



TO: Subcommittee on Elections, Committee on House Administration

FROM: Mike Brickner, Ohio State Director, All Voting is Local

DATE: April 25, 2019

RE: Voting Rights and Election Administration in Ohio

To Chairwoman Fudge, Ranking Member Davis, and members of the Subcommittee on Elections, my name is Mike Brickner, Ohio State Director for All Voting is Local, and I submit testimony on the current state of voting rights and election administration in Ohio.

All Voting is Local<sup>1</sup> launched in 2018 as 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. We fight to protect and expand the right to vote, working directly with disenfranchised communities to fight for a democracy that works for us all. In Ohio, our campaign has worked with our partners on nonpartisan election protection for voters; providing public education to voters with disabilities on their rights; and recruiting poll workers to ensure elections run smoothly. In the November 2018 general election, we tackled a nationwide shortage of poll workers by recruiting approximately 3,000 individuals nationwide to sign up to serve, with nearly 450 volunteers in Ohio alone. Prior to joining All Voting is Local, I worked for 14 years at the American Civil Liberties Union of Ohio, most recently as senior policy director, where I oversaw our advocacy and policy campaigns.

Ohio has long been the epicenter of voting rights battles, where political parties and candidates have sought to manipulate the system to capture or maintain power -- all at the expense of voters. More common are the voters who are disenfranchised not because of malice or cynical power grabs, but because of administrative failures and a lack of adequate resources. The result: voters are denied access to the ballot box and our democracy is weakened.

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<sup>1</sup> More information is available at [www.allvotingislocal.org](http://www.allvotingislocal.org).

Ohioans, particularly people of color, currently face needless barriers to the ballot, including attempts to undermine early, in-person voting; polling places that are moved, leaving voters confused and frustrated; high rejection rates of provisional ballots; struggles to secure ballots in jail, which are mandated by law; and discriminatory voter purges that leave nearly 2 million voters at risk of losing their sacred right to vote. As a state and as a nation, we must fight to eliminate these obstacles to voting. Ohio must do its part to ensure elections are administered freely and fairly, so that all voices are heard.

### **Early in-person voting**

In 2006, the Republican-controlled Ohio General Assembly enacted no-fault absentee balloting, allowing voters to cast an early ballot by mail or in-person 35 days before an election.<sup>2</sup> The impetus for expansion of early voting was Ohio's notorious lines in the 2004 general presidential election, where some voters waited as long as 10 hours to cast their ballots.<sup>3</sup> From its inception, early in-person voting was a popular option for many voters to cast their ballot early without relying upon the U.S. mail. Black churches throughout the state have organized "Souls to the Polls" programs where they visit the polls immediately after Sunday services to encourage their communities to vote together. Generally, Black voters have been more likely to utilize early in-person voting.<sup>4</sup> While any voter with an inflexible schedule may appreciate early in-person voting, given the history of voter suppression laws and policies targeting Black voters throughout U.S. history, it is particularly appealing to Black voters who may have apprehension about simply mailing in their ballot rather than casting it in person.

Early in-person voting has been successful in Ohio, with an increasing number of people opting to cast their ballot ahead of Election Day. Despite this accomplishment, Ohio politicians have sought to undermine the practice by attempting to pass several restrictions over the past decade.<sup>5</sup> Many of these laws have been struck down, either by citizen referendum or litigation.<sup>6</sup> However, barriers remain to early in-person voting and must be confronted.

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<sup>2</sup> See 2005 HB 234 (eff. 1-27-2006) and 2006 HB 3 (eff. 5-2-2006).

<sup>3</sup> Adam Cohen, *No One Should Have to Stand in Line for 10 Hours to Vote*, NEW YORK TIMES, August 25, 2008, available at <http://www.nytimes.com/2008/08/26/opinion/26tue4.html>

<sup>4</sup> Norman Robbins & Mark Salling, *Racial and ethnic proportions of early in-person voters in Cuyahoga County, General Election 2008, and implications for 2012*, Northeast Ohio Voter Advocates, available at <https://drive.google.com/file/d/0B4HH5KrGW6jiTXNDOHdGSE9DbldJeGFMROxhTzZwZGxubVpn/view>. Richard Perez-Pena, *Ohio Limits on Early Voting are Discriminatory, Judge Says*, NEW YORK TIMES, May 24, 2016, available at <https://www.nytimes.com/2016/05/25/us/ohios-limits-on-early-voting-are-discriminatory-judge-says.html>; *NAACP v. Husted*, No. 2:14-cv-404, U.S. District Court for the Southern District of Ohio.

<sup>5</sup> See 2011 HB 194 (repealed by 2012 SB 295 on May 15, 2012); 2013 HB 250 (not enacted); 2014 SB 238 (eff. 6/1/2014); 2014 SB 205 (eff. 6/1/2014); Directive 2014-17, *Uniform Days and Hours for Early In-Person Voting*, available: <https://www.sos.state.oh.us/globalassets/elections/directives/2014/dir2014-17.pdf>; Directive 2012-35, *In-Person Absentee Voting Days and Hours*, available: <https://www.sos.state.oh.us/globalassets/elections/directives/2012/dir2012-35.pdf>.

<sup>6</sup> *NAACP v. Husted*, No. 2:14-cv-404, U.S. District Court for the Southern District of Ohio; See 2012 SB 295 (enacted May 15, 2012.) *Author's note: SB 295 was passed by the legislature after citizen advocates successfully circulated petitions to place HB 194 under referendum. The Ohio General Assembly repealed HB 194 by passage of SB 295, thus ending the referendum.*

*NAACP v. Husted* challenged the elimination of evening and weekend early in-person voting hours, and the elimination of same-day voter registration during a portion of early voting. While the Ohio Secretary of State eventually agreed to some evening and weekend hours, the settlement agreement is no longer in force, and there is no permanent law guaranteeing these hours. A future Secretary of State could decide to cut or alter early in-person hours at their discretion. In December 2018, there was an attempt in the Ohio General Assembly to codify those hours in an amendment to HB 41, which was ultimately tabled by the Senate Committee considering it.

