



October 16, 2018

Secretary John Husted
Ohio Secretary of State
180 East Broad Street, 16th Floor
Columbus, OH 43215
jhusted@ohiosecretaryofstate.gov

VIA EXPRESS MAIL AND E-MAIL

Re: Ballot Access for Incarcerated Eligible Voters

Dear Secretary Husted:

Campaign Legal Center writes to inform you that Ohio's current election system denies people who are arrested and detained just before Election Day the right to vote in violation of the First and Fourteenth Amendments to the United States Constitution. The Supreme Court has held that denying access to the ballot for qualified electors who are held in pretrial detention violates the Equal Protection Clause. *O'Brien v. Skinner*, 414 U.S. 524 (1974); *Goosby v. Osser*, 409 U.S. 512 (1973). State and/or local officials may not take actions that prohibit or burden these electors' fundamental right to vote.

There are several ways for the Ohio Secretary of State and county elections officials to remedy this constitutional violation and ensure that incarcerated eligible voters are not disenfranchised, a few of which are outlined below. We request the opportunity to discuss these remedies with you so that these voters are not denied their fundamental right to vote in the November 2018 elections. If we cannot agree on a speedy remedy, we will consider all appropriate legal action, including potential injunctive relief for the November 2018 election.

I. Ohio's Absentee Ballot Application Deadline for Incarcerated Voters Unconstitutionally Deprives Late-Jailed Voters of their Right to Vote.

Ohio's exclusion of late-jailed voters from its emergency absentee ballot system, and its failure to offer an in-person voting option to such persons, unconstitutionally deprives eligible voters of their right to vote. Ohio law provides that absentee ballot applications from incarcerated eligible voters "shall not be valid if [they are] delivered to the director . . . after twelve noon of the third day before the election." Ohio Rev. Code Ann. § 3509.08(A). The statute lacks any exception for persons detained shortly before or after that deadline who remain in custody through Election Day, and we understand that Ohio does not ensure that alternative arrangements permit such persons to vote in-person on Election Day, such as through supervised transportation to the polls or a polling station at the jail. This means that anyone arrested starting (at least) on Friday prior to the election,¹ and detained through Election Day, is denied the right to vote, either absentee or in-person. This violates the First and Fourteenth Amendments. *See O'Brien*, 414 U.S. 524; *Goosby*, 409 U.S. 512.

This unconstitutional deprivation stands in contrast to how Ohio treats voters who experience an unforeseen medical emergency (or their child does) after the general absentee ballot deadline passes. Those voters are entitled to have a ballot delivered to them at the hospital so long as they make a request by 3:00 p.m. on Election Day. *See* Ohio Rev. Code Ann. § 3509.08(B)(2). There is no reason the same system cannot be applied to guarantee that late-jailed voters are afforded their constitutionally guaranteed right to vote.

Ohio may not exclude eligible voters from the franchise merely because their arrest date precludes them from meeting the generally applicable absentee ballot application deadline. The Constitution requires that the state make arrangements to permit these eligible voters to exercise their right to vote.

¹ In practice, eligible voters detained earlier in the week prior to Election Day are also deprived of the right to vote because they cannot guarantee that an absentee ballot application will reach the registrar's office by Saturday, or that the absentee ballot will be delivered to the detained person in time for her to return it by the postmark deadline of the Monday before Election Day. This is particularly problematic given slower mail processing times in jails, over which detained persons have no control.

II. Ohio Must Provide a Mechanism for Late-Jailed Voters to Vote in the November 2018 (and Future) Elections.

In light of the upcoming elections, it is imperative that the Secretary of State and local boards of elections address this constitutional violation immediately. There are several ways to do so. For example, Ohio could:

- Offer in-person voting to eligible voters at county and municipal jails, through limited purpose polling stations at the jails;
- Permit late-jailed voters to request that an emergency absentee ballot be delivered to them—the same mechanism Ohio utilizes to ensure those with medical emergencies retain their right to vote;
- Provide supervised transport to the appropriate polling station for voters whose arrest dates precluded an absentee ballot request; or
- Suspend bail obligations on Election Day to permit jailed voters the right to vote in-person on Election Day.

* * *

Ohio may not operate its election system in a manner that forecloses the ability to vote for those arrested shortly before Election Day. Rather, the state must ensure—whether through absentee or in-person voting—that these eligible voters are afforded their constitutional right to vote.

We would like to discuss these issues with you as soon as possible, in light of the upcoming election, and hope we can assist in fashioning a resolution to these issues without the need for litigation.

Respectfully submitted,



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cc: Damian Sikora, Section Chief, Office of the Attorney General
Board of Elections Members for Butler, Cuyahoga, Franklin, Hamilton,
Lorain, Lucas, Mahoning, Montgomery, Stark, and Summit Counties
(via e-mail)