



TO: Senate Civil Justice Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
DATE: May 4, 2016
RE: Senate Bill 296

To Chairman Bacon, Vice Chair Oelslager, Ranking Member Skindell, and members of the Senate Civil Justice 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 that would, for all intents and purposes, end any and all attempts by voters to keep polls open past 7:30pm on Election Day no matter how serious the problems and conditions are that result in troubles. The problems with SB 296 are many, I will touch on several.

SB 296 attempts to limit all filings of motions to keep polls open to state, rather than federal, court by explaining a plaintiff “shall (emphasis added) file a petition in the court of common pleas of that county” in these situations. I trust members of this committee are well aware state legislation cannot dictate whether a plaintiff seek relief in federal versus state court, rendering this provision moot.

Indeed, much of SB 296 is obviously predicated upon a recent order by a federal judge here in Ohio. Whatever one thinks about that order and how it came to be, nothing in SB 296 is applicable to how federal courts and judges consider matters before them or how they ultimately rule. The ironic twist is SB 296 will likely drive more, not less, litigation to federal court and perpetuate the very problem it seeks to solve.

For those who wish to file in state courts, SB 296 places various hurdles in their path ensuring the practical result of this bill will be an end to all such filings. Those include:

- A modern-day “poll tax” requiring a plaintiff to pay a cash bond equal to the estimated amount of keeping the polls open after 7:30pm. In other words, anyone wishing to exercise their fundamental and constitutional right to vote must first be able to instantly produce thousands, if not tens of thousands, of dollars. The ACLU of Ohio is aware this requirement is waved if one is indigent, but even those who are not will be unable to

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produce such large amounts of money on extremely short deadlines (or even without such deadlines).

- SB 296 also 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 highest of hurdles.
- However, should a voter be successful in overcoming said hurdle, any polls ordered kept open would only be for that individual voter, and no others. So, if, for example, a polling place loses power at 3pm on Election Day making it impossible for Ohioans to vote in that location, each and every voter must then (after conjuring up thousands of dollars) rush to the county courthouse and file to keep the polling location open should they wish to still exercise their right to vote.
- Under SB 296, if a voter prevails and the polls are kept open, government defendants in these situations may then immediately appeal the court’s order to a special Election Day panel of appeals judges created by SB 296. For reasons thus far unexplained, this bill does not make that panel available to voters, appearing to further stack the deck in favor of government.

Members of this committee, I hope we can all agree there are unfortunately times and situations when polls should be kept open after 7:30pm. In the northern part of the state, severe weather makes voting a challenge on some November election days. Every part of the state is subject to technological glitches, power failures, personnel problems, and other factors making Election Day more chaotic than we all prefer. (Because there have been frequent references to Hamilton County during consideration of SB 296, I have included with my testimony a local news story reporting various problems at an astonishing 83% of polling locations in just that county during the November 2015 election).

As much as anyone, the ACLU of Ohio understands concern over certain court decisions, no matter what the issue. But, we do not think the answer should be detonating the current system in place so no one will be able to utilize it as such actions affect Ohioans of all political parties and ideologies.

Surely, there are other answers to improving elections in Ohio – online voter registration, state funding to advertise the ease and availability of early voting, enhanced poll worker training, and splitting poll workers shifts being among the many solutions that will lessen Election Day challenges and court cases. SB 296 does not belong along those and we urge you to reject this harmful and unprecedented legislation.

Hamilton County Board of Elections report promises fixes after 83% of poll sites report problems

New e-Poll book, training, tech issues blamed

BY: James Leggate, Rose-Ann Aragon

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CINCINNATI – The Hamilton County Board of Elections admitted problems and promised changes in a report on the “glitch”-filled November election released Friday.

“The problems encountered by far too many voters are simply unacceptable,” the report states.

Hamilton County was the first large county in Ohio to implement new electronic poll books, referred to as “e-Poll books.” More than 83 percent of polling locations in the county reported some type of problem related to the new system.

Board members expressed confidence in the report that they would be able to fix the problems.

“In fact, many of the resolutions are well underway, as BOE staff and vendors began working diligently immediately after Election Day to make sure that the core problems we experienced would not be duplicated in future elections,” they wrote.

Friday’s report came at the instruction of Ohio Secretary of State Jon Husted after numerous voters complained about problems on Election Day, “to ensure each election is run better than the last.”