In January 2019, All Voting is Local conducted analysis on early in-person voting patterns from the 2016 and 2018 general elections in six representative Ohio counties that include urban, rural and suburban areas (Delaware, Defiance, Franklin, Summit, Warren, and Washington counties).<sup>7</sup> We found that early in-person voting was popular across the board. In particular, the week before the election and the weekend times to cast ballots were the most used days. News reports showed that in the days leading up to those elections, voters waited in long lines at early voting locations.<sup>8</sup> Given the success of early in-person voting, hours should be formalized in state law and should be expanded on the week prior to the election and on weekends.

Another major barrier to early in-person voting in Ohio is the law restricts early voting locations to only one per county, regardless of the needs of the community. By default, early voting locations are typically each county's local board of elections office.<sup>9</sup> This makes casting an early ballot much more difficult for people who rely on public transportation, have a disability, or live far away from the early voting site.

Athens County, located in Appalachian Ohio and home to Ohio University, provides an example of this problem. Recently, the Board of Elections sought to move its offices due to storage and accessibility concerns for voters with disabilities. Currently, the office is located in the downtown Athens area, within walking distance for those who live downtown and at Ohio University. The proposed site would have moved the office to an industrial park, farther away from the city center and the university.

According to our analysis of 2018 general election data, two-thirds of all early in-person ballots cast were from Athens city residents.<sup>10</sup> We found precincts that included Ohio University dorms traditionally have the highest increase in early in-person voting in presidential election years. Moving the site further away from the university could have significant ramifications. However, the current model of a single early voting site does not serve residents in other parts of the county. For voters outside of the city of Athens, they must drive up to 20 miles to be able to cast an early ballot. If the current prohibition on multiple early in-person voting sites were lifted, the

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<sup>7</sup> Dr. Megan Gall, *Ohio Early Vote*, All Voting is Local, see appendix.

<sup>8</sup> Libby Nelson, There are 4,000 people in a half-mile voting line in Cincinnati today. This isn't okay., VOX.COM, Nov 6, 2016, available at <https://www.vox.com/presidential-election/2016/11/6/13542680/there-are-4000-people-in-a-half-mile-voting-line-in-cincinnati-today-this-isn-t-okay>

<sup>9</sup> Ohio Revised Code § 3501.10(C)

<sup>10</sup> Mike Brickner, *Letter to Athens County Commissioners*, January 7, 2019.

Athens County Board of Elections could opt to have multiple early voting sites on the campus, in the both the city and in remote areas, making it easier for every voter.

### **Polling place and precinct moves**

In November 2018, All Voting is Local partnered with the NAACP Cleveland Branch and Lawyers' Committee for Civil Rights Under Law to coordinate nonpartisan election protection. In determining where to deploy poll monitors, we noticed that several polling locations had been consolidated and precincts had been moved. After the election, we determined that between 2016 and 2018, there was a reduction of 41 polling locations countywide, with 15.7 percent of all precincts with a change in location.<sup>11</sup>

While polling places were reduced county-wide, majority Black communities were particularly harmed. In the city of Cleveland, there are 17 total wards, and eight of them are majority Black, ranging from 98.1 percent to 72.1 percent. The other nine minority Black wards range from 43.6 percent to 15.5 percent.<sup>12</sup> In the eight Black-majority wards, six had polling location changes, while only four of the nine Black-minority wards had changes. Throughout the city, 45 precincts had a change in their polling location, with 29 of them in Black-majority wards and 16 in Black-minority wards.

According to data from the Election Protection call center and monitors stationed at poll locations, Cuyahoga County had more than twice the number of reports of voters at the wrong polling location compared to Franklin and Hamilton counties. Poll monitors at Miles Pre K-8 (located in Cleveland Ward 2, which is 89.4 percent Black) reported that they redirected 40 voters who were at the wrong location. The location with the next highest number of reported voters at the wrong polling location was Murtis Taylor Human Services Center (located in Cleveland Ward 1, which is 98.1 percent Black). Both of these locations had precinct changes between 2016 and 2018.<sup>13</sup>

For voters who rely on public transportation, have inflexible work schedules, or have a disability, the burden of traveling to a new polling location cannot be overstated. In one instance at Murtis Taylor Human Services Center, officials told a frustrated voter she was at the wrong location. As she was leaving, she told the poll monitor that she was simply going to go home and would not cast a ballot. The poll monitor encouraged her to call the board of elections and go to her correct polling location, but the voter left frustrated and discouraged. We are not certain whether she cast a ballot in the 2018 general election.

It is the duty of boards of elections to notify voters that their polling location changed.<sup>14</sup> State law requires that election officials mail the voter a postcard with the information, but this is limited in impact. Election officials should clearly post signage outside of any poll locations with

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<sup>11</sup> All Voting is Local, analysis of polling locations in Cuyahoga County, March 2019.

<sup>12</sup> The Center for Community Solutions, *Cleveland Neighborhoods and Wards Snapshot*, available: <https://www.communitysolutions.com/resources/community-fact-sheets/cleveland-neighborhoods-and-wards/>

<sup>13</sup> *Id.*

<sup>14</sup> Ohio Revised Code § 3501.21

changes, so voters do not spend unnecessary time waiting in line. Elections officials must ensure these changes do not have a disparate impact on voters of color. In addition, officials should partner with community groups to solicit their feedback on potential poll location changes, as well as alternative public education methods to ensure voters are informed.

### **Provisional ballots**

Provisional ballots are intended to be a last resort for voters who have some sort of issue that cannot be resolved when they cast their ballot. Reasons why a voter might cast a provisional ballot include their name not appearing in the poll book, the voter not having proper identification, or having recently moved or changed their name. In many cases, the board of elections can resolve the problem itself after the election, or the voter must provide additional information, such as proper identification. While provisional ballots can be beneficial for voters who might otherwise be turned away, their use should be minimized by strong election administration procedures, effective poll worker training, and robust voter education programs.

Ohioans cast far too many provisional ballots. While the overall number has decreased in recent years, the state still has one of the highest overall number of provisional ballots cast.<sup>15</sup> All Voting is Local has studied provisional ballot use in Franklin and Greene counties, which illustrate how different voters are likelier to cast a provisional ballot.

