



**LEAGUE OF WOMEN VOTERS® OF OHIO**

17 South High Street, Suite 650 • Columbus, Ohio 43215

Phone (614) 469-1505 • Fax (614) 469-7918

www.lwvohio.org

LWVO Opponent Testimony on  
SB 296 – Polls Extended Hours  
House Government Accountability and Oversight Committee  
Carrie Davis, LWVO Executive Director  
May 24, 2016

Chairman Brown, Ranking Member Clyde, and members of the House Government Accountability and Oversight Committee, thank you for the opportunity to present opponent testimony on behalf of the League of Women Voters of Ohio (LWVO) on Senate Bill 296.

LWVO has serious concerns with SB 296, and we urge you to take the time to thoroughly vet these issues rather than racing to pass a bill that will likely cause far more harm than it is arguably intended to prevent.

**A. Emergencies happen and courts should be able to order a remedy.**

There is a reason a legal process exists for courts to order extended polling hours. Sometimes, despite sound planning, things go wrong – and there needs to be remedy.

This bill, in its current form, poses a real risk to hinder access to the courts in such emergency situations.

Regardless of what you consider to be legitimate reasons for keeping polls open late – anything from weather problems to traffic tie-ups to voting machine failures – this bill has potential unintended consequences on keeping polls open for what are unquestionably legitimate reasons.

Polls have been court-ordered to stay open late for a whole range of emergency circumstances that could be impacted by this kind of policy. – e.g., weather emergencies occur, polling places are flooded and have to be moved at the last minute, roads are flooded or icy that delays delivery of voting equipment, the power goes out, polling places run out of ballots, voting machines malfunction, ballot scanners jam, polling locations do not open on time, long lines occur due to insufficient poll workers or voting machines, etc.

**B. SB 296 is not needed.**

First we question the need for this bill in that the problem identified by the sponsor was a ruling from a federal court. A state legislature cannot bind a federal court, and nothing in SB 296 is applicable to how federal courts and judges consider matters before them or how they ultimately rule. Secretary Husted's appeal of the order is the only way to impact what a federal court may do in the future.

Furthermore, much of the sponsor and proponent testimony on SB 296 in both the House and Senate spoke to problems that had to do with communication breakdowns and insufficient planning for how to handle emergency court rulings – not due to the court orders themselves. Arguably, our election officials and voters would be better served by focusing on solutions to those problems.

However, if the Government Accountability and Oversight Committee nonetheless chooses to move forward with passage, we strongly urge you to amend SB 296 to fix the serious problems in the current bill and to clarify other sections to improve outcomes.

### **C. Recommended changes to prevent SB 296 from doing more harm than good.**

#### **1. Remove the bond requirement.**

Eliminate the bond requirement. Whether intended to or not, it creates the impression of putting a price tag on the right to vote.

We do not expect voters to plan for and run elections, because that is the government’s job. We don’t expect voters to pay for elections, and in fact the 24<sup>th</sup> Amendment to the U.S. Constitution expressly prohibits such a poll tax.

Yet, SB 296 seeks to shift this burden. It puts the onus on voters to seek a remedy when problems arise on Election Day. It erects a “pay wall” by requiring the voter to post a cash bond and bear financial liability. And it raises the standard of proof by requiring additional evidence to seek relief.

While the Senate amended SB 296 to allow a judge discretion in setting the bond amount, that does not alleviate the problem. It poses a real financial risk and uncertainty for the voter petitioning for emergency relief, because the voter does not know if a judge will order a bond to cover the maximum amount or some lesser amount. The bill only allows a judge to waive the bond requirement if a petitioner is found to be indigent (as opposed to if the evidence indicates extended hours are warranted), and even then an order issued to an indigent petitioner only applies to that individual (instead of everyone in the effected precincts).

If a voter feels they must petition a court for the extraordinary relief of keeping polls open late, that is a sign that something went wrong. We shouldn’t be punishing voters for circumstances beyond their control. We should be seeking solutions – together – to make sure such problems do not recur.

#### **2. Ensure the rules apply uniformly to all parties.**

We support having an expedited appeal process to adjudicate matters quickly. However, the expedited appeal process should apply to all parties, not just the state.

#### **3. Set a realistic legal standard that can be met in exigent circumstances.**

SB 296 should be amended to apply a preponderance of the evidence standard and allow the court to determine, under the rules of civil procedure, what evidence is admissible.

How can a petitioner move quickly enough in the case of an emergency request to keep the polls open if there are incredibly narrow limitations on what kinds of evidence they can submit? The mandate for fair and equitable access to a polling place should be valued highly enough to let the courts decide, based on the best evidence available, the merits of keeping the polls open.

