



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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## Bill of Rights and Voting Committee

Prof. Richard Saphire, Chair  
Jeff Jacobson, Vice-chair

### Part II

December 15, 2016

Ohio Statehouse  
Room 017

## **OCMC Bill of Rights and Voting Committee**

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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MEMORANDUM

**TO:** Chair Richard Saphire, Vice-chair Jeff Jacobson, and  
Members of the Bill of Rights and Voting Committee

**CC:** Steven C. Hollon, Executive Director

**FROM:** Shari L. O'Neill, Counsel to the Commission and  
E. Erin Oehler, Student Intern

**DATE:** October 27, 2015

**RE:** Introduction to and Comparison of State Voter Registration Laws  
In Article V, Section 1 (Qualifications of an Elector)

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**Introduction**

The Bill of Rights and Voting Committee has asked staff to provide research that will assist in the committee's review of Article V, Section 1 (Qualifications of an Elector).

Article V, Section 1 provides:

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. Any elector who fails to vote in at least one election during any period of four consecutive years shall cease to be an elector unless he again registers to vote.

This memorandum focuses on one aspect of the section: the requirement that a voter must be registered to vote for thirty days in order to qualify as an elector. The memorandum is intended as a general introduction to the topic of voter registration as well as indicating current trends in state voter registration laws.

To facilitate the committee's review of Article V, Section 1, the attachments to this memorandum provide two surveys of voting registration laws across the United States. The first survey indicates which states provide for online voter registration, and is provided as Attachment

A. The second survey indicates which states allow same day registration. It is provided as Attachment B.

## Background

Currently, Ohio does not provide for online voter registration. However, there are three bills in committee in the House and one bill in committee in the Senate which would allow for online voter registration. House Bill 41, introduced in February 2015 by Rep. Michael Stinziano, and House Bill 181, introduced in April 2015 by Rep. Kathleen Clyde, have been assigned to the House Government Accountability and Oversight Committee, but have not yet had a first hearing. Senate Bill 63, introduced in February 2015 by Sen. Frank LaRose, passed the Senate in June 2015, was considered for the first time by the House in June 2015, and has been assigned to the House Government Accountability and Oversight Committee. Senate Bill 158, introduced in May 2015 by Sen. Kenny Yuko, has been assigned to the Senate Government Oversight and Reform Committee, and has not had a first reading.

There is no current legislation in either the House or the Senate that would allow for same day voter registration.

## Analysis

Presently, there are 28 states<sup>1</sup> that allow for online voter registration (D.C. included). Twenty-three states<sup>2</sup> allow for online voter registration by statute, and 5 states<sup>3</sup> did not require legislation to implement online voter registration. Of the 23 states that do not allow for it, 10<sup>4</sup>, including Ohio, have pending legislation that would amend a statute in order to allow for online voter registration.

Iowa is also engaged in the process of allowing online voter registration, although its measure does not require legislation for implementation. In January 2015, the Iowa Voter Registration Commission voted unanimously to allow online voter registration.

Additionally, Maine and Montana had proposed bills to allow online voter registration this year, but in Maine, the bill died in the Senate, and, in Montana, the bill died in the House. Nationwide, there has been no movement to amend a state constitution to allow for online voter registration.

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<sup>1</sup> AZ, CA, CO, CT, DE, DC, FL, GA, HI, IL, IN, KS, LA, MD, MA, MN, MO, NE, NV, NY, OK, OR, PA, SC, UT, VA, WA, WV

<sup>2</sup> CA, CO, CT, DE, FL, DC, GA, HI, IL, IN, LA, MD, MA, MN, NE, NV, OK, OR, SC, UT, VA, WA, WV

<sup>3</sup> AZ, KS, MO, NY, PA

<sup>4</sup> AK, ID, KY, MI, NJ, NM, OH, RI, TX, WI



Currently, 14 states<sup>5</sup> have same-day voter registration (D.C. included). All of the states that allow for it have done so by statute and do not have a restrictive clause in their constitutions that prevent same-day registration. Of the 36 states<sup>6</sup> that do not have same day voter registration, 14<sup>7</sup> have proposed legislation to allow for it. Thirteen of them do not have restrictive clauses in their constitutions and have proposed only amendments to statutory language in order to allow for same day voter registration.

The remaining state, New York, does have a restrictive clause in its state constitution. Therefore, New York has two proposed bills. One would delete the restrictive clause in the constitution, and the other would amend a statute to allow for same-day voter registration. Further, there are six states<sup>8</sup>, including Ohio, that have restrictive clauses in their constitutions. New York is the only one to propose changes thus far.

### **Reception of Online Voter Registration**

The Brennan Center for Justice at the New York University School of Law maintains an online data resource that, among other topics, has addressed voter registration modernization efforts in the 50 states. The following excerpts from the website are provided as a brief overview of what some states are doing with regard to online voter registration.

#### Arizona<sup>9</sup>

Automated and online registration have transformed the process of voter registration in Arizona. Mail-in registration, which made up 60 percent of all transactions as recently as 2001-02, fell below 20 percent in 2007-08. Now online registrations predominate in election years and MVD registrations in off years. Voters were quick to embrace both systems, and together they account for 70 percent of all registrations received between 2007 and 2009.

In Maricopa County, home to over half of all Arizona residents, officials have found that young voters are particularly drawn to online registration. They recently determined that 18 to 34 year-olds, an age group that accounts for only some 25 percent of registered voters nationwide, have submitted 36 percent of all updates made through the online portal. With regard to party preference, Maricopa County's data suggest that online users are fairly typical of the general population.

<sup>5</sup> CA, CO, CT, DC, HI, IL, IA, ME, MN, MT, NH, VT, WI, WY

<sup>6</sup> AL, AK, AZ, AR, DE, FL, GA, IN, KS, KY, LA, MD, MA, MI, MS, MO, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV

<sup>7</sup> AL, AK, DE, GA, MA, MI, NE, NV, NJ, NM, NY, NC, PA, UT

<sup>8</sup> AR, MS, NY, OH, OR, VA

<sup>9</sup> <https://www.brennancenter.org/analysis/vrm-states-arizona> (last visited November 2, 2015).



Maricopa County officials have also found that electronic registrations are far less prone to defects than paper forms. On August 17, 2009, they surveyed all records then “on suspense”—applications that contain incomplete, inaccurate, or illegible information, and which require further input from applicants. Paper applications, which made up only 15.5 percent of all registrations received in 2009, accounted for over half of these suspended records. Conversely, electronic submissions were a minority in the suspense pool despite accounting for over 84 percent of all registrations.

Cost savings have been substantial, particularly in the Phoenix area. Maricopa County automatically reviews and accepts about 90 percent of the electronic transactions it receives, and officials there estimate they spend an average of 3¢ to process an electronic application compared to 83¢ per paper form. As the county received 462,904 applications electronically in 2008, this represents savings of over \$370,000. Factoring in other savings on labor and printing costs, the county saved well over \$450,000 in 2008. In return, state officials estimate they spend a total of at most \$125,000 annually to operate, enhance, and maintain the online and MVD systems.

#### Colorado<sup>10</sup>

Almost 5,000 people registered online in the system’s first three months, with one of the online bill’s sponsors, Democratic State Representative Joe Miklosi, declaring himself “absolutely thrilled” with this response. The Secretary of State’s office has provided a demographic breakdown of this group of users that reveals several notable trends.

The most striking is online registration’s popularity with younger voters. While 40 to 60 year-olds accounted for 34 percent of users, 17-30 year-olds accounted for 33 percent (17 year-olds are permitted to register if they will turn 18 before the next election). This parity is highly unusual, because younger voters usually lag far behind older ones in their rate of registration. In 2008, 18 to 30 year olds only accounted for about 20 percent of registered voters nationwide, whereas 40 to 60 year olds accounted for 40 percent. Analysis also determined that men made up 54 percent of these initial online users (compared to 48 percent of all registered voters in 2008), while a plurality (39 percent) affiliated with the Republican Party.

#### Delaware<sup>11</sup>

Delaware has boasted one of the nation’s most successful [Department of Motor Vehicles (“DMV”)] registration programs since the mid-1990s, regularly

<sup>10</sup> <https://www.brennancenter.org/analysis/vrm-states-colorado> (last visited November 2, 2015).

<sup>11</sup> <https://www.brennancenter.org/analysis/vrm-states-delaware> (last visited November 2, 2015).



accounting for around 80 percent of all voter registrations in the state. Initial data suggest that e-Signature has not been drawing more people into the process, though it may account for a significant increase in changes of party affiliation.

E-signature has substantially reduced the time and expense of processing voter registrations. Each DMV office will now save the cost of printing an estimated 1000 pages a day in election years, and 300 a day in off years. And each registration transaction now takes DMV employees an average of 30 seconds to complete, compared to 90 seconds in the past. A large drop in workloads since e-Signature debuted also allowed officials to eliminate five staff vacancies in 2009, representing more than 10 percent of Delaware's total election staff. This move has already created \$200,000 in annual [savings], according to Commissioner of Elections Elaine Manlove, and she hopes to eliminate up to four additional positions as they become vacant.

Officials have encountered no technical difficulties or security problems with either online or DMV registration, and are considering ways to expand both systems. One idea is to allow the online system to retrieve signatures from the DMV. And officials are currently planning to introduce e-Signature into the offices of social service agencies that offer voter registration.

#### Florida<sup>12</sup>

Election officials in Leon County, home to Tallahassee, have found that the automated system works smoothly and conveniently, though in a few instances they have failed to receive a person's registration data. When the possibility of this arises, they can confirm that a person attempted to register by examining her printed receipt from the DHSMV or by contacting the agency directly to inquire whether her file has been marked for voter registration. If they find that a registration attempt occurred, they will add the person to the rolls or validate her provisional ballot.

#### Georgia<sup>13</sup>

State Director of Elections Wesley Tailor reports that, beyond savings at the county level, full automation has relieved state officials of printing, sorting, and mailing expenses; formerly they served as intermediaries in directing forms from DDS offices to the appropriate county election officials, a process that could take up to ten days in its entirety.

<sup>12</sup> <https://www.brennancenter.org/analysis/vrm-states-florida> (last visited November 2, 2015).

<sup>13</sup> <https://www.brennancenter.org/analysis/vrm-states-georgia> (last visited November 2, 2015).



Indiana<sup>14</sup>

Approximately 2,500 people used the online system in its first month, and election officials expect the rate of use to increase registration deadline for the 2010 general election approaches. According to Regina Harris, the Registration Administrator for Lake County, her office can process paperless registrations in half the time needed for a paper form, or even less.

Kansas<sup>15</sup>

Kansas recently saw a large jump in DMV registrations. The state reported approximately 110,000 of these transactions in 2007-08, compared to over 107,000 in 2009 alone. Use of the online portal was limited in the months after its introduction, likely due in part to the fact that there were no regular elections during that time.

Kansas's paperless systems have improved the registration process in a variety of ways. One local official estimates that counties can process electronic applications twice as quickly as paper forms. And automation at the DMV has reduced the number of registrations forwarded to the wrong county, while fewer unregistered people are erroneously supplying a change of address rather than making a new registration. According to Brad Bryant, the State Election Director, the online and automated DMV registration systems have not been difficult to develop or maintain.

Louisiana<sup>16</sup>

Commissioner of Elections Angie LaPlace anticipates that, by reducing the amount of data entry required of local election officials, the online system will reduce the potential for data entry errors, and will also help relieve some of the burden placed on these officials during the busy period before elections.

In the Orleans Parish Registrar of Voter's office, Assistant Chief Deputy Rachel Penns estimates that her office can process an electronic registration in the half the time required for a paper form. She notes that online system also saves time for her office by providing registrations that are consistently accurate and complete, and describes the lack of legibility problems, in particular, as "really, really wonderful."

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<sup>14</sup> <https://www.brennancenter.org/analysis/vrm-states-indiana> (last visited November 2, 2015).