Franklin County accounts for 10.93 percent of the state's electorate, only slightly trailing Cuyahoga County. Depending on where one lives in the county, voters have very different experiences with provisional ballots. In 2018, the countywide rate of provisional ballots cast was 1.84 percent. However, All Voting is Local's analysis found people of color, millennials, and low-income voters were all significantly more likely to cast a provisional ballot. Of the three polling locations near Franklin County's Ohio State University campus, nearly one in ten voters cast a provisional ballot. On campus at the Ohio Union, nearly 65 percent of the provisional ballots cast were rejected by the board of elections.<sup>16</sup>

Franklin County's rate of provisional ballot rejection is also troubling. In the 2018 general election, over one in five rejected provisional ballots statewide came from Franklin County. While urban counties, including Cuyahoga, Hamilton, and Summit decreased their rate of provisional rejections in 2018, Franklin's rate increased. Among the reasons ballots were rejected in Franklin County: the voter was in the wrong precinct, wrong location (38 percent of the statewide total); insufficient identification (36 percent of the statewide total); and signature mismatch (65.9 percent of statewide total).<sup>17</sup>

Another important example is Greene County, located west of Dayton and home to Central State University, Ohio's only public Historically Black College/University (HBCU). Voter advocates contacted All Voting is Local following the 2018 election because of the high rate of Central

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<sup>15</sup> Election Administration Commission, *EAVS Deep Dive: Provisional Ballots*, available: <https://www.eac.gov/documents/2018/06/07/eavs-deep-dive-provisional-ballots/>

<sup>16</sup> All Voting is Local, *Franklin County Provisional Use*, see appendix.

<sup>17</sup> *Id.*

State students casting provisional ballots. The overall rate of provisional ballots cast in Greene County was 1.89 percent, but in the precinct that serves Central State, nearly half--46.4 percent--of all ballots cast were provisional. Of those, nearly half--45.7 percent--were eventually rejected by the board of elections. According to advocates, these problems are not new and mark a pattern of needless barriers to the ballot over years. These problems have an overall suppressive impact on black voter participation and on participation from marginalized communities at large. While Greene County had a turnout of 70.9 percent and Ohio had a 55.7percent turnout overall, Central State's precinct only had 15.8 percent turnout, making it the eighth lowest turnout precinct in the state.<sup>18</sup>

### **Voting Rights of Incarcerated People**

Ohio is comparatively progressive in its laws to enfranchise people with criminal convictions. Only those who are currently incarcerated post-felony conviction are disenfranchised, meaning that many people housed in jails are eligible to vote.<sup>19</sup> On any given day in Ohio, more than 17,000 people are housed in local jails - nearly 60 percent of them awaiting trial.<sup>20</sup> Those who have not been convicted of a crime and those serving a sentence for a misdemeanor indisputably have the right to vote, but it remains a right in theory, not practice.

In 2018, All Voting is Local worked with advocates in Cuyahoga, Lake, Lorain, Franklin, Montgomery, Licking, and Lucas counties to launch voter registration and absentee voting at county jails. While some counties were successful, such as Cuyahoga and Lake, activists in other counties experienced administrative hurdles and a lack of clear accountability on who has ownership over this important service. As a result, the state has a patchwork of policies and practices that lead to very different access to the ballot for incarcerated voters in different jails. In most instances, we found a voter could get a ballot, but they had to assert themselves and agitate to receive one. Access to the ballot should be the rule for jailed eligible voters, but too often, it is the exception.

Access to the ballot is directly tied to our broken criminal justice system. Voters often languish days and weeks in jail unable to afford their bail, uncertain when they will be released. When we worked with jailed voters in 2018, it was common to speak to a person a month before the election who could only guess where they might be on Election Day. This made it difficult for the voter to decide if they should believe they would be released in time to vote in person on Election Day, or if they should request a ballot be delivered to them at the jail. Advocates working in the Cuyahoga County Jail reported it was common for a voter to request a ballot, but the voter would be released before it was delivered to the jail.<sup>21</sup> Similarly, volunteers would encounter voters who did not request a ballot because they believed their release was impending,

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<sup>18</sup> All Voting is Local, *Central State University Provisional Use*, see appendix.

<sup>19</sup> Ohio Revised Code § 2961.01(A)(1).

<sup>20</sup> American Civil Liberties Union, *Blueprint for Smart Justice Ohio*, available: <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-OH.pdf>

<sup>21</sup> Northeast Ohio Voter Advocates, November 1, 2018, personal communication.

but were still incarcerated days or weeks later. Staff at jails were often under-resourced to facilitate jail voting, due to high jail populations driven by unjust laws and policies.

Another failure of Ohio law is that late-jailed voters--i.e. those incarcerated after 5 p.m. Friday before Election Day, cannot obtain a ballot unless they can afford to bail themselves by Election Day. In 2018, All Voting is Local analyzed the late-jailed population at the Montgomery County Jail in Dayton and found at least 62 such voters who would not be able to obtain a ballot.<sup>22</sup> The Campaign Legal Center and Demos filed class action litigation on Election Day 2018 that is pending in federal court challenging this prohibition.<sup>23</sup>

### **Voter purges**

Ohio's voter purge system is notorious for removing large numbers of voters from the registration rolls. While the U.S. Supreme Court has upheld the state's process, the ramifications of the purges continue to reverberate. In early 2019, Secretary of State Frank LaRose announced he would continue the voter purge program, but would send out a final mailing to voters who may be purged. Secretary LaRose mailed 264,516 letters to voters about to be purged, and only 540 responses from voters. Of those, nearly 70 percent matched the voter's previous name and address--meaning those voters had no change in their eligibility and should never have been purged.<sup>24</sup>

Leaders must devise new methods to reach voters. In 2018, All Voting is Local identified nearly 400,000 voters with inactive registrations and texted them the state's online voter registration site and encouraged them to update their registration. Over 30,000 of those voters clicked the link and visited the voter registration site. While we do not know yet how many then updated their registration, we know this was a higher response rate at 7.5 percent, while average for text campaigns is 3-4 percent.<sup>25</sup>

Most importantly, large scale voter purges occur mostly because of outdated voter registration systems. Ohio does not have Automatic Voter Registration or Same-Day Voter Registration, both of which make it easier for voters to confirm and update their registration. Voters who do business with government agencies such as the Department of Job and Family Services, disability services, and veterans services should have their voter registrations automatically updated if they inform a government agency of a change. Additionally, allowing a voter to update their registration on the same day they cast their ballot helps those who move frequently, the homeless, and youth voters.

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<sup>22</sup> All Voting is Local, original analysis using publicly available voter registration lists and online booking report provided by the Montgomery County Sheriff's Office, Nov 1-7, 2018.

