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Committee on House Administration, Subcommittee on Elections
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Thank you, Chairwoman Fudge, and to all the Committee members for the invitation to testify today. My name is Naila Awan, and I am a Senior Counsel at Dēmos, a dynamic "think-and-do" tank that powers the movement for a just, inclusive, multiracial democracy. Our name—meaning "the people"—is the root word of democracy, and it reminds us that the promise of a democracy is only met when all the people can access the ballot, cast a vote that counts, and have a meaningful say in who and what laws govern.

A study released last November that examined registration and voting laws to assess the time and effort it took to vote ranked Ohio as the 43rd hardest state to cast a ballot in during the 2016 presidential election.[1] As a native Ohioan and proud Buckeye, who went to both college and law school in this state, I am proud of the work that Dēmos has done and continues to do to make voting accessible to all eligible Ohioans.

My testimony today will describe several significant barriers to voting that currently exist in the state. It will focus on Ohio's problematic practice of purging infrequent voters from the registration rolls, other practices that unfairly prevent Ohioans from participating in the electoral process, and how the elimination of Ohio's same-day registration period, often referred to as "Golden Week," negatively impacts Ohio voters.

Ohio's Practice of Purging People for Not Voting

Ohio has long used an individual's failure to vote over a two-year period as an indicator that they have moved from their recorded residence. Under what it has dubbed the "Supplemental Process," Ohio sends voters who have not voted in two years a single-sheet notice, and then removes them from the voter rolls if they do not respond to the notice or vote in the subsequent four-year period.[2] Because it is not uncommon for voters to limit their political participation to

[1] Quan Li, Michael J. Pomante II & Scot Schraufnagel, *Cost of Voting in the American States*, 17(3) ELECTION L. J. 234 (2018); *New Study Scrutinizes Time and Effort It Takes to Vote in Each State: Changes in Restrictions, State Discrepancies Impact Voter Turnout*, NIU NEWSROOM, Sept. 25, 2018, https://newsroom.niu.edu/2018/09/25/new-study-scrutinizes-time-and-effort-it-takes-to-vote-in-each-state/.

[2] *See, e.g.*, Ohio Secretary of State, Election Official Manual (rev. Mar. 22, 2019), at 3-3, 3-68, https://www.sos.state.oh.us/globalassets/elections/ directives/2017/dir2017-10_eom.pdf; Ohio Secretary of State, Directive 2018-20, 2018 General Voter Records Maintenance Program – Supplemental Process, July 9, 2018.

presidential election cycles, this means that, for such voters, the decision to sit out one presidential election can lead to the removal of their names from the registration rolls.

Numerous eligible voters across Ohio have been purged from the rolls pursuant to the Supplemental Process.[3] Often, these individuals learn that their names no longer appear on the voter rolls when they appear at the polls to vote and are informed that their names are not in the poll books.[4] While such persons should be provided provisional ballots to cast, such ballots were not counted prior to the lawsuit we brought challenging Supplemental Process purges. Rather, the provisional ballots served only as re-registration forms that placed people back on the voter rolls for future elections—often at the same address where they had been previously registered.[5]

Larry Harmon was one of the many eligible Ohio voters who was disenfranchised because of the Supplemental Process. Represented by Dēmos and the American Civil Liberties Union of Ohio, Mr. Harmon challenged Ohio's purge procedure as violating the National Voter Registration Act ("NVRA") alongside two organizations: the Ohio A. Philip Randolph Institute ("APRI") and the Northeast Ohio Coalition for the Homeless ("NEOCH"). Both organizations conduct voter registration among communities that are likely to experience heightened rates of disenfranchisement as a result of the Supplemental Process—low-income communities, communities of color, and the housing insecure.[6]

The case brought by APRI, NEOCH, and Mr. Harmon—commonly referred to as *Ohio A. Philip Randolph Institute v. Husted ("APRI")*—consisted of two claims. The first was that, by using a person's failure to vote to initiate a voter registration record purge, Ohio was in violation of the NVRA.[7] The second claim was that the single-sheet notice sent to voters targeted by the Supplemental Process itself did not satisfy the informational requirements set forth in the NVRA,

[3] *See, e.g.*, Plaintiffs' Motion for Summary Judgment and Permanent Injunction or, in the alternative, Preliminary Injunction, at 17 n. 2, 20-24, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio May 24, 2016), ECF No. 39 (describing the number of people removed under the Supplemental Process and individuals who were disenfranchised in 2015 as a result of the Supplemental Process purge).

[4] *See, e.g.*, Plaintiffs' Motion for Summary Judgment and Permanent Injunction or, in the alternative, Preliminary Injunction, at 18-24, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio May 24, 2016), ECF No. 39.