<sup>15</sup> <https://www.brennancenter.org/analysis/vrm-states-kansas> (last visited November 2, 2015).

<sup>16</sup> <https://www.brennancenter.org/analysis/vrm-states-louisiana> (last visited November 2, 2015).





Nevada<sup>17</sup>

[State Elections Deputy Matt] Griffin anticipates that the online system will prove more reliable and more secure than paper-based registration, while also delivering “huge” cost savings. He notes that the address verification process, in particular, will likely ensure a higher degree of accuracy and dramatically reduce the time county officials spend reviewing applications. He further expects that the online system will succeed in drawing in new applicants on its own, especially among younger residents, and thus reduce the role of sometimes-problematic voter registration drives.

Larry Lomax, the Clark County Registrar of Voters, has found that, thanks to the lack of data entry and the verification checks that occur before a person even submits an online registration, a large majority of these applications require “almost no work” when they reach his office. As of September 23, 2010, less than a month since the online portal debuted, he estimated that online submissions have come to account for one in every five new registrations he receives.

Pennsylvania<sup>18</sup>

Pennsylvania has been processing a very large number of motor vehicle registrations for many years. Between 2001 and 2008 the state received an average of over a million of these registrations annually, a total equivalent to over 10 percent of its voting-age citizen population. Full automation does not appear to have impacted these registration rates.

State election officials report that electronic applications from PennDOT are more accurate than paper, and quicker to process. They also note that the new system allows them to trace the history of any transaction from the time it is first submitted at a PennDOT office. On the debit side, they find that visitors who are not yet registered sometimes mistakenly submit address updates (rather than a new registration); county officials must then attempt to contact these people in order to obtain the full range of information they require to make a new registration.

Washington<sup>19</sup>

DOL registrations have increased dramatically since 2008. From 95,000 in 2004 and 103,000 in 2007, their number grew to 178,000 in 2008 and 205,000 in 2009. In relative terms, the DOL accounted for approximately 15 percent of all

<sup>17</sup> <https://www.brennancenter.org/analysis/vrm-states-nevada> (last visited November 2, 2015).

<sup>18</sup> <https://www.brennancenter.org/analysis/vrm-states-pennsylvania> (last visited November 2, 2015).

<sup>19</sup> <https://www.brennancenter.org/analysis/vrm-states-washington> (last visited November 2, 2015).



registrations recorded by the Secretary of State's office in 2004 compared to about 27 percent in 2008. In 2009 this proportion rose to 70 percent. Voters were also quick to embrace online registration, submitting over 200,000 online transactions in 2008, of which 18-24 year olds submitted nearly one in three.

Paperless registration saved over \$126,000 for the Secretary of State's office in 2008, minus the one-time cost of mailing electronic registrations to counties still in the process of upgrading their systems. The effect has been even greater at the county level. Officials in Pierce County estimate that they can process an electronic registration in half the time required for a paper form, or less. They also report that electronic registrations are less error-prone than paper, requiring less follow-up work with voters. A recent survey of four Washington counties has further determined that they save "anywhere from \$.50 to \$2.00" on each registration they receive electronically.

In addition, DOL officials estimate their employees save 30 seconds per registration over the old approach, while offices save on the costs printing and processing paper. DOL IT Specialist Michael Bethany also reports that his office received a large amount of positive feedback from employees and visitors alike when it first introduced the new system. And Election Information Services Manager David Motz has estimated that, assuming people who submitted online transactions would otherwise send mail-in forms, the online portal saved voters nearly \$90,000 in postage in 2008.

### **Reception of Same Day Voter Registration**

News reports suggest that voters generally support same-day registration in states that permit it, and that attempts to eliminate same-day registration have not been successful.

#### Maine

(The following is a direct excerpt from Bangor *Daily News*)<sup>20</sup>

By a relatively wide margin, Mainers on Tuesday overturned a recently passed law that would have ended a 38-year-old practice of allowing voters to register on Election Day.

Question 1 asked: "Do you want to reject the section of Chapter 399 of the Public Laws of 2011 that requires new voters to register to vote at least two business days prior to an election?"

<sup>20</sup> <https://bangordailynews.com/2011/11/08/politics/early-results-indicate-election-day-voter-registration-restored/> (last visited November 2, 2015).



“Maine voters sent a clear message: No one will be denied a right to vote,” said Shenna Bellows, director of the American Civil Liberties Union of Maine. “Voters in small towns and big cities voted to protect our constitutional right.”

### Minnesota

(The following is a direct excerpt from CNN)<sup>21</sup>

Americans who want to vote should be able to decide that on Election Day. That's true in Minnesota, where you can walk into your polling place, register and cast a ballot -- all at the same time. It's not true in many states, where voter registration closes days or weeks before Election Day. Research shows that states with same-day registration have turnout rates 5 percent to 7 percent higher than those that don't, according to Michael McDonald at George Mason University.

The drawback, some would argue, is an increased risk of voter fraud. [Mark] Ritchie, the [former] Minnesota secretary of state, told me that hasn't posed a real threat, and the state has been using the system since the 1970s. “Imagine you're registering a voter that's standing in front of you versus registering someone through a form in the mail. Which one of those has more integrity? Obviously, the person who is standing in front of you.” The state checks on Election-Day registrations against computer databases the next day to catch duplicates, he said.

### Montana

(The following is a direct excerpt from Demos)<sup>22</sup>

Legislative Referendum 126 (LR-126), which would have cut off the voter registration deadline from when the polls closed on Election Day to the Friday before, met resounding defeat upon being placed into the hands of Montanans. Fifty-seven percent of voters opposed the repeal of Montana's SDR program compared to 43 percent who favored the referendum.

In an explainer outlining the illogical and unproven arguments of removing SDR, Demos cites earlier polling that delivers the same message: Montana voters view SDR as a benefit as opposed to hindrance.

Montana's Same-Day Registration fight is relatively new. Detractors' first salvo against SDR began in 2011, with the passage of HB 180 by the state legislature. Then-Governor Brian Schweitzer vetoed that bill, but in 2013, a similar SDR-repeal measure was introduced in House; its language was used for a companion bill in the Senate. This bill also passed, and was thereafter also vetoed, this time

<sup>21</sup> <http://www.cnn.com/2012/10/27/opinion/ctl-minnesota-best-voting/> (last visited November 2, 2015).

<sup>22</sup> <http://www.demos.org/blog/11/7/14/montana-voters-keep-same-day-registration> (last visited November 2, 2015).



by Governor Steve Bullock. LR-126 was subsequently born out of a desire to circumvent gubernatorial veto power, in the hopes that voters would agree that the reform caused longer lines and too much overall confusion at the polls.

The problem with the sentiment behind LR-126, however, was that Montanans had already made it clear that they felt differently about Same-Day Registration. Polling showed that 70 percent of respondents believed SDR to be necessary to protect voter participation in Montana, with 66 percent also believing that SDR protects Montana's democracy overall. More than 28,000 Montanans have benefitted from SDR since it became available in 2006.

Montana Secretary of State Linda McCulloch perhaps states it best: "There is no reason to change a law that works, especially when that law secures your fundamental right to actively participate in our democracy."

### **Conclusion**

This memorandum provides a starting point for the Bill of Rights and Voting Committee's review of the voter registration portion of Article V, Section 1. Staff is pleased to provide additional research on this topic as needed.



## ATTACHMENT A

## SURVEY OF VOTER REGISTRATION PROVISIONS

| State       | Online Registration? | Year Implemented | How Enacted             | Current Proposed Legislation | Sources  |
|-------------|----------------------|------------------|-------------------------|------------------------------|--|
| Alabama     | No                   | N/A              | N/A                     | No                           | AL Const. Amend. 579; <a href="http://brennancenter.org">brennancenter.org</a> ; Ala.Code 1975 § 17-4-60                                 |
| Alaska      | No                   | N/A              | N/A                     | Yes (SB 93 to amend statute) | AK Const. Art. 5, Sect. 4; 2015 Alaska Senate Bill No. 93  |
| Arizona     | Yes                  | 2002             | No legislation required | N/A                          | AZ Const. Art. 8, Sect. 12; A.R.S. § 16-131  |
| Arkansas    | No                   | N/A              | N/A                     | No                           | AR Const. Amend. 39; <a href="http://www.dmv.org/arkansas/voter-registration.php">http://www.dmv.org/arkansas/voter-registration.php</a> |
| California  | Yes                  | 2012             | Statute                 | N/A                          | <a href="http://ncsl.org">ncsl.org</a> ; CA Const. Art. 2, § 3; Ann.Cal.Elec.Code § 2196   |
| Colorado    | Yes                  | 2010             | Statute                 | N/A                          | <a href="http://ncsl.org">ncsl.org</a> ; CO Const. Art. 7, § 1; C.R.S.A. § 1-2-202.5   |
| Connecticut | Yes                  | 2014             | Statute                 | N/A                          | <a href="http://ncsl.org">ncsl.org</a> ; CT Const. Art. 6, § 1; CT Const. Art. 6, § 11; C.G.S.A. § 9-19k                                 |
| Delaware    | Yes                  | 2014             | No legislation required | N/A                          | <a href="http://ncsl.org">ncsl.org</a> ; Del.C. Ann. Const., Art. 5, § 4   |



|                      |     |  |                         |  |  |
|----------------------|-----|--|-------------------------|--|--|
| District of Columbia | Yes | 2015                                     | Statute                 | N/A  | <a href="http://ncsl.org">ncsl.org</a> ; DC ST § 1-1001.02   |
| Florida              | Yes | Not yet implemented; bill passed in 2015 | Statute                 | N/A  | <a href="http://ncsl.org">ncsl.org</a> ; F.S.A. Const. Art. 6 § 2; 2015 SB 228   |
| Georgia              | Yes | 2014                                     | Statute                 | N/A  | <a href="http://ncsl.org">ncsl.org</a> ; GA Const. Art. 2, § 1; Ga. Code Ann., § 21-2-221.2  |
| Hawaii               | Yes | 2015                                     | Statute                 | N/A  | <a href="http://ncsl.org">ncsl.org</a> ; Const. Art. 2, § 4; HRS § 11-15.3   |
| Idaho                | No  | N/A                                      | N/A                     | Yes (HB 488—proposed in 2014 to amend statute—being held in the State Affairs Committee)   | ID Const. Art. 6, § 2; I.C. § 34-407; I.C. § 34-404; 2014 HB 488   |
| Illinois             | Yes | 2014                                     | Statute                 | N/A  | <a href="http://ncsl.org">ncsl.org</a> ; IL Const. Art. 3, § 1; 10 ILCS 5/1A-16.5  |
| Indiana              | Yes | 2010                                     | Statute                 | N/A  | <a href="http://ncsl.org">ncsl.org</a> ; IN Const. Art. 2, § 2; IC 3-7-26.7  |
| Iowa                 | No  | N/A                                      | No legislation required | Yes (In Jan. 2015, the Iowa Voter Registration Commission voted unanimously to adopt rules establishing an online registration system) | IA Const. Art. 2, § 1; I.C.A. § 48A; <a href="http://www.desmoinesregister.com/story/news/politics/2015/01/20/online-voter-registration-iowa/22062699/">http://www.desmoinesregister.com/story/news/politics/2015/01/20/online-voter-registration-iowa/22062699/</a> |

