



Preventing Problems at the Polls: Ohio

By Billy Corriher and Liz Kennedy | October 11, 2016

Ohio voters take pride in their state's reputation as a bellwether for America. In the past 13 presidential races, the candidate who won Ohio also won the White House.³ This has led to record high turnout during recent presidential elections but has also been accompanied by big problems with voting.

For decades, Ohio's elections have been plagued by election administration issues and attempts by Ohio secretaries of state to purge voters from the rolls.⁴ The purges have contributed to longer lines, as election officials and voters struggle to determine who should vote. Last month, the U.S. Court of Appeals for the 6th Circuit found that Ohio was violating the law by removing people from the voting rolls simply for not having voted in recent elections. Ohio must ensure that those voters' registrations are reinstated so that they are able to exercise their right to vote.

A new Ohio law also limits the number of days of early voting and does away with the opportunity to register and vote on the same day—changes that could also contribute to longer lines this year.⁵ October 11 is the final day to register to vote.⁶

The 6th Circuit recently upheld the cuts to early voting, as well as new rules for counting provisional ballots.⁷ This prompted a fiery dissent from 94-year-old African American Judge Damon Keith, who warned that Ohio and other states “are audaciously nullifying a right for which our ancestors relentlessly fought and—in some instances—even tragically died.”⁸ Judge Keith argued that the other judges on the three-judge panel had disregarded the evidence that these changes disproportionately affect black voters.⁹

Even before these new rules went into effect, a 2015 Center for American Progress report ranked Ohio 37th in the nation in “accessibility of the ballot.”¹⁰ The report faulted Ohio for failing to offer online voter registration and for participating in an Interstate Crosscheck system that can lead to voters improperly being purged.¹¹ The state will, however, begin offering online registration next year.

The integrity of elections in the United States demands that every eligible American is able to cast a ballot and trust that it will be counted. Americans have the right to choose their representatives and take part in electoral decision-making. But across the country, thousands of voters have not had their voices heard—either because of targeted voter suppression laws or poor election administration decisions.¹ While the vast majority of Americans will vote without encountering difficulties, in recent election cycles, voters have faced preventable problems and unnecessary hurdles. Failures at the polls may deny individuals their right to participate in the democratic process.

This series of issue briefs assesses potential problems for voters in states that have experienced issues with election administration or recent changes to voting rules. Each brief analyzes steps to improve election performance and the voting experience. Ongoing lawsuits have led to significant changes in recent weeks, as federal judges have ruled that many provisions of new voting laws discriminate against voters of color and collectively burden voting rights for hundreds of thousands of Americans.² Understanding the potential burdens that voters may face is a first step toward ensuring that voting is free, fair, and accessible for all Americans.

These new laws making it harder for Ohioans to vote were enacted in the midst of steadily rising turnout by voters of color. Black voters have seen higher turnouts in each of the past three presidential elections.¹² While Latino and Asian voters in Wisconsin saw a slight decrease from 2004 to 2008,¹³ turnout for all voters of color exceeded turnout for white voters in the past two presidential elections.¹⁴

Problems in the 2016 primaries

Before the March primary, Ohio Secretary of State Jon Husted (R) ordered poll workers not to allow 17-year-olds who would turn 18 before the general election to cast ballots.¹⁵ A state judge struck down the order and required the secretary to inform election officials that these teenagers could vote.¹⁶ A federal judge ordered three counties to keep polls open after a car accident caused traffic jams, but this ruling was overturned.¹⁷ A few polling places in cities such as Columbus saw long lines for the primary, though it is unclear if this prevented people from voting.¹⁸

What to watch for at the polls

New voting rules or restrictions

In 2014, the Ohio legislature passed a bill that created stricter rules for counting provisional ballots and slashed the number of early voting days.¹⁹ The bill eliminated the so-called golden week, when the registration period overlaps with early voting.²⁰ In May, a federal court struck down these drastic cuts, reasoning that they would lead to longer lines and “less opportunity for African Americans to participate in the political process than other voters.”²¹ Another federal court also struck down the new provisional ballot rules, which allowed the state to discard votes because of technical errors.²²

Unfortunately, the 6th Circuit reversed both decisions and upheld the new voting laws.²³ This means that voters will not be able to take advantage of golden week, which has been crucial to facilitating high turnout. In the 2012 presidential election, 80,000 people took advantage of Ohio’s golden week, making up 1.4 percent of total ballots cast.²⁴ Black voters were three-and-a-half times more likely to vote during Ohio’s golden week in 2008 and five times more likely to vote during that week in 2012 compared with white voters.²⁵