[5] The Supplemental Process may also contribute to Ohio's high rate of provisional ballots. As noted in a report from the U.S. Election Assistance Commission, "[i]n 2016, 2,460,421 provisional ballots were cast nationally and . . . [f]our states—Arizona, California, New York, and Ohio—each reported that more than 100,000 provisional ballots were cast in the 2016 election[.]" U.S. Election Assistance Commission, The Election Administration and Voting Survey: 2016 Comprehensive Report, at 16, *available at* https://www.eac.gov/assets/1/6/2016_EAVS_Comprehensive__Report.pdf; *id.* at 28 (noting that 154,965 Ohioans cast provisional ballots in 2016); *see also* U.S. Election Assistance Commission, EAVS Depp Dive: Provisional Ballots, June 7, 2018, https://www.eac.gov/documents/2018/06/07/eavs-deep-dive-provisional-ballots/ (noting that in 2016 the provisional ballots cast in Arizona, California, New York, and Ohio amounted to nearly 75 percent of the total number cast).

[6] Plaintiffs' Motion for Summary Judgment and Permanent Injunction or, in the alternative, Preliminary Injunction, at 24-27, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio May 24, 2016), ECF No. 39.

[7] Plaintiffs' First Amended Complaint, at 15–16, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:16-cv-303 (S.D. Ohio June 29, 2016) (No. 2:16-cv-303), ECF No. 37.

including by failing to inform voters that failure to respond to the notice or vote in the subsequent four-year period *would* result in removal from the registration rolls.[8]

As a direct result of the *APRI* litigation, we secured court-ordered relief that required the provisional ballots cast by voters purged under the Supplemental Process in or since 2011 be counted if the voters (1) appear in person to vote, (2) continue to reside in the same county where they were previously registered, and (3) had not become ineligible for another cause subsequent to the time of their removal from the voter rolls.[9] This relief is frequently referred to as the "APRI Exception." In November 2016 alone, the APRI Exception prevented the disenfranchisement of 7,515 voters across Ohio.[10] The "APRI Exception" has been in place for every federal, state, and local election held since November 2016,[11] including in the November 2018 election, through an emergency injunction pending appeal granted by the Sixth Circuit.[12] The emergency injunction pending appeal was based on the second claim brought in *APRI* related to the insufficiency of the notice sent to voters targeted for removal under the Supplemental Process.[13] Because litigation over the second claim in *APRI* is ongoing, it is currently unclear how long the APRI Exception will remain available to Ohio voters.

While the U.S. Supreme Court held last year, in *Husted v. A. Philip Randolph Institute ("Husted")*, that Ohio's use of non-voting to initiate a purge procedure did not run afoul of the NVRA,[14] that disposed only of APRI, NEOCH, and Mr. Harmon's first claim. The Supreme Court's decision, however, does not make the Supplemental Process wise or right. As an amicus brief filed by 36 current and former Ohio election officials in the *Husted* case recognized that the Supplemental Process "ultimately results in the disenfranchisement of thousands of Ohio voters" and undermines the ability to maintain "up-to-date and accurate" voter rolls.[15] These election officials and other amici recognized that "there are other, more targeted [roll-maintenance practices] that could be adopted without disenfranchising duly registered Ohioans."[16]

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[8] *Id.* at 16–17.

[9] *Ohio A. Philip Randolph Inst. v. Husted*, 2016 WL 6093371, *9-12 (S.D. Ohio Oct. 19, 2016); Order, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio Oct. 25, 2016), ECF No. 92; Order, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio Nov. 5, 2016), ECF No. 93.

[10] Provisional Ballot Report: November 8, 2016 General Election, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio Sept. 14, 2018), ECF No. 132-7.

[11] *See* Declaration of Matthew Damschroder, at 8-9, *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio Sept. 27, 2019), ECF No. 133-4.

[12] *A. Philip Randolph Inst. v. Husted*, 907 F.3d 913, 922-23 (6th Cir. 2018).

[13] *See, e.g.*, *id.* at 919-21.

[14] *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1841–47 (2018).

[15] Brief of Current and Former Ohio Election Officials as *Amici Curiae* in Support of Respondents, at 1, *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018) (No. 16-980) (hereinafter "OEO Amicus") (noting also that the Supplemental Process undermines the ability to ensure "that every eligible voter has the opportunity to cast her vote").