|               |     |      |                         |   |   |
|---------------|-----|------|-------------------------|---|---|
| Kansas        | Yes | 2009 | No legislation required | N/A   | <a href="http://ncsl.org">ncsl.org</a> ; KS Const. Art. 5, § 4; K.S.A. 25-2309                        |
| Kentucky      | No  | N/A  | N/A                     | Yes (HB 334 to amend statute)                           | KY Const. § 147; KRS § 116.045; 2015 Kentucky House Bill No. 334                                      |
| Louisiana     | Yes | 2010 | Statute                 | N/A   | <a href="http://ncsl.org">ncsl.org</a> ; LA Const. Art. 11, § 1; LSA-R.S. 18:31                       |
| Maine         | No  | N/A  | N/A                     | No (2015 bill proposed to amend statute—died in Senate) | ME Const. Art. 2, § 1; 21-A M.R.S.A. § 122  |
| Maryland      | Yes | 2012 | Statute                 | N/A   | <a href="http://ncsl.org">ncsl.org</a> ; MD Constitution, Art. 1, § 2; MD Code, Election Law, § 3-201 |
| Massachusetts | Yes | 2015 | Statute                 | N/A   | <a href="http://ncsl.org">ncsl.org</a> ; M.G.L.A. 51 § 33A  |
| Michigan      | No  | N/A  | N/A                     | Yes (SB 61 to amend statute)                            | MI Const. Art. 2, § 1; M.C.L.A. 168.497; 2015 Michigan Senate Bill No. 61                             |
| Minnesota     | Yes | 2013 | Statute                 | N/A   | <a href="http://ncsl.org">ncsl.org</a> ; MN Const. Art. 7, § 1, M.S.A. § 201.061                      |
| Mississippi   | No  | N/A  | N/A                     | No  | MS Const. Art. 12, § 242; Miss. Code Ann. § 23-15-37; Miss. Code Ann. § 23-15-47                      |
| Missouri      | Yes | 2014 | No legislation required | N/A   | <a href="http://ncsl.org">ncsl.org</a> ; MO Const. Art. 8, § 5; V.A.M.S. 115.151                      |



|                |     |      |                         |  |  |
|----------------|-----|------|-------------------------|--|--|
| Montana        | No  | N/A  | N/A                     | No<br>(2015 bill proposed to amend statute died in House)            | MT CONST Art. 4, § 2; MCA 13-2-110   |
| Nebraska       | Yes | 2015 | Statute                 | N/A  | <a href="http://ncsl.org">ncsl.org</a> ; NE Const. Art. VI, § 1; Neb.Rev.St. § 32-304                                  |
| Nevada         | Yes | 2012 | Statute                 | N/A  | <a href="http://ncsl.org">ncsl.org</a> ; NV Const. Art. 2, § 6; N.R.S. 293.506;  |
| New Hampshire  | No  | N/A  | N/A                     | No   | NH Const. Pt. 1, Art. 11; N.H. Rev. Stat. § 654:7-a  |
| New Jersey     | No  | N/A  | N/A                     | Yes<br>(A4613 to amend statute—bill passed both by House and Senate) | NJ Const. Art. 2, § 1, ¶ 3; Chapter 31 of Title 19 of the Revised Statutes; 2014 A4613 Establishes "The Democracy Act" |
| New Mexico     | No  | N/A  | N/A                     | Yes<br>(SB 643 to add a section to the Election Code)                | NM Const. Art. 7 § 1; 2015 Regular Session SB 643  |
| New York       | Yes | 2011 | No legislation required | N/A  | <a href="http://ncsl.org">ncsl.org</a> ; NY Const. Art. 2, § 5; NY CLS Elec § 5-210                                    |
| North Carolina | No  | N/A  | N/A                     | No   | NC Const. Art. 6, § 3; N.C. Gen. Stat. § 163-82  |
| North Dakota   | No  | N/A  | N/A                     | ND does not require voter registration                               | ND Const. Art. 2, § 1  |





|                |     |  |                         |   |  |
|----------------|-----|--|-------------------------|---|--|
| Ohio           | No  | N/A  | N/A                     | Yes<br>(HB 41 to amend statute; HB 181 to amend statute; SB 63 to amend statute; SB 158 to amend statute) | OH Const. Art. 5, § 1; ORC Ann. 3503.19; 2015 Bill Text OH H.B. 181; 2015 Bill Text OH H.B. 41; 2015 Bill Text OH S.B. 63; 2015 Bill Text OH S.B. 158)       |
| Oklahoma       | Yes | Not implemented yet<br>(Bill Passed in 2015) | Statute                 | N/A   | <a href="http://ncsl.org">ncsl.org</a> ; OK Const. Art. 3, § 4; ENROLLED Senate Bill No. 313   |
| Oregon         | Yes | 2010   | Statute                 | N/A   | <a href="http://ncsl.org">ncsl.org</a> ; OR Const. Art. 2, § 2; O.R.S. § 247.019   |
| Pennsylvania   | Yes | 2015   | No legislation required | N/A   | <a href="http://ncsl.org">ncsl.org</a> ; PA Const. Art. 7, § 6; 25 Pa.C.S.A. § 1321; 25 Pa.C.S.A. § 1325   |
| Rhode Island   | No  | N/A  | N/A                     | Yes<br>(HB 6051 to amend statute)   | RI Const. Art. 2, § 2; Gen.Laws 1956, § 17-9.1-10; 2015 Rhode Island House Bill No. 6051, Rhode Island 2015 Legislative Session                              |
| South Carolina | Yes | 2012   | Statute                 | N/A   | <a href="http://ncsl.org">ncsl.org</a> ; SC Const. Art. 2, § 8; Code 1976 § 7-5-185  |
| South Dakota   | No  | N/A  | N/A                     | No  | SD Const. Art. 7, § 2; <a href="https://sdsos.gov/elections-voting/voting/register-to-vote/">https://sdsos.gov/elections-voting/voting/register-to-vote/</a> |
| Tennessee      | No  | N/A  | N/A                     | No  | TN Const. Art. 4, § 1; T. C. A. § 2-2-109  |



|               |     |      |         |                                  |  |
|---------------|-----|------|---------|----------------------------------|--|
| Texas         | No  | N/A  | N/A     | Yes<br>(HB 446 to amend statute) | Vernon's Ann. Texas Const. Art. 6, § 2; V.T.C.A., Election Code § 13.002; 2015 Texas House Bill No. 446, Texas Eighty-Fourth Legislature     |
| Utah          | Yes | 2010 | Statute | N/A                              | <a href="http://ncsl.org">ncsl.org</a> ; UT Const. Art. 4, § 2; U.C.A. 1953 § 20A-2-206  |
| Vermont       | No  | N/A  | N/A     | No                               | VT Const. CH 2, § 42; 17 V.S.A. § 2144a  |
| Virginia      | Yes | 2013 | Statute | N/A                              | <a href="http://ncsl.org">ncsl.org</a> ; VA Const. Art. 2, § 2; § 24.2-416.7. Application for voter registration by electronic means         |
| Washington    | Yes | 2008 | Statute | N/A                              | <a href="http://ncsl.org">ncsl.org</a> ; WA Const. Art. 6, § 7; West's RCWA 29A.08.123   |
| West Virginia | Yes | 2015 | Statute | N/A                              | <a href="http://ncsl.org">ncsl.org</a> ; WV Const. Art. 4, § 12; W. Va. Code, § 3-2-5  |
| Wisconsin     | No  | N/A  | N/A     | Yes<br>(SB 281 to amend statute) | WI Const. Art. 3, § 1; W.S.A. 6.33; 2015 Wisconsin Senate Bill No. 281, Wisconsin One Hundred Second Legislature - 2015-2016 Regular Session |
| Wyoming       | No  | N/A  | N/A     | No                               | WY Const. Art. 6, § 12; W.S.1977 § 22-3-104  |



**ATTACHMENT B**  
**SURVEY OF SAME DAY VOTER REGISTRATION LAWS**

| State      | Same Day Registration? | Constitutional Requirement                       | Statutory Requirement                                    | Proposed Law for Same Day Registration | Sources   |
|------------|------------------------|--|--|--|---|
| Alabama    | No                     | N/A  | Must register 15 or more days before an election         | Yes (HB 93 to amend statute)           | AL Const. Amend. 579; Ala.Code 1975 § 17-3-50; 2015 Alabama House Bill No. 216  |
| Alaska     | No                     | N/A  | Must register 30 or more days before an election         | Yes (SB 93 to amend statute)           | AK Const. Art. 5, § 4; AS § 15.07.070; 2015 Alaska Senate Bill No. 93   |
| Arizona    | No                     | N/A  | Must register 29 or more days before an election         | No                                     | AZ Const. Art. 7 § 12; A.R.S. § 16-120; <a href="http://www.brennancenter.org/analysis/vrm-states-arizona">www.brennancenter.org/analysis/vrm-states-arizona</a>  |
| Arkansas   | No                     | Must register 30 or more days before an election | Must register 30 or more days before an election         | No                                     | AR Const. Amend. 51, § 9; A.C.A. § 7-5-201  |
| California | Yes                    | N/A  | Same day voter registration – available starting in 2016 | N/A                                    | <a href="http://ncsl.org">ncsl.org</a> ; CA Const. Art. 2, § 3; <a href="http://www.calnewsroom.com/2014/02/05/same-day-voter-registration-law-delayed-until-2016/">http://www.calnewsroom.com/2014/02/05/same-day-voter-registration-law-delayed-until-2016/</a> |
| Colorado   | Yes                    | N/A  | Same day voter registration                              | N/A                                    | <a href="http://ncsl.org">ncsl.org</a> ; CO Const. Art. 7, § 1; C.R.S.A. § 1-2-201  |



|                      |     |     |   |                               |   |
|----------------------|-----|-----|---|-------------------------------|---|
| Connecticut          | Yes | N/A | Same day voter registration   | N/A                           | <a href="http://ncsl.org">ncsl.org</a> ; CT Const. Art. 6, § 1; C.G.S.A. § 9-19j  |
| Delaware             | No  | N/A | “Must register by the 4 <sup>th</sup> Saturday prior to any Presidential, Primary, or General Election” | Yes (SB 111 to amend statute) | DE Const. Art. 5, § 4; 148th General Assembly Senate Bill 111   |
| District of Columbia | Yes | N/A | Same day voter registration   | N/A                           | <a href="http://ncsl.org">ncsl.org</a> ;<br><a href="https://www.dcboee.org/faq/voter_reg.asp">https://www.dcboee.org/faq/voter_reg.asp</a> |
| Florida              | No  | N/A | Must register 29 or more days before for the next election  | No                            | FL Const. Art. 6 § 2; F.S.A. § 97.055   |
| Georgia              | No  | N/A | Must register on or before the 5 <sup>th</sup> Monday before the election                               | Yes (HB 355 to amend statute) | GA Const. Art. 2, § 1, ¶ II; Ga. Code Ann., § 21-2-224; 2015 Georgia House Bill No. 355   |
| Hawaii               | Yes | N/A | Same day voter registration—available starting in 2018  | N/A                           | <a href="http://ncsl.org">ncsl.org</a> ; HI Const. Art. 2, § 4; 2015 House Bill 2590  |
| Idaho                | Yes | N/A | Same day voter registration   | N/A                           | <a href="http://ncsl.org">ncsl.org</a> ; ID Const. Art. 6, § 2; I.C. § 34-408A  |



|           |     |     |  |     |  |
|-----------|-----|-----|--|-----|--|
| Illinois  | Yes | N/A | Same day voter registration  | N/A | <a href="http://ncsl.org">ncsl.org</a> ; IL Const. Art. 3, § 1; HB0105 98th General Assembly |
| Indiana   | No  | N/A | Must register 29 or more days before an election   | No  | IN Const. Art. 2, § 14; IC 3-7-13-11   |
| Iowa      | Yes | N/A | Same day voter registration  | N/A | <a href="http://ncsl.org">ncsl.org</a> ; IA Const. Art. 2, § 1; I.C.A. § 48A.7A              |
| Kansas    | No  | N/A | Must register 21 or more days before an election   | No  | KS Const. Art. 5, § 1; K.S.A. 25-2311  |
| Kentucky  | No  | N/A | Must register before “the fourth Tuesday preceding through the first Monday following any primary or general election” | No  | KY Const. § 147; KRS § 116.045;  |
| Louisiana | No  | N/A | Must register 30 or more days before an election   | No  | LA Const. Art. 11, § 1; LSA-R.S. 18:135  |
| Maine     | Yes | N/A | Same day voter registration  | N/A | <a href="http://ncsl.org">ncsl.org</a> ; ME Const. Art. 2, § 1; 21-A M.R.S.A. § 121-A        |



