

## **TESTIMONY OF ANDREA R. YAGODA OPPOSING SB 293**

Chair Roegner, Vice Chair Gavarone, Ranking member Blackshear and Members of the General Government Committee. My name is Andrea R. Yagoda. I have been a resident of Ohio for fifty one (51) years.

The Constitution's Elections Clause empowers states to prescribe the "Times, Places, and Manner of holding" congressional elections. U.S. Const. art. I, § 4, cl. 1. "[T]hese comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes" among other issues. *Smiley v. Holm*, 285 U.S. 355, 366 (1932). The Elections Clause empowers Congress to "make or alter" state election laws. U.S. Const. art. I, § 4, cl. 1. "In practice, the Clause functions as 'a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices." *Foster v Love*, (1997), 522, US 67,69; *Arizona v. Inter Tribal Council of Case Arizona, Inc.*, 570 U.S. 1, 9 (2013)

The President "plays no direct role in the process" of appointing electors, "nor does he have authority to control the state officials who do." *Trump v. United States*, 603 U.S. 593, 627 (2024). As the Supreme Court has observed, "the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker." *Medellín v. Texas*, 552 U.S. 491, 526-27 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952))

The US Attorney General through Executive Orders does not have the authority to dictate the way States conduct federal elections, she may however, make suggestions, so Secretary of State LaRose reliance on the letter from the DOJ to support this bill is a false narrative.

In League of United Latin American Citizens, et al v. Executive Office of the President, (2025) 1:25-CV-00946-CKK the court rejected the proposition that the Attorney General could “enforce” the Election Day Statutes, as directed in Section 7(a) of the Executive Order, by initiating criminal or civil actions and stated:

*It is not obvious that either criminal or civil enforcement actions, in fact, are available means for the Attorney General to “enforce” the Election Day Statutes. First, the Election Day Statutes do not define any criminal offenses, and Defendants have not identified any other statute that criminalizes the counting of ballots in accordance with State laws regarding ballot-receipt deadlines. Nor can the Court readily imagine how a criminal enforcement action could be brought “against States” as Section 7(a) directs. Second, unlike the many other election-related statutes under which the Department of Justice routinely brings civil actions, the Election Day Statutes do not contain any explicit provisions for civil enforcement actions.” See: p. 98; Also See: California v. Donald Trump (US Dist CT June, 2025) 25-CV-10810*

Also his claim that we want to avoid litigation is comical at best. LaRose and other legislators did not seek to avoid litigation when the Secretary voted for what he describes as an asinine map; nor when the Secretary drafted the ballot language for two (2) constitutional amendments; nor has the legislature sought to avoid litigation in its refusal to repeal statutes that directly conflict with the will of Ohioans when they voted for the choice amendment; LaRose did not attempt to avoid litigation when he issued certain directives regarding dropboxes. So, no, this is not about avoiding litigation. But how about this novel idea? How about

litigating to promote more accessible voting verses less? How about challenging the letter Larose received from the Department of Injustice? How about maintaining the status quo and if sued defend Ohioans right to free and fair elections? This is about catering to the MAGA base who still refuse to accept the 2020 election results and catering to the demands of an out of control president.

The sponsors of this bill have relied on one appellate court case. It does not bind us. As other courts have noted, however, the text of the Election Day statutes require only that all votes are cast by Election Day, not that they are received by that date. 2 U.S.C. § 7; 3 U.S.C. §§ 1, 21(1); See Bost v. Illinois State Bd. of Elections, 684 F. Supp. 3d 720, 736 (N.D. Ill. 2023) (upholding an Illinois law allowing ballots postmarked on or before Election Day to be counted if received up to fourteen days thereafter, concluding that this provision “is facially compatible with the relevant federal statutes”), *aff’d* on other grounds, 114 F.4th 634 (7th Cir. 2024); Donald J. Trump for President, Inc. v. Way, 492 F. Supp. 3d 354, 372 (D.N.J. 2020) (concluding that “the Federal Election Day [s]tatutes are silent on methods of determining the timeliness of ballots” and, therefore, do not preempt a New Jersey law allowing ballots lacking a postmark to be counted if received within 48 hours after polls close); California v. Donald Trump (US Dist CT June, 2025) 25-CV-10810 wherein Injunction granted. The logic behind such rulings is simple: states that allow ballots received after Election Day to be counted still require that all votes are cast by Election Day, meaning a candidate’s “electoral fate is sealed at midnight on Election Day, regardless of the resources he expends after the fact.” Bost, 684 F. Supp. 3d at 733-34 . And,

at present, in Ohio, ALL ballots must be postmarked the **DAY BEFORE** Election Day, an even tighter standard. This logic is applicable to those who will try to claim that Ohio arbitrarily treats some people's votes differently when they permit absentee votes to be received after Election Day affords some absentee voters several extra days after Election Day to cast their votes.