[16] *Id.* at 2; Brief for the States of New York, California, Connecticut, Delaware, Hawai'i, Illinois, Iowa, Kentucky, Maryland, New Mexico, Oregon, and Washington, and the District of Columbia as Amici Curiae in Support of Respondents, at 22–27, *Husted v. A. Philip Randolph Inst*., 138 S. Ct. 1833 (2018) (No. 16-980); Brief of the League of Women Voters of the United States, League of Women Voters of Ohio, and the Brennan Center for Justice as Amici Curiae in Support of Respondents, at 21–25, *Husted v. A. Philip Randolph Inst*., 138 S. Ct. 1833 (2018) (No. 16-980); *see also Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1865 (2018) (Sotomayor J.,

Further, no discrimination claim was brought in *APRI*, and the Supreme Court's decision in *Husted* did not consider whether Ohio's purge practice would run afoul of constitutional protections, such as the Equal Protection Clause, or other federal laws. However, in her dissent Justice Sotomayor recognized that barriers to the ballot box experienced by communities whose voices have been traditionally suppressed through the political process "render[] them particularly vulnerable to unwarranted removal under the Supplemental Process."[17] This was borne out in an analysis of the number of infrequent voters purged in Hamilton County, Ohio from 2012 through 2015, which found that "African-American-majority neighborhoods in downtown Cincinnati had 10 percent of their voters removed due to inactivity, compared to only four percent of voters in a suburban, majority-white neighborhood."[18]

In apparent response to our lawsuit, Ohio decided last year that it will use data from the Bureau of Motor Vehicles to narrow the total number of individuals who are targeted and removed under the Supplemental Process. While we were pleased to see this change adopted, we remain concerned that this change was made purely by an administrative directive,[19] which could be undone at any time, and uses data that will likely overlook low-income voters and voters of color.[20]

The Reverend Jesse Jackson aptly recognized that, unlike how some states treat the right to vote, "[n]o other rights guaranteed to citizens are bound by the constant exercise of that right. We do not lose our right to free speech because we do not speak out on every issue."[21] Something as fundamental as the right to vote should simply not be treated as a use-it-or-lose-it right. In treating it as such, Ohio shuts out countless qualified voters from the political process and calls into question the legitimacy of the state's democracy.[22] The longstanding implications of this practice, moreover, are dangerous: the more the state removes eligible voters from the rolls, without sufficient evidence that they have moved, the likelier these voters—upon learning of their inability to vote on Election Day itself—will give up on political participation and voting altogether. This whittling away of the electorate takes the "demos" out of "democracy."

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dissenting) ("The majority of States have found ways to maintain accurate voter rolls without initiating removal processes based solely on an individual's failure to vote.").

[17] *Husted*, 138 S. Ct. at 1864 (Sotomayor J., dissenting).

[18] Andy Sullivan & Grant Smith, *Use it or Lose it: Occasional Ohio Voters May Be Shut Out in November*, REUTERS (June 2, 2016), http://www.reuters.com/article/us-usa-votingrightsohio-insight/use-it-or-lose-it-occasional-ohio-voters-may-be-shut-outin-november-idUSKCN0YO19D.

[19] Ohio Secretary of State, Directive 2018-21, Automatic Confirmation of Address Safeguard, July 9, 2018.

[20] *Id.* (noting that the procedure put in place last year uses data from Ohio's motor vehicle agency); *see also* S. REP. NO. 103-6, at 15-16 (1993) (noting that the NVRA did not limit its registration requirement to motor vehicle agencies because such agencies "may not adequately reach low income citizens and minorities" and that "public assistance offices . . . are more likely to reach [such] eligible citizens"); *supra* notes 27 and 28, along with accompanying text.

[21] S. REP. NO. 103-6, at 17 (1993).

[22] Secretary Husted: A Single Vote Makes All the Difference (June 14, 2018), *Ohio A. Philip Randolph Inst. v. Husted*, No. 2:15-cv-303 (S.D. Ohio Oct. 5, 2018), ECF No. 139-5.

Barriers to the Ballot Box

Numerous barriers exist that can and do prevent Ohio residents from voting and contribute to the likelihood that a voter will be targeted for removal under the Supplemental Process. This testimony describes some of the challenges Ohioans face getting to the polls and casting a ballot, as well as the problems posed by ineffective or inaccessible election materials.

Challenges getting to polling places.

Registered voters may not be able to make it to the polls for any number of reasons, but some of those most cited are: illness or disability, scheduling problems, transportation issues, registration problems, and inconvenient polling locations.[23] Several of these obstacles are discussed below.

