



The Honorable Frank LaRose
Ohio Secretary of State
22 North Fourth Street, 16th Floor
Columbus, Ohio 43215

Re: Reverse directive that prohibit multiple drop boxes across the State of Ohio and facilitate expansion

Dear Secretary LaRose:

All Voting is Local and Common Cause Ohio write to urge you to continue implementing critical improvements to Ohio's upcoming election. While providing every registered voter an absentee ballot application is a step in the right direction, more must be done to avoid the difficulties Ohioans faced during the primaries. We saw a process fraught with problems spurred by COVID-19, made worse by inadequate voter education and late-arriving absentee ballots after an abrupt switch to an exclusive vote-by-mail election. The unfortunate, but avoidable, result: turnout that was among the lowest in recent history with less than 24 percent of registered Ohio voters casting ballots in the 2020 presidential primary¹. These numbers fell well below the 44% of ballots cast in the 2016 presidential primary². Our analysis of state data shows that counties with higher Black populations tended to have lower turnout and counties with higher white populations tended to have higher turnout. This lends to the evidence that communities of color are disproportionately impacted by COVID-19 related problems.

Drop boxes are a secure option for voters to cast their absentee ballots without waiting in long lines during the COVID-19 pandemic, and even beyond. Along with prepaid postage for applications and ballots, increased voter education, and poll worker recruitment of younger Ohioans, multiple drop boxes locations will reduce the potential of a COVID-19 uptick on Election Day and help keep voters safe. While we acknowledge that mail-in voting is also a safe and secure method of casting a ballot, we would be remiss not to also acknowledge the delays that USPS has encountered. We are working with county BOEs to ensure absentee ballot processors are employed in a timely manner, recruiting and training people on the constantly

¹ <https://www.ohiosos.gov/elections/election-results-and-data/2020/>

² <https://www.ohiosos.gov/elections/election-results-and-data/2016-official-elections-results/>

changing rules, and deploying organizations for grassroots voter education efforts, but this will not be enough without more changes from the State. Therefore we ask you to adopt all four of these necessary actions in time for the November 3 general election:

I. Reverse your directive that prohibited multiple drop boxes across counties

Legal research indicates that reversing your directive is consistent with current Ohio law and is within your authority to promulgate. Boards of Elections have broad authority to provide for the collections of ballots and the provision of polling places, which would reasonably include ballot drop boxes according to Ohio Rev. Code Ann. § 3501.11(B), (C), (I).

Your suggestion that Ohio Rev. Code Ann. § 3509.05(A) bars the use of ballot drop boxes³, other than as provided, is not accurate. You conceded, and H.B. 197 actually required, that “deliver[y] ... to the director” encompasses receipt in at least one drop box outside the board of elections offices. And just as an elector could personally deliver a ballot to the director outside his office, nothing in the statute precludes personal delivery to receptacles outside the director’s immediate office. To that extent, under the statute, if the board determines that such collection through remote drop boxes constitutes the “proper conduct of elections,” the director is bound to carry it out. See Ohio Rev. Code Ann. § 3501.13(A).

Given the following interpretation of O.R.C.A. § 3509.05, the Ohio Supreme Court has principally held that “no ballot shall be rejected for any technical error unless it is impossible to determine the voter’s choice,” Ohio Rev. Code Ann. § 3505.28, means that the language of § 3509.05 should not be read strictly to prevent counting ballots not otherwise bearing any indication of fraud. See *In re Election of Member of Rock Hill Bd. of Edn.*, 669 N.E.2d 1116, 1122-23 (Ohio 1996). The sum total of the legislature’s decision in H.B. 197, § 32(E)(1) to require drop boxes as a means of delivery, the breadth of authority provided to boards and directors, and the Ohio Supreme Court’s interpretation of § 3509.05 suggest that boards of elections and directors have broad discretion to determine the manner of personal delivery to the director, including by drop box.

Therefore you should feel confident that reversing your directive would be in line with current Ohio law.

II. Proactively work with county Boards of Elections (BOEs) to facilitate multiple drop box locations ahead of the November general election

Drop boxes serve as a guard against postal delays in rural areas with infrequent service and are especially important in urban areas with reduced in-person voting sites. Seventy-six percent of Ohioians surveyed are in favor of establishing secure drop box locations for voters to

³ See @FrankLaRose, Twitter (Aug. 17, 2020, 9:44 AM), <https://twitter.com/FrankLaRose/status/1295400998198968321> (claiming “The law is clear about how ballots can be returned” and quoting 3509.05(A)).

drop off their absentee ballots in-person.⁴ Given our terrain, one (1) drop box per county is not sufficient.

