutes in a manner that avoids unconstitutional disenfranchisement. *See, e.g., Daggett v. Hudson* (1885), 43 Ohio St. 548, 561-66 (invalidating statutory requirement that voters register within seven-day annual period on ground that it “unnecessarily abridge[s] or impair[s] the right of suffrage secured to every elector by the constitution”); *State ex rel. May v. Jones* (1968), 16 Ohio App.2d 140, 143-44 (construing statute to deem student and his wife eligible voters in part based upon Article V, Section 1’s prohibition of unreasonable voting restrictions); *compare In re Gorham-Fayette Local Sch. Dist.* (1969), 20 Ohio Misc. 222, 226 (invalidating election where precincts ran out of ballots; “No individual, no government officer or body, by executive fiat or legislative enactment, can disfranchise a constitutionality qualified elector.”)⁸

Construing Ohio law to preclude voters who are indisputably eligible to vote in the November election from casting an absentee ballot, based simply upon the duration of their registration at the time they requested and/or cast that absentee ballot, would be unreasonable and

⁸ *See also* Ohio Const., Art. I, §2 (“All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.”); *Board of Lucas County Commrs. v. Waterville Twp. Bd. of Trustees* (2007), 171 Ohio App.3d 354, 367 (holding that provision excluding non-property owners from right to petition was unconstitutional under Article I, Section 2).

have the effect of impeding rather than facilitating the right to vote. The Secretary's construction of the applicable laws avoids this constitutional problem.

Amici Curiae's Proposition of Law No. III:

The Petition is barred by laches.

The Relators' petition is barred by the doctrine of laches. "It is axiomatic that relators in election cases must act with the utmost diligence." *State ex rel. Ditmars v. McSweeney* (2002), 94 Ohio St.3d 472, 479; *see also State ex rel. Carberry v. Ashtabula* (2001), 93 Ohio St.3d 522, 523 ("We have consistently required relators in election cases to act with the utmost diligence."); *State ex rel. Newell v. Tuscarawas Cty. Bd. of Elections* (2001), 93 Ohio St.3d 592, 595 (same). "A relator seeking extraordinary relief in an election-related matter bears the burden of establishing that [it] acted with the required diligence, and if the relator fails to do so, laches may bar the action." *Newell*, 93 Ohio St.3d at 595. Prompt resolution of election disputes is of such importance that this Court has held that "a delay as brief as *nine days* can preclude . . . consideration of the merits of an expedited election case." *State ex rel. Landis v. Morrow Cty. Bd. of Elections* (2000), 88 Ohio St.3d 187, 189 (citing *Paschal v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St.3d 141) (emphasis in original); *see also Carver v. Stankiewics* (2004), 101 Ohio St.3d 256, 259 (holding that delay of 19 days required court to deny relators' extraordinary writ).

In assessing whether laches bars an expedited election case, this Court has directed consideration of four elements: "(1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong,

and (4) prejudice to the other party.” *Blankenship v. Blackwell* (2004), 103 Ohio St.3d 567, 571 (internal quotation marks omitted).

Each of these elements is present here. The Secretary issued Directive 2008-63 on August 13, 2008. At that time, 48 days remained before the beginning of the overlap period.⁹ Yet Relators unreasonably waited *30 days* – until September 12, 2008 – before bringing this emergency petition. Relators do not claim that they were unaware of the issuance of the Directive; nor have they provided any justification or excuse for their extreme delay.

As to the final element, the Secretary and others unquestionably have been prejudiced by Relators’ delay. By filing just 18 days prior to the overlap period, Relators ensured that election officials, voters, and individuals seeking to register voters could not make plans in relation to the overlap period without concern as to the legality of their actions. In fact, Relators’ own Petition and brief suggest that such individuals could be guilty of criminal acts simply for following the Secretary’s Directive. Relators’ Br. 18; Relators’ Verified Petition ¶37. Moreover, the Relators’ delay in filing and serving the Petition means that, even under the expedited procedures of Rule 10 of the Rules of Practice of the Ohio Supreme Court, full briefing could conclude only the day before the overlap period begins, depriving the Court of a full and adequate opportunity to consider the parties’ arguments before ruling on the merits of the Petition. *See, e.g., Blankenship v. Blackwell* (2004), 103 Ohio St.3d 567, 573 (“Relators’ delay also prejudiced the Secretary of State and the protesters. If relators had acted more diligently, the Secretary of State would have had more time to defend against relators’ claims Instead, the Secretary of State was forced

⁹ Moreover, the overlap period has existed for years, and voters had been permitted to register to vote and cast absentee ballots simultaneously in prior elections. *See Answer* ¶29.

to defend these provisions under the accelerated evidence and briefing schedule for expedited-election cases in S.Ct.Prac.R. X(9).”).

