

County Council of Cuyahoga County, Ohio

Ordinance No. O2014-0008

Sponsored by: County Executive FitzGerald and Councilmember Simon	An Ordinance enacting the Cuyahoga County Voting Rights Law; updating the Cuyahoga County Equity Plan in Chapter 1101 of the Cuyahoga County Code in conformity therewith; and declaring the necessity that this Ordinance become immediately effective.
Co-sponsored by: Councilmembers Hairston, Brady, Jones, Miller, Connally and Conwell	

WHEREAS, as recognized by the U.S. Court of Appeals for the 6th Circuit in *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463 (6th Cir. 2008), the citizens of Cuyahoga County experienced substantial problems and long lines trying to exercise their constitutional right to vote during the 2004 general election; and,

WHEREAS, the voting problems experienced by the County's citizens in 2004 are not a mere accident, but are the byproduct of unique conditions and needs of large, urban counties; and,

WHEREAS, Cuyahoga County is Ohio's largest county with a population of 1,280,122 according to the 2010 U.S. Census; and,

WHEREAS, of Ohio's 88 counties, Cuyahoga County is home to approximately 11 percent of Ohio's population of 11,536,502 according to the 2010 U.S. Census; and,

WHEREAS, a significant percentage of the County's citizens often change residential addresses a number of times in between elections. Almost 35 percent of Cuyahoga County's citizenry reside in rental housing. Furthermore, the County's Office of Homeless Services estimates that approximately 5,157 homeless citizens above the age of 18 live in the County who are entitled to cast their ballots in accordance with *Northeast Ohio Coalition for the Homeless v. Husted*, 2012 WL 2711393 (S.D. Ohio July 9, 2012); and,

WHEREAS, 94 percent of the voting precincts in Cuyahoga County are in multi-precinct locations, which significantly raises the possibility of relegating the County's citizens to provisional ballots when they vote on Election Day; and,

WHEREAS, the County found a real solution to these voting problems through a combination of mechanisms working together, including (1) the ability of its citizens, especially citizens who change residential addresses multiple times in between elections, to register to vote or update their voting registration and cast

their vote on the same day during early in person voting at the Board of Elections; (2) early in person voting at the Board of Elections during after hours, the weekends, especially Sundays, and the Monday before the election; and (3) mailing the vote by mail applications to its citizens with postage-prepaid return envelopes to promote early voting and voting by mail; and,

WHEREAS, the citizens of Cuyahoga County have come to expect and rely on the fact that they automatically receive their requests for ballots to vote by mail, with postage-prepaid return envelopes, for every election; and,

WHEREAS, these solutions proved successful, and the County reduced the number of voting precincts available on Election Day; and,

WHEREAS, by the adoption of Ohio Senate Bills 205, 216, and 238, and Secretary of State Directive 2014-06, the State has jettisoned the very solutions that proved successful in resolving elections problems in Cuyahoga County; and,

WHEREAS, Cuyahoga County has a substantial interest in ensuring that its citizens have adequate opportunities to cast their ballots in every election; and,

WHEREAS, Cuyahoga County also has a substantial interest in protecting the integrity of its own elections, including elections for its elected offices and issues that it places on the ballot by ensuring that the County's citizens have adequate opportunities to cast their ballot in elections that can be very close and impacted by the citizenry's ability to have adequate access to the ballot. For instance, in the 2010 primary election for County Council, the Republican primary for County Council District 1 was decided by just 96 votes, and the Democratic primary for County Council District 3 was decided by 201 votes; and,

WHEREAS, Cuyahoga County also has a substantial monetary interest in protecting the integrity of elections in Cuyahoga County through early in person voting and voting by mail. The County is the budgetary authority for the County's Board of Elections. The County appropriates the funds, and the County's Treasury pays the Board's expenses pursuant to R.C. 3501.17. If the State were to succeed in eliminating the solutions that proved very successful in Cuyahoga County and it results in voting problems as happened in 2004, such problems will trigger the need for investing additional financial resources, including potentially having to purchase additional voting machines and to spend money maintaining these additional machines, to avoid the problems in the future; and,

WHEREAS, In August 2012, Cuyahoga County adopted an Equity Plan, which is codified in Chapter 1101 of the Cuyahoga County Code; and,

WHEREAS, Section 1101.02(A) of the Cuyahoga County Code expressly provides that the County's objective is to remove barriers that stand in the way of the County's citizens:

Cuyahoga County embraces the ideal of one united community, committed to equality of opportunity for all of our citizens. As part of our equity plan, the county's objective is to remove barriers and enable all citizens in our community to have equal opportunities to fulfill their potential. The county will do so by ensuring that best practices in equity are being implemented by all county departments and agencies and by measuring progress on an ongoing basis. In addition, the county will work with community partners to influence other important domains that reinforce the economic, educational, health and social progress of Cuyahoga County and its citizens.