<sup>23</sup> *Tommy Ray Mays II v. LaRose*, U.S. Federal District Court for the Southern District, Case No. Case No. 2:18-cv-1376.

<sup>24</sup> Ohio Secretary of State Frank LaRose, *Fresh Start Voter Registration Campaign Announces Results*, April 10, 2019, available: <https://www.sos.state.oh.us/media-center/press-releases/2019/2019-04-10-a/>

<sup>25</sup> Dr. Megan Gall, All Voting is Local, original analysis of text campaign results, January 2019.

## **Recommendations:**

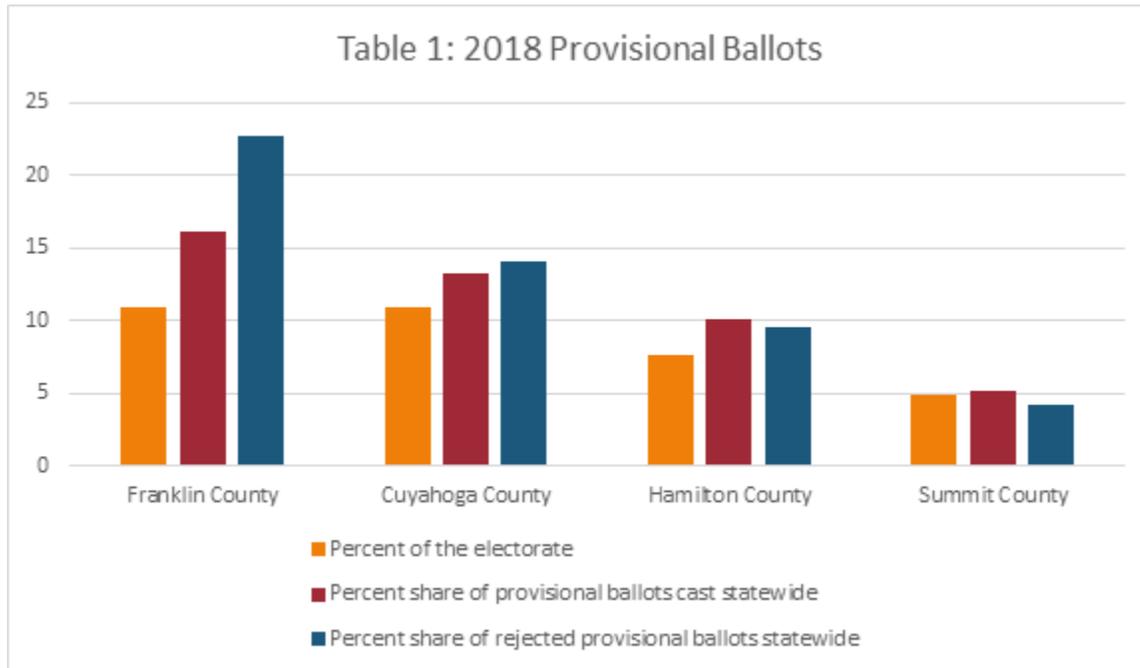
In 2018, the Ohio Voter Rights Coalition, which includes All Voting is Local, released a proactive voting rights agenda.<sup>26</sup> These proposals would address many of the issues outlined in this testimony, and ensure free and fair elections for all Ohioans. Ohio must establish uniform standards for implementing these reforms. Recommendations include:

- Adopt automatic voter registration.
- Expand and make permanent evening and weekend early voting hours.
- Allow multiple early voting sites per county.
- Stop voter purges based on voting activity.
- Require voter registration and absentee voting at Ohio jails.

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<sup>26</sup> Ohio Voter Rights Coalition, available: [https://allvotingislocal.org/wp-content/uploads/2018/08/AVL\\_Ohio\\_MultiPager\\_Web-1.pdf](https://allvotingislocal.org/wp-content/uploads/2018/08/AVL_Ohio_MultiPager_Web-1.pdf).