Moreover, by their unreasonable delay, Relators have created the possibility that the Court may rule after the overlap period has begun. The prejudice to voters would be extreme if the Court were to credit Relators’ arguments and invalidate the absentee applications requested and absentee votes cast during the overlap period. Voters who have relied on Directive 2008-63 and registered and cast absentee ballots during the overlap period would have to be told that their votes will not count and that they must come back a second time to vote in person on Election Day. This would disenfranchise those voters who cannot be reached, or who are unable to vote in person on election day.

Relators have not acted with the diligence required by law, prejudicing the Secretary of State and the State’s voters. The doctrine of laches thus precludes the extraordinary relief that Relators seek.

Amici Curiae’s Proposition of Law No. IV:

The Court should deny the petition as far in advance of September 30, 2008 as possible.

Ohio voters are entitled under federal and state law to register, apply to vote absentee, and receive their absentee ballots at boards of elections throughout the State during the overlap period, which begins on September 30, 2008. Even the pendency of this lawsuit as that date approaches makes it difficult for voters, election officials, and individuals urging citizens to participate in our democracy by registering and voting to make plans. To the extent that uncertainty were to persist into the overlap period itself, voters who arrive in county election

offices throughout the State on September 30, 2008 and thereafter will have no way to know whether they lawfully may register to vote and request an absentee ballot in the same visit. That would be unconscionable.

In fact, in three counties, citizens may not be permitted to do so. As Relators' Petition points out, the Holmes, Miami, and Madison county prosecuting attorneys have advised the county boards of elections not to follow the Secretary's Directive. Petition ¶¶20-24; RE 033-041. It is unclear whether these county boards of elections will comply with the Secretary's Directive and permit voters who register during the overlap period to request absentee ballots.

Thus, this Court should act forthwith to reject Relators' petition so that the cloud of illegality Relators have cast over this overlap period can be dispelled. There is no need to wait until after the scheduled date for Relators' reply brief to issue a ruling.

Relators audaciously ask this Court to invalidate the Secretary's Directive on equal protection grounds under *Bush v. Gore* (2000), 531 U.S. 98. Relators' Br. 20-22. Yet this request ignores that the very point of the Directive is to ensure uniform procedures throughout the State during the overlap period; the threatened violation of equal protection results not from the Secretary's Directive, but because of the prospect that three county boards of elections may refuse to follow that Directive. Relators' Br. 19. It is only by affirming the lawfulness of the Secretary's interpretation in sufficient advance of September 30 that this Court can avoid the equal protection violation that would result if these three counties were to defy the Secretary of State's Directive and refuse to permit eligible voters to register to vote and vote absentee during the overlap period.

CONCLUSION

For the reasons discussed, the Petition should be denied.

Dated: *Sept. 24, 2008*

Respectfully submitted,

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By: *Michael J. Hunter*
Michael J. Hunter *by Thomas C. Drabick, Jr.*
per authority this
24th day Sept., 2008

CERTIFICATE OF SERVICE

The undersigned hereby certified that a copy of the foregoing was sent via regular U.S.

Mail Service the 24th day of September, 2008 to the following: *This document was also served by e-mail upon the following:*

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PREAMBLE

PREAMBLE

We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.

ARTICLE I: BILL OF RIGHTS

INALIENABLE RIGHTS.

§1 All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

(1851)

RIGHT TO ALTER, REFORM, OR ABOLISH GOVERNMENT, AND REPEAL SPECIAL PRIVILEGES.

§2 All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.

(1851)

RIGHT TO ASSEMBLE.

§3 The people have the right to assemble together, in a peaceable manner, to consult for the common good; to instruct their representatives; and to petition the General Assembly for the redress of grievances.

(1851)

BEARING ARMS; STANDING ARMIES; MILITARY POWER.