Problems and Solutions

More than a third of voting locations – 34.9 percent – reported problems with setting up the e-Poll book equipment because of “unfamiliarity with the process and lack of time.”

Voting location managers and deputies received different, “enhanced” training from other poll workers, but it turned out that they had less knowledge of how to set up the devices, according to the report.

To fix that in the future, the board plans to give all poll workers the same training and move up workers’ start time 30 minutes on Election Day for extra setup time. They also aim to hire 125 troubleshooters to help out with any problems.

Nearly two-thirds of voting locations – 65.1 percent – reported problems with router/printer connectivity.

Printers will eventually be phased out, after the 2016 presidential election. Also, the board is working with e-Poll book vendor Tenex and router supplier AT&T to resolve the technical and connectivity issues, the report states.

“We do not anticipate this will cause problems in upcoming elections and fully expect a resolution in the short-term,” they wrote.

Poll workers also had difficulty locating voters in the e-Poll books at 42.6 percent of voting locations. Most of the problems were caused by voters with no date of birth in the database or worker confusion over the process when looking up a voter.

“While this isn’t a failure of the e-Poll Book system, PEO confusion about how to look the voters up by other means forced a number of otherwise eligible, registered voters to be processed provisionally.”

As a solution, the board will mail notices to voters whose dates of birth they don’t have, requesting the information. Also, the board is working with Tenex to change the language on the screens to improve instructions on how to find voters when the driver license scan isn’t being used and may add more training for election officials about the process.

There was also a problem with the voter database, which “Tenex failed to update” after the August special election, according to the report. As a result, 2,764 voters were incorrectly told they “registered too late.”

The report also claims “all ‘regularly’ registered voters who were impacted and cast provisional ballots had their ballots accepted and counted by the BOE.”

However, election data show that of 12,826 provisional ballots cast in Hamilton County, 1,034 were rejected and 185 were only partially counted. In some cases, confused poll workers sent voters to other, incorrect voting locations, where their provisional ballots weren’t counted – 275 ballots were rejected because the voter was registered in state but voted in the wrong precinct and polling location, according to the data.

The board will work with Tenex to “enhance system checklists and tests of the production database, so all scenarios can be reviewed for consistency between the voter registration database and the e-Poll book,” the report states.

Staffing levels were also a problem at 5.2 percent of voting locations, but that problem isn’t unique to Hamilton County, according to the report, citing the Presidential Commission on Elections. The board will try to enhance their recruitment efforts.

Training Efforts

The report also detailed the process of how the board settled on e-Poll book vendor Tenex Software Solutions and the training that went into preparing election workers.

The board settled on Tenex after staff tested several systems and found “Tenex provided the smoothest process and easiest to use product,” according to the report.

The board also sent a team to observe an election using Tenex’s system in Hillsborough County, Florida and spoke to election workers there about their experience using the equipment. In May 2015, the board voted to award the contract to Tenex with the “unanimous recommendation” of board of elections staff, the report states.

The Tenex system was first used in Hamilton County for an August special election of

eight precincts in Mount Healthy and Saint Bernard. There was only one problem with scanning during that election, and election staff were able to work with Tenex staff to fix it, according to the report.

The board hired extra staff after receiving all the new equipment a month earlier than normal to process and test the new equipment. The software was updated four times to meet needs identified by board staff. Elections staff also spent two weeks testing Wi-Fi at all 364 polling places in the county.

The board brought in election officials for hours of training sessions and doubled the number of Election Day troubleshooters and included paper poll books in each precinct's supplies as a backup.

"The process undertaken to bring e-Poll books to Hamilton County was long and labor intensive," the report states. "Years of research and hands-on experience were following by a thorough bid process and combined with countless hours of testing and training before implementation was attempted in the November General Election. The Hamilton County Board of Elections has strived to continuously improve the voting experience for the voters of Hamilton County through the introduction of industry accepted best practices such as e-Poll books."

Looking Ahead

Tim Burke, the chairman of the Hamilton County Board of Elections, said they knew they have work to do.

"There is no question that the Hamilton County Board of Elections is responsible for what happened on Election Day," Burke said. "We recognize that."

Secretary of State Husted said the two things that "jumped out" at him were the Internet connectivity problems and the "lack of properly-trained poll workers."

While Hamilton was the first "large" county to use the e-Poll books, 41 others in Ohio used them without any problems, according to Husted.

“It better not happen again – let’s just say that,” Husted said.

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