|               |     |   |   |   |   |
|---------------|-----|---|---|---|---|
| Maryland      | No  | N/A   | Must register 29 or more days before an election; Same day voter registration during early voting | No  | MD Constitution, Art. 1, § 2; MD Code, Election Law, § 3-302; 2013 SB 0279  |
| Massachusetts | No  | N/A   | Must register 20 or more days before the next election  | Yes (HB 540 to amend statute)                                       | MA Const. Pt. 1, Art. 9; MA Const. Amend. Art. 3; 2015 Massachusetts House Bill No. 540   |
| Michigan      | No  | N/A   | Must register 30 or more days before an election  | Yes (HB 5789 to amend statute—introduced in 2014—held in committee) | MI Const. Art. 2, § 1; <a href="http://www.dmv.org/mi-michigan/voter-registration.php">http://www.dmv.org/mi-michigan/voter-registration.php</a> ; 2014 House Bill 5789 |
| Minnesota     | Yes | N/A   | Same day voter registration   | N/A   | <a href="http://nsl.org">nsl.org</a> ; MN Const. Art. 7, § 1; M.S.A. § 201.061  |
| Mississippi   | No  | Must be registered 4 months or more before the next election (exceptions) | Must register 30 or more days before an election  | No  | MS Const. Art. 12, § 242; MS Const. Art. 12, § 244A; MS Const. Art. 12, § 249; MS Const. Art. 12, § 251   |



|               |     |     |  |   |  |
|---------------|-----|-----|--|---|--|
| Missouri      | No  | N/A | Must register on or before the “fourth Wednesday prior to the election”              | No  | MO Const. Art. 8, § 5; V.A.M.S. 115.135  |
| Montana       | Yes | N/A | Same day voter registration  | N/A   | <a href="http://www.dmv.org/mt-montana/voter-registration.php">ncsl.org</a> ; MT Const. Art. 4, § 2; MCA 13-2-304; <a href="http://www.dmv.org/mt-montana/voter-registration.php">http://www.dmv.org/mt-montana/voter-registration.php</a> |
| Nebraska      | No  | N/A | Must register on or before the “second Friday preceding any election”                | Yes (Legislative Bill 491 to amend statute)                   | NE CONST. Art. VI, § 1; Neb.Rev.St. § 32-302; 2015 Nebraska Legislative Bill No. 491   |
| Nevada        | No  | N/A | Must register prior to the “third Tuesday preceding any primary or general election” | Yes (SB 316 to amend statute)                                 | NV Const. Art. 2, § 6; N.R.S. 293.560; 2015 Nevada Senate Bill No. 316   |
| New Hampshire | Yes | N/A | Same day voter registration  | N/A   | <a href="http://www.ncsl.org">ncsl.org</a> ; NH Const. Pt. 1, Art. 11; N.H. Rev. Stat. § 654:7-a   |
| New Jersey    | No  | N/A | Must register 21 or more days before an election                                     | Yes (A4613 to amend statute— passed by both House and Senate) | NJ Const. Art. 2, § 1, ¶ 3; N.J.S.A. 19:31-6.1; 2014 A4613 Establishes "The Democracy Act"   |



|                |    |   |  |  |   |
|----------------|----|---|--|--|---|
| New Mexico     | No | N/A   | Must register 28 or more days before an election | Yes (HB 405 to amend statute)  | NM Const. Art. 7, § 1; N. M. S. A. 1978, § 1-4-8; 2015 New Mexico House Bill No. 405  |
| New York       | No | Registration is to be completed at least 10 days before each election | Must register 25 or more days before an election | Yes (Assembly Bill 5891 to amend constitution—remove ten day requirement) AND (SB 6041 to amend statute) | NY Const. Art. 2, § 5; 2015 New York Assembly Bill No. 5891; McKinney's Election Law § 5-210 ; 2015 New York Senate Bill No. 6041 |
| North Carolina | No | N/A   | Must register 25 or more days before an election | Yes (HB 124 bill to amend statute)   | NC Const. Art. VI, § 3; NC Const. Art. VI, § 4; N.C.G.S.A. § 163-82.6; 2015 North Carolina House Bill No. 124                     |
| North Dakota   | No | N/A   | N/A  | No   | ND Const. Art. 2, § 1   |
| Ohio           | No | Must register 30 or more days before an election                      | Must register 30 or more days before an election | No   | OH Const. Art. V, § 1; R.C. § 3503.19   |
| Oklahoma       | No | N/A   | Must register 25 or more days before an election | No   | OK Const. Art. 3, § 4; 26 Okl.St.Ann. § 4-110.1; 2015 Okla. Sess. Law Serv. Ch. 87 (S.B. 313)                                     |





|                |    |  |  |                               |   |
|----------------|----|--|--|-------------------------------|---|
| Oregon         | No | Must register 21 or more days before an election | Must register 21 or more days before an election | No                            | OR Const. Art. II, § 2; O.R.S. § 247.025  |
| Pennsylvania   | No | N/A  | Must register 30 or more days before an election | Yes (HB 13 to amend statute)  | PA Const. Art. 7, § 6; 25 Pa.C.S.A. § 1326; 2015 Pennsylvania House Bill No. 13   |
| Rhode Island   | No | N/A  | Must register 30 or more days before an election | No                            | RI Const. Art. 2, § 2; Gen.Laws 1956, § 17-9.1-3  |
| South Carolina | No | N/A  | Must register 30 or more days before an election | No                            | SC Const. Art. 2, § 8; Code 1976 § 7-5-150  |
| South Dakota   | No | N/A  | Must register 15 or more days before an election | No                            | SD Const. Art. 7, § 2; SDCL § 12-4-5; <a href="http://www.dmv.org/sd-south-dakota/voter-registration.php">http://www.dmv.org/sd-south-dakota/voter-registration.php</a> |
| Tennessee      | No | N/A  | Must register 30 or more days before an election | No                            | TN Const. Art. 4, § 1; T. C. A. § 2-2-109   |
| Texas          | No | N/A  | Must register 30 or more days before an election | No                            | TX Const. Art. 6, § 2; V.T.C.A., Election Code § 13.143   |
| Utah           | No | N/A  | Must register 30 or more days before an election | Yes (HB 219 to amend statute) | UT Const. Art. 4, § 2; U.C.A. 1953 § 20A-2-102.5; 2015 H.B. 219   |



|               |     |   |  |     |  |
|---------------|-----|---|--|-----|--|
| Vermont       | Yes | N/A   | Same day voter registration                      | N/A | <a href="http://ncsl.org">ncsl.org</a> ; VT Const. CH II, § 42; 17 V.S.A. § 2144     |
| Virginia      | No  | Registration records shall not be closed more than 30 days before an election | Must register 22 or more days before an election | No  | VA Const. Art. 2, § 2; VA Code Ann. § 24.2-416                                       |
| Washington    | No  | N/A   | Must register 29 or more days before an election | No  | WA Const. Art. 6, § 7; RCWA 29A.08.140   |
| West Virginia | No  | N/A   | Must register 21 or more days before an election | No  | WV Const. Art. 4, § 12; W. Va. Code, § 3-2-6   |
| Wisconsin     | Yes | N/A   | Same day voter registration                      | N/A | <a href="http://ncsl.org">ncsl.org</a> ; WI Const. Art. 3, § 1; W.S.A. 6.29          |
| Wyoming       | Yes | N/A   | Same day voter registration                      | N/A | <a href="http://ncsl.org">ncsl.org</a> ; WY Const. Art. 6, § 12; W.S.1977 § 22-3-104 |





OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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MEMORANDUM

**TO:** Chair Richard Saphire, Vice-chair Jeff Jacobson, and  
Members of the Bill of Rights and Voting Committee

**CC:** Steven C. Hollon, Executive Director

**FROM:** Shari L. O'Neill, Counsel to the Commission, and  
E. Erin Oehler, Student Intern

**DATE:** May 2, 2016

**RE:** State Provisions Regarding Voting Age  
In Conjunction with the Committee's Review of  
Ohio Constitution Article V, Section 1  
(Qualifications of an Elector)

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**Introduction**

The Bill of Rights and Voting Committee has asked staff to provide research that will assist in the committee's review of Article V, Section 1 (Qualifications of an Elector).

Article V, Section 1 provides:

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. Any elector who fails to vote in at least one election during any period of four consecutive years shall cease to be an elector unless he again registers to vote.

This memorandum focuses on the section's reference to the requirement that voters be at least 18 years of age in order to qualify as an elector.

Attachment A to this memorandum provides a chart indicating which states permit voters younger than 18 to vote, either in the primary before the general election at which they will be 18, or in the general election itself. The chart describes whether states that permit minors to vote do so by statute or by constitutional amendment.

## Background

Article V, Section 1 defines an elector as someone who is 18 years of age or older. R.C. 3503.07 permits 17-year olds to register at age 17 if they will be 18 by the time of the general election. That statute provides:

Each person who will be of the age of eighteen years or more at the next ensuing November election, who is a citizen of the United States, and who, if he continues to reside in the precinct until the next election, will at that time have fulfilled all the requirements as to length of residence to qualify him as an elector shall, unless otherwise disqualified, be entitled to be registered as an elector in such precinct. When once registered, an elector shall not be required to register again unless his registration is canceled.

R.C. 3503.011 permits registered 17-year olds to vote in the primary as long as they will be 18 by the time of the general election:

At a primary election every qualified elector who is or will be on the day of the next general election eighteen or more years of age, and who is a member of or is affiliated with the political party whose primary election ballot he desires to vote, shall be entitled to vote such ballot at the primary election.

Ohio is one of a majority of states that allow some form of voting prior to age 18. Presently, 26 states,<sup>1</sup> including Ohio, allow 17-year olds to vote in the primary so long as they will turn 18 by the next general election. Indiana allows 17-year olds to vote in the primary if they will turn 18 by the next general, municipal, or special election. In contrast, 30 states<sup>2</sup> permit a person to register to vote at the age of 17 if the person will turn 18 by the next general election. Nine states<sup>3</sup> permit 16-year olds to register through pre-registration (D.C. included). The remaining 11 states<sup>4</sup> have varying qualifications for registration. Of the states that allow 17-year olds to vote if they will turn 18 by the next general election, three states<sup>5</sup> have amended their constitution to provide this. There are also five states<sup>6</sup> that currently have proposed legislation that would amend their constitution to allow 17-year olds to vote in the primary as long as they are 18 by the next general election. Missouri's H.J.R. 16, a proposed amendment to the constitution, would

<sup>1</sup> AK, AZ, CT, DE, DC, HI, IL, IA, KY, ME, MD, MN, MS, NE, NV, NC, ND, OH, SC, UT, VT, VA, WA, WV, WI, WY

<sup>2</sup> AL, AZ, AR, ID, IL, KS, KY, ME, MI, MN, MS, MT, NE, NV, NH, NJ, NM, NY, NC, OH, PA, SC, SD, TN, VT, VA, WA, WV, WI, WY

<sup>3</sup> CO, DE, DC, FL, HI, MD, LA, RI, UT

<sup>4</sup> AK, CA, CT, GA, IA, ID, MA, MO, OK, OR, TX

<sup>5</sup> CT, VA, VT

<sup>6</sup> CA, MD, MI, NJ, NY



allow 16-year olds to vote in the primary and the general election. New Hampshire and New Mexico have previously tried to amend their constitutions to allow 17-year olds to vote in the primary if they are 18 by the next general election. However, both proposals died in their respective state legislatures.

