

ACLU of Ohio Voting Rights Litigation



Punch Card Ballots

The ACLU was concerned with Ohio election procedures long before the now-fabled problems in the 2004 election. In 2002, the ACLU of Ohio and national ACLU Voting Rights Project filed suit on behalf of seven Ohio voters challenging the use of punch card and central-count optical scan ballots in a limited number of Ohio counties as violating the Equal Protection Clause and Section 2 of the Voting Rights Act (VRA).

According to the lawsuit, the use of punch card and central-count optical scan voting systems in most, but not all, of Ohio counties violated the Equal Protection Clause because the use of fallible punch card and central-count optical scan ballots was shown to increase the likelihood that votes cast using the challenged technology would not be counted. Additionally, punch cards in three Ohio counties were shown to lead to discriminatory rates of invalidated ballots between black and white voters within those counties in violation of the VRA.

House Bill 3

In response to the controversy surrounding the 2004 election, the Ohio General Assembly decided to make substantial changes to Ohio election law. While calling it election “reform,” the General Assembly passed a 319-page omnibus bill, House Bill 3, enacting confusing new regulations and restrictions on election activity. Among other things, HB 3:

- Created a Help America Vote Act (HAVA) voter ID requirement
- Enacted many new restrictions on who can serve as petition or voter registration

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- Expanded the ability of poll workers to “challenge” a voter’s eligibility

One positive voting bill, the Ohio General Assembly also passed House Bill 234, which allows no-fault absentee voting, and allows high school students time off to serve as poll workers.

In August 2006, the ACLU of Ohio and national ACLU Voting Rights Project, along with other voting rights organizations, filed *Boustani v. Blackwell* in response to one of the election law changes made by HB 3.

Ohio election law had allowed poll workers to challenge a voter’s eligibility to vote, but HB 3 added that a voter challenged on the basis of one’s citizenship shall be asked if he or she is a native born or naturalized citizen. It said native born citizens may go ahead and vote, but naturalized citizens who are challenged must present their certificate of naturalization in order to vote.

The lawsuit charged these provisions unconstitutionally discriminate against naturalized citizens and impose an unauthorized, unnecessary and undue burden on their fundamental right to vote, in violation of the First and Fourteenth Amendments to the U.S. Constitution. The lawsuit also alleged that these provisions violate the Civil Rights Act of 1964 and constitute a poll tax on naturalized citizens in Ohio in violation of the Twenty-Fourth and Fourteenth Amendments. On October 4, 2006, the ACLU of Ohio and other voting rights groups were handed a victory in this important voting rights lawsuit.