Low-wage and hourly workers often have inflexible work schedules that can prevent them from making it to the polls during the polling location's hours of operation.[24] While Ohio law prohibits employers from "discharg[ing] or threaten[ing] to discharge an elector for taking a reasonable amount of time to vote on election day,"[25] it does not define what is considered a "reasonable amount of time." Further, there is no requirement that hourly workers receive compensation for the time they take to vote.[26] This means that individuals struggling to make ends meet may simply not be able to afford to take time off to go vote.

Lack of access to transportation—often acutely felt by low-income individuals, people of color, and persons with disabilities—can also impact an individual's ability to make it to the polls to vote. To illustrate:

- A 2013 report published by the Ohio Department of Transportation recognized that "8.1 percent of Ohio households do not own a vehicle, while 33.3 percent only own one vehicle," with areas of "lower median incomes" correlating to "no vehicle households."[27]

- A 2014 analysis noted that "African Americans in Ohio report 1.2 vehicles per household, on average, compared to 2.2 vehicles for whites. No less important, African

[23] U.S. Census Bureau, Table 10. Reasons for Not Voting, by Selected Characteristics: November 2016, https://goo.gl/SbTb6U (noting also that a number of people indicated that they did not vote in 2016 because they did not like the issues or candidates on the ballot or they were not interested in the election).

[24] Brief of National Disability Rights Network, Disability Rights Ohio, AARP, AFL-CIO, SEIU, Democracy Initiative, National Coalition for the Homeless, Columbus Coalition for the Homeless, and Miami Valley Voter Protection Coalition as *Amici Curiae* in Support of Respondents, at 9-11, *Husted v. A. Philip Randolph Inst*., 138 S. Ct. 1833 (2018) (No. 16-980) (hereinafter "NDRN Amicus").

[25] OHIO REV. CODE § 3599.06.

[26] Kenneth Quinnell, *Know Your Rights: State Laws on Employee Time Off to Vote*, AFL-CIO Blog (Nov. 5, 2016), https://aflcio.org/2016/11/5/know-your-rights-state-laws-employee-time-vote.

[27] CDM Smith, Technical Memorandum: Setting the Stage, Ohio Department of Transportation, at 22, 25 (Mar. 2013), *available at* http://www.dot.state.oh.us/Divisions/Planning/SPR/StatewidePlanning/access.ohio/AO40_library/TechMemos/Setting%20the%20Stage.pdf; *see also* NDRN Amicus, *supra* note 24, at 13 ("In the Census Bureau's 2016 voting and registration survey, approximately eight percent of registered citizens earning less than $15,000 per year who did not vote cited transportation problems as the reason for not casting a ballot. Yet, transportation problems accounted for less than one percent of registered non-voters earning more than $40,000.").

Americans in Ohio are about three times as likely to have to rely on public transportation or walk to work and are about four times less likely to own their own car, both of which imply immediate travel financial costs but also substantially more time costs to voting."[28]

- A 2016 survey conducted by Disability Rights Ohio "identified transportation as the second most prevalent issue for people with disabilities to access in-person voting."[29]

Compounding the obstacles that inflexible work schedules and lack of transportation access pose are the limitations that have been placed on the times and places when Ohioans can cast an in-person ballot. While Ohio's early voting window is just under a month long,[30] evening and weekend voting times are limited.

With the exception of Presidential General Elections, early in-person voting evening hours extend until only 7 PM during the workweek prior to Election Day, and Sunday voting times are limited to only four hours the weekend before an election.[31] Because the state legislature restricted the number of early voting sites to one per county in 2011,[32] getting to the polls before 7 PM can be challenging for voters who cannot leave their places of employment until (or after)

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[28] Expert Report of Vincent J. Roscigno, at 15, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp. 3d 808 (S.D. Ohio Sept. 4, 2014) (No. 2:14-cv-404), ECF No. 18-2.

[29] Disability Rights Ohio, *Voting in Ohio: A Disability Rights Perspective*, at 5, Mar. 2018, *available at* https://www.disabilityrightsohio.org/assets/documents/dro_voting_in_ohio_report_march_2018.pdf; *id.* at 5-6 (noting also that "[w]hile some voters with disabilities can utilize their own vehicle," a 2017 "report found that many voters with disabilities rely on family, friends, or service providers to provide transportation," and while some voters with disabilities "use public transportation, . . . service availability to polling places can limit this option").

[30] Polling locations are *not* open each day of the early voting window. *See, e.g.*, Ohio Secretary of State, Voting Schedule for the 2019 Elections, https://www.sos.state.oh.us/elections/voters/voting-schedule/#gref; League of Women Voters of Ohio, November 2018 Election Early Voting Hours, https://my.lwv.org/ohio/november-2018-election-early-voting-hours; Election Official Manual, *supra* note 2, at 2-31 to 2-33.

