



PROTECTING THE VOTE FOR ALL AMERICANS

**TESTIMONY IN OPPOSITION TO AMENDED SENATE BILL 22
OHIO HOUSE STATE AND LOCAL GOVERNMENT COMMITTEE, MAY 22, 2019 at
3:00 p.m.**

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Fair Elections Center submits this testimony in opposition to Amended Senate Bill 22. This legislation proposes to give county boards of elections the authority to reduce the number of poll workers at multi-precinct voting locations, if electronic pollbooks are in use at the voting location. Currently, Ohio law requires four poll workers per precinct in a multi-precinct polling location. This would reduce that number to a minimum of two poll workers per precinct.

It is of course understandable that the state would seek to avoid wasting scarce election administration resources and money in areas of the state with lower populations levels and in elections with lower voter turnout. Rural counties with fewer than 100,000 residents can surely be provided with some discretion to reduce their poll workers in multi-precinct polling places and, according to the U.S. Census, 62 of Ohio's 88 counties fall below that threshold. But counties with higher-population urban and suburban areas like Franklin, Cuyahoga and Hamilton require more poll workers to process the high volume of voters and to ensure wait times and errors are minimized. Poll worker reduction is particularly concerning during high-turnout elections with federal races on the ballot, when turnout is at its highest.

SB 22 should be further amended to limit this discretion to reduce poll workers per precinct to those counties with fewer than 100,000 residents (the overwhelming majority of Ohio's counties) and/or to eliminate this option to reduce the poll worker force for any general elections, including a special general election, involving a federal race. At a bare minimum, when both of those conditions are present – a high-population county in a high-turnout general elections with a federal office on the ballot – there should be no discretion to reduce the number of poll workers serving in multi-precinct voting locations.

¹ Fair Elections Center is a national, nonpartisan voting rights and election reform organization that works to remove barriers to registration and voting for traditionally underrepresented constituencies. The Center works to improve election administration through legislative and administrative reform, to protect access to the ballot through litigation, and to provide election law expertise, voter information and technical assistance to voter mobilization organizations.

Understaffing voting locations increases the risk of error and disenfranchisement, and Ohio has seen some serious ones in recent elections. In the 2018 midterm elections, in Miami County, the Secretary of State found that

inadequate human processes and preparation caused the failure of the Board and its staff to properly download and tally in-person absentee votes cast in the election. . . . Board staff members were new to the task of shutting down in-person absentee voting machines and not provided with the proper training, nor given any documentation necessary to understand the appropriate process for shutting down the machines in question. Because of this, Board staff members did not complete the required additional step of downloading the votes cast before turning off the machines.²

As a result, 6,282 votes were never counted.³ This took place at the board of elections office where in-person absentee voting takes place. But if this is possible with board of elections staff, it is all the more probable that these disenfranchising errors can occur at voting locations on Election Day. Why would the state legislature seek to give Miami County the option to reduce its poll worker force on Election Day, given the consequential human errors they have already experienced which led to the disenfranchisement of over 6,000 voters?

In Hamilton County, in 2015, the implementation of electronic pollbooks caused severe delays and problems at 10 of the county's 364 voting locations, forcing poll workers to resort to paper pollbooks.⁴ Many voters were required to vote provisional ballots due to poll worker errors in inputting names or a failure to consult paper pollbooks. SB 22 puts enormous faith in this technological shift, but there is no reason to think that electronic pollbooks are a panacea, especially when training on them is limited or uneven, and poll workers lack basic familiarity with the technology. In Ohio, while each new election official must attend a training program before that individual can serve, returning election officials must attend training programs at least once every three years or whenever the board of elections or Secretary of State require such training.⁵ If anything, electronic poll books have introduced some new complexity, particularly for an older poll worker force. One cannot predict when such problems will arise, either from human or technological error. But if electronic pollbooks malfunction, forcing poll workers to resort to paper poll books, or if there are other technological problems such as a faulty router delaying the voting process, having fewer poll workers on hand means the voting location will not be able to adapt to problems that arise on Election Day.

This is not theoretical. Hamilton County's 2015 post-election report documented that "[r]oughly 35 percent of the polling places had trouble setting up the new equipment, 65 percent

² See Ohio Secretary of State, Report on Requirements and Recommendations for Miami County Board of Elections November 2018 General Election, at 1, available at https://www.sos.state.oh.us/globalassets/media-center/news/2019/2019-04-04_miamicountyreportandrecommendation.pdf.

³ *Id.* at 5.

⁴ <https://www.cincinnati.com/story/news/politics/elections/2015/11/03/polling-location-snafus-hamper-morning-voting/75081776/>

⁵ OHIO REV. CODE ANN. § 3501.27.

reported problems with the printers and routers not being connected and 43 percent had difficulty locating voters in the books because the database lacked dates of birth for some 8,459 registered voters.”⁶ According to the report, “83.8 percent of polling locations reported some type of problem related to e-poll book implementation.”⁷ Far from suggesting this major county could now comfortably reduce the number of poll workers on duty, the report said the county would need to “*hire more poll workers, refine training, have more troubleshooters on hand, allot more time for setting up the books, and resolve the technical issues with connectivity between routers and printers.*” (Emphasis added).⁸

Additionally, for years, Ohio has had a contentious debate over wrong-precinct provisional ballots and the role poll worker error plays in the casting of these out-of-precinct provisional ballots. Following litigation, the rule in Ohio is that the ballot will be partially counted – for all races in which the voter was eligible to cast a ballot – as long as the voter cast the ballot in the correct voting location, if not the correct precinct (the wrong pew but right church).⁹ However, poll workers must still not erroneously direct voters to the incorrect precinct table at a multi-precinct voting location or mistakenly issue a provisional ballot to a voter who is at the wrong polling place. Otherwise, the voter will lose votes in a down-ballot race when issued the wrong precinct’s ballot form, or will lose their votes in all races if they are not redirected to the correct voting location. Historically, these multi-precinct polling locations have shown high rates of errors. That is why the rule was changed to permit partial counting of the provisional ballot as long as the voter was in the correct voting location.