Nor do the sponsors of this bill explain why this hypothetical risk of fraud and loopholes justifies the potential disenfranchisement of voters whose ballots may not be received by Election Day, simply because of mailing delays outside of their control. See Wise v. Circosta, 978 F.3d 93, 100-01 (4th Cir. 2020) (concluding that a state court consent judgment extending the receipt deadline for ballots mailed on or before Election Day was clear and uniform and "impacts only an element outside the voters' control: how quickly their ballots must be received to be counted"). These voters are likely to include the handicapped, elderly, lower income voters, and those in rural areas, and those out of the state at election time, and the list goes on. And on top of this, the same sponsors, are proposing the elimination of dropboxes.

If we interpret the law that votes cast on Election Day is to mean that all ballots must be received on Election Day as proposed by the sponsors then how does this bill's Amendment (which by the way I could not locate on the legislature's website but which amendment was adopted on October 28.) carve out exceptions for UOCAVA as commendable as that may be? And how would that not be a violation of the equal protection clause? See: *Obama for America v Husted* (2012), 697 F. 3d 423. How can we have two different interpretations of a

vote being “cast”? Do the sponsors of this bill really desire to risk this harm to our military and those Ohioans temporarily out of the country by disenfranchising them?

Senators Gavarone and Brenner state in their sponsor testimony “One case of voter fraud is too much and I believe SB 293 tightens the loopholes that some people can exploit to undermine our elections systems and, by definition, our Republic.” And yet they neglect to specify the “loopholes”. Tell us Senators what loopholes are you referring to? Just because you say there are loopholes does not make it true. There is no loophole, nor is there a greater risk of voter fraud because we have a four day grace period. Is this an attempt by the sponsors to hoist themselves up to the base that still believe the 2020 election was stolen for a State Senate and/or a statewide office such as the Secretary of State in 2026?

These legislative committees always ask the voters for data, etc when we testify and yet conveniently fail to provide any to support their bills. Tell us Senators Gavarone and Brenner how does the four (4) day grace period encourage fraud? Ohioans like myself would like to know. Here is some data: According to the Secretary of State’s Absentee and Early Vote Dashboard, Nine Thousand Five Hundred Twenty Three ( 9,523) ballots were received via mail; nine (9) in dropboxes and one in person in the four (4) day window after November 5, 2024. So for a minimal risk of voter fraud without any substantiation, the sponsors would rather disenfranchise over 9,500 voters, which equaled .008% of the total ballots returned. More data: In 2024 all 88

county Board of Elections reported 100% accuracy rate for the Presidential election; 99.997(.003%) for the Senate and 99.998% (.002%)of local races so an overall 99.998% accuracy rate. So doing the math this bill would disenfranchise a significantly larger amount of voters than we have seen voter fraud.

In his proponent testimony, Mr. Ennis who claimed to be a Texas resident testified that this bill would alleviate the threat of litigation for ballots returned without a postmark. Let's be clear there has been no litigation over a ballot lacking a postmark in Ohio. Contrary to Mr. Ennis' testimony, Ohio law is not ambiguous and is very clear. All mail in ballots must be postmarked the day before Election Day and must be received within four (4) days after the election. He also refers to a survey conducted by the Honest Elections Project a Leonard Leo group which I am hard pressed to place much reliance on.

This legislative body has made it harder to request an absentee ballot by mandating that a specific form be used to request one and have confused voters into thinking they will always receive a request when in some elections they do receive one without asking and then the next not, which delays the requests. The fur (4) day window affords those who receive the wrong ballot to have a correct one sent or those who are out of state at election time and are unaware that ballots cannot be forwarded by the US Post Office. These are just some examples of why ballots could be delayed outside the post office delays.

Why are you republicans so afraid of the voters so that at every turn you work on ways to suppress the vote? This is a bad bill and the voters are consistently hit with another change to the voter laws and nothing has been done

to actually educate them on the changes. This is just another change to confuse the voters, suppress the vote and breed apathy when voters just give up because the laws are ever changing.

I implore you to vote No on this bill.

*Andrea R. Yagoda*