[31] Election Official Manual, *supra* note 2, at 2-31 to 2-33 (noting that in Presidential General Elections, polls are also open until 6 PM during the workweek two weeks out from the election and there is a second Sunday of early voting during which time the polls are open for 4 hours).

The availability of these early voting hours were agreed upon in a settlement agreement, which expired on December 31, 2018. Settlement Agreement Among Plaintiffs and Defendant Secretary of State Jon Husted, ¶ 10, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp. 3d 808 (S.D. Ohio Sept. 4, 2014) (No. 2:14-cv-404), ECF No. 111-1. Because the settlement term has now expired, we are concerned that the times when early voting is available may be scaled back. Between 2006 and the time that the settlement was entered in 2015, changes were frequently made to early voting opportunities. *See, e.g.*, Plaintiffs' Motion for Preliminary Injunction and Memorandum in Support of Motion, at 8, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp. 3d 808 (S.D. Ohio Sept. 4, 2014) (No. 2:14-cv-404), ECF No. 17. And, when debating whether to cut early voting opportunities, decisionmakers explicitly understood the impact cuts to early voting opportunities would have on people of color and other traditionally marginalized groups. For example, one member of the board of the Franklin County Board of Elections stated that "I guess I really actually feel we shouldn't contort the voting process to accommodate the urban – read African-American – voter-turnout machine." Darrel Rowland, *Voting in Ohio: Fight Over Poll Hours Isn't Just Political*, at 1, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp. 3d 808 (S.D. Ohio Sept. 4, 2014) (No. 2:14-cv-404), ECF No. 18-48.

[32] *See, e.g.*, Bill Bush, *Few Will Travel Far to Franklin County's Single Early-Voting Site, Analysis Finds*, THE COLUMBUS DISPATCH, Nov. 11, 2018, https://www.dispatch.com/news/20181111/few-will-travel-far-to-franklin-countys-single-early-voting-site-analysis-finds (noting that the prohibition on having more than one early voting location per county was established by a law passed in 2011); Election Official Manual, *supra* note 2, at 5-7 to 5-8; OHIO REV. CODE § 3501.10(C).

5 PM or who do not own a vehicle and need to rely on public transportation or other options.[33] Further, the limits on early voting locations make it more likely that those who utilize early in-person voting are those who live in the immediate vicinity of their county's early voting location.[34]

The recent consolidation of polling locations creates additional challenges for Ohio voters. As noted by the former Executive Director of the League of Women Voters of Ohio: "Between 2008 and 2010, fourteen Ohio counties reduced the number of precincts they had by more than 15%."[35] In some of Ohio's largest counties—Cuyahoga, Hamilton, and Lucas—precincts were reduced by 26 percent, 23 percent, and 28 percent, respectively.[36] And, reduction in polling site locations has continued since that time.[37] Disability Rights Ohio, Columbus Coalition for the Homeless, and the Miami Valley Voter Protection Coalition, among others, have noted the impact such changes have on voters:

> [C]utbacks to polling locations can affect not only voters' ability to find their polling place but also their ability to get transportation to those locations and the lines once they get there. After 2008, many Ohio counties consolidated precincts and polling places. . . . As a result, for many Ohioans, what used to be a short walk to their polling place now requires a drive to a polling location that serves many more voters.[38]

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[33] DeNora Getachew, *Voting 2014: Stories from Ohio*, Brennan Center for Justice, Dec. 5. 2014, https://www.brennancenter.org/analysis/voting-2014-stories-ohio (noting that Brian Davis, former Executive Director of the Northeast Ohio Coalition for the Homeless, stated that "[e]arly voting cuts were incredibly restrictive to the homeless population of Cleveland because '40 percent of the homeless [population] work, [and] it is easier to coordinate rides [after 5:00 PM]'").

[34] A November 2018 story published by *The Columbus Dispatch* noted that "[a]lmost half of the 54,000 Franklin County residents who voted in person before Election Day at the early voting center in [the county] live[d] within 5 miles of the facility; those who live[d] farther in the rest of the 532-square mile county used it sparingly." Bush, *supra* note 32.

[35] *Field Hearing on New State Voting Laws III: Protecting the Right to Vote in America's Heartland*, 112th Cong. 7 (2012), https://www.judiciary.senate.gov/imo/media/doc/12-5-7DavisTestimony.pdf (noting that the above data was "gathered from Election Results available on the Ohio Secretary of State website and presented in testimony to the Ohio House State Government and Elections Committee during the May 2011 hearings on HB 194 by Counsel for the nonpartisan Miami Valley Voter Protection Coalition, Ellis Jacobs").