§4 The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

(1851)

TRIAL BY JURY.

§5 The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the

rendering of a verdict by the concurrence of not less than three-fourths of the jury.

(1851, am. 1912)

SLAVERY AND INVOLUNTARY SERVITUDE.

§6 There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime.

(1851)

RIGHTS OF CONSCIENCE; EDUCATION; THE NECESSITY OF RELIGION AND KNOWLEDGE.

§7 All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

(1851)

WRIT OF HABEAS CORPUS.

§8 The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety require it.

(1851)

BAIL

§9 All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great and except for a person who is charged with a felony where the proof is evident or the presumption great and who where the person poses a substantial risk of serious physical harm to any person or to the community. Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the type, amount, and

1.47 Presumptions in enactment of statutes.

In enacting a statute, it is presumed that:

- (A) Compliance with the constitutions of the state and of the United States is intended;
- (B) The entire statute is intended to be effective;
- (C) A just and reasonable result is intended;
- (D) A result feasible of execution is intended.

Effective Date: 01-03-1972

1.49 Determining legislative intent.

If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

- (A) The object sought to be attained;
- (B) The circumstances under which the statute was enacted;
- (C) The legislative history;
- (D) The common law or former statutory provisions, including laws upon the same or similar subjects;
- (E) The consequences of a particular construction;
- (F) The administrative construction of the statute.

Effective Date: 01-03-1972

3501.11 Board duties.

Each board of elections shall exercise by a majority vote all powers granted to the board by Title XXXV of the Revised Code, shall perform all the duties imposed by law, and shall do all of the following:

- (A) Establish, define, provide, rearrange, and combine election precincts;
- (B) Fix and provide the places for registration and for holding primaries and elections;
- (C) Provide for the purchase, preservation, and maintenance of booths, ballot boxes, books, maps, flags, blanks, cards of instructions, and other forms, papers, and equipment used in registration, nominations, and elections;
- (D) Appoint and remove its director, deputy director, and employees and all registrars, judges, and other officers of elections, fill vacancies, and designate the ward or district and precinct in which each shall serve;
- (E) Make and issue rules and instructions, not inconsistent with law or the rules, directives, or advisories issued by the secretary of state, as it considers necessary for the guidance of election officers and voters;
- (F) Advertise and contract for the printing of all ballots and other supplies used in registrations and elections;
- (G) Provide for the issuance of all notices, advertisements, and publications concerning elections, except as otherwise provided in division (G) of section 3501.17 and divisions (F) and (G) of section 3505.062 of the Revised Code;
- (H) Provide for the delivery of ballots, pollbooks, and other required papers and material to the polling places;
- (I) Cause the polling places to be suitably provided with voting machines, marking devices, automatic tabulating equipment, stalls, and other required supplies. In fulfilling this duty, each board of a county that uses voting machines, marking devices, or automatic tabulating equipment shall conduct a full vote of the board during a public session of the board on the allocation and distribution of voting machines, marking devices, and automatic tabulating equipment for each precinct in the county.
- (J) Investigate irregularities, nonperformance of duties, or violations of Title XXXV of the Revised Code by election officers and other persons; administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and report the facts to the prosecuting attorney or the secretary of state;
- (K) Review, examine, and certify the sufficiency and validity of petitions and nomination papers, and, after certification, return to the secretary of state all petitions and nomination papers that the secretary of state forwarded to the board;
- (L) Receive the returns of elections, canvass the returns, make abstracts of them, and transmit those

abstracts to the proper authorities;

(M) Issue certificates of election on forms to be prescribed by the secretary of state;

(N) Make an annual report to the secretary of state, on the form prescribed by the secretary of state, containing a statement of the number of voters registered, elections held, votes cast, appropriations received, expenditures made, and other data required by the secretary of state;

(O) Prepare and submit to the proper appropriating officer a budget estimating the cost of elections for the ensuing fiscal year;

(P) Perform other duties as prescribed by law or the rules, directives, or advisories of the secretary of state;

(Q) Investigate and determine the residence qualifications of electors;

(R) Administer oaths in matters pertaining to the administration of the election laws;

(S) Prepare and submit to the secretary of state, whenever the secretary of state requires, a report containing the names and residence addresses of all incumbent county, municipal, township, and board of education officials serving in their respective counties;

(T) Establish and maintain a voter registration database of all qualified electors in the county who offer to register;

(U) Maintain voter registration records, make reports concerning voter registration as required by the secretary of state, and remove ineligible electors from voter registration lists in accordance with law and directives of the secretary of state;

(V) Give approval to ballot language for any local question or issue and transmit the language to the secretary of state for the secretary of state's final approval;

(W) Prepare and cause the following notice to be displayed in a prominent location in every polling place:

"NOTICE

Ohio law prohibits any person from voting or attempting to vote more than once at the same election.