## Appendix



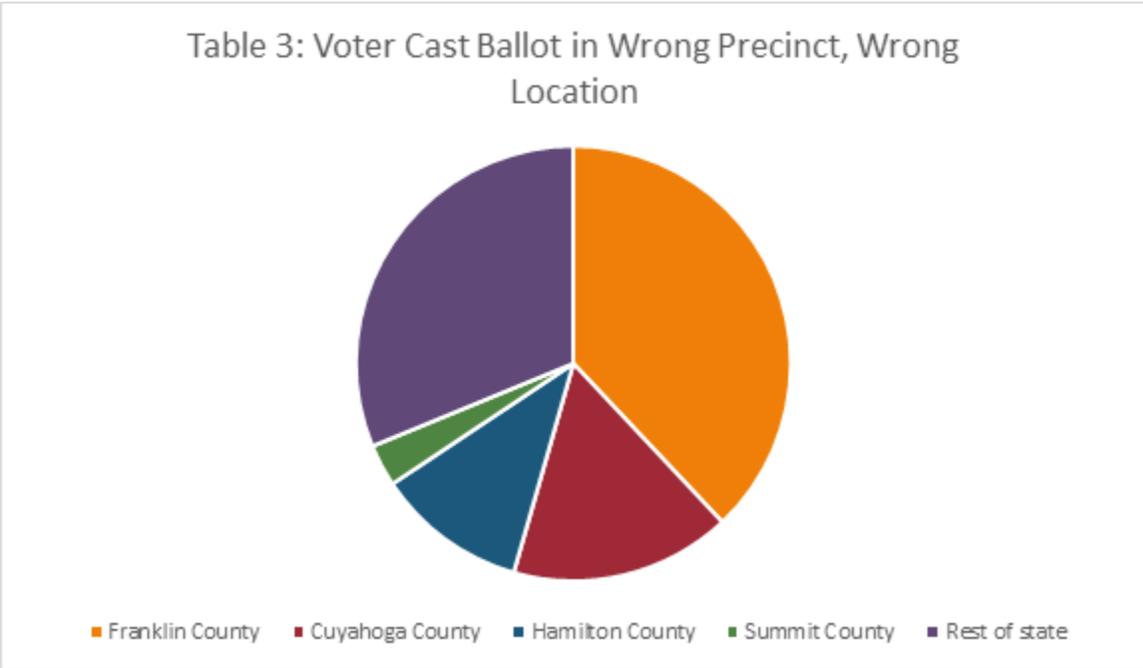
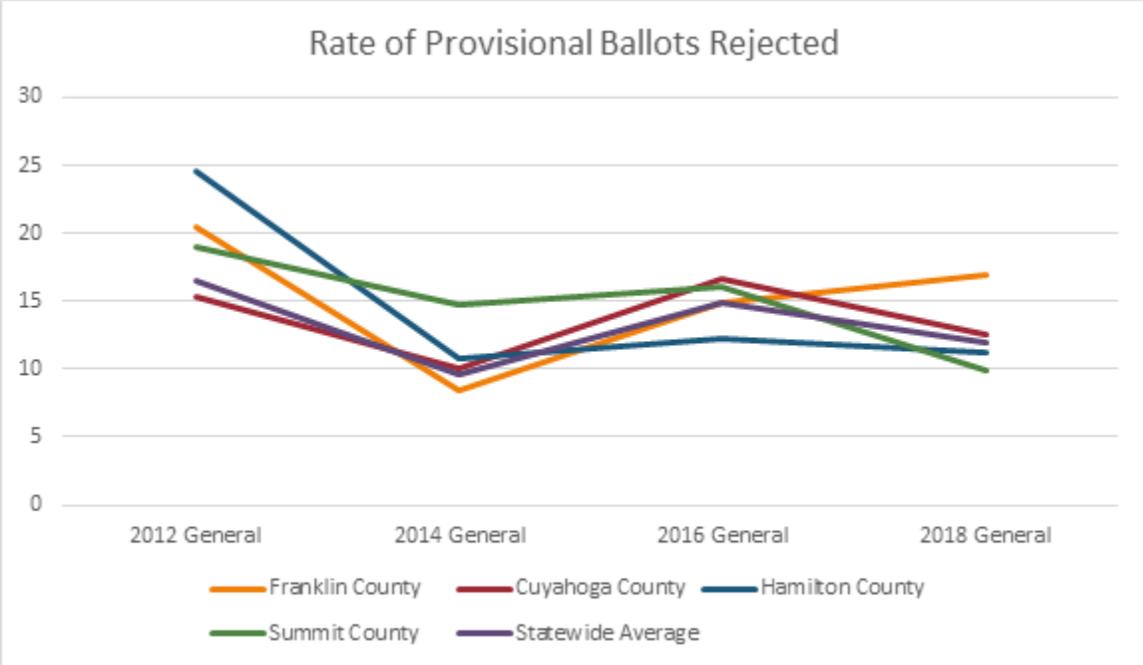
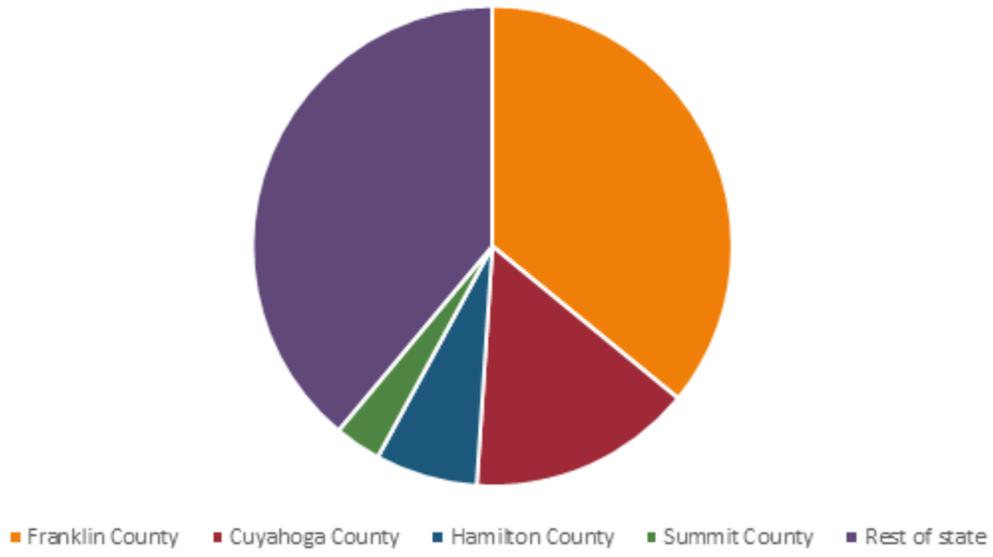
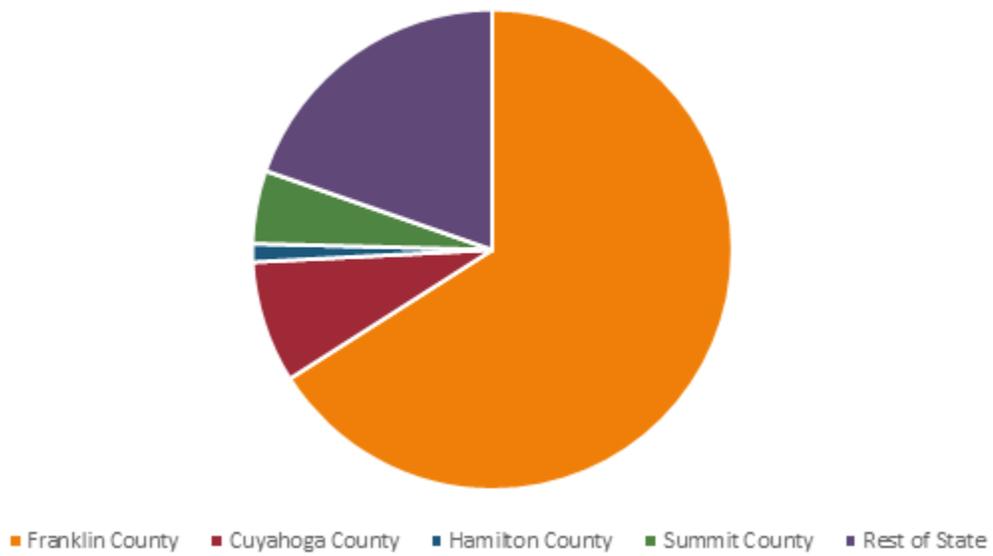