Historically, the basis for the current voting age of 18 derives from enactment of the Twenty-Sixth Amendment to the United States Constitution in 1972, at a time when enfranchisement at 21 was felt to conflict with the military draft at age 18.<sup>7</sup> Prior to that time, the United States had followed the British common law tradition of enfranchising at age 21, a concept that, in turn, may have derived from a recognition in the Middle Ages that it was only at age 21 that young men could be considered to have developed the physical strength and battle skill that qualified them for knighthood.<sup>8</sup>

### Recent Ohio Litigation

In March 2016, nine 17-year-old plaintiffs who will be 18 by the time of the general election in November 2016, acting through their parents, filed a mandamus action challenging a directive by Ohio Secretary of State Jon Husted preventing them from voting in Ohio’s presidential primary. According to the directive, because a voter in a presidential primary is not voting to nominate a presidential candidate, but instead is electing a delegate, and because only 18-year olds may vote to elect, 17-year olds may not participate in the presidential primary election.

Plaintiffs’ case, styled as *State ex rel. Schwerdtfeger et al. v. Husted*, Franklin County Common Pleas No. 16 CV-2346 [provided as Attachment B], asserted the secretary’s directive contravened the broad grant of primary voting rights for 17-year olds in R.C. 3503.11, as well as the recognition that the word “electors,” in Article V, Section 1 does not restrict the state from extending the voting right to persons younger than 18. In ruling for plaintiffs, the court found the secretary’s interpretation of the statute and the constitutional provision to be “strained,” noting “the meaning of the word ‘elector’ in this statute is generic, just as it is in the balance of the election code. It justifies no distinction between 17-year olds choosing presidential convention delegates as opposed to voting to ‘nominate’ others.” The court also recognized the public policy rationale behind allowing 17-year olds to vote in a presidential primary, if they will be 18 by the general election:

In considering any apparent ambiguity in the language of any statute, the General Assembly has provided by law that a court should consider the “object sought to be attained” and the “consequences of a particular construction.” R.C. 1.49(A) & (E). Did not this particular law seek to encourage 17-year olds to get involved in the democratic process? America has a strong interest in encouraging 17-year olds – who will be 18 in the fall and fully qualified to help pick the next President – to become informed in advance. Depriving them of an opportunity to vote the entire ballot in the March 2016 primary election sends a contradictory message.

<sup>7</sup> Vivian E. Hamilton, *Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority*, 77 Brooklyn L.Rev. 1447, 1462-65 (2012).

<sup>8</sup> *Id.* at 1454-55, 1459.



Inferentially, it tells 17-year olds to ignore the televised debates and town hall meetings; the myriad of daily television, cable, and other programming about Presidential candidates; and the actual visits to our state by candidates seeking the Presidency. This is irrational. It flies in the face of the object sought to be obtained by the General Assembly when it enacted R.C. 3503.11.

Concluding that Article V, Section 7 provided the General Assembly with the constitutional authority to provide by law for choosing delegates to the national presidential nominating conventions, and that R.C. 3503.11 was duly enacted under that authority, the court granted the writ of mandamus in favor of plaintiffs, ordering Secretary Husted to permit 17-year olds' choices for presidential convention to be counted in the same fashion as voters age 18 and older.

## Trends

A growing number of political commentators and cognitive development specialists advocate lowering the voting age to 16 or 17. As support, they cite research suggesting that these young people generally possess a sufficiently mature level of intellectual development and civic awareness required for voting, and that the key features of "citizenship," defined as a sense of membership in the community, concern for rights, and participation in civic life, are well-developed by late adolescence. One study concludes:

On measures of civic knowledge, political skills, political efficacy, and tolerance, the 16-year olds, on average, are obtaining scores similar to those of adults. Moreover, while there appears to be substantial evidence for rapid development in some of these constructs through age 16, development after it seems relatively slow. Based on the developmental trajectories \* \* \* there is little empirical reason to award the vote to 18-year olds but to deny it to 16-year olds.<sup>9</sup>

Permitting voting by 16- and 17-year olds is also perceived as promoting a lifetime of civic engagement, thus potentially enhancing voter turnout. The rationale is that voting habits established when students are living in their home communities and learning about government and politics as part of their school curriculum are more likely to be sustained in later years.<sup>10</sup> By contrast, at age 18, students have left their home communities, may be preoccupied with college or jobs, and may feel detached from the political process. As Tufts University Citizenship and Public Affairs Professor Peter Levine has noted, lowering the voting age "is a strategy for connecting civic learning in schools to an important act of citizenship: voting," a strategy for expanding the electorate long term, and a recognition that older adolescents are affected by public policy and should be allowed to influence it by their vote.<sup>11</sup>

Based on a belief that younger voters tend to be more liberal, some have expressed a concern that increasing the voting rolls by including 16- and 17-year olds would disadvantage the Republican

<sup>9</sup> Daniel Hart & Robert Atkins, *American Sixteen- and Seventeen-Year olds Are Ready to Vote*, 633 *Annals of the Amer. Acad. of Pol. And Soc. Sci.* 201, 212-13 (2011).

<sup>10</sup> Peter Levine, *Why the Voting Age Should be 17*, *Politico Magazine*, (Feb. 24, 2015). Available at: <http://www.politico.com/magazine/story/2015/02/voting-age-17-115466> (last visited Dec. 8, 2015).

<sup>11</sup> *Id.*



party. Professors John Holbein and D. Sunshine Hillygus, two researchers at Duke University, report data tending to disprove this assumption:

[I]n contrast to popular assumptions, our results suggest that preregistration actually helped Republicans to slightly narrow the Democratic advantage among young people because the mobilization effect gap is smaller than the party voting gap. A back of the envelope calculation helps to illustrate this point. We estimate that approximately 37 percent of partisan voters mobilized by preregistration in 2008 were likely to vote Republican in 2012; in comparison, only 32 percent of young voters in Florida voted Republican in 2012. In other words, in terms of net mobilization, preregistration appears to slightly advantage Republicans. This pattern is quite consistent with previous studies that have found institutional programs tend to register more Democrats but mobilize more Republicans. [Citations omitted.]<sup>12</sup>

Internationally, the concept of allowing 16- and 17-year olds to vote has gained traction, with some countries now permitting or considering this expansion of voting rights.<sup>13</sup>

### Questions for Discussion

The committee may wish to consider whether Article V, Section 1 should be revised to expressly acknowledge statutory law that permits 17-year olds to register and vote in a primary if they will be 18 by the general election.

The committee also may wish to consider whether to recommend a revision that would expressly allow 16-year olds to pre-register.

### Conclusion

Expanding the voting franchise to 16- and 17-year olds is an interesting concept that could represent the future of the electoral process. Ohio has taken steps in this direction by enacting statutes that allow 17-year olds to register and vote in a primary if they will be 18 at the time of the general election. Should the committee wish to revise Article V, Section 1, either to accommodate this statutory provision or to otherwise modify the voting age requirements, staff would be glad to provide further research and assistance.

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<sup>12</sup> John B. Holbein & D. Sunshine Hillygus, *Making Young Voters: The Impact of Preregistration on Youth Turnout*, 60 *Amer. J. of Pol. Sci.* 364 (2016). Available at: <http://sites.duke.edu/hillygus/files/2014/07/Preregistration-10.22.14.pdf> (last visited May 2, 2016).

<sup>13</sup> Hamilton, *supra*, at 1468-73.



## ATTACHMENT A

**SURVEY OF STATE PROVISIONS RELATING TO  
REGISTRATION AND VOTING FOR MINORS**

| <b>State</b> | <b>Who is able to register to vote</b>                  | <b>Who is allowed to vote in the primary election</b> | <b>Who is allowed to vote in the general election</b> | <b>Constitutional amendment to change voting age for the primary election</b>     | <b>Sources</b>   |
|--------------|---|---|---|---|--|
| Alabama      | 17 if 18 by the next general election                   | 18 years old  | 18 years old  | No  | AL Const. Art. 8, § 177; AL Const. Amend. 579; Ala.Code 1975 § 17-3-50; Alabama Voter Guide-Secretary of State   |
| Alaska       | 17 if within 90 days prior to 18 <sup>th</sup> birthday | 17 if 18 by the next general election                 | 18 years old  | No  | AK Const. Art. 5, § 1; AS § 15.07.030; AS § 15.07.040; AS § 15.25.014; elections.alaska.gov  |
| Arizona      | 17 if 18 by the next general election                   | 17 if 18 by the next general election                 | 18 years old  | No  | AZ Const. Art. 7, § 2; AZ Const. Art. 7, § 10; A.R.S. § 16-101; A.R.S. § 16-121  |
| Arkansas     | 17 if 18 by the next general election                   | 18 years old  | 18 years old  | No  | AR Const. Art. 3, § 1; AR. Const. Amend. 85, § 1; Voter Registration Information-Secretary of State  |
| California   | 17 years old (pre-registration)                         | 18 years old  | 18 years old  | No<br>(Current Proposed Amendment to allow 17 if 18 by the next general election) | CA Const. Art. 2, § 2; Cal. Elec. Code §2102(3)(d); Assembly Constitutional Amendment 2  |
| Colorado     | 16 years old (pre-registration)                         | 18 years old  | 18 years old  | No  | CO Const. Art. 7, § 1; C.R.S.A. § 1-2-101  |
| Connecticut  | 17 years old (pre-registration)                         | 17 if 18 by the next general election                 | 18 years old  | Yes   | CT Const. Art. 6, § 1; CT Const. Art. 31; C.G.S.A. § 9-12; <a href="http://www.dmv.org/ct-connecticut/voter-registration">http://www.dmv.org/ct-connecticut/voter-registration</a> |



|                      |  |  |  |  |   |
|----------------------|--|--|--|--|---|
| Delaware             | 16 years old (pre-registration)                              | 17 if 18 by the next general election                        | 18 years old (Constitution still requires the age of 21) | No   | DE Const. Art. 5, § 1; 15 Del.C. § 1701   |
| District of Columbia | 16 years old (pre-registration)                              | 17 if 18 by the next general election                        | 18 years old   | No   | DC ST 1981 § 1-1302; DC ST 1981 § 1-1311; <a href="https://www.dcboee.org/faq/voter_reg.asp">https://www.dcboee.org/faq/voter_reg.asp</a> |
| Florida              | 16 years old (pre-registration)                              | 18 years old   | 18 years old   | No   | FL Const. Art. 6, § 2; F.S.A. § 97.041  |
| Georgia              | 6 months before 18 <sup>th</sup> birthday                    | 18 years old   | 18 years old   | No   | GA Const. Art. 2, § 1; Ga. Code Ann., § 21-2-216  |
| Hawaii               | 16 years old (pre-registration)                              | 17 if 18 by the next general election                        | 18 years old   | No (Current Proposed Amendment—16 year-olds allowed to vote) | HI Const. Art. 2, § 1; HRS § 11-11; HRS § 11-12   |
| Idaho                | 17 if 18 by the next general election                        | 18 years old   | 18 years old   | No   | ID Const. Art. 6, § 2; I.C. § 34-402; I.C. § 34-408   |
| Illinois             | 17 if 18 by the next general election                        | 17 if 18 by the next general election                        | 18 years old   | No   | IL Const. Art. III § 1; 10 ILCS 5/3-1; 10; ILCS 5/3-6   |
| Indiana              | 17 if 18 by the next general, municipal, or special election | 17 if 18 by the next general, municipal, or special election | 18 years old   | No   | IN Const. Art. II § 2; IC 3-7-13-1; IC 3-7-13-2   |
| Iowa                 | 6 months before 18 <sup>th</sup> birthday                    | 17 if 18 by the next general election                        | 18 years old (Constitution still requires the age of 21) | No   | IA Const. Amend. 30; I.C.A. § 48A.5   |