The heightened standard proposed in SB 296 is impractical due to the short amount of time in which parties have to file and the court has to evaluate expedited Election Day cases. A preponderance standard would still meet the stated goal of assuring adequate evidence is presented and vetted by the courts before issuing an order.

#### **4. Clarify that SB 296 does not impact election officials' ability to respond to emergencies.**

In examining past situations in Ohio and other states in which courts have ordered extended polling place hours, there were several situations in which it was election officials themselves who petitioned for extended hours to address an unforeseen or emergency circumstances.<sup>1</sup>

Since there are situations in which it is the election officials seeking an extension order, how would SB 296 impact that kind of scenario? While the bill sponsor indicated that his intent is to address what courts do, this committee may want to amend SB 296 to make clear that the bill does not tie the hands of Ohio election officials to address emergencies.

It would be advisable for House legal counsel to closely examine the bill to make sure, if the procedure set forth is the only way to get an order for extended hours, that SB 296 does not tie the hands of Ohio officials who either have to try to satisfy the problematic state court process in SB 296 outlined above or could themselves have to seek relief in federal courts because the state process is too burdensome and impractical.

#### **D. Additional recommendations**

While the above reforms are the most critical to correcting problems with SB 296, we also want to offer a couple additional suggestions that would help counties comply with those rare situations in which a court orders extended polling hours.

##### **1. Require clear communication protocols for Election Day court orders**

There was unquestionably a communication breakdown during this year's primary, in terms of the court providing timely notification to the Secretary of State (SOS), the SOS communicating that order to the affected county Boards of Elections (BOEs) in southwest Ohio, and the BOEs notifying the polling locations. If the problem is a communication breakdown, then let's focus on solutions to that problem.

Regarding communication between the courts and SOS, the Secretary could set up a special hotline number and distribute it to all Ohio state and federal courts in advance of the election, encouraging court personnel to use that number to notify the SOS immediately of any election-related orders. A senior-

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<sup>1</sup> See, for example "Election Emergencies Happen," The Canvass: States and Election Reform, National Conference of State Legislatures, available online at <http://www.ncsl.org/research/elections-and-campaigns/election-emergencies-happen.aspx>

level staff person in the SOS office could be tasked with the responsibility to monitor that phone number, and internal protocols could be put in place within the SOS office to quickly act on any notifications received from the courts.

In a perennial battleground state that frequently sees litigation leading up to and during elections, especially during presidential election years, it makes imminent sense to have clear lines of communication between the courts and SOS to timely convey emergency orders.

Regarding communication between the SOS and BOEs and between BOEs and polling location managers, a mechanism already exists to solve this exact problem. Put it in the BOE's written Election Administration Plan as required by Directive.<sup>2</sup>

## **2. If BOEs are concerned about the challenge of recruiting poll workers for long days, one solution would be pass legislation allowing for split shifts**

One of the BOE witnesses who testified as a proponent of SB 296 spoke to a concern that it may be more difficult to recruit poll workers if an already long Election Day could be extended by the courts.

First of all, that has always been true. The courts have always been able to order – and have in fact ordered – extended polling hours for emergency situations. So BOEs have always had to recruit with that reality in mind. If they are concerned that this spring's communication problems about extended hours may impact recruiting, reassuring potential poll workers that such communication planning has been fixed may do more to help than passing this bill.

However, if this legislature and the BOEs are truly concerned about the impact on poll worker recruitment when a long 15-hour day is made even longer, then why don't we finally pass legislation allowing BOEs to offer split shifts for poll workers? If long-time poll workers are willing to continue working the full Election Day, they could continue to do so. But offering split shifts as an option may bring in additional poll workers who for various reasons cannot commit to a full day but would be eager to participate for a portion of the day.

## **Conclusion**

For the foregoing reasons, we strongly urge the House to slow down and not rush to pass this legislation. Or, if the House is intent on passing SB 296, we strongly recommend that you amend the bill to address the concerns outlined above.

Thank you for the opportunity to testify, and we would be happy to answer your questions.

*The League of Women Voters of Ohio, a nonpartisan political organization, encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy.*

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<sup>2</sup> Additional information about the EAP requirement was detailed in our testimony to the Senate, which is available here: [http://lwvohio.org/assets/attachments/file/SB%20296%20senate%20testimony%20final\(3\).pdf](http://lwvohio.org/assets/attachments/file/SB%20296%20senate%20testimony%20final(3).pdf)