



October 26, 2022

Hon. Frank LaRose
Secretary of State
State of Ohio
22 North Fourth Street, 16th Floor
Columbus, OH 43215
secretarylarose@ohiosos.gov

VIA EMAIL

Dear Secretary LaRose:

Campaign Legal Center (“CLC”) writes to provide you with information regarding how Ohio’s Boards of Elections and voting location can adjudicate frivolous challenges to voter eligibility to minimize the burden on election administrators and protect the rights of voters, including important guidance on limitations imposed by federal law.¹ Such guidance will help to limit the disruption of frivolous challenges on election administration and protect Ohio voters from harassment and intimidation.

CLC is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis, and public education. CLC seeks a future in which the American political process is accessible to all citizens, resulting in representative, responsive, and accountable government. Consistent with that mission, we have worked with election officials across the nation to improve their administrative policies, protect the freedom to vote of citizens within their jurisdictions, and strengthen the democratic process.

CLC is concerned about the potential for mass eligibility challenges organized by partisan challengers and submitted with insufficient evidence, which risk

¹ This letter is not legal advice; it is intended to present a summary of relevant Ohio and federal law.

both disenfranchising eligible voters and causing unnecessary disruption to the orderly administration of the 2022 elections.² CLC is also concerned about precinct election officials who may not be properly trained on how to address such eligibility challenges, which could cause needless confusion at polling locations, particularly with a large number of new and first-time poll workers.³ As such, CLC writes to provide you and the counties with information and recommendations on how election officials can best adjudicate frivolous challenges to voter eligibility or individual ballots.

Reminding the county boards, their staffs, and volunteers of the rules for voter challenges and their responsibilities in dismissing challenges lodged without cause will ensure a fair and orderly election and will safeguard voters from intimidation.

To mitigate potential harms to both voters and county boards of elections caused by baseless or otherwise improper challenges, and to eliminate the potential for confusion at the polls, CLC provides the following election law summary for Boards of Elections to make sure they are appraised of the law regarding challenges, and to ensure that it is properly communicated to polling location managers. The Secretary of State's *Election Official Manual* provides a comprehensive explanation of these laws and procedures, and this letter aims to highlight those areas that are of particular relevance to concerns about voter eligibility challenges. We kindly request that you issue similar recommendations and guidance to county election officials and/or disseminate this letter to them.

I. Challenges to Voter Eligibility:

As you are aware, there are two avenues for challenges to voter eligibility under Ohio election law: a challenge to the right to vote made by any registered voter prior to the election, and a challenge to the right to vote made by a precinct election official at the polls.⁴ The timeframe for pre-election challenges by any registered voter has passed, and the criteria and process for a challenge at the polls by a precinct election official is detailed and limited. This is explained further below.

A. Pre-election challenges by any registered voter

² See Lynn Hulsey, *Conservative group to challenge voter registrations, ballots in Ohio*, Dayton Daily News (Oct. 12, 2022), <https://www.daytondailynews.com/local/conservative-group-plans-to-challenge-voter-registrations-and-ballots-in-ohio/G4UAOOBBPVCQ5CAIBEK3TQKNFE/>.

³ See Paige Bennett, *Help wanted: Board of Elections looks for poll workers ahead of November election*, CantonRep.com/The Repository (Oct. 4, 2022), <https://www.cantonrep.com/story/news/local/stark-county/2022/10/04/stark-county-board-of-elections-seeks-poll-workers/69518948007/>.

⁴ Ohio Rev. Code Ann. §§ 3503.24; 3503.20.

Challenges of the right to vote of any registered voter by any qualified elector must occur at least thirty days prior to the day of the election.⁵ These challenges must be filed with the relevant county board of election either in person or by mail.⁶ Because there are now fewer than 30 days until the November 8, 2022 election, this path for challenges has closed. If county boards of elections receive any such challenges between now and the November 8 election, they should be rejected as untimely and invalid.