[36] *Id.*

[37] *See, e.g.*, Marion County Board of Elections, Marion County Polling Places, Aug. 18, 2017, https://www.marionelections.com/news/2017-general-election-polling-place-changes/; Tom Troy, *Elections Board to Consolidate Polling Locations: At Least 45,000 Voters Being Moved*, THE BLADE, June 30, 2017, https://www.toledoblade.com/local/2017/06/30/Elections-board-to-consolidate-polling-locations/stories/20170629301; Michael Cooper, *4 Springfield Voting Precincts Moving to New Location*, SPRINGFIELD NEWS-SUN, Mar. 4, 2018, https://www.springfieldnewssun.com/news/local-govt--politics/springfield-voting-precincts-moving-new-location/txWqBGJcOBhkoGWwklSZDI/. *But see* Kayla Beard, *Elections Board Reverses Controversial Plans to Consolidate Polling Places in Nelsonville, Alex*, THE ATHENS NEWS, Mar. 27, 2019, https://www.athensnews.com/news/local/elections-board-reverses-controversial-plans-to-consolidate-polling-places-in/article_617e9fa4-50b4-11e9-b0c5-cfb4de241e5a.html (reporting that the Athens County Board of Elections unanimously voted to overturn a number of polling location consolidation decisions this year after "residents and some elected officials . . . voice[d] opposition" to the changes).

[38] NDRN Amicus, *supra* note 24, at 14.

Challenges casting a ballot.

Ohioans experience additional challenges that may prevent them from casting a ballot on Election Day or absentee. These challenges include: accessibility issues, long lines, and restrictions on pre-trial detainee voting rights.

Disabled voters indicated in the 2016 Disability Rights Ohio survey, referenced above, that the most common barrier to voting involved "problems interacting with poll workers," which suggested that poll workers would benefit from additional training on "how to set up [a] polling location to be physically accessible, how to use all available equipment including accessible machines, and how to communicate effectively with voters who may have difficulties speaking, hearing, or writing."[39]

Further, Ohio has a history of long lines at the polls. In 2004, it was widely noted that Ohio had the longest lines in the country[40] and reported that "long wait times caused 10,000 Columbus voters not to vote . . . and caused many voters to leave without voting to attend work, school, or provide care to family members."[41] In fact, the 2004 elections exposed deficiencies so severe that Dēmos and the Lawyers' Committee for Civil Rights brought a lawsuit alleging that Ohio's electoral system was failing to provide the fundamental right to vote guaranteed by the Constitution. As the Sixth Circuit's decision allowing these claims to proceed summarized:

> Voters were forced to wait from two to twelve hours to vote because of inadequate allocation of voting machines. Voting machines were not allocated proportionately to the voting population, causing more severe wait times in some counties than in others. At least one polling place, voting was not completed until 4:00 a.m. on the day following election day. Long wait times caused some voters to leave their polling places without voting in order to attend school, work, or to family responsibilities or because a physical disability prevented them from standing in line. Poll workers received inadequate training, causing them to provide incorrect instructions and leading to the discounting of votes. In some counties, poll workers misdirected voters to the wrong polling place, forcing them to attempt to vote multiple times and delaying them by up to six hours. Provisional balloting was not utilized properly, causing 22% of provisional ballots cast to be discounted, with the percentage of ballots discounted reaching 39.5% in one county. Disabled voters who required assistance were turned away.[42]

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[39] Disability Rights Ohio, *supra* note 29, at 4; *id.* at 5 (noting that poll workers are sometimes also not aware that individuals who are unable to physically sign their name in a poll book are not required to do so in order "to affirm [their] intent to vote").

[40] *See, e.g.*, Ari Berman, *Ohio Keeps Making It Harder to Vote*, THE NATION, Sept. 13, 2016, https://www.thenation.com/article/ohio-keeps-making-it-harder-to-vote/.

[41] *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 468–69 (6th Cir. 2008) (noting allegations of complaint).

[42] *Id.* at 477-78. The Supplemental Process may also contribute to Election Day resources being inaccurately allocated and longer lines at the polls, as a person who does not respond to a Supplemental Process notice within 30 days will not be counted when a county is determining precinct boundaries. OHIO REV. CODE § 3501.18(A).