|               |   |                                       |              |   |   |
|---------------|---|---------------------------------------|--------------|---|---|
| Kansas        | 17 if 18 by the next general election                                   | 18 years old                          | 18 years old | No  | KS Const. Art. 5 § 1; K.S.A. 25-2306; K.S.A. 25-215; <a href="http://www.dmv.org/ks-kansas/voter-registration.php">http://www.dmv.org/ks-kansas/voter-registration.php</a>  |
| Kentucky      | 17 if 18 by the next general election                                   | 17 if 18 by the next general election | 18 years old | No  | KY Const. § 145; KRS § 116.025; KRS § 116.045; KRS § 116.055  |
| Louisiana     | 16 years old (pre-registration)   | 18 years old                          | 18 years old | No  | LA Const. Art. 1, § 10; LSA-R.S. 18:101   |
| Maine         | 17 if 18 by the next general election                                   | 17 if 18 by the next general election | 18 years old | No  | ME Const. Art. 2, § 1; 21-A M.R.S.A. § 111; 21-A M.R.S.A. § 111-A   |
| Maryland      | 16 years old (pre-registration)   | 17 if 18 by the next general election | 18 years old | No<br>(Proposed Amendment in 2008 to allow 17 if 18 by the next general election—held in committee) | MD Const. Art. 1 § 1; MD Code, Election Law, § 3-102; <a href="http://mgaleg.maryland.gov/webmga/frmMain.aspx?ys=2008rs/billfile/sb0201.htm">http://mgaleg.maryland.gov/webmga/frmMain.aspx?ys=2008rs/billfile/sb0201.htm</a> ; <a href="http://openstates.org/md/bills/2008/SB201/">http://openstates.org/md/bills/2008/SB201/</a> ; <a href="http://archive.fairvote.org/?page=2480">http://archive.fairvote.org/?page=2480</a> |
| Massachusetts | 17 if 18 by the next preliminary, primary, special, or general election | 18 years old                          | 18 years old | No  | MA Const. Pt. a, Art. 9; MA Const. Amend. Art. 3; M.G.L.A. 51 § 1; M.G.L.A. 51 § 47A  |

|               |   |                                       |  |  |  |
|---------------|---|---------------------------------------|--|--|--|
| Michigan      | 17 if 18 by the next general election     | 18 years old                          | 18 years old (Constitution still requires the age of 21) | No<br>(Proposed Amendment in 2007 to allow 17 if 18 by the next general election—held in the House Elections and Ethics Committee) | MI. Const. Art. II §1; M.C.L.A. 168.492; 2007 House Joint Resolution S   |
| Minnesota     | 17 if 18 by the next general election     | 17 if 18 by the next general election | 18 years old   | No   | MN Const. Art. 7, § 1; M.S.A. § 201.014; M.S.A. § 202A.16  |
| Mississippi   | 17 if 18 by the next general election     | 17 if 18 by the next general election | 18 years old   | No   | MS Const. Art 12, § 241; Miss. Code Ann. § 23-15-11  |
| Missouri      | 6 months before 18 <sup>th</sup> birthday | 18 years old                          | 18 years old   | No<br>(Current Proposed Amendment—16 year-olds allowed to vote)  | MO Const. Art. 8, § 2; V.A.M.S. 115.133; 2015 MO H.J.R. 16 (NS)  |
| Montana       | 17 if 18 by the next general election     | 18 years old                          | 18 years old   | No   | MT Const. Art. 4, § 2; MCA 13-2-205; MCA 13-1-111  |
| Nebraska      | 17 if 18 by the next general election     | 17 if 18 by the next general election | 18 years old   | No   | NE Const. Art. 6, § 1; Neb.Rev.St. § 32-110  |
| Nevada        | 17 if 18 by the next general election     | 17 if 18 by the next general election | 18 years old   | No   | NV Const. Art. 2, § 1; N.R.S. 293.485; <a href="http://www.dmv.org/nv-nevada/voter-registration.php#The-Qualifications">http://www.dmv.org/nv-nevada/voter-registration.php#The-Qualifications</a> |
| New Hampshire | 17 if 18 by the next general election     | 18 years old                          | 18 years old   | No<br>(Proposed Amendment in 2008 to allow 17 if 18 by the next general election—died in the House)                                | NH Const. Pt. 1, Art. 11; RSA 654:7; RSA 654:1; <a href="http://www.gencourt.state.nh.us/bill_status/default.aspx">http://www.gencourt.state.nh.us/bill_status/default.aspx</a>                    |

|                |   |  |  |   |   |
|----------------|---|--|--|---|---|
| New Jersey     | 17 if 18 by the next general election                 | 18 years old                                       | 18 years old   | No<br>(Proposed Amendment in 2008 to allow 17 if 18 by the next general election—held in the Assembly State Government Committee) | NJ Const. Art. 2, § 1; N.J.S.A. 19:31-5; N.J.S.A. 19:4-1; <a href="http://www.njleg.state.nj.us/bills/BillView.asp">http://www.njleg.state.nj.us/bills/BillView.asp</a> |
| New Mexico     | 17 if 18 by the next general election                 | 18 years old                                       | 18 years old (Constitution still requires the age of 21) | No<br>(Proposed Amendment in 2013 to allow 17 if 18 by the next general election—died in the House)                               | NM Const. Art. 7, § 1; N. M. S. A. 1978, § 1-4-2; N. M. S. A. 1978, § 1-1-4; 2013 Regular Session HB 157  |
| New York       | 17 if 18 by the next general election                 | 18 years old                                       | 18 years old   | Yes<br>(Current Proposed Amendment to allow 17 if 18 by the next general election)  | NY Const. Art. 2, § 1; McKinney's Election Law § 5-102; Bill No. A00504   |
| North Carolina | 17 if 18 by the next general election                 | 17 if 18 by the next general election              | 18 years old   | No  | NC Const. Art. 6, § 1; N.C.G.S.A. § 163-59  |
| North Dakota   | No registration required                              | 17 if 18 by the next general election <sup>1</sup> | 18 years old   | No  | ND Const. Art. 2, § 2; NDCC, 16.1-01-04; <a href="http://www.dmv.org/mo-missouri/voter-registration.php">http://www.dmv.org/mo-missouri/voter-registration.php</a>      |
| Ohio           | 17 if 18 by the next general election                 | 17 if 18 by the next general election              | 18 years old   | No  | OH Const. § 5.01; R.C. § 3503.07; R.C. § 3503.01; R.C. § 3503.011   |
| Oklahoma       | 17 if 18 within 60 days prior to the general election | 18 years old                                       | 18 years old   | No  | OK Const. Art. 3, § 1; 26 Okl.St. Ann. § 4-101  |
| Oregon         | 17 years old (pre-registration)                       | 18 years old                                       | 18 years old   | No  | OR Const. Art. 2, § 2; O.R.S. § 247.016   |

|                |                                       |                                       |  |     |   |
|----------------|---------------------------------------|---------------------------------------|--|-----|---|
| Pennsylvania   | 17 if 18 by the next general election | 18 years old                          | 18 years old (Constitution still requires the age of 21) | No  | PA Const. Art. 7, § 1; 25 P.S. § 2811; 25 P.S. § 2812;  |
| Rhode Island   | 16 years old (pre-registration)       | 18 years old                          | 18 years old   | No  | RI Const. Art. 2, § 1; Gen.Laws 1956, § 17-1-3; Gen.Laws 1956, § 17-9.1-33  |
| South Carolina | 17 if 18 by the next general election | 17 if 18 by the next general election | 18 years old   | No  | SC Const. Art. 2, § 4; Code 1976 § 7-5-120; Code 1976 § 7-5-150; Code 1976 § 7-9-20   |
| South Dakota   | 17 if 18 by the next general election | 18 years old                          | 18 years old   | No  | SD Const. Art. 7, § 2; SDCL § 12-4-1; SDCL § 12-3-1   |
| Tennessee      | 18 by the next general election       | 18 years old                          | 18 years old   | No  | TN Const. Art. 4 § 1; T. C. A. § 2-2-102; T. C. A. § 2-2-104  |
| Texas          | 17 years and 10 months of age         | 18 years old                          | 18 years old   | No  | TX Const. Art. 6, § 1; V.T.C.A., Election Code § 11.002; V.T.C.A., Election Code § 13.001   |
| Utah           | 16 years old (pre-registration)       | 17 if 18 by the next general election | 18 years old   | No  | UT Const. Art. 4, § 2; U.C.A. 1953 § 20A-2-101; U.C.A. 1953 § 20A-3-101; U.C.A. 1953 § 20A-2-101.1  |
| Vermont        | 17 if 18 by the next general election | 17 if 18 by the next general election | 18 years old   | Yes | VT Const. CH. 2, § 42; 17 V.S.A. § 2121   |
| Virginia       | 17 if 18 by the next general election | 17 if 18 by the next general election | 18 years old   | Yes | VA Const. Art. 2, § 1; VA Code Ann. § 24.2-400; VA Code Ann. § 24.2-403; VA Code Ann. § 24.2-101  |
| Washington     | 17 if 18 by the next general election | 17 if 18 by the next general election | 18 years old   | No  | WA Const. Art. 6, § 1; RCWA 29A.04.061; RCWA 29A.08.230; <a href="http://www.dol.wa.gov/driverslicense/voter.html">www.dol.wa.gov/driverslicense/voter.html</a> |

|               |                                       |                                       |  |    |   |
|---------------|---------------------------------------|---------------------------------------|--|----|---|
| West Virginia | 17 if 18 by the next general election | 17 if 18 by the next general election | 18 years old   | No | WV Const. Art. 4, § 1; W. Va. Code, § 3-1-3; W. Va. Code, § 3-2-2 |
| Wisconsin     | 17 if 18 by the next general election | 17 if 18 by the next general election | 18 years old   | No | WI Const. Art. 3, § 1; W.S.A. 6.02; W.S.A. 6.05                   |
| Wyoming       | 17 if 18 by the next general election | 17 if 18 by the next general election | 18 years old (Constitution still requires the age of 21) | No | WY Const. Art. 6 § 2; W.S.1977 § 22-3-102                         |

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<sup>1</sup> Government sources could not be located to confirm that a 17-year old may vote in a primary if he or she is 18 years old by the next general election. However, three websites suggest this is the case: 1. fairvote.org  
2. occasionalplanet.org 3. votesmart.org

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION**

|   |   |                         |
|---|---|-------------------------|
| STATE <i>ex rel.</i> REV. GLENN         | : |                         |
| SCHWERDTFEGER, as next friend of        | : |                         |
| RACHEL SCHWERDTFEGER, a minor,          | : |                         |
| <i>et al.</i> ,                         | : |                         |
|   | : |                         |
| Plaintiffs/Relators,                    | : |                         |
|   | : | Case No. 16CV-2346      |
| v.                                      | : |                         |
|   | : | (Judge Richard A. Frye) |
| JON HUSTED, in his official capacity as | : |                         |
| the Secretary of State, etc.            | : |                         |
|   | : |                         |
| Defendant/Respondent.                   | : |                         |

**OPINION  
GRANTING DECLARATORY RELIEF AND  
GRANTING A WRIT OF MANDAMUS**

**1. Introduction.**

Nine individual plaintiffs filed this case on Tuesday March 8, 2016. All are alleged to be 17-year-old citizens of Ohio who will have their 18<sup>th</sup> birthday prior to the November 8, 2016 general election. All seek a court ruling that their choices for delegates to the Presidential nominating conventions be tabulated at the March 15 primary election.<sup>1</sup> The sole defendant is Ohio Secretary of State Jon Husted. The Secretary is the chief elections officer for the state.

Plaintiffs were permitted to add their parents as parties, pursuant to Civ. R. 17(A) and (B), since under Ohio law minors can only file suit in civil court through a parent, guardian or other representative.<sup>2</sup> Plaintiffs seek a ruling that a December 2015 revision to the *Ohio Election Official Manual* promulgated by the Secretary is legally incorrect, and misconstrues R.C. § 3503.011. Generally, that statute makes it possible for 17-year olds who will be legal electors at the time of the November 8, 2016 general election to

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<sup>1</sup> One plaintiff has already voted; the other eight have not yet done so. As explained later in this decision, it is unclear if early votes by 17-year olds can now be re-examined so that presidential primary choices are honored.