Violators are guilty of a felony of the fourth degree and shall be imprisoned and additionally may be fined in accordance with law."

(X) In all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the director or chairperson shall submit the matter in controversy, not later than fourteen days after the tie vote or the disagreement, to the secretary of state, who shall summarily decide the question, and the secretary of state's decision shall be final.

(Y) Assist each designated agency, deputy registrar of motor vehicles, public high school and vocational school, public library, and office of a county treasurer in the implementation of a program for registering voters at all voter registration locations as prescribed by the secretary of state. Under this program, each board of elections shall direct to the appropriate board of elections any voter registration applications for persons residing outside the county where the board is located within five days after receiving the applications.

(Z) On any day on which an elector may vote in person at the office of the board or at another site designated by the board, consider the board or other designated site a polling place for that day. All requirements or prohibitions of law that apply to a polling place shall apply to the office of the board or other designated site on that day.

Effective Date: 08-28-2001; 05-02-2006; 2007 HB119 09-29-2007

3503.02 Residence determination rules.

All registrars and judges of elections, in determining the residence of a person offering to register or vote, shall be governed by the following rules:

(A) That place shall be considered the residence of a person in which the person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.

(B) A person shall not be considered to have lost the person's residence who leaves the person's home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.

(C) A person shall not be considered to have gained a residence in any county of this state into which the person comes for temporary purposes only, without the intention of making such county the permanent place of abode.

(D) The place where the family of a married person resides shall be considered to be the person's place of residence; except that when the spouses have separated and live apart, the place where such a spouse resides the length of time required to entitle a person to vote shall be considered to be the spouse's place of residence.

(E) If a person removes to another state with the intention of making such state the person's residence, the person shall be considered to have lost the person's residence in this state.

(F) Except as otherwise provided in division (G) of this section, if a person removes from this state and continuously resides outside this state for a period of four years or more, the person shall be considered to have lost the person's residence in this state, notwithstanding the fact that the person may entertain an intention to return at some future period.

(G) If a person removes from this state to engage in the services of the United States government, the person shall not be considered to have lost the person's residence in this state during the period of such service, and likewise should the person enter the employment of the state, the place where such person resided at the time of the person's removal shall be considered to be the person's place of residence.

(H) If a person goes into another state and while there exercises the right of a citizen by voting, the person shall be considered to have lost the person's residence in this state.

(I) If a person does not have a fixed place of habitation, but has a shelter or other location at which the person has been a consistent or regular inhabitant and to which the person has the intention of returning, that shelter or other location shall be deemed the person's residence for the purpose of registering to vote.

Effective Date: 08-22-1995; 05-02-2006

3503.06 Registration as elector - circulation or signing of initiative or referendum.

(A) No person shall be entitled to vote at any election, or to sign or circulate any declaration of candidacy or any nominating, or recall petition, unless the person is registered as an elector and will have resided in the county and precinct where the person is registered for at least thirty days at the time of the next election.

(B)(1) No person shall be entitled to circulate any initiative or referendum petition unless the person is a resident of this state.

(2) All election officials, in determining the residence of a person circulating a petition under division (B)(1) of this section, shall be governed by the following rules:

(a) That place shall be considered the residence of a person in which the person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.

(b) A person shall not be considered to have lost the person's residence who leaves the person's home and goes into another state for temporary purposes only, with the intention of returning.

(c) A person shall not be considered to have gained a residence in any county of this state into which the person comes for temporary purposes only, without the intention of making that county the permanent place of abode.

(d) If a person removes to another state with the intention of making that state the person's residence, the person shall be considered to have lost the person's residence in this state.