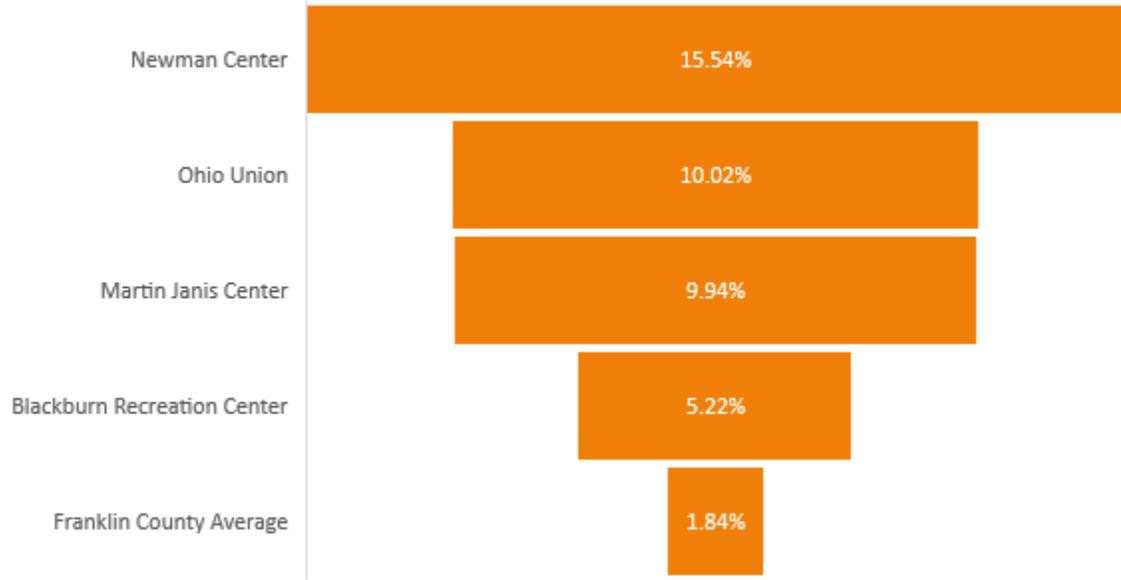
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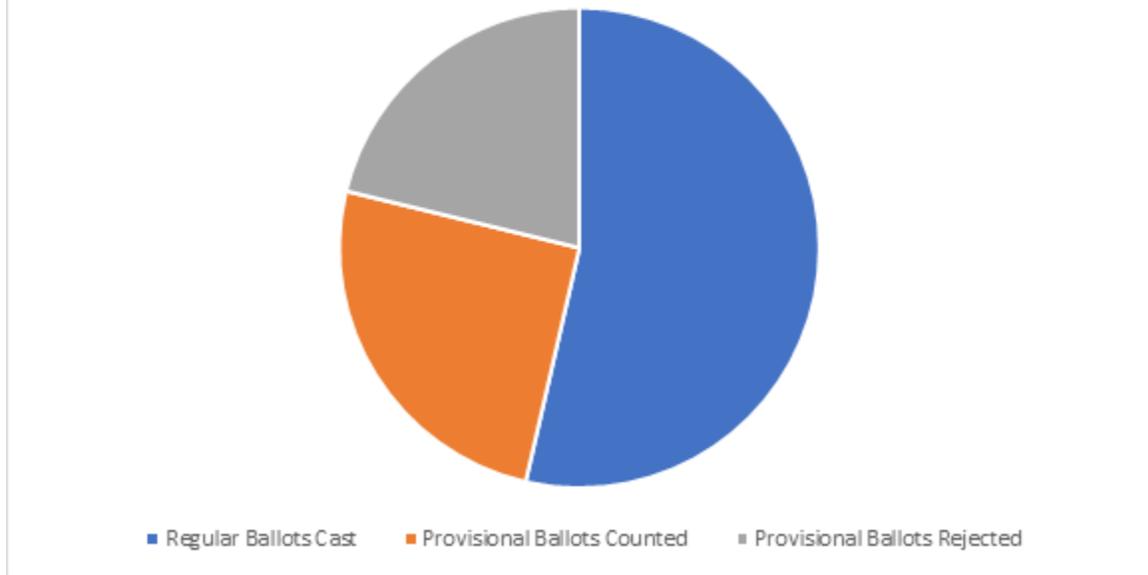
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### Rate of Provisional Ballots Cast by Polling Location