Voters have asked the full 6th Circuit to review the ruling by the three-judge panel to uphold the stricter rules for provisional ballots.²⁶ In addition to allowing the state to throw out provisional and absentee ballots with small errors, these changes also give voters less time—seven days—to learn about and correct any errors.²⁷ One of the attorneys

who filed the lawsuit warned that this new law is being applied in a discriminatory fashion. “Smaller, rural counties in Ohio are counting votes they’re not supposed to under these laws, while larger, urban counties are disenfranchising voters for the same errors,” attorney Subodh Chandra told ThinkProgress soon after the court’s decision. “This is unequal application of the law based on race, and it’s happening right now.”²⁸

Although Ohio has a voter identification law, voters can use a wide range of documents, including nonphotographic documents such as utility bills, as identification. This means that Ohio’s law does not bar as many eligible people from voting, nor does it add as much to wait times as other states’ voter ID laws.²⁹

Purges

In 2015 alone, the state removed hundreds of thousands of voters from the voting rolls for not voting in recent elections.³⁰ Many of these purges have disproportionately affected voters in urban areas.³¹ A recent PBS NewsHour report noted that the state has removed hundreds of thousands of “inactive” voters in advance of this year’s election.³² In the three largest counties—home to Cleveland, Columbus, and Cincinnati—a total of 144,000 people had been removed from voter registration rolls, and voters from Democratic-leaning neighborhoods were removed at roughly twice the rate as voters from Republican-leaning neighborhoods.³³ One of the attorneys representing the voters challenging the purge, Dan Tokaji, said that many purged voters “will not realize that they’ve actually been removed from the rolls until they go to vote. We think that the biggest impact is going to be felt in urban areas, especially places where you’ve got less affluent voters.”³⁴

On October 2, it was revealed that more than 1 million of Ohio’s 7.7 million registered voters did not receive their absentee ballot applications after Secretary Husted removed from the list of eligible absentee voters those whose address had changed and those who did not vote in either the 2012 or 2014 elections.³⁵

On September 23, the 6th Circuit ruled that Ohio’s system for purging voters violates federal law.³⁶ The court faulted the state for purging voters merely because they had not voted within a certain number of years.³⁷ Voter Larry Harmon was purged in 2015, and he joined the lawsuit challenging the rules. “It is my right to vote; staying home for a few years should not take that right away,” Harmon said.³⁸ The 6th Circuit sent the case back to the trial court to decide what to do about the thousands of voters who have already been purged.³⁹

Wait times

Past voting purges have complicated elections in many Ohio cities. Voters in urban counties have reported standing in line for hours, even though the state's overall average voting wait times were only 16 minutes in 2008 and 11 minutes in 2012.⁴⁰ Many polling places in urban areas saw long lines in the 2012 election,⁴¹ even though the U.S. Department of Justice had placed election monitors in two of these counties and a court had ordered the creation of a state election administration plan.⁴² Many 2012 polling places saw long lines—an average wait of two hours in Akron—during early voting the weekend before the election.⁴³ The bipartisan Presidential Commission on Election Administration, formed after long lines plagued polling locations across the country in 2012, recommends that no citizen should have to wait more than 30 minutes to vote.⁴⁴

The Ohio state legislature recently passed a bill that would have limited state courts' ability to order that polls be kept open in the event of problems causing delays at the polls.⁴⁵ The bill would have required that voters post a cash bond to seek a court order to keep polling places open.⁴⁶ Legislators who opposed the bill called it a “poll tax,” and Gov. John Kasich (R) vetoed it.⁴⁷

Laws governing voter challenges and voter intimidation

Ohio enacted limits on challenging voters' eligibility after the 2004 election, when a last-minute court ruling allowed partisan poll watchers to challenge voters' eligibility at polling places.⁴⁸ A 2012 report from Demos and Common Cause found that Ohio's laws on intimidation at the polls are now fairly protective of voters and place strict limits on the activities of poll observers.⁴⁹

On election day, state law now says that voters who remain on the rolls should not face challenges to their registration, except from election officials.⁵⁰ But a voter can challenge another voter's eligibility up to 20 days before the election.⁵¹ The reason for the challenge must be submitted to election officials in writing and signed by the challenging voter “under penalty of election falsification,” which is a felony.⁵² If election officials can determine a voter's eligibility based on their records, then the law requires them to make an immediate decision.⁵³ But if the records do not provide a clear answer, then a hearing must be held within 10 days, and notice is only required to be sent to the challenged voter three days before the hearing, leaving very little time for the voter to make plans to attend.⁵⁴ For challenges made within 30 days of an election, election officials can postpone the hearing until after the election.⁵⁵

