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Voting Advocates to the Ohio House: Don't put a price tag on voting

Columbus, OH – Voting advocates urged legislators to back off a fast-tracked bill that would stymie judges' ability to ensure that all voters have equal opportunity to cast their ballot in the 2016 Presidential Election.

Senate Bill 296 has been racing through the legislature without adequate time to scrutinize the potential consequences. Senate hearings took less than a month, and the bill was amended in committee and passed on the floor the same day, with no time to review the amended bill. Now the House is moving even faster, with the bill scheduled for two hearings in the Ohio House Government Accountability and Oversight Committee this week and could see a vote as soon as tomorrow, Tuesday.

Voter advocates have been raising the alarm about serious problems with SB 296 and urging the legislature to either scrap the bill or make major changes, but legislators appear intent on moving forward with a flawed proposal. SB 296 would drastically limit state courts' ability to order polls to remain open past normal Election Day voting hours.

“To say that Substitute Senate Bill 296 is overkill would be an understatement. This bill is the classic case of the cure that is worse than the disease,” said Daniel Tokaji, the Charles W. Ebersold and Florence Whitcomb Ebersold Professor of Constitutional Law at Moritz College of Law at The Ohio State University. “It will do nothing to solve the problem it purports to solve, especially since the Ohio legislature has no constitutional authority to regulate the procedures followed by federal courts. What it will do instead is to impose practically insurmountable barriers on access to state court for voters who are not wealthy.”

State statute requires the polls to be open on Election Day from 6:30 a.m. to 7:30 p.m., thereby providing 13 hours to vote. However, courts may order extended hours for local voters when extenuating circumstances prevent voters from having the full 13 hours. Examples include polling locations that do not open on time, voting machine failures, running out of ballots, or weather-related emergencies. None of these unexpected

problems are caused by or are the responsibility of a voter seeking to address the reduced access to the polls.

“This bill would curtail not just one but two rights that are fundamental in our constitutional democracy: the right to vote and the right of access to courts,” added Professor Tokaji. “We are tipping the scales of justice in favor of the state.”

Senate Bill 296 would not only make it harder for courts to issue such extended-voting orders, but an extreme provision would require any plaintiff seeking an emergency court order to post a cash bond in order to get relief. This bond is supposed to cover overtime costs for extended hours, essentially requiring voters to pay for running that part of the election, which totaled \$58,500 for Hamilton County in 2015 and 2016.

While the bond is waived for people who are indigent, only that individual would be permitted to vote after hours leaving out any other voters in the same predicament – an absurd outcome. The Senate-passed version of the bill gives a judge the discretion to set the bond amount, so someone seeking emergency relief has no idea if they will be required to pay one dollar or sixty-thousand dollars.

“This creates a discriminatory poll tax by allowing judges to cherry-pick which plaintiffs have to front tens of thousands of dollars to cover overtime pay for every poll worker in the county,” said Camille Wimbish of the Ohio Voter Rights Coalition. “We should never put a price tag on our right to vote.”

Substitute Senate Bill 296 is also problematic because it imposes all these harsh restrictions without even addressing the real problems that led the sponsor to introduce the bill.

“The sponsor of the bill points to problems with extended polling hours in Hamilton County during the last two elections, but this bill does nothing to address what happened during those two elections. In November 2015, a judge ordered Hamilton County to keep polls open late due to problems poll workers had using their new electronic poll books. The solution to that is better planning and training,” said Carrie Davis of the League of Women Voters of Ohio.

In the primary this spring, several southwest Ohio counties were ordered to extend polling hours due to a severe highway accident that made area roads unpassable. There were communication problems with conveying the judge’s extended hours order to the Secretary of State, his office telling area Boards of Elections, and the boards telling poll workers. The Secretary of State is appealing the federal judge’s order, which is the proper method to challenge the legality of how the order was issued, since the state legislature has no authority over federal courts.

“Neither the Secretary of State’s appeal nor this bill solve the communication problems the led to the problems on Election Day Rather than racing through legislation making it harder to get an emergency court order, we ought to focus on solutions to the real problems – better Election Day communication and contingency planning,” Davis said.

The Ohio Secretary of State provided written testimony supporting Senate Bill 296. The Ohio Association of Election Officials has not taken an official position on the bill.