### Breakdown of Total Votes in Precinct 354

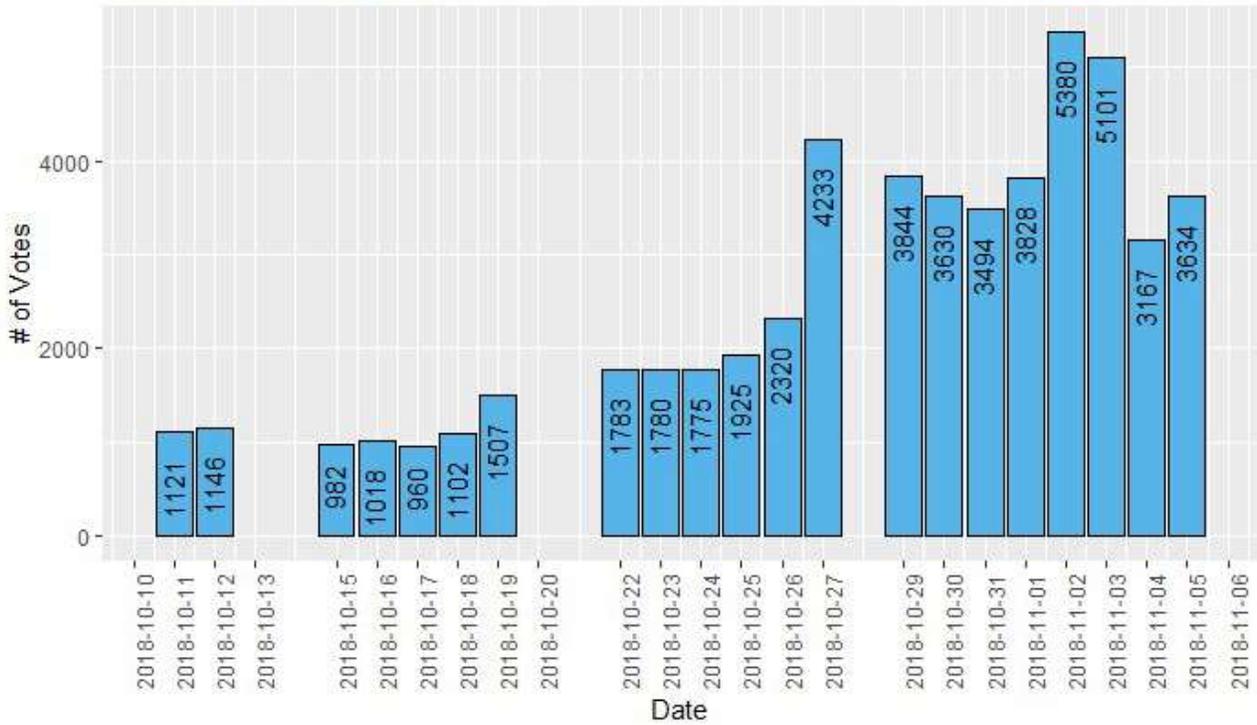


# Ohio Early Vote

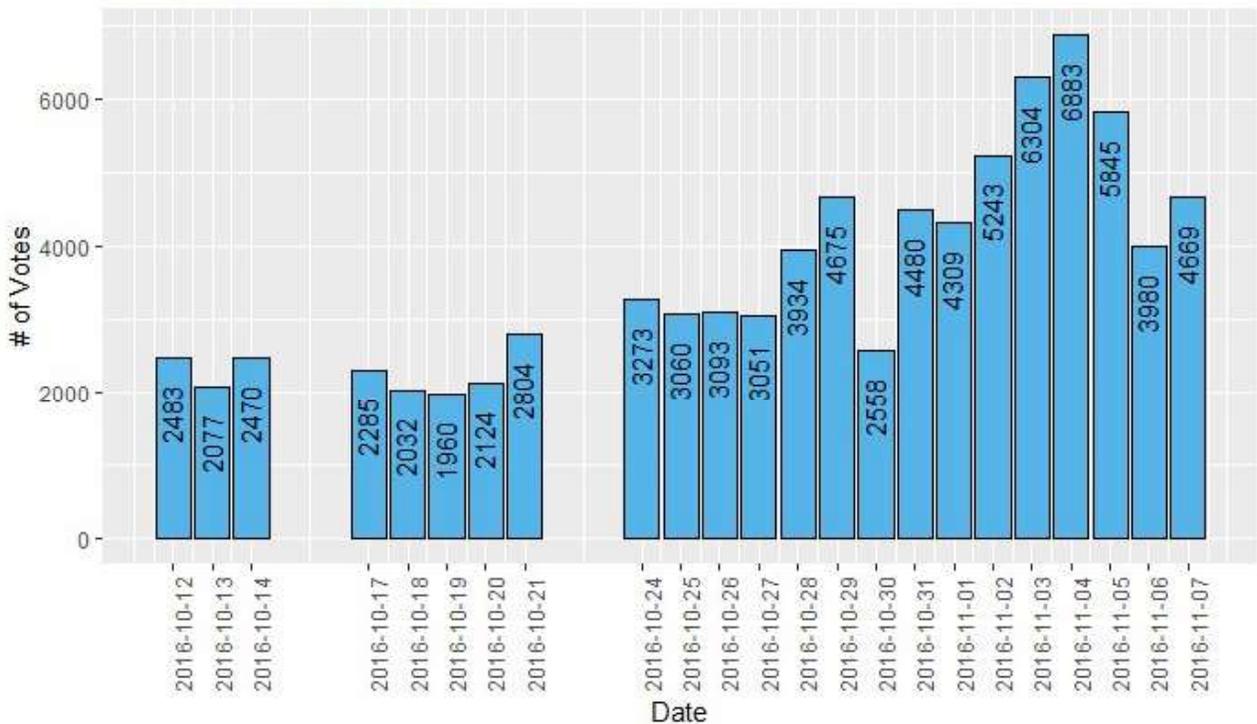
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## Early Vote for Franklin, Warren, Washington, Summit, Delaware, and Defiance Counties by day: 2016 & 2018

