



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

AMERICAN CIVIL  
LIBERTIES UNION  
OF OHIO  
4506 CHESTER AVENUE  
CLEVELAND, OH 44103-3621  
T/216.472.2220  
F/216.472.2210  
WWW.ACLUOHIO.ORG  
contact@acluohio.org

A MEMBER OF  
P R O M O T E D  
S H A R E S



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.