But even after this change, some percentage of voters are still directed to the wrong line for the wrong precinct at the right polling place, depriving them of their votes in some down-ticket races. According to Table 1 below, which summarizes data from the State of Ohio’s responses to Question E2c. in the U.S. Election Assistance Commission’s Election Administration and Voting Survey for the 2016 general election, some of the largest counties like Franklin, Montgomery, Stark and Summit have the highest numbers of out-of-precinct provisional ballots: 542 in Franklin, 268 in Summit, 195 in Montgomery, and 198 in Stark. This is not surprising given the higher voter turnout in a presidential election and the corresponding strain on election administration resources, including poll workers, at multi-precinct voting locations.

⁶ <https://www.daytondailynews.com/news/report-eight-polling-locations-had-problems/5VtRg0yzWR9sZexathiq9K/>

⁷ *Id.*

⁸ *Id.*

⁹ OHIO REV. CODE ANN. §§ 3505.181—3505.183.

Table 1. Number of Out-of-Precinct Provisional Ballots Cast in 2016 Election (EAC Survey)

COUNTY	POPULATION ¹⁰	NUMBER OF OUT-OF-PRECINCT PBs
Adams	27,726	0
Allen	103,198	34
Ashland	53,628	0
Ashtabula	97,807	35
Athens	65,597	18
Auglaize	45,778	0
Belmont	68,029	11
Brown	43,576	2
Butler	380,604	56
Carroll	27,385	3
Champaign	38,840	0
Clark	134,557	0
Clermont	204,214	87
Clinton	42,009	7
Columbiana	103,077	32
Coshocton	36,544	0
Crawford	41,746	1
Cuyahoga	1,248,514	0
Darke	51,536	0
Defiance	38,156	7
Delaware	200,464	0
Erie	74,817	5
Fairfield	154,733	0
Fayette	28,752	7
Franklin	1,291,981	542
Fulton	24,489	12
Gallia	29,973	34
Geauga	93,918	0
Greene	166,752	41
Guernsey	39,093	8
Hamilton	813,822	0
Hancock	75,754	2
Hardin	31,364	4
Harrison	15,216	4
Henry	27,185	8
Highland	42,971	0
Hocking	28,474	0
Holmes	43,957	2

¹⁰ <https://www.census.gov/quickfacts/OH>

Huron	58,494	0
Jackson	32,449	0
Jefferson	66,359	16
Knox	61,261	24
Lake	230,117	36
Lawrence	60,249	0
Licking	173,448	0
Logan	45,325	2
Lorain	307,924	56
Lucas	430,887	0
Madison	44,036	0
Mahoning	229,796	65
Marion	64,967	0
Medina	178,371	41
Meigs	23,080	18
Mercer	40,873	0
Miami	105,122	0
Monroe	13,946	0
Montgomery	531,542	195
Morgan	14,709	0
Morrow	34,994	0
Muskingum	86,149	0
Noble	14,406	0
Ottawa	40,657	1
Paulding	18,845	0
Perry	36,024	0
Pickaway	57,830	0
Pike	28,270	0
Portage	162,277	0
Preble	41,120	17
Putnam	33,878	0
Richland	120,589	0
Ross	77,313	0
Sandusky	59,195	0
Scioto	75,929	2
Seneca	55,243	0
Shelby	48,759	27
Stark	372,542	198
Summit	541,228	268
Trumbull	200,380	0
Tuscarawas	92,297	10
Union	56,741	0
Van Wert	28,217	2
Vinton	13,092	1
Warren	228,882	49

Washington	60,418	13
Wayne	29,817	38
Williams	36,784	4
Wood	130,492	48
Wyandot	22,029	5

Finally, wait times for voting can also be excessive in Ohio counties with larger populations around urban cores. It is not hard to imagine what will happen when poll workers are drastically reduced at multi-precinct voting locations. Voters already largely come in the early morning, at lunch, and after work. With fewer people to check voters in and issue ballots, lines will grow longer.

Fair Elections Center agrees in principle that one-size-fits-all election administration rules sometimes do not make sense—some flexibility can be justified. This is particularly true in less-populous, rural counties and during lower-turnout elections for state and local races or even during primary elections for federal races. For that very reason, SB 22 should not be passed as is. It should be amended to limit this discretion to reduce poll workers per precinct to those counties with fewer than 100,000 residents and to eliminate this discretionary reduction for any general elections, including a special general election, involving a federal race. At a bare minimum, when both of those conditions are present – high-population counties in high-turnout general elections for federal offices – there should be no discretion to reduce the number of poll workers serving in multi-precinct voting locations. There is limited gain here and a severe risk of causing problems with election administration and disenfranchising voters. Passing SB 22 would court disaster in the 2020 presidential election and beyond.