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Testimony of Donald J. McTigue

S. B. 296

Ohio Senate Civil Justice Committee

May 11, 2016

Mr. Chairman and Members of the Committee, thank you for this opportunity to testify regarding this bill. I am an attorney in private practice in Ohio. My practice has focused primarily on election law since 1991. Prior to that year, I served in the Ohio Secretary of State's office for eight years, first as Assistant and then Chief Elections Counsel. As a result of my professional background, I am aware of most every time in the past 30 years that voters have resorted to the courts in an effort to extend voting hours on election day. In many instances, the courts, after considering the evidence and arguments, have not granted the emergency relief that was sought. In a few instances, the courts have acted based on severe problems at polling locations to protect the right to vote. This is what courts do and are best suited to do whether we agree with their decision in every case.

S. B. 296 will essentially close the doors of the courthouse on Election Day by imposing onerous requirements for seeking judicial relief. The unintended consequence of S. B. 296 will be to redirect actions seeking emergency relief from the state courts and state judges to the federal courts. Is that what this committee wants? The state has no power to control the jurisdiction or procedures in federal court and by making relief in the state courts effectively unobtainable, federal abstention doctrines will not have any persuasive force. The end result will be that local elected judges in the county where there is a problem will be taken out of the picture. And the end result will be more costly for counties as well because of federal civil rights laws that award attorneys' fees.

In addition, S. B. 296, likely could be successfully challenged in the Ohio courts as violative of Article I, section 16 of the Ohio Constitution, which guarantees to all Ohioans that the courts shall be open for redress of injury and justice shall be administered without denial or delay. My final comment is that S. B. 296 may also have the unintended consequence of increasing post-election litigation contesting the results of elections under Revised Code sections 3515.08 et seq. It would be wiser to preserve the ability to resolve issues in court before the polls close rather than weeks or months after an election, but S.B. 296 makes that less likely.