(e) Except as otherwise provided in division (B)(2)(f) of this section, if a person removes from this state and continuously resides outside this state for a period of four years or more, the person shall be considered to have lost the person's residence in this state, notwithstanding the fact that the person may entertain an intention to return at some future period.

(f) If a person removes from this state to engage in the services of the United States government, the person shall not be considered to have lost the person's residence in this state during the period of that service, and likewise should the person enter the employment of the state, the place where that person resided at the time of the person's removal shall be considered to be the person's place of residence.

(g) If a person goes into another state and, while there, exercises the right of a citizen by voting, the person shall be considered to have lost the person's residence in this state.

(C) No person shall be entitled to sign any initiative or referendum petition unless the person is registered as an elector and will have resided in the county and precinct where the person is registered for at least thirty days at the time of the next election.

Effective Date: 08-22-1995; 05-02-2006

3503.13 Registration forms - records - electronic data processing system.

(A) Except as otherwise provided by state or federal law, registration forms submitted by applicants and the statewide voter registration database established under section 3503.15 of the Revised Code shall be open to public inspection at all times when the office of the board of elections is open for business, under such regulations as the board adopts, provided that no person shall be permitted to inspect voter registration forms except in the presence of an employee of the board.

(B) A board of elections may use a legible digitized signature list of voter signatures, copied from the signatures on the registration forms in a form and manner prescribed by the secretary of state, provided that the board includes the required voter registration information in the statewide voter registration database established under section 3503.15 of the Revised Code, and provided that the precinct election officials have computer printouts at the polls prepared in the manner required under section 3503.23 of the Revised Code.

Effective Date: 01-01-1995; 05-02-2006

3503.24 Application for correction of precinct registration list or challenge of right to vote.

(A) Application for the correction of any precinct registration list or a challenge of the right to vote of any registered elector may be made by any qualified elector of the county at the office of the board of elections not later than twenty days prior to the election. The applications or challenges, with the reasons for the application or challenge, shall be filed with the board on a form prescribed by the secretary of state and shall be signed under penalty of election falsification.

(B) On receiving an application or challenge filed under this section, the board of elections promptly shall review the board's records. If the board is able to determine that an application or challenge should be granted or denied solely on the basis of the records maintained by the board, the board immediately shall vote to grant or deny that application or challenge.

If the board is not able to determine whether an application or challenge should be granted or denied solely on the basis of the records maintained by the board, the director shall promptly set a time and date for a hearing before the board. Except as otherwise provided in division (D) of this section, the hearing shall be held, and the application or challenge shall be decided, no later than ten days after the board receives the application or challenge. The director shall send written notice to any elector whose right to vote is challenged and to any person whose name is alleged to have been omitted from a registration list. The notice shall inform the person of the time and date of the hearing, and of the person's right to appear and testify, call witnesses, and be represented by counsel. The notice shall be sent by first class mail no later than three days before the day of any scheduled hearing. The director shall also provide the person who filed the application or challenge with such written notice of the date and time of the hearing.

At the request of either party or any member of the board, the board shall issue subpoenas to witnesses to appear and testify before the board at a hearing held under this section. All witnesses shall testify under oath. The board shall reach a decision on all applications and challenges immediately after hearing.

(C) If the board decides that any such person is not entitled to have the person's name on the registration list, the person's name shall be removed from the list and the person's registration forms canceled. If the board decides that the name of any such person should appear on the registration list, it shall be added to the list, and the person's registration forms placed in the proper registration files. All such corrections and additions shall be made on a copy of the precinct lists, which shall constitute the poll lists, to be furnished to the respective precincts with other election supplies on the day preceding the election, to be used by the election officials in receiving the signatures of voters and in checking against the registration forms.

(D)(1) If an application or challenge for which a hearing is required to be conducted under division (B) of this section is filed after the thirtieth day before the day of an election, the board of elections, in its discretion, may postpone that hearing and any notifications of that hearing until after the day of the election. Any hearing postponed under this division shall be conducted not later than ten days after the day of the election.

(2) The board of elections shall cause the name of any registered elector whose registration is challenged and whose challenge hearing is postponed under division (D)(1) of this section to be marked in the official registration list and in the poll list or signature pollbook for that elector's precinct to indicate that the elector's registration is subject to challenge.