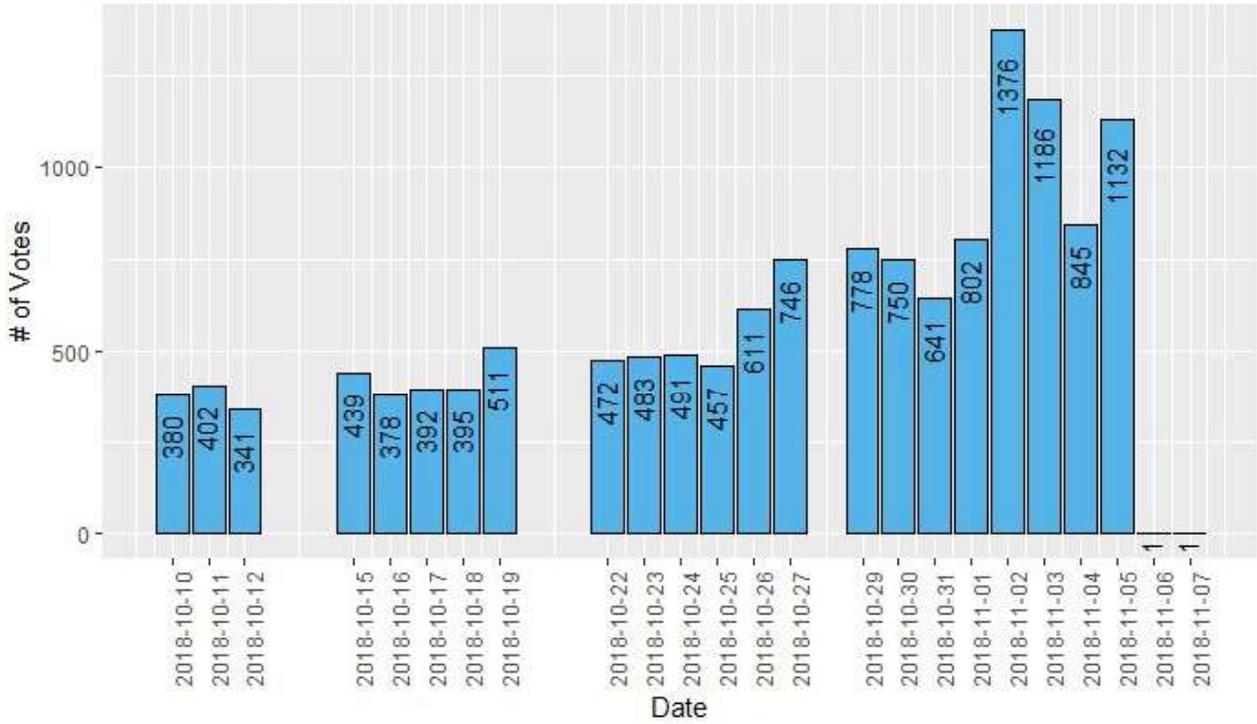
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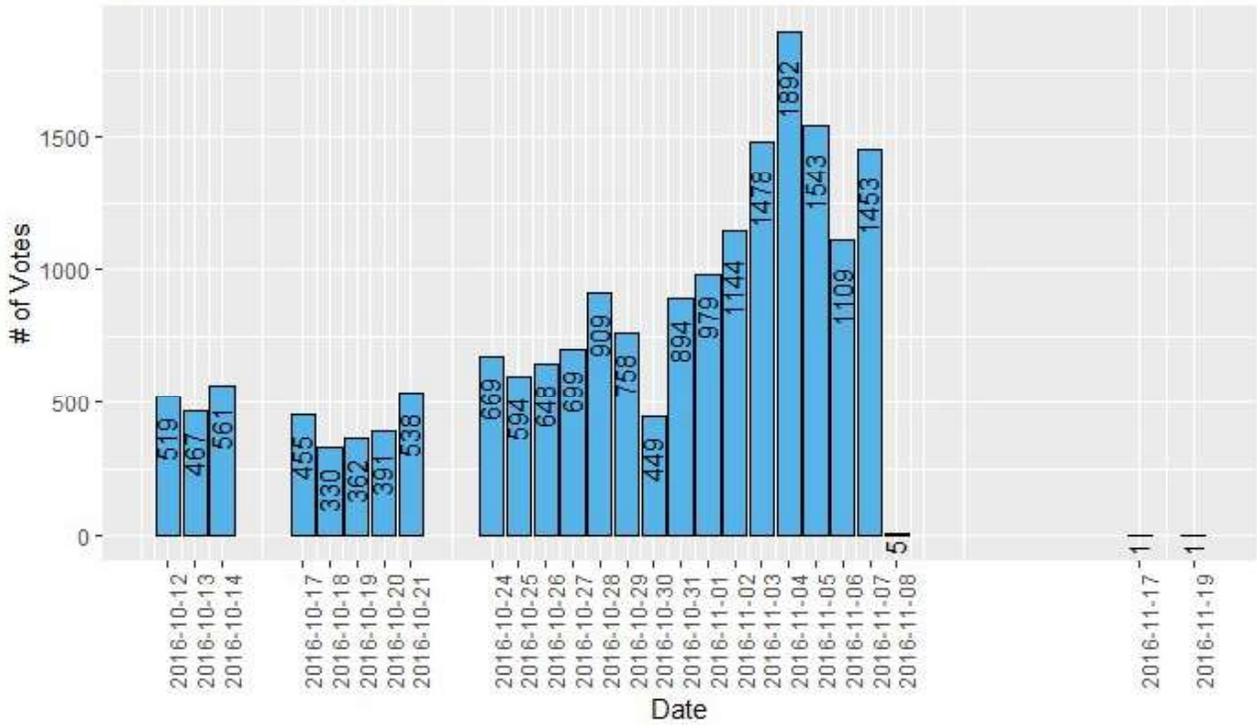
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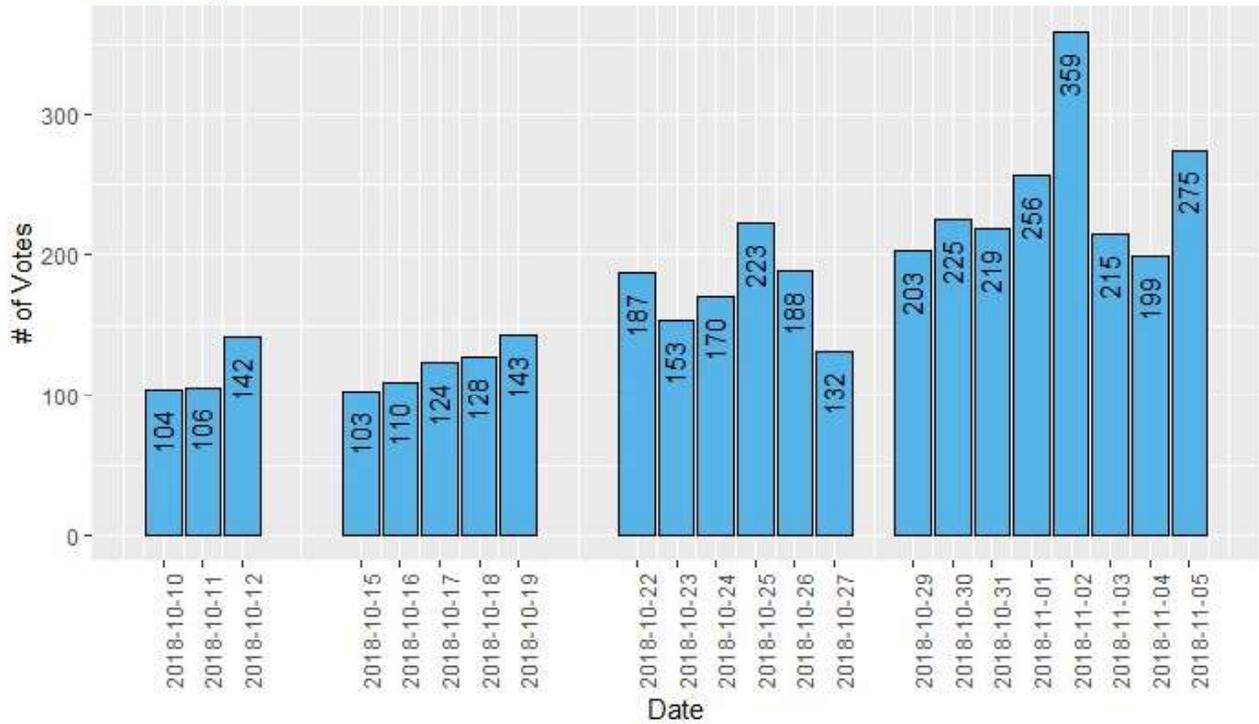
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