



TO: House Government Accountability & Oversight Committee  
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio  
DATE: May 24, 2016  
RE: Senate Bill 296

To Chairman Brown, Vice Chair Blessing, Ranking Member Clyde, and members of the House Government Accountability & Oversight Committee, my name is Gary Daniels, chief lobbyist for the American Civil Liberties Union of Ohio ("ACLU of Ohio") and I appear to present opponent testimony on Senate Bill 296.

SB 296 is a misguided bill advertised as an improvement to the current system of keeping polling places open for additional time on Election Day. Regrettably, it is a better bet SB 296 will perpetuate problems it seeks to solve.

Regardless of ideology or political party, I hope we all agree there unfortunately are extraordinary times when it is desirable, perhaps even necessary, to extend the hours polling places are open on Election Day.

Election Day is a big undertaking across Ohio's 88 counties and it is not uncommon to learn of technical glitches, bad weather, staffing shortages, and other problems leading to temporary delays for voters trying to cast ballots. Such issues are not exclusive to any city, county, or region of Ohio.

On rare occasions, these problems may be longer-lasting or occur later in the day. This leads to a much greater likelihood some voters will see their final opportunity to vote on Election Day pass, should they be unable because of work, childcare, health, or other reasons to remain at a polling location to see if the problem is resolved in a timely manner.

There have been several times in the past 10-15 years when voters have filed suit to keep some polls open because of persistent or systemic problems. Not all courts agree to extend hours, but it has happened. After all, this is the only means by which Ohio voters - your constituents and supporters - have to keep polls open when serious problems on Election Day otherwise reduce their voting hours.

Sometimes, voters choose to file in federal court, sometimes in state court. Because this body cannot pass laws impacting federal court litigation or processes, SB 296 does not impact federal lawsuits. For this reason, it will undoubtedly lead to more litigation in federal court.

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Those who may still unwisely wish to file in state court will find SB 296 stacks the deck against them in several key ways:

- Among other impractical and worrisome changes this bill makes to the litigation process, SB 296 requires an evidentiary standard of plaintiffs to “prove by clear and convincing evidence that no prospect of a fair election exists in the absence of the order.” I expect very few, if any, voters will be able to overcome this extremely steep hurdle.
- The requirement of a cash bond from those voters who file to keep polls open. SB 296 has been amended to give courts discretion regarding the amount, but clearly, this bill is written with the intention of urging judges to impose the entire cost of keep polling locations on the voter.

Petitioners keep that bond money if they ultimately prevail. But there may also be those who file, win in court on Election Day, lose in appellate court, and therefore, lose the potentially thousands of dollars they were required to post. This will either discourage voters from attempting to keep polling locations open or, as mentioned, ensure such motions are all filed in federal court where the state has zero control.

- SB 296 also creates a vague, undefined appellate court panel for the appeal of trial court decisions. However, that panel is only available to government appellees, not voters. Voters may still appeal to appellate court but it has yet to be explained why the government parties in a case get to appeal to this mysterious panel but voters do not.

If SB 296 was about creating an alternative, non-partisan process to address those rare instances when polling places should be kept open beyond closing time, I suspect you would find much interest.

If SB 296 was about making positive changes to the system, such as allowing split shifts for poll workers, improving the pay and training for poll workers, and expanding locations and publicity for early voting, you would find even more interest.

Senate Bill 296 does none of this. Instead, it entrenches litigation as the only way to solve these problems on short notice; then places numerous hurdles before those who dare to spend time and money in order to make sure Ohioans get an opportunity to vote when problems far outside their control impact their ability and right to cast a ballot.

Members of this committee, the ACLU of Ohio urges you to reject SB 296 in favor of concrete solutions to Election Day problems that will make litigation even rarer than it is now.