



PROTECTING THE VOTE FOR ALL AMERICANS

June 3, 2020

Hon. Scott Wiggam, Chair
Hon. Jason Stephens, Vice Chair
Hon. Brigid Kelly, Ranking Member
House Committee on State and Local Government
77 S. High Street, 13th Floor
Columbus, OH 43215

Dear Chairman Wiggam, Vice Chairman Stephens, and Ranking Member Kelly:

Fair Elections Center¹ writes to express its opposition to HB 680, which is scheduled for hearings before the State and Local Government Committee on June 2–3, 2020. The Center and its predecessor organization, Fair Elections Legal Network, have been helping Ohio voters gain access to the ballot since 2006. Our Campus Vote Project provides more than 250,000 students enrolled at Ohio colleges and universities with non-partisan information on registration and voting procedures.

We respectfully request that this letter be entered into the record as written testimony. As many Ohioans face radical changes in nearly every aspect of their lives during a critical election year, lawmakers should make it easier, not harder, for them to cast their ballots. HB 680 does not meet this urgent need.

On March 9, 2020, Gov. DeWine declared a state of emergency in response to the threat posed to public safety by novel coronavirus and the disease it causes, COVID-19.² Two days later, the World Health Organization declared novel coronavirus a pandemic.³ Ohio has been particularly

¹ Fair Elections Center is a national, nonpartisan voting rights and election reform 501(c)(3) non-profit organization based in Washington, D.C. Its mission is to use litigation, education, and advocacy to remove barriers to registration and voting, particularly those disenfranchising underrepresented and marginalized communities, and to improve election administration.

² See Exec. Order 2020-01D, § 1 (March 9, 2020), available at https://content.govdelivery.com/attachments/OHOOD/2020/03/09/file_attachments/1396418/Executive%202020-01D.pdf.

³ WHO Director-General's opening remarks at the media briefing on Covid-19, World Health Organization (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-Covid-19---11-march-2020>.

impacted by the virus, with 35,984 cases and 2,206 deaths confirmed as of June 2, 2020.⁴ It currently ranks twelfth in the nation in COVID-19-related deaths.⁵

Recognizing the threat to voters, the Legislature enacted legislation postponing the state's presidential primary to April 28, 2020 and requiring it to be conducted primarily by mail.⁶ However, despite mandating vote by mail, the legislation did not authorize the Secretary of State to send absentee mail-in ballot request forms to each registered voter; instead, voters received postcards informing them how to obtain a request form. It also failed to establish an online portal that voters could use to request a mail-in ballot. As a result, many voters faced unnecessary delays in receiving their ballots or did not receive their ballots in time to have them counted, and local boards of elections experienced severe strains on their limited resources.⁷

Despite these complications and widespread criticism of how the April 28th primary had been conducted, HB 680 would codify those same procedures for future elections conducted during public health emergencies. It would again establish vote by mail as the primary means for conducting an election in these circumstances, but prohibit the Secretary of State from sending unsolicited request forms to registered voters in the November 2020 General Election, and from prepaying the postage for request forms and absentee mail-in ballots. The bill would also shorten the deadline for requesting absentee mail-in ballots. Although this measure could help ensure that voters receive their ballots on time, it may wholly disenfranchise many voters by reducing the time in which they can obtain, complete, and submit an absentee mail-in ballot request form and have it processed. HB 680 also fails to provide for the creation of an online portal to request an absentee mail-in ballot. These provisions would be especially burdensome on voters who lack access to the Internet (so that they can download the request form from the Secretary of State's website), printers, printing services, and stamps during a public health emergency.

These restrictions will severely burden Ohio voters in exercising their right to vote, without any rational justification. To the extent that the Legislature believes that mailing ballot request forms directly to voters could facilitate vote by mail fraud, available evidence confirms that this type of fraud is functionally nonexistent.⁸ By contrast, some 9,000 voters across six counties did

⁴ *Cases in the U.S.*, CTRS. FOR DISEASE PREVENTION & CONTROL, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html#accordion-1-collapse-3> (last updated June 1, 2020).

⁵ *Id.*

⁶ 2020 Ohio Laws File 30, Am. Sub. H.B. No. 197

⁷ See, e.g., Stephen Stromberg, *Ohio's election was a mess. It would be a disaster at the national level.*, Washington Post (May 8, 2020), <https://www.washingtonpost.com/opinions/2020/05/08/ohios-election-was-mess-it-would-be-disaster-national-level/>; Jason Aubry, *Some primary election ballots won't count due to lack of absentee request*, ABC NEWS 2 WDTN (May 4, 2020), <https://www.wdtn.com/news/your-local-election-hq/some-primary-election-ballots-wont-count-due-to-lack-of-absentee-request/>; Darrell Rowland and Rick Rouan, *After a problem-plagued priary, Ohio leaders disagree about November election plan*, Ohio Dispatch (Apr. 28, 2020), <https://www.dispatch.com/news/20200428/after-problem-plagued-primary-ohio-leaders-disagree-about-november-election-plan>; Meg Cunningham, *'More time would have been helpful': Ohio election officials face ballot issues due to postal service delays*, ABC NEWS (Apr. 24, 2020), <https://abcnews.go.com/Politics/time-helpful-ohio-election-officials-face-ballot-issues/story?id=70333752>; Lynn Hulsey, *Elections officials say vote-by-mail changes everything*, Dayton Daily News (Apr. 16, 2020), <https://www.daytondailynews.com/news/local-govt-politics/25m-ohioans-seek-ballots-1st-mail-only-election/e59Y1VShXGvIvu2Shk3F5O/>.