Ohio increased early voting opportunities in order to respond to the 2004 debacle, but has since: reduced early voting times; restricted early voting centers to one per county, which does little to reduce the stress on polling sites countywide; consolidated polling locations, thus increasing the number of people being processed at voting sites across the state; and purged large numbers of people under the Supplemental Process, which can cause confusion and bottleneck at the polls.[43]

In addition to the problems that occur at polling locations, Ohio also limits access to absentee ballots. For example, under Ohio law, registered voters who are arrested and held in Ohio jails after the absentee ballot request deadline and who are detained through Election Day are prevented from obtaining and casting an absentee ballot.[44] However, voters who are hospitalized, or whose minor children are hospitalized, during this time are permitted to obtain and cast a ballot.[45]

On November 6, 2018, Dēmos, along with Campaign Legal Center and MacArthur Justice Center, filed an Election Day challenge to Ohio's practice of denying late-jailed Ohio voters the right to vote—a practice that is estimated to disenfranchise approximately 1000 voters each election.[46] Our clients—two Ohio voters who were detained on misdemeanor charges after the time to cast an absentee ballot had passed—filed a class action lawsuit alleging that Ohio's absentee voting laws violated their First and Fourteenth Amendment rights. A federal judge in the Southern District of Ohio issued a Temporary Restraining Order requiring Ohio to deliver ballots to our named clients and count their votes. In so ordering, the Court found that:

> "[T]here is evidence that Named Plaintiffs are eligible and have the right to vote, and that there is evidence that Named Plaintiffs have no mechanism by which to cast their vote. Accordingly, . . . Named Plaintiffs are likely to succeed on the merits of their claim. The risk of irreparable harm is great, as failure to grant the requested relief would amount to the denial of Named Plaintiffs' right to vote."[47]

Barriers to voting such as those described above make it more likely that individuals will be prevented from voting and be swept up under the Supplemental Process.

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[43] OEO Amicus, *supra* note 15, at 7 ("[L]engthier lines [are] occasioned by poll workers trying to sort out these matters or the back-up caused by purged voters having to cast provisional ballots—those lines may dissuade others from voting.").

[44] OHIO REV. CODE § 3509.08(A) (noting that the board must receive a request for an absentee ballot by "twelve noon of the third day before the day of the election at which the ballot is to be voted").

[45] *Id.* § 3509.08(B).

[46] Mark Salling, PhD, Estimation of the Number of Registered Ohio Voters Prevented from Voting Because They Were Arrested After the Absentee Ballot Request Deadline and Detained Through General Elections in November 2012, 2014, 2016, and 2016, at 3-11, *Mays, II, et al., v. Husted*, No. 2:18-cv-1376 (S.D. Ohio Apr. 12. 2019), ECF No. 31-1.

[47] Order, at 1-2, *Mays, II, et al., v. Husted*, No. 2:18-cv-1376 (S.D. Ohio Nov. 6, 2018), ECF No. 12.

Ineffectiveness of mailings: Supplemental Process notices and other voting materials.

Election mailings—whether Supplemental Process notices, polling location information, absentee ballot request forms, or other materials—often fail to achieve their purported goal. Individuals with limited English proficiency, disabilities, as well as those without traditional residential addresses, may not be provided information in a meaningful way or at all. This heightens the possibility that such voters will be targeted and removed under practices like Ohio's Supplemental Process.

Asian and Spanish language speakers in Ohio are more likely to be of limited English proficiency than the national average, and it is estimated that over 51,000 of these individuals are qualified voters.[48] Because election mailings are often provided only in English, voters with limited English proficiency are often "reliant on assistance from fluent English-speaking family members or third parties to navigate the electoral process" and interpret election mailings.[49]

Election mailings are often also not accessible to disabled voters, such as the blind.[50] In fact, November 2018 marked the first election where blind voters were able to receive and cast an absentee ballot privately, independently, and securely.[51]

Further, voters who lack a traditional residence or who are facing extended stays at hospitals or care facilities, often encounter problems receiving mail. For example, in Ohio, people who do "not have a fixed place of habitation" can list "a shelter or other location at which [they have] been a consistent or regular inhabitant" as their voter registration address.[52] Election mailings sent to such locations are often not received.[53] Disabled or older voters who face extended stays at hospitals or care facilities can face similar problems receiving election-related mail, with the "effectiveness and efficiency of [a] facility[y's] mail delivery system[]" playing a critical role.[54]

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[48] Brief of Asian Americans Advancing Justice I AAJC, National Association of Latino Elected and Appointed Officials Education Fund, LatinoJustice PRLDEF, and Seventeen Other Organizations as *Amici Curiae* in Support of Respondents, at 6-18, *Husted v. A. Philip Randolph Inst*., 138 S. Ct. 1833 (2018) (No. 16-980).