B. Challenges at polling places by precinct election officials

The second way that a registered voter's eligibility to vote may be challenged is by a precinct election official at the polling location on the day of voting. Such challenges may *only* be raised by a precinct election official who believes that a voter is ineligible. Any challenges to a registered voter's eligibility at a polling location on Election Day or during early voting that is made by anyone other than a precinct election official should be rejected as not permitted under Ohio election law.

Only a precinct election official may initiate a challenge at a polling location. As you know, precinct election officials are appointed by the board of elections, and there are typically four precinct election officials per precinct.⁷ No more than half of the precinct election officials may be of the same political party.⁸ One precinct election official of the dominant political party is designated by the Board as the voting location manager.⁹ Only the precinct election officials may challenge the eligibility of a voter by following the official form, observers may not.¹⁰

If a voter's eligibility is properly challenged by a precinct election official, but the board of elections has already ruled on the question presented in the challenge as a result of a challenge filed at least thirty days prior to the election, the ruling of the board is final.¹¹ If there has been no prior ruling on the question presented in the challenge by a precinct election official, the voting location manager shall evaluate the challenge using the following legal process.¹²

There are four bases on which a precinct election official may challenge the eligibility of a person registered to vote: A) citizenship, B) length of residency,

⁵ Ohio Rev. Code Ann. § 3504.24(A).

⁶ *Id.*

⁷ Ohio Rev. Code Ann. § 3501.22(A)(1).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Election Official Manual*, 2-50.

¹¹ Ohio Rev. Code Ann. § 3505.20.

¹² *Id.*

C) precinct residency, and D) age.¹³ For each ground on which a voter’s eligibility can be challenged, the law provides a series of questions that the voting location manager must ask the challenged voter, and the *Election Official Manual* includes a form that the voting location manager must complete while asking these questions.¹⁴

If the voter is at the incorrect polling location, the precinct election officials should direct them to the correct polling location. If the voter refuses to go to the appropriate polling location or the precinct officials cannot determine the correct location, the person should be given a provisional ballot.

If the challenged voter cannot answer the questions that are asked, or refuses to sign their name to the form offered by the location manager, they should be given a provisional ballot in place of a regular ballot.¹⁵

In order for a person to be denied the right to vote at the polling location for any other reason and instead to be issued a provisional ballot, a majority of the precinct election officials must make a determination.¹⁶ This means that the presumption is in favor of the voter’s eligibility. A voter should only be given a provisional ballot in place of a regular ballot in the event that *more* than half of the precinct election officials believe the voter is ineligible for one of the four statutory reasons. Otherwise, the voter should receive a regular ballot.

The standard applied by the Ohio elections commission in a hearing on a complaint for a violation of the election code is “clear and convincing evidence.”¹⁷ The same standard should be applied by precinct election officials in evaluating the ineligibility of a challenged voter.

As you are aware, and as the *Election Official Manual* makes clear, the circumstances in which a voter’s eligibility may be challenged at a polling location are limited, the ability to challenge is restricted to precinct election officials, and the bar for determining that a voter is ineligible is high.

II. Other Legal Requirements:

As you know, both federal and Ohio law provide robust protection against voter intimidation and other forms of infringement on the fundamental right to vote. The process for responding to early ballot challenges—especially those conducted *en masse*—must therefore comply with all such federal and state

¹³ *Id.*

¹⁴ Form No. 10-U Prescribed by Secretary of State (08-17).

¹⁵ Form No. 10-U Prescribed by Secretary of State (08-17).

¹⁶ Ohio Rev. Code Ann. § 3505.20.

¹⁷ Ohio Rev. Code Ann. § 3517.155(D)(1).

laws, as well as the U.S. Constitution. As such, we suggest that you reiterate to boards of election via official guidance their responsibility to protect Ohio voters from baseless and discriminatory challenges, as well as alert County Boards of Election to the ways in which the adjudication of early ballot challenges can implicate both state and federal law.