<sup>2</sup> For simplicity, parents and their 17-year old children are collectively referenced as “plaintiffs” in this Opinion.

participate in the March primary election. However, the Secretary ruled that 17-year old voters may have their ballots counted for nearly everything except Presidential convention delegates. In line with positions taken by previous Secretaries, defendant also has ruled that votes for state or county political party central committee seats and public questions or issues like school levies are not properly voted upon by 17-year olds. These restrictions are not challenged in this case.

Directly at issue is the determination by the Secretary that “[i]n presidential primary elections, a 17-year-old voter is not permitted to vote for presidential delegates, because delegates are elected not nominated.” *Manual* at page 7-6. Plaintiffs merely seek to assure that their choices in the March 15 primary will be counted in Ohio’s hotly contested Presidential selection process.

Following a hearing held March 10, plaintiffs added a claim for relief by way of a writ of mandamus. This is the customary remedy (rather than injunction) to address election law issues or other errors allegedly made by public officials in Ohio.

The record includes a number of affidavits and exhibits. All were stipulated by both sides at the March 10 hearing. No genuine issue of material fact remains, and the question presented is strictly a legal one. The court is grateful to have had the benefit of strong presentations from top-flight counsel on both sides.

As more fully explained below, the court holds that the Secretary abused his discretion in issuing his December 2015 legal interpretation in the *Manual* at page 7-6, and as a result otherwise qualified 17-year olds must have their choices for delegates to presidential nominating conventions counted in the March 15 primary election.

In response to this suit, the Secretary has argued that irrespective of possible merit to plaintiffs’ claim, their delay in filing suit (the equitable defense of laches) precludes relief under the circumstances presented here. To be sure, this case was filed very close to the March 15, 2016 primary election date. Early voting was already underway before this case was filed. On the other hand, we are dealing with a complicated rule that challenges easy understanding, and 17-year olds could hardly be expected to have anticipated it long in advance of the primary. Furthermore, after bringing suit plaintiffs and their counsel moved with great dispatch to present a factual record to the court, and thoroughly address the legal question. The court acknowledges defendant’s representation that some ballots voted early by 17-year olds around Ohio



apparently cannot now be tabulated for the presidential nominating race because early ballots from 17-year olds are already tabulated—without counting the presidential race—and have then literally been mixed-in with ballots of all other early voters age 18 and older. Boards of Election, the court is told, cannot now go back after the fact to locate 17-year olds' ballots and record their presidential nominating convention choice.

The Secretary argues in substance that since this court decision comes late in the primary election calendar that it should not be issued at all. For him, if some 17-year olds' ballots cannot now be counted, justice requires no 17-year old's ballot for presidential delegates be counted. This would be unjust. It would serve no good purpose to turn the fact that the court cannot grant complete statewide relief to every 17-year old voter into a disenfranchisement of all the 17-year olds yet able to vote. To the extent still reasonably possible, all 17-year old voters should have their choice on presidential convention delegates counted.<sup>3</sup>

Defendant also disregards the practical fact that, experience teaches, a majority of voters do not vote early. As most people still vote at a polling place on election day a sizeable portion of the 17-year old voting population can still benefit from a decision favoring plaintiffs.

The Secretary also argues that at this late date a decision favoring plaintiffs will be disruptive to the ongoing work of running the primary election. However, the affidavit of Caleb Faux from the Hamilton County Board of Elections contradicts that assertion. Mr. Faux states that if the court were to invalidate the Secretary's directive, "[w]e simply would remake ballots to exclude the other races 17-year olds are not allowed to vote in, but we would leave their presidential primary selection. Such a ruling would not add any administrative burden to our procedures. There would be no or very minimal additional cost associated with such change." (Pltf. Ex. 15, at ¶ 5) The

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<sup>3</sup> Practically speaking, early voting involves some risk that a ballot will be wasted. Every early voter will miss 11<sup>th</sup> hour developments, which experience shows are not infrequent. For instance, 2016 Republican primary ballots being used in Ohio include the names of ten men plus one woman who have already withdrawn from the contest following lackluster showings in earlier state caucuses or elections. An early voter in Ohio who chose one of them is just out of luck; they retain no ability to vote a second time because their first choice withdrew. This situation is somewhat comparable. The fact that the law is clarified in Ohio for 17-year olds yet to vote while there are other 17-year olds who have voted early who do not get counted is simply an unintended feature of a very complex process.

court is confident that the dedicated men and women across Ohio who conduct Ohio's elections can make the small adjustment called for here, even on short notice.

In summary, the court finds and declares that:

1. As a matter of law, 17-year olds otherwise qualified to vote under R.C. 3503.011 are entitled to have their choices for convention delegates counted in the March 15, 2016 primary election;
2. The Secretary has a clear legal duty to promptly advise all 88 county Boards of Election to disregard his previous interpretation of § 3503.011, and to permit 17-year olds' choices for presidential convention delegates to be counted in the same fashion as voters age 18 and older, despite the current version of the *Ohio Election Official Manual* and any comparable directives he has previously issued;
3. The Secretary has a clear legal duty to promptly advise all 88 county Boards of Election to discontinue giving oral or written instructions to otherwise qualified 17-year old voters that their choice of presidential convention delegates will not be counted; and
4. The Secretary has a clear legal duty to promptly advise all 88 county Boards of Election that they must make a reasonable effort to attempt to determine and record choices for presidential convention delegates made by 17-year old "early" voters if such ballots remain identifiable and accessible, so that to the extent reasonably possible their choices are included in final vote totals for the March 15, 2016 primary election.

## **2. *The Ohio Election Official Manual.***

The Ohio election code is found in R.C. Title 35. As published by Page's legal publisher, it covers (with some indexing and case annotations) over 650 pages, much of which is single spaced. Given this large volume of legal rules, and recognizing that elections are primarily conducted by local Boards of Election across all 88 counties, R.C. § 3501.05 lists over 30 obligations of the Ohio Secretary of State. Among them are requirements that the Secretary "[i]ssue instructions by directives and advisories \*\*\* as to the proper methods of conducting elections" (R.C. 3501.05(B)) and "[p]repare rules and instructions for the conduct of elections." (R.C. 3501.05(C)) One way in which this

has been done is through publication of the Secretary's 596 page *Ohio Election Official Manual*.

In mid-December 2015, the Secretary amended the *Manual* relative to 17-year olds ability to vote in primary elections. (See, *Ohio Election Official Manual*, Cover Page) The Secretary did so after offering a public comment period in August and September on his web site. (Damschroder Affidavit, ¶ 15.) A lawyer from the "Fair Election Legal Network" commented negatively about the change in question last September, stating it was "more restrictive than the relevant statutory language." (*Id.* and Attachment "E") That comment apparently resulted in no change by the Secretary to his plan to alter the *Manual*, so far as the record before this court discloses.

The pertinent provision in the *Manual* now states (on page 7-6) under the subheading "17-Year-Old Voter" that:

Ohio law allows a 17-year-old voter who will be 18 years of age on or before the date of the next general election to vote in the primary election *solely* on the *nomination* of candidates.<sup>6</sup> This is because the 17-year-old voter will be eligible to vote for the nominees at the November general election.

\*\*\*

In presidential primary elections, a 17-year-old voter is not permitted to vote for presidential delegates, because delegates are elected and not nominated.<sup>7</sup>

(emphasis in original). Two footnotes were included by the Secretary to this provision. Footnote 6 to the first noted sentence in the *Manual* sets out the legal basis as R.C. §§ 3503.01, 3503.011, and 3503.07, along with the decision in *State ex rel. Webber v. Felton*, 77 Ohio St. 554 (1908). Footnote 7 refers to the reader to R.C. §§ 3513.12 and 3513.121.

Interestingly, another part of the *Manual* is similarly entitled "Seventeen-Year Old Voters (Primary Election Only)." (Page 4-6) It says "[v]oters who are 17 years old as of the date of the primary election are not permitted to vote on any Questions and Issues.<sup>10</sup>" It does not mention presidential convention delegates. The text thereafter prescribes the Form of Ballot for Optical Scan (17-Year Old Voter). It says that the ballot can contain "only the offices with candidates to be nominated (i.e. without the state and

central committee contests [in the appropriate years] and without the questions and issues) \*\*\* .” There again, no reference is even made to presidential convention delegates, although the same 1908 Ohio Supreme Court decision and R.C. §§ 3503.01, 3503.011, and 3503.07 are cited as authority under footnote 10.

**3. § 3503.011, and related statutory and constitutional provisions.**

Article V, § 7 of the Ohio Constitution was adopted in 1976. It authorizes “Primary Elections.” In pertinent part, that provision states that “[a]ll delegates from this state to the national conventions of political parties *shall be chosen by direct vote of the electors in a manner provided by law*. Each candidate for such delegate shall state his first and second choices for the presidency, but the name of no candidate for the presidency shall be so used without his written authority.” (emphasis added).

Defendant argues that the key to this case is use of the word “electors.” That word first appears in the Ohio Constitution at Article V, § 1. Much like the 26<sup>th</sup> Amendment to the United States Constitution, § 1 provides, in relevant part, that “[e]very citizen of the United States, of the age of eighteen years \*\*\* is entitled to vote at all [Ohio] elections.” The 26<sup>th</sup> Amendment has been interpreted to provide that the age of 18 is not a minimum age for voters. Nothing precludes a state from extending the right to vote to persons younger than eighteen. *Wesley v. Collins*, 605 F. Supp. 8021, 813 (M.D. Tenn 1985, *aff’d* 791 F.2d 1255 (6th Cir.1986)). Read in that same way, Article V, § 1 clearly permitted the General Assembly to provide for some voting by 17-year olds. No case holds otherwise. Placing reliance on the word “electors” as requiring someone to be age 18 before they can choose nominating delegates for President is a strained reading.

R.C. § 3503.01(A) parrots the comparable provision in the Ohio Constitution. It is the primary statutory statement of how one is normally determined to be an Ohio “elector.”

(A) 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.

The next statute following in sequence is R.C. 3503.011. It is squarely before the court in this case and was adopted in 1981. It allows voting by 17-year olds if they will be a fully qualified “elector” by the next general election. That statute reads in full:

At a primary election every qualified elector who is or will be on the day of the next general election eighteen or more years of age, and who is a member of or is affiliated with the political party whose primary election **ballot** he desires to vote, shall be entitled to **vote such ballot** at the primary election.

(emphasis added). The meaning of the word “elector” in this statute is generic, just as it is in the balance of the election code. It justifies no distinction between 17-year olds choosing presidential convention delegates as opposed to voting to “nominate” others.

*State ex rel. Colvin v. Brunner*, 120 Ohio St.3d 110, 2008-Ohio-5041 at ¶ 43 recognized that in construing provisions in the Constitution and the state election code one “must ‘read words and phrases in context according to the rules of grammar and common usage.’” (additional citations omitted). Accordingly, the statute’s repetitive use of the word “ballot” must be addressed.

#### **4. The Meaning of “Ballot” in the Election Code.**

R.C. § 3503.011 refers to the “primary election ballot he desires to vote” and provides that eligible 17-year olds “shall be entitled to vote such ballot at the primary election.” Although the statute speaks of “electors,” the most pertinent part of this law is the reference to the “primary election *ballot* he desires to vote” and that the 17-year old who otherwise qualifies “shall be entitled to vote such *ballot* at the primary election.” (emphasis added). The statute clearly does not say that a 17-year old voter is only entitled to vote a part of the “ballot.” It speaks to voting the whole ballot.

The word “ballot” is defined by the General Assembly. R.C. § 3506.01(B). It “means the official election presentation of offices and candidates, including write-in candidates, and of questions and issues, and the means by which votes are recorded.”