(3) Any elector who is the subject of an application or challenge hearing that is postponed under division (D)(1) of this section shall be permitted to vote a provisional ballot under section 3505.181 of the Revised Code. The validity of a provisional ballot cast pursuant to this section shall be determined in accordance with section 3505.183 of the Revised Code, except that no such provisional ballot shall be counted unless the hearing conducted under division (B) of this section after the day of the election results in the elector's inclusion in the official registration list.

Effective Date: 08-22-1995; 05-02-2006

3503.30 Correction of registration form.

When by mistake a qualified elector has caused himself to be registered in a precinct which was not his place of residence, the board of elections, on full and satisfactory proof that such error was committed by mistake, may, on his personal application and proof of his true residence, correct his registration form. The board may correct all errors occurring in the registration of electors when it finds that the errors subject to corrections were not of fraudulent intent.

Effective Date: 10-01-1953

3509.031 Absent voter's ballot for member of state militia on active duty in the state.

(A) Any qualified elector who is a member of the organized militia called to active duty within the state and who will be unable to vote on election day on account of that active duty may make written application for absent voter's ballots to the director of elections for the county in which the elector's voting residence is located. The elector may personally deliver the application to the director or may mail it, send it by facsimile machine, or otherwise send it to the director. The application need not be in any particular form but shall contain all of the following:

- (1) The elector's name;
- (2) The elector's signature;
- (3) The address at which the elector is registered to vote;
- (4) The elector's date of birth;
- (5) One of the following:
 - (a) The elector's driver's license number;
 - (b) The last four digits of the elector's social security number;
 - (c) A copy of the elector's current and valid photo identification, a copy of a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, that shows the name and address of the elector.
- (6) A statement identifying the election for which absent voter's ballots are requested;
- (7) A statement that the person requesting the ballots is a qualified elector;
- (8) A statement that the elector is a member of the organized militia serving on active duty within the state;
- (9) If the request is for primary election ballots, the elector's party affiliation;
- (10) If the elector desires ballots to be mailed to the elector, the address to which those ballots shall be mailed;
- (11) If the elector desires ballots to be sent to the elector by facsimile machine, the telephone number to which they shall be so sent.

(B) Application to have absent voter's ballots mailed or sent by facsimile machine to a qualified elector

who is a member of the organized militia called to active duty within the state and who will be unable to vote on election day on account of that active duty may be made by the spouse of the militia member or the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother or sister of the whole blood or half blood, son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of the militia member. The application shall be in writing upon a blank form furnished only by the director. The form of the application shall be prescribed by the secretary of state. The director shall furnish that blank form to any of the relatives specified in this division desiring to make the application, only upon the request of such a relative in person at the office of the board or upon the written request of such a relative mailed to the office of the board. The application, subscribed and sworn to by the applicant, shall contain all of the following:

- (1) The full name of the elector for whom ballots are requested;
 - (2) A statement that such person is a qualified elector in the county;
 - (3) The address at which the elector is registered to vote;
 - (4) The elector's date of birth;
 - (5) One of the following:
 - (a) The elector's driver's license number;
 - (b) The last four digits of the elector's social security number;
 - (c) A copy of the elector's current and valid photo identification, a copy of a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, that shows the name and address of the elector.
 - (6) A statement identifying the election for which absent voter's ballots are requested;
 - (7) A statement that the elector is a member of the organized militia serving on active duty within the state;
 - (8) If the request is for primary election ballots, the elector's party affiliation;
 - (9) A statement that the applicant bears a relationship to the elector as specified in division (B) of this section;
 - (10) The address to which ballots shall be mailed or telephone number to which ballots shall be sent by facsimile machine;
 - (11) The signature and address of the person making the application.
- (C) Applications to have absent voter's ballots mailed or sent by facsimile machine shall not be valid if

dated, postmarked, or received by the director prior to the ninetieth day before the day of the election for which ballots are requested or if delivered to the director later than twelve noon of the third day preceding the day of such election. If, after the ninetieth day and before four p.m. of the day before the day of an election, a valid application for absent voter's ballots is delivered to the director of elections at the office of the board by a militia member making application in the militia member's own behalf, the director shall forthwith deliver to the militia member all absent voter's ballots then ready for use, together with an identification envelope. The militia member shall then vote the absent voter's ballots in the manner provided in section 3509.05 of the Revised Code.

