



LEAGUE OF WOMEN VOTERS® OF OHIO

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LWVO Opponent Testimony on
SB 296 – Polls Extended Hours
Senate Civil Justice Committee
Carrie Davis, LWVO Executive Director
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Chairman Bacon, Ranking Member Skindell, and members of the Senate Civil Justice 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. Unintended Consequences

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 poses a real risk to hinder access to the courts in such emergency situations.

Regardless of whether you think keeping polls open late due to area traffic problems is a legitimate reason, 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. Focus on solutions to the real problems

Much of the sponsor and proponent testimony on SB 296 spoke to problems that had to do with communication breakdowns and insufficient planning – not due to the court orders themselves.

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), and the BOEs notifying the polling locations. If the problem is about communication breakdowns, then let's focus on solutions to that problem.

1. Communication between the courts and the Secretary of State

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-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.

2. Communication between the Secretary of State and Boards of Elections, and between BOEs and polling location managers

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.

Back in 2004, Ohio had widespread election administration problems that resulted from insufficient planning for things that could go wrong on Election Day. LWVO sued then-Secretary Blackwell. That lawsuit was eventually settled, and one of the key provisions of the settlement agreement was to require every BOE to prepare a written Election Administration Plan (EAP) and file it with the SOS. The EAP is supposed to include plans for how to handle Election Day communications and how to handle surprise problems that arise.

Secretary of Husted took the EAP process a step forward in 2012 by creating an EAP template that BOEs were required to use, to make sure they included all the required elements of a sound plan. In the most recent Election Officials Manual (EOM) issued as Directives 2015-24 through 37¹ the SOS expressly lists "Election Day Communication" and "Election Day Contingencies" as required elements of this year's EAPs (see attachment A).

The EAP section in the EOM further states "Detailed election administration planning is something that each board of elections should do prior to any election.." and "The board should look at the EAP process not just as critical planning exercise, but also as an opportunity for continuous process improvements."²

¹ Available online at <http://www.sos.state.oh.us/sos/upload/elections/EOResources/general/2015EOM.pdf>

² Ibid pg. 15-10.

The whole purpose of EAPs is to make sure that mistakes only happen once and are corrected for subsequent elections. The communication breakdown that occurred during this year's primary in relaying court-ordered extended polling hours is precisely the kind of issue to be addressed in EAPs.

EAPs, which are due to be filed with the SOS by July 11 this year, should be required to address how such communications will be handled. For example, using modern communication technology, the BOEs could set up a text alert system for SOS to notify BOEs and BOEs to notify precinct managers.

3. If BOEs are concerned about the challenge of recruiting poll workers for long days, we should finally pass legislation allowing for split shifts

One of the BOE witnesses who testified as a proponent of SB 296 last week 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 split shifts for poll workers?

4. If we are truly concerned with reducing the cost of election administration, the state act expeditiously to implement online voter registration

Proponents of SB 296 also raised concerns about the increased cost of having to keep polls open late. While we are sympathetic to the plight of counties trying to do more with less, there are some costs that can be trimmed and some that cannot. BOEs have already trimmed Election Day staffing costs by moving to consolidate precincts and polling locations, as well as adjusting the required number of voting machines to account for the number of people who choose to vote before Election Day.

If this legislature really wants to help counties save money on election administration, then pass online voter registration (SB 63) so that BOEs don't have such an avalanche of paper forms to process. Unlike extended polling hours, which is a relatively rare occurrence that only impacts a handful of counties, implementing online registration will impact each and every county in Ohio.

C. It is the responsibility of government, not voters, to plan for how to conduct elections and pay for them.

Ohio law is crystal clear that it is the responsibility of the Secretary of State and Boards of Elections to plan for and conduct our elections, including being able to nimbly address problems that occur during the course of elections. Similarly, those elections are paid for by a combination of county, state, and in some cases federal funds.

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 24th 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.

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.

D. It is the purview of courts to assess the reliability of evidence

We are also concerned about this section of the proposed revision to Sec. 3501.321(B)(1) of the Code:

“(d) The court's decision is based solely on testimonial evidence submitted under oath or affirmation and on physical evidence, if physical evidence has been submitted to the court. The court shall not consider evidence gathered from a media report that is not submitted under oath or affirmation.”³

How can a petitioner move quickly enough in the case of an emergency request to keep the polls open if a reliable report from the media (on a major problem affecting traffic, for example) can't be submitted as evidence? 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 - without the restriction of posting a case bond for the added expense.

This is contrary to the very first sentence of current ORC Section 3501.17(A):

“The expenses of the board of elections shall be paid from the county treasury, in pursuance of appropriations by the board of county commissioners, in the same manner as other county expenses are paid.”

County treasury funds should be appropriated to cover such contingencies, and not push that expense on to an individual seeking to ensure access to voting.

Conclusion

³ Lines 453-458 of the as introduced version of SB 296

For the foregoing reasons, we strongly urge the Senate to slow down and not rush to pass this legislation.

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.