⁸ See Amber McReynolds and Charles Stewart III, *Let's put the vote-by-mail 'fraud' myth to rest*, THE HILL (Apr. 28, 2020), <https://thehill.com/opinion/campaign/494189-lets-put-the-vote-by-mail-fraud-myth-to-rest>; Wendy R.

not receive ballots due to issues with their ballot request forms⁹ and “likely several thousand” did not receive their requested ballots on time,¹⁰ thus demonstrating the very real and substantial impact HB 680 will have on future elections held during public health emergencies. What’s more, Ohio already provides numerous and more effective safeguards against vote by mail fraud, among them: requiring voters to provide personal identifiers like driver’s license numbers or the last four digits of their Social Security numbers on their request forms¹¹ to confirm their identities; requiring voters to sign an oath on their absentee mail-in ballot envelope¹²; employing a ballot tracking system¹³; and imposing criminal penalties for fraud.¹⁴

The harm to Ohio voters is all the more imminent for the November 2020 General Election, which is predicted to draw record-setting turnout. Before the COVID-19 pandemic, the Brookings Institution predicted that “turnout in 2020 could break all records and test our election machinery as it has never been tested before.”¹⁵ Other experts have made similar forecasts.¹⁶ Ohio’s own turnout statistics speak to an increased interest in civic engagement among Ohioans. For example, voter turnout in the 2016 General Election was more than 71 percent,¹⁷ far higher than the national average.¹⁸ Turnout in the 2018 midterm elections was 15 percent higher than in the 2014 midterm elections.¹⁹ With health experts predicting a second wave of novel coronavirus illnesses this fall and winter, and voters facing a substantial alteration of the state’s election system, HB 680 will only exacerbate the threat of chaos and disenfranchisement. **For these reasons, Fair Elections Center strongly urges the Legislature to enact legislation that would authorize the mailing of absentee ballot request forms to all registered voters, establish an online ballot request portal for the 2020 General Election, provide pre-paid postage for voters to return their**

Weiser and Harold Ekeh, *The False Narrative of Vote-by-Mail Fraud*, BRENNAN CTR. FOR JUSTICE (Apr. 10, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>.

⁹ Josh Sweigart, *9K local voters didn’t get requested ballots, changes called for in November*, DAYTON DAILY NEWS (May 3, 2020), <https://www.daytondailynews.com/news/local/local-voters-didn-get-requested-ballots-changes-called-for-november/tfn0q4MUbxoHEAVNrXY2nL/>.

¹⁰ Nathaniel Rakich, *What Went Down In Ohio’s Primary*, FIVETHIRTYEIGHT (May 7, 2020), <https://fivethirtyeight.com/features/what-went-down-in-ohios-primary/>.

¹¹ Ohio Rev. Stat. Ann. § 3509.03(B)(5)

¹² *Id.* § 3509.04(B)

¹³ *Track Your Ballot*, SEC’Y OF STATE, <https://www.ohiosos.gov/elections/voters/toolkit/ballot-tracking/> (last visited June 2, 2020).

¹⁴ *See* Ohio Rev. Stat. Ann. § 3599.26.

¹⁵ William A. Galston, *What does high voter turnout tell us about the 2020 elections?* BROOKINGS INSTITUTION (Nov. 20, 2019), <https://www.brookings.edu/blog/fixgov/2019/11/20/what-does-high-voter-turnout-tell-us-about-the-2020-elections/>.

¹⁶ *See, e.g.*, Susan Milligan, *Preparing for a Voter Surge*, U.S. NEWS & WORLD REPORT (Sept. 20, 2019), <https://www.usnews.com/news/elections/articles/2019-09-20/experts-predict-huge-turnout-in-2020>; Nate Cohn, *Huge Turnout Is Expected in 2020. So Which Party Would Benefit?* N.Y. TIMES (July 15, 2019), <https://www.nytimes.com/2019/07/15/upshot/2020-election-turnout-analysis.html>; Ronald Brownstein, *Brace for a Voter-Turnout Tsunami*, THE ATLANTIC (June 13, 2019), <https://www.theatlantic.com/politics/archive/2019/06/2020-election-voter-turnout-could-be-record-breaking/591607/>.

¹⁷ *Voter Turnout in General Elections*, SEC’Y OF STATE, <https://www.ohiosos.gov/elections/election-results-and-data/historical-election-comparisons/voter-turnout-in-general-elections/> (last visited June 2, 2020).

¹⁸ Thom File, *Voting in America: A Look at the 2016 Presidential Election*, U.S. CENSUS BUREAU (May 10, 2017), https://www.census.gov/newsroom/blogs/random-samplings/2017/05/voting_in_america.html.

¹⁹ *Voter Turnout in General Elections*, SEC’Y OF STATE, <https://www.ohiosos.gov/elections/election-results-and-data/historical-election-comparisons/voter-turnout-in-general-elections/> (last visited June 2, 2020).

request forms and absentee mail-in ballots, and adopt and expand access to ballot drop boxes. Please see our report, [*Registering and Voting in the Era of COVID-19*](#), for additional recommendations for improving ballot accessibility during the novel coronavirus pandemic.

Thank you for allowing Fair Elections Center to share its expertise on this matter and to express its opposition to HB 680. Should you have any questions, I can be reached at caguilera@fairelectionscenter.org.

Sincerely,

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