Effective Date: 08-22-1995; 01-27-2006; 05-02-2006; 2008 HB562 09-22-2008



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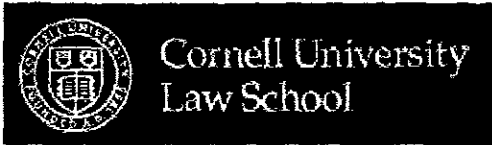
TITLE 2 > CHAPTER 1 > § 1

§ 1. Time for election of Senators

At the regular election held
in any State next preceding

the expiration of the term for which any Senator was elected to represent such State in Congress,
at which election a Representative to Congress is regularly by law to be chosen, a United States
Senator from said State shall be elected by the people thereof for the term commencing on the 3d
day of January next thereafter.

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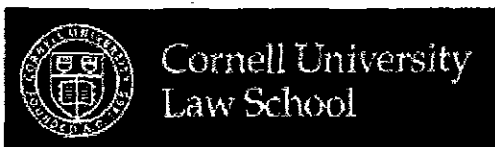
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TITLE 2 > CHAPTER 1 > § 7

§ 7. Time of election

The Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter.

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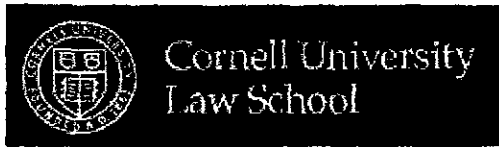
TITLE 3 > CHAPTER 1 > § 1

§ 1. Time of appointing electors

appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President.

The electors of President and Vice President shall be

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TITLE 42 > CHAPTER 20 > SUBCHAPTER I-B > § 1973aa-1

§ 1973aa-1. Residence requirements for voting **(a) Congressional findings**

The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President, and the lack of sufficient opportunities for absentee registration and absentee balloting in presidential elections—

- (1)** denies or abridges the inherent constitutional right of citizens to vote for their President and Vice President;
- (2)** denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines;
- (3)** denies or abridges the privileges and immunities guaranteed to the citizens of each State under article IV, section 2, clause 1, of the Constitution;
- (4)** in some instances has the impermissible purpose or effect of denying citizens the right to vote for such officers because of the way they may vote;
- (5)** has the effect of denying to citizens the equality of civil rights, and due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment; and
- (6)** does not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.

(b) Congressional declaration: durational residency requirement, abolishment; absentee registration and balloting standards, establishment

Upon the basis of these findings, Congress declares that in order to secure and protect the above-stated rights of citizens under the Constitution, to enable citizens to better obtain the enjoyment of such rights, and to enforce the guarantees of the fourteenth amendment, it is necessary

- (1)** to completely abolish the durational residency requirement as a precondition to voting for President and Vice President, and
- (2)** to establish nationwide, uniform standards relative to absentee registration and absentee balloting in presidential elections.

(c) Prohibition of denial of right to vote because of durational residency requirement or absentee balloting

No citizen of the United States who is otherwise qualified to vote in any election for President and Vice President shall be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision; nor shall any citizen of the United States be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because

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of the failure of such citizen to be physically present in such State or political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.

(d) Registration: time for application; absentee balloting: time of application and return of ballots

For the purposes of this section, each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election; and each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

(e) Change of residence; voting in person or by absentee ballot in State of prior residence

If any citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President has begun residence in such State or political subdivision after the thirtieth day next preceding such election and, for that reason, does not satisfy the registration requirements of such State or political subdivision he shall be allowed to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election,

(1) in person in the State or political subdivision in which he resided immediately prior to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or

(2) by absentee ballot in the State or political subdivision in which he resided immediately prior to his removal if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

(f) Absentee registration requirement

No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President shall be denied the right to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election because of any requirement of registration that does not include a provision for absentee registration.

(g) State or local adoption of less restrictive voting practices

Nothing in this section shall prevent any State or political subdivision from adopting less restrictive voting practices than those that are prescribed herein.

(h) "State" defined

The term "State" as used in this section includes each of the several States and the District of Columbia.

(i) False registration, and other fraudulent acts and conspiracies: application of penalty for false information in registering or voting

The provisions of section 1973i (c) of this title shall apply to false registration, and other fraudulent acts and conspiracies, committed under this section.

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