This statutory definition in the election code is consistent with standard English usage. Thus, “ballot” is today usually used as a noun, and defined as “[a]n instrument, such as a paper or ball, used for casting a vote.” *Black’s Law Dictionary* (9<sup>th</sup> Ed.2009) at p.163. An earlier definition defined ballot as either the “act of voting” or the “piece of paper on which the voter gives expression to his choice.” *Black’s Law Dictionary* (Rev’d

4<sup>th</sup> Ed.1968) at p.182. *State ex rel. Weinberger v. Miller*, 87 Ohio St. 12, 42 (1912) held that the word “ballot” as used in our constitution must be construed to mean a written or printed ballot. “[I]t is a printed or written expression of the voter’s choice upon some material capable of receiving and reasonably retaining it, prepared or adopted by each individual voter and passing by the act of voting from his exclusive control into that of the election officers, to be by them accepted as the expression of his choice.” *Id.* (additional citation omitted).

The statute employs the word “ballot.” This does not mean “a part of the ballot.” Defendant’s argument would essentially amend R.C. § 3503.011 to allow 17-year olds to vote only parts of the primary election ballot. The Secretary has been given no authority by the General Assembly to alter the broad words used in the statute.

### **5. *Statutory Interpretation in Election Cases.***

Ohio law as applied in election law cases recognizes that the “paramount concern is the legislative intent” in enacting a statute, and that to discern such intent courts “must ‘read words and phrases in context according to the rules of grammar and common usage’.” *State ex rel. Knowlton v. Noble County Bd. of Elections*, 126 Ohio St.3d 483, 2010-Ohio-4450, ¶ 49 and cases cited; *see also*, *State ex rel. Ernst v. Brunner*, 145 Ohio Misc.2d 73, 2007-Ohio-7265, 882 N.E.2d 990 (C.P.), ¶¶ 17–18 and cases cited. If plain meaning does not suffice, Ohio courts regularly consider correlative provisions in the Revised Code together with any administrative construction when given a complicated statute or group of statutes in order to arrive at a sensible meaning.

The Secretary makes a strained argument. He contends that the foregoing provisions of the Constitution and the election statutes draw some meaningful distinction between “nominating” a candidate on the primary ballot and actually “electing” them. In the Secretary’s view, delegates to national presidential conventions are being “elected,” when 17-year olds are only entitled to “nominate” people. Contrary to the Secretary’s position, § 3503.011 draws no distinction between “nominating” a candidate on the primary ballot and actually electing them. As explained above, reasonably read, it simply says 17-year old primary voters get to vote the entire “ballot.” Moreover, Ohio law contains many references to how national convention delegates are “chosen,” which is not necessarily the same as “elected.” *See, e.g.*, R.C. 3513.12.

At this point it is useful to point out the Affidavit of William P. DeMora. (Pltf. Ex. 12) He is the Director of Delegate Selection for the Ohio Democratic Party. (*Id.* at ¶ 3) In his view, national convention delegates do not hold public office, as their only responsibility is to attend the convention and vote for their pledged candidates. (*Id.* at ¶ 4) Moreover, at least for the Democratic Party, “[t]he vote during the presidential primary election does not actually elect anyone specific. It only tells us the proportion of people who support one candidate versus another that the Ohio Democratic Party will send to the national convention. \*\*\* The selection of district-based delegates who will go to the convention to represent the various candidates happens separately, at a caucus.” (*Id.* at ¶ 5) Hence, “[m]any delegates of the Ohio Democratic Party are not identified at all before the March 15, 2016 primary.” (*Id.* at ¶ 6) It is difficult to see how the Secretary sensibly claims that 17-year olds would be “electing” specific convention delegates, as opposed to simply “choosing” them in this somewhat open-ended system. “Choosing” is the word used in the statutes and is not necessarily the same as “electing.” The distinction argued by the Secretary is, in short, a “metaphysical subtlety which may make anything mean everything or nothing, at pleasure.” Thomas Jefferson letter to William Johnson, *Works of Thomas Jefferson* 7:297 (1854), quoted in Shapiro, *Oxford Dictionary of American Legal Quotations* 388 (1993).

National convention delegates are addressed in R.C. § 3513.12. This statute says that “delegates and alternates to the national conventions of the different major political parties shall be *chosen by direct vote* of the electors as provided in this chapter. Candidates for delegate and alternate shall be qualified and the *election shall be conducted in the manner prescribed in this chapter* \*\*\*.” (emphasis added). Again, the words “chosen by direct vote of the electors” do not necessarily equate to “elected,” given the open-ended process described by Mr. DeMora.

“There is no common law of elections; they are governed by statutes.” *State ex rel. Ruehlmann v. Luken*, 65 Ohio St.3d 1, 3 (1992). Here, we are left with the single most relevant statute referring to 17-year olds being “entitled to vote such ballot at the primary election” and not merely a statute that says they can vote only part of the ballot. Beyond that, Ohio has a national convention delegate selection provision in Article V, § 7 of the Constitution and in R.C. § 3513.12 speaking to how delegates are “chosen by

direct vote” as opposed to simply being “elected.” Everyone concedes the absence of an Ohio statute saying that “17-year olds may not vote for national convention delegates.”

Where statutes appear unclear or ambiguous, secondary rules of construction come into play. Ohio law seeks to “avoid unduly technical interpretations that impede the public policy favoring free, competitive elections.” *State ex rel. Myles v. Brunner*, 120 Ohio St.3d 328, 2008-Ohio-5097, ¶ 22 and cases cited. Ohio will “liberally construe election laws in favor of the right to vote.” *Id.* at ¶ 26, quoting *State ex rel. Colvin at* ¶ 62, and cases cited, followed by *State ex rel. Skaggs v. Brunner*, 120 Ohio St.3d 506, 2008-Ohio-6333, ¶ 50. Furthermore, the *Colvin* decision notes that “statutes written in broad, sweeping language should be given broad, sweeping application.” *Id.* at ¶ 26 (additional citation omitted).

In considering the proper meaning of these election-related statutes, the general deference that the Secretary enjoys from courts in election matters is not unlimited. Ohio courts “need not defer to the secretary of state’s interpretation [if] it is unreasonable and fails to apply the plain language of” the relevant statute and fails to be an interpretation that favors the right to vote. *State ex rel. Myles at* ¶ 26.

In considering any apparent ambiguity in the language of any statute, the General Assembly has provided by law that a court should consider the “object sought to be attained” and the “consequences of a particular construction.” R.C. § 1.49(A) & (E). Did not this particular law seek to encourage 17-year olds to get involved in the democratic process? America has a strong interest in encouraging 17-year olds—who will be 18 in the fall and fully qualified to help pick the next President—to become informed in advance. Depriving them of an opportunity to vote the entire ballot in the March 2016 primary election sends a contradictory message. Inferentially, it tells 17-year olds to ignore the televised debates and town hall meetings; the myriad of daily television, cable, and other programming about Presidential candidates; and the actual visits to our state by candidates seeking the Presidency. This is irrational. It flies in the face of the object sought to be obtained by the General Assembly when it enacted R.C. § 3503.011.



## 6. ***The Secretary's Other Proffered Explanations***

Numerous Affidavits have been filed for the record explaining how different Secretaries of State have handled primary elections since § 3503.011 was adopted in 1981. One undisputed fact is crucial: between 1981 and 2012, **no** Ohio Secretary of State ever adopted the reading of § 3503.011 challenged here. That is, it was not until 2012, when the current Secretary discovered this new limitation on 17-year old voting, that anyone holding the office publicly said that selection of Presidential convention delegates was off-limits for 17-year olds.

It is of course true that R.C. § 1.49(F) teaches that in evaluating statutes that courts may consider the “administrative construction of the statute” in resolving ambiguities about the intention of the legislature. In the 1980’s, shortly after the 17-year old voting statute first came into effect, Secretary of State Sherrod Brown informally but publicly communicated that 17-year olds could vote for “all party candidates on the Primary Election ballot.” (Pltf. Ex. 17 “McTigue Affidavit” at Attachment “A”) Given that indication of the original understanding of the law, defendant’s own administrative construction of it is surely counterbalanced. The next sensible step is to examine more closely the explanations the Secretary has for his position.

The Secretary relies upon two sentences in a 1908 decision of the Ohio Supreme Court to justify his argument that “nominations” are different from “elections” and jumps from that to the conclusion that this century-old decision controls the meaning given to § 3503.011. The decision was *State ex rel. Webber v. Felton*, 77 Ohio St. 554 (1908). The law in question in that 1908 decision merely allowed political parties to notice a primary election and to have such an election held with the assistance of public election supervisors and inspectors under provisions of a new 1904 law. This process was novel at that point. Indeed, the dissenting opinion saw the use of state resources to assist with primary elections as a waste of public money—“public plunder”—not serving the public interest. *Id.* at 581 (Davis, J. dissenting). Only a few years later the same court pointed out that although primary elections were the focus of *State ex rel. Webber v. Felton*, the decision was limited in scope: “It was in nowise the purpose of the statute involved in the *Felton* case to prescribe and enforce a method, but merely to furnish the facilities to assist recognized and organized portions of the citizenship to have their own

method accomplished in keeping with decency and the good order of the community.” *Fitzgerald v. Cleveland*, 88 Ohio St. 338, 355–56 (1913).

*State ex rel. Webber v. Felton* is not a landmark in Ohio law or helpful here. It is a relic of a bygone era when primary elections were a novelty, and all women along with men under age 21 could not vote. The decision does not address a comparable situation, such as voting by 20-year olds who would turn 21 by the fall elections. *Felton* neither offers guidance to the proper understanding of Article V, § 7 on primary elections (adopted in 1976) nor the 17-year old voting statute (adopted in 1981). Unfortunately, the *Manual* points to no other case law as authority.

## 7. ***Mandamus Relief.***

A writ of mandamus is used when an action seeks to compel a public official to take certain action, rather than prevent action. An injunction is used to stop ongoing action. Here, plaintiffs seek some of both: to prevent the Secretary from enforcing the specific provision in his *Manual* but more fundamentally to compel the Secretary to take steps so that their choices for Presidential convention delegates will be counted by local Boards of Election. The court grants relief using the Writ of Mandamus but recognizes in the alternative that the criteria for a preliminary injunction have been proven justifying relief of that nature (and that no bond should be required given the nature of the legal rights at issue).

“To be entitled to the requested writ, relators must establish a clear legal right to the requested relief, a corresponding clear legal duty on the part of the secretary of state to provide it, and the lack of an adequate remedy in the ordinary course of the law. Given the proximity of the November 6 election, relators have established that they lack an adequate remedy in the ordinary course of law.” *State ex rel. Heffelfinger v. Brunner*, 116 Ohio St. 3d 172, 2007-Ohio-5838 ¶ 13, citing *State ex rel. Evans v. Blackwell*, 111 Ohio St.3d 437, 2006-Ohio-5439, ¶ 18 and *State ex rel. Duncan v. Portage Cty. Bd. of Elections*, 115 Ohio St.3d 405, 2007-Ohio-5346, ¶ 8. This standard is fully met by plaintiffs here.

A focus of many mandamus cases is whether a public official has abused their discretion in discharging their public duty. If an administrative officer’s interpretation of a statute was not “reasonable” and “within the contemplation of the statute” then an

abuse of discretion may be found. *State ex rel. Ernst* at ¶ 12, quoting *Strongsville Bd. of Edn. v. Zaino*, 92 Ohio St.3d 488, 490 (2001).

## **8. Conclusion.**

The Ohio General Assembly acted within its Constitutional authority under Article V, § 7 to “provide by law” for choosing delegates to the national presidential nominating conventions. Such “law” includes R.C. § 3503.011 allowing 17-year olds who will be eighteen by the next general election and who wish to affiliate with a specific political party to “vote such ballot at the primary election.” Plaintiffs are entitled to a Judgment that the Secretary abused his discretion when he revised the *Manual* and instructed the 88 county Boards of Election otherwise.

By separate order a Writ of Mandamus is being **GRANTED** in favor of plaintiffs and potentially thousands of other 17-year old voters still eager to participate at next week’s primary election.

**IT IS SO ORDERED.**



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### 2017 Meeting Dates

January 12

February 9

March 9

April 13

May 11

June 8

July 13

August 10

September 14

October 12

November 9

December 14