STATE OF OHIO

Executive Department

OFFICE OF THE GOVERNOR

Columbus

VETO MESSAGE

STATEMENT OF THE REASONS FOR THE VETO OF SUBSTITUTE SENATE BILL 296

JUNE 16, 2016

Pursuant to Article II, Section 16 of the Ohio Constitution, which states that the Governor may disapprove of any bill, I hereby disapprove of Substitute Senate Bill Number 296 (SB 296) and set forth the following reasons for so doing.

Given that Ohioans have ample opportunities to vote in the month before Election Day and for thirteen hours on Election Day itself, and given that Ohio law already requires that any voter in line when the polls close at 7:30 p.m. can still vote, there needs to be some extraordinary circumstance occurring on Election Day to justify disregarding Ohio law and allowing people to vote if they arrive at the polls after 7:30 p.m. Thus, I agree with the requirements in this bill that injunctions allowing people to vote if they arrive at the polls after 7:30 p.m. should be issued by the courts only if:

- The Secretary of State and the Attorney General have been notified of the request for the injunction and have had an opportunity to be heard by the judge;
- The judge's decision is based on admissible evidence submitted under oath and not on inadmissible hearsay or unconfirmed media reports;
- It is clear that a fair election cannot be had in the absence of an order keeping the polls open past 7:30 p.m.; and
- There is an immediate appellate review of the trial court's decision.

The bill also requires the party seeking the injunction to obtain a bond, but the Ohio Supreme Court's rules governing civil lawsuits have always provided for the possibility of a bond in any lawsuit seeking an injunction. Rule 65(C) provides that:

> No temporary restraining order or preliminary injunction is operative until the party obtaining it gives a bond . . . *in an amount fixed by the court or judge allowing it*, to secure to the party enjoined the damages he may sustain, if it is finally decided that the order or injunction should not have been granted.

Under the Rule, judges have wide discretion to set the amount of the bond and can even waive the bond requirement altogether.

Substitute Senate Bill 296 seeks to modify the Rule, but only in cases in which a party is seeking an injunction to keep the polls open. Prohibiting state court judges from exercising their discretion to waive the bond requirement in only these types of cases is inequitable and might deter persons from seeking an injunction to allow after-hours voting when there may be a valid reason to do so.

I agree that there is a need to create a uniform process for the common pleas judges in all 88 counties to follow when they may be considering requests to keep polling places open after 7:30 p.m. due to some extraordinary circumstance. I also believe that the process this bill would create is sound and would prevent frivolous injunction requests from being granted. I look forward to working with the General Assembly in the future to see this process become law. The bill's provision that eliminates the judicial discretion to waive the bond is a step too far, however, and should not become law.

For these reasons, I am vetoing Substitute Senate Bill Number 296.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Ohio to be affixed at Columbus this 16th day of June, Two Thousand Sixteen.

John R. Kasich, Governor

This will acknowledge the receipt of a copy of this Veto Message of Substitute Senate Bill 296 that was disapproved by Governor John R. Kasich on June 16, 2016.

Vincent Keane, Senate Clerk

Name and Title of Officer

Date and Time of Receipt