

May 27, 2016

Dear Governor Kasich:

On behalf of the Ohio Fair Elections Network, we are writing to express our opposition to SB 296, which grossly restricts the ability of the courts to protect voting rights by granting polling place hour extensions in response to election emergencies. We urge you to immediately veto this bill. The Ohio Fair Elections Network (OFEN) is comprised of a number of national and local groups, as well as individuals, invested in ensuring access to the ballot box. Our members have previously submitted testimony on this issue and we appreciate the opportunity to briefly reiterate our concerns.

Remarkably, by infringing on the right to vote and the right to judicial access, this bill manages to threaten not one, but two constitutionally protected fundamental rights. The Ohio Constitution also explicitly provides both the right to vote and the right to judicial redress. This bill could face legal challenge, forcing taxpayers to again cover litigation costs related to voting rights lawsuits. Moreover, this bill threatens real harm to Ohio voters.

While several polling place extensions garnered media attention in recent years, these orders are rare in Ohio, especially considering the number of precincts and the number of elections each year, including primary, special, and general elections. Though polling place hour extensions are rare, there are many reasons why an extension may become necessary, from weather emergencies or power outages, to unstaffed polling places or malfunctioning machines. No voter is immune from one of these reasons potentially interfering with their ability to vote, no matter their location, age, or party affiliation. There are examples of such emergencies and court intervention throughout the country. Ohio voters should not be deprived the same right.

Supporters of the bill claim that extensions are never necessary, as voters in line at poll closing are permitted to vote. But someone turned away in the morning may not be able to return by precisely 7:30 p.m. for a variety of reasons, from work schedules or professional deadlines to caregiving responsibilities. Proponents also seem to suggest that the right to vote on Election Day need not be guaranteed because electors may cast their ballots during early voting. But some Ohioans may prefer Election Day voting, whether they are still evaluating candidates or simply prefer the sense of community participation and excitement. It is an absurd proposition to cast aspersions on citizens for voting – or attempting to vote – on Election Day.

This bill harms voters' ability to secure their right to vote through poll hour extensions by imposing a bond requirement to cover Election Day overtime costs – an amount that is likely insurmountable for many plaintiffs. Although the Senate amended SB 296 to allow a judge discretion in setting the bond amount, that does not alleviate the problem. It poses a real financial risk and uncertainty for the voter petitioning for emergency relief, because the voter does not know if a judge will order a bond to cover the maximum amount or some lesser amount. Only people with very low incomes are exempt from this monetary requirement. Those exempted – likely those with low-paid, shift work and inflexible schedules – must travel to court to petition independently for the right to vote if they are unable to return to the polls by the exact closing time. Clearly this is impractical. In fact, all of our modern lives can be busy and inflexible. This is precisely why individual petitioners should be able to ask for an extension for *all* the polling place's voters who were affected, without an exorbitant cost.

The bill also needlessly changes the standard of proof by allowing extensions only if there is “clear and convincing evidence that no prospect of a fair election exists in the absence of the order.” This high

standard is inappropriate given the fundamental right involved. Practically, this standard unfairly makes it harder for petitioners to prove their case and easier for the government to win, even in the extreme case of a polling place issue the government caused or could have prevented.

Important decisions, including election decisions, should be constrained by rules, procedures, and standards. Luckily, these already exist. This bill is unnecessary, problematic, and an obvious over-reaction to a single, controversial decision to extend polling place hours. Here too, procedures already exist to reign in and correct judges should they abuse their discretion. Instead, this bill punishes the citizens of Ohio. For these reasons, we ask that you veto this bill.

Sincerely,

AAUW of Ohio, Citizens' Alliance for Secure Elections Ohio, Coalition on Homelessness and Housing in Ohio, Columbus Ohio Alumnae Chapter of Delta Sigma Theta Sorority, Inc., Common Cause Ohio, Communication Workers of America District 4, Fair Elections Legal Network, Miami Valley Voter Protection Coalition, Northeast Ohio Voter Advocates, Ohio Coalition Against Gun Violence, Ohio Voter Rights Coalition, Ohio Women With Disabilities Network, ProgressOhio, Project Vote, and Unitarian Universalist Justice Ohio