[49] *Id.* at 19. Ohio has had other problems in making elections accessible to people with limited English proficiency. Lawsuits were filed by the U.S. Department of Justice in both 2010 and 2011 alleging that Cuyahoga and Lorain Counties, respectively, were violating Section 4(e) of the Voting Rights Act, 52 U.S.C. § 10303(e), which requires that voters with limited English proficiency who were educated in Puerto Rico receive bilingual ballots, education materials, and poll worker assistance. *Id.* at 19, 22-23. Both cases settled, with the respective boards of elections promising to meet the requirements of Section 4(e). *Id.* at 23. However, several years after settlement federal observers determined that Cuyahoga County was still not meeting all of its responsibilities under the agreement. *Id.*

[50] NDRN Amicus, *supra* note 24, at 30.

[51] Disability Rights Ohio, *supra* note 29, at 5; Ohio Secretary of State, Directive 2018-03, Availability of a Remote Ballot Marking System for Use by a Voter with a Disability During Ohio's By-Mail Absentee Voting Period, Jan. 19, 2018, at 2.

[52] OHIO REV. CODE § 3503.02(I).

[53] *See, e.g.*, Northeast Ohio Coalition for the Homeless, Frequently Asked Questions, https://www.neoch.org/faq-homeless-voting-2016 (last visited Apr. 22, 2019) (noting that mail addressed to a park bench will bounce back to the elections office from which it was sent).

[54] NDRN Amicus, *supra* note 24, at 30.

These obstacles make it less likely that voters will be aware of changes in polling locations, be able to effectively request an absentee ballot if they cannot make it to the polls, or be able to respond to a Supplemental Process notice. As a result, Ohio's elections are less accessible to individuals with limited English proficiency, disabilities, or who lack a traditional residence, and such individuals are more likely to have their names removed from Ohio's voter rolls.

Ohio's Elimination of "Golden Week"

The elimination of the same-day registration period—Golden Week—ended a week of early voting, as well as the one opportunity Ohio voters had to both register and vote simultaneously.

Golden Week provided a now-extinct, but important, safeguard to allow voters the opportunity to correct registration errors, update registration information at the polls, and avoid complete disenfranchisement if they were wrongfully purged. For example, a number of individuals who work with Ohio's homeless population have remarked that Golden Week was critical to ensuring that the homeless and housing insecure were able to participate in the democratic process; it provided individuals who lacked a fixed address with the opportunity to update their registration and vote and it provided those whose names had been removed with the ability to register and cast a ballot that counted. [55]

Conclusion

It is not surprising that Ohio ranks behind 42 other states in terms of voter access.

Ohio's election rules, regulations, and procedures institute serious obstacles that prevent voters from being able to exercise their fundamental right to vote; they also make it more likely that eligible Ohioans will be erroneously removed from the registration rolls. Without same-day registration, Ohio voters are denied a one-stop opportunity to correct erroneous removals and participate in the democratic process.

We know that this is a state where even a single vote can make an enormous impact.[56] And, while some barriers to voting were reduced after the 2004 election, many of those have been built back up again and new barriers have also been created.

As Congress considers how to ensure that eligible voters are able to effectively participate in the political process, we at Dēmos strongly encourage you to take two steps. First, pass H.R. 1, the For the People Act. H.R. 1 creates a more robust democracy by, among other things: (1) directly

[55] *See, e.g.*, Declaration of Josh Spring, ¶¶ 21-22, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp. 3d 808 (S.D. Ohio Sept. 4, 2014) (No. 2:14-cv-404), ECF No. 18-23; Declaration of Erik Crew, ¶¶ 14-21, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp. 3d 808 (S.D. Ohio Sept. 4, 2014) (No. 2:14-cv-404), ECF No. 18-24; Declaration of Georgine Gerry, ¶¶ 15-16, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp. 3d 808 (S.D. Ohio Sept. 4, 2014) (No. 2:14-cv-404), ECF No. 18-25; Getachew, *supra* note 33.

[56] In June 2018, former Ohio Secretary of State Jon Husted noted that "199 races and issues were decided by one vote or tied" in the past five years, with 59 of those elections being in the first half of 2018. Secretary Husted: A Single Vote Makes All the Difference, *supra* note 22.

responding to the U.S. Supreme Court decision in *Husted* and amending the NVRA to make clear that voters simply should not—and cannot—be targeted for removal from the registration rolls or otherwise penalized for not casting a ballot; and (2) mandating that same-day registration is available in federal elections. Second, advance legislation to increase access to the ballot for those individuals who are incarcerated, but eligible, to vote. This includes increasing access to registration in jails and guaranteeing that qualified voters are not disenfranchised merely because they are experiencing a period of incarceration. Dēmos is actively working on these issues, and we would be happy to work with members of this committee to advance such reforms.