In 2012, activists challenged the registrations of more than 2,100 Ohio voters, mostly students and African Americans.⁵⁶ Those challenges proved baseless.⁵⁷

Election administration budgets and plans

Ohio has thrown out thousands of ballots in recent elections because they were cast at the wrong polling place. A report from state Sen. Nina Turner (D) and state Rep. Kathleen Clyde (D) found that 9,483 ballots were thrown out after poll workers did not direct voters to the correct polling places in 2012.⁵⁸

Secretary Husted issued an order in 2014 requiring counties to develop their own election administration plans, including details on training poll workers to “provid[e] the voter with directions to the correct polling place.”⁵⁹ The order drew from a plan that the state devised in 2012 pursuant to a federal court order, as well as from the Presidential Commission on Election Administration’s 2014 report.⁶⁰ The order also requires each county’s plan to include information on training election officials, resource allocation, voter registration, polling accessibility, and “Election Day Contingencies.”⁶¹ Secretary Husted now includes a version of this order in his manual for election officials, which requires counties to submit a plan to the state 120 days before the general election and 60 days before a primary election.⁶²

Recent media reports indicate that county elections boards are facing budget cuts after the state reduced the amount of funding provided to local governments.⁶³ The Knox County Board of Elections, for example, has asked the county to provide more funding.⁶⁴ The state did, however, allocate \$760,000 in this year’s budget for state-mandated training for poll workers.⁶⁵

Use of provisional balloting

Ohio has had some of the highest percentages of provisional ballots cast—and rejected. In the 2008 race, 3.6 percent of ballots cast were provisional, and 0.68 percent of all ballots cast were rejected.⁶⁶ The 2012 election saw similar numbers. The state had one of the highest rates of rejected mail-in ballots in 2008 at 0.46 percent, but that rate decreased somewhat in 2012.⁶⁷ The share of mail-in ballots that were rejected has grown sharply in recent years—up to 1.79 percent in the November 2015 local elections and 0.97 percent in the March 2016 primary, according to Rep. Clyde.⁶⁸

Given that a new law allows the state to throw out provisional and absentee ballots for minor errors, the state may see an even higher percentage of ballots rejected in this year’s election. A 2014 Center for American Progress report found that in 2012, in Ohio and 15 other states, the counties with the most voters of color used the most provisional ballots.⁶⁹

Elections programs and technologies

Ohio law permits the use of electronic pollbooks but only if the type of pollbook is certified by the secretary of state.⁷⁰ E-pollbooks are usually tablets or other handheld devices that are generally quicker and easier for poll workers to use than traditional lists of voters on paper.⁷¹ Secretary Husted has placed limits on counties' use of e-pollbooks,⁷² but many counties have moved forward with acquiring them.⁷³ For the first time, the state 2015-16 budget included funding for e-pollbooks, nearly \$13 million.⁷⁴

Many Ohio voters will cast their ballots using old machines and outdated software. Secretary Husted warned in 2013 that “machines are aging, they need maintenance and, at some point, will need to be replaced. The next time we go to the polls to elect a president, these machines will be 12 years old. That’s a lifetime when it comes to technology.”⁷⁵ Ken Terry, an election official from Allen County, Ohio, told the Brennan Center for Justice that the “Zip Disks” he ordered for his county’s machines were outdated: “When we purchased new Zip Disks in 2012, they had a coupon in the package that expired in 1999.”⁷⁶

A 2015 report from the Center for Public Integrity said:

*All but four of Ohio’s 88 counties are using machines bought in 2006 or earlier, and ... only 14 counties have a plan to replace them. The stakes are especially high in Franklin County. ... Those machines, which were first used in 2006, serve some 800,000 voters and are aging fast, but there is no plan to replace them.*⁷⁷

The report found that poll workers in Franklin County reported more than 100 problems with voting equipment in the 2014 election.⁷⁸

Conclusion

The state of Ohio has had a rocky history when it comes to election administration. Several decisions by the current and prior secretaries of state were harshly criticized by voting rights advocates. This year, the elimination of the golden week period and tighter rules for counting provisional ballots could make it harder for voters to get to the polls and get their votes counted. Voters in Ohio will have to surmount these hurdles to participate in the democratic process.

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