A. Racially Discriminatory Challenges

Organized challengers frequently target voters from marginalized communities in an attempt to intimidate or deter members of those communities from voting.¹⁸ Sustaining such discriminatory challenges could violate the U.S. Constitution and federal law. Taken together, the Equal Protection Clause of the Fourteenth Amendment¹⁹ and Section 2 of the Voting Rights Act²⁰ prohibit the use of voting practices that result in citizens being denied equal access to the democratic process on account of “race, color, or membership in a language minority group.”²¹ Since these are often the exact groups targeted by discriminatory challenges, boards of election, precinct election officials, and other local elections officials should consider carefully whether granting mass challenges brought before them would have the effect of unlawfully disadvantaging voters because of their race.

B. Voter Intimidation

Baseless mass challenges to voter eligibility could constitute voter intimidation, since such challenges are often made in bad faith to deter eligible citizens—including members of historically marginalized groups—from voting. Such voter intimidation is illegal under both federal and Ohio law.

Federal law provides that anyone who “intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote” in a federal election has committed a federal crime.²² Additionally, several federal statutes impose civil liability for voter intimidation. Section 11(b) of the Voting Rights Act makes it unlawful to “intimidate, threaten, or coerce” another person, or attempt to do so, “for voting or attempting to vote” or “for urging or aiding any person to vote or attempt to vote.”²³ And Section 2 of the Ku Klux Klan Act of 1871 makes it unlawful for “two or more persons to conspire to prevent by force, intimidation,

¹⁸ See, e.g., Nicolas Riley, Brennan Ctr. for Just., *Voter Challenges* 11-12 (2012), https://www.brennancenter.org/sites/default/files/legacy/publications/Voter_Challengers.pdf.

¹⁹ U.S. Const. amend XIV, § 1.

²⁰ 52 U.S.C. 10301

²¹ See U.S. Dept. of Justice, *Guidance Under Section 2 of the Voting Rights Act*, 52 U.S.C. § 10301, for *Redistricting and Methods of Electing Government Bodies* (Sept. 1, 2021) <https://www.justice.gov/opa/press-release/file/1429486/download>.

²² 18 U.S.C. § 594.

²³ 52 U.S.C. § 10307(b).

or threat,” any voter from casting a ballot for the candidate of his or her choice.²⁴

Similarly, Ohio law criminalizes the use of “force, fraud, or other improper means, [to] obtain or attempt to obtain possession of the ballots, ballot boxes, or pollbooks,” “recklessly destroy[ing] any property used in the conduct of elections,” any “[a]ttempt to intimidate an election officer or prevent an election official from performing the official’s duties,” or “loiter[ing] in or about a registration or polling place during registration or the casting and counting of ballots so as to hinder, delay, or interfere with the conduct of the registration or election.”²⁵ Accordingly, election officials should be aware that challenges at polling locations by persons other than precinct election officials, may be considered voter intimidation in violation of federal and Ohio law.

To that end, we encourage you and the county boards of election to review the relevant laws and standards defining voter intimidation and promptly report any incidents of voter intimidation to the Ohio Attorney General’s Office and the U.S. Department of Justice (DOJ).²⁶

We urge you to send the above summary of the relevant law to Ohio’s boards of elections and advise them on the processes, requirements, and limitations of Ohio’s voter eligibility challenge provisions. Please do not hesitate to reach out with any questions. We stand ready to assist you in upholding federal and state laws and protecting Ohioans’ freedom to vote.

Sincerely,

Jonathan Diaz
Senior Legal Counsel, Voting Rights
Campaign Legal Center
1101 14th St NW, Ste. 400
Washington, DC 20005
jdiaz@campaignlegalcenter.org

CC: Brian D. Malachowsky, Deputy Elections Counsel

²⁴ 42 U.S.C. § 1985(3).

²⁵ Ohio Rev. Code Ann. § 3599.24.

²⁶ The DOJ Civil Rights Division can be reached at 800-253-3931, and voter intimidation reports can be submitted online at <https://civilrights.justice.gov/report>. More information on DOJ’s resources to protect voting access can be found at <https://www.justice.gov/opa/pr/justice-department-releases-information-efforts-protect-right-vote>.