A more accessible absentee voting option is necessary to combat the increasing spread of COVID-19. According to the Cybersecurity and Infrastructure Security Agency (CISA) Elections Infrastructure Government Coordinating Council and Sector Coordinating Council's Joint COVID Working Group: Setting up ballot drop boxes and educating voters to use them mitigates a number of COVID-19-related risks associated with in-person voting. It also minimizes the number of people that will need to access voting locations, thereby providing more space for those who are engaged in in-person voting⁵.

According to CISA, the best practices to determine drop box locations include:

- A. Providing one drop box per 15,000 – 20,000 voters;
- B. Installing them in communities with historically low vote by mail usage; and
- C. Using demographic data analysis to determine the needs of rural voters versus urban voters.

Our neighbors to the north saw record setting numbers for total turnout and voting by mail turnout through the state of Michigan and are looking for approval of the additional absentee ballot drop boxes for the general election⁶. The success of other states that utilize multiple drop boxes and absentee voting prove their support and spurr of democracy for all.

III. Publish clear, accessible guidance for voters on the use and location of drop boxes

Drop boxes are only useful when voters know about them. Information about drop boxes should be widely available and publicized online. For voters without internet access or living in digitally divided communities, for whom this information would be hard to retrieve, drop box location information and usage instructions should be published through all available means of communication at your disposal. This includes, but is not limited to, posted signs, mail and text campaigns, and radio and television advertisements, in addition to online voter education efforts.

IV. Standardize instructions for counties on handling and processing ballots from drop boxes

⁴ Secure Democracy/Public Opinion Strategies, Poll was conducted between May 18-21, 2020, surveying 600 Ohio voters

⁵ https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf

⁶

<https://www.mlive.com/news/ann-arbor/2020/08/ann-arbor-to-put-extra-ballot-drop-boxes-throughout-city-f-or-potential-record-setting-election.html>

In addition to allowing, and facilitating where needed, more drop boxes across the state, we are requesting standardized instructions for elections officials to process absentee ballot applications promptly and uniformly. For each vote to count equally, counties must use the same methods to collect, count, and process absentee ballots. We saw that the backlog of absentee ballot applications and ballot processing were among the biggest issues that led to voter confusion in other states that conducted in-person primary elections.

This issue can be resolved through providing clear and mandatory instruction to all counties on how and when to collect ballots, enforcing time standards on when ballots should be processed and requiring prompt notification whenever ballot issues are discovered.

Conclusion

For the reasons mentioned above, it is urgently necessary that you expand drop box availability and accessibility, and immediately reverse directives that hinder the ability to do so. With the unprecedented challenges facing this year's election, you must continue action to provide Ohioans with safe opportunities for casting their ballots. Our democracy and our health depend on it.

We urge you to implement these commonsense and nonpartisan recommendations so that Ohio voters can safely and successfully cast their ballots in the November 3, 2020 General Election. We further ask that you or your representatives agree to meet with us within the next week to discuss our recommendations. Please reach out to Kayla Griffin by email at kayla@allvotingislocal.org or phone at (330) 402-2427 to coordinate a time for a meeting.

Sincerely,

Kayla Griffin, Ohio State Director
All Voting Is Local
6815 Euclid Ave,
Cleveland, OH, 44103
(330) 402-2427
kayla@allvotingislocal.org

Catherine Turcer, Executive Director
Common Cause Ohio
394 E. Town,
Columbus, OH, 43215
(614) 579-5509
cturcer@commoncause.org

Brandi Slaughter, JD, Public Policy Associate
Ohio Council of Churches

6161 Busch Boulevard, Suite 100
Columbus, OH, 43229
Office: 614.372.8010
bslaughter@ohcouncilchs.org

Rev. Dr. Susan K Smith, Founder and Executive Director
Crazy Faith Ministries
82 E. 16th Avenue,
Columbus, OH, 43201
cassady2euca@icloud.com

Rev Joan VanBecelaere, Executive Director
Unitarian Universalist Justice Ohio
7430 Grand Bahama Dr,
Columbus, OH, 43085
uujoanvanb@gmail.com

Morgan Harper, Executive Director
Columbus Stand Up
139 E. Main St.
Columbus, OH, 43215
morgan@morganharper.org

All Voting Is Local

All Voting is Local works to eliminate needless and discriminatory barriers to voting before they happen, to build a democracy that works for us all. It is a collaborative campaign housed at The Leadership Conference Education Fund, in conjunction with the American Civil Liberties Union Foundation; the American Constitution Society; the Campaign Legal Center; and the Lawyers' Committee for Civil Rights Under Law.

Common Cause

Common Cause is a nonpartisan, grassroots organization dedicated to upholding the core values of American democracy. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process. Learn more at www.CommonCause.org.