WHEREAS, the restrictions imposed by the State have a disparate impact on working men and women in Cuyahoga County; and,

WHEREAS, the County should do everything possible to remove barriers in the way of its citizens' right to vote to further its equity objectives; and,

WHEREAS, as federal courts have recognized, the establishment of so-called "uniform" procedures across the State that fail to take into account the unique needs of individual counties results in inequity and hurts the ability of citizens in large counties to vote. See, e.g., *Vanzant v. Brunner*, S.D.Ohio Case No. 1:10-cv-596; and,

WHEREAS, the right to vote is a constitutional right expressly stated in the 14th Amendment to the United States Constitution and strengthened with additional amendments thereafter: (a) the 15th Amendment to the United States Constitution provides that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude;" (b) the 19th Amendment to the U.S. Constitution provides that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex;" (c) the 24th Amendment to the United States Constitution provides that the "right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax;" and (d) the 26th Amendment to the United States Constitution provides that the "right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age;" and,

WHEREAS, Cuyahoga County provides many services to its citizens, including health and human services programs, homeless services programs, economic development programs, and educational programs; and,

WHEREAS, as a chartered county with home rule powers, County Council finds it necessary for the County to provide services to its citizens to facilitate their ability to vote; and,

WHEREAS, as a chartered county, Cuyahoga County is constitutionally entitled to rights and privileges, including a First Amendment right to communicate with its citizens and share information with them on how to vote and what forms to use when they want to apply to receive their ballots by mail; and,

WHEREAS, Senate Bill 205 restricts speech based on the identity of the speaker by not prohibiting individuals and private corporations from exercising their First Amendment right to communicate through sending applications to vote by mail, including postage-prepaid return envelopes, while attempting to restrict the ability of home rule entities from exercising the very same speech; and,

WHEREAS, the County Council finds it necessary to invoke the County's home rule powers and its constitutional First Amendment rights to establish a program to assist its citizens in exercising their right to vote through voter registration as well as mailing applications for voting by mail to its citizens, with postage-prepaid return envelopes.

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of the County departments.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Title 12 of the Cuyahoga County Code is hereby enacted, and it shall read as follows:

Title 12: Voting Rights

Chapter 1201: Voting Rights Program

Section 1201.01. Establishment

There is hereby established the Cuyahoga County Voting Rights Program, which shall be administered by the County Executive through any appropriate departments, offices, and other agencies of county government.

Section 1201.02. Program Benefits

Notwithstanding any State law, regulation, or other directive to the contrary, the Cuyahoga County Executive is hereby expressly authorized to undertake all acts

necessary to promote voter participation and access to the ballot in Cuyahoga County by all citizens, including, but not limited to the following:

- a. Promoting and implementing voter registration at all levels of citizen interaction with County government, including through services provided by any division in the Department of Health and Human Services; and
- b. Promoting early voting and maximizing voter participation through voting by mail in Cuyahoga County, including, but not limited to, mailing applications to vote by mail, with postage-prepaid return envelopes, to all registered voters in Cuyahoga County.

SECTION 2. Section 1101.03 of the Cuyahoga County Code is hereby amended to add Section 1101.03(K) as follows:

K. Voting Rights and Access to the Ballot. Cuyahoga County will act to protect its citizens' right to vote. The County will promote voter registration at all levels of citizen interaction with County Government. The County will also promote early voting programs, including voting by mail programs. When deemed necessary and appropriate, the County's Department of Law will seek court intervention to protect access to the ballot by the County's citizens.

SECTION 3. It is necessary that this Ordinance become immediately effective for the usual daily operation of the County and the reasons set forth in the preamble. Provided that this Ordinance receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

SECTION 4. It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Ms. Simon, seconded by Mr. Miller, the foregoing Ordinance was duly enacted.

Yeas: Miller, Brady, Germana, Conwell, Jones, Hairston, Simon and Connally

Nays: Greenspan, Gallagher and Schron

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: March 11, 2014

Committee(s) Assigned: Committee of the Whole

Additional Sponsorship Requested: April 1, 2014

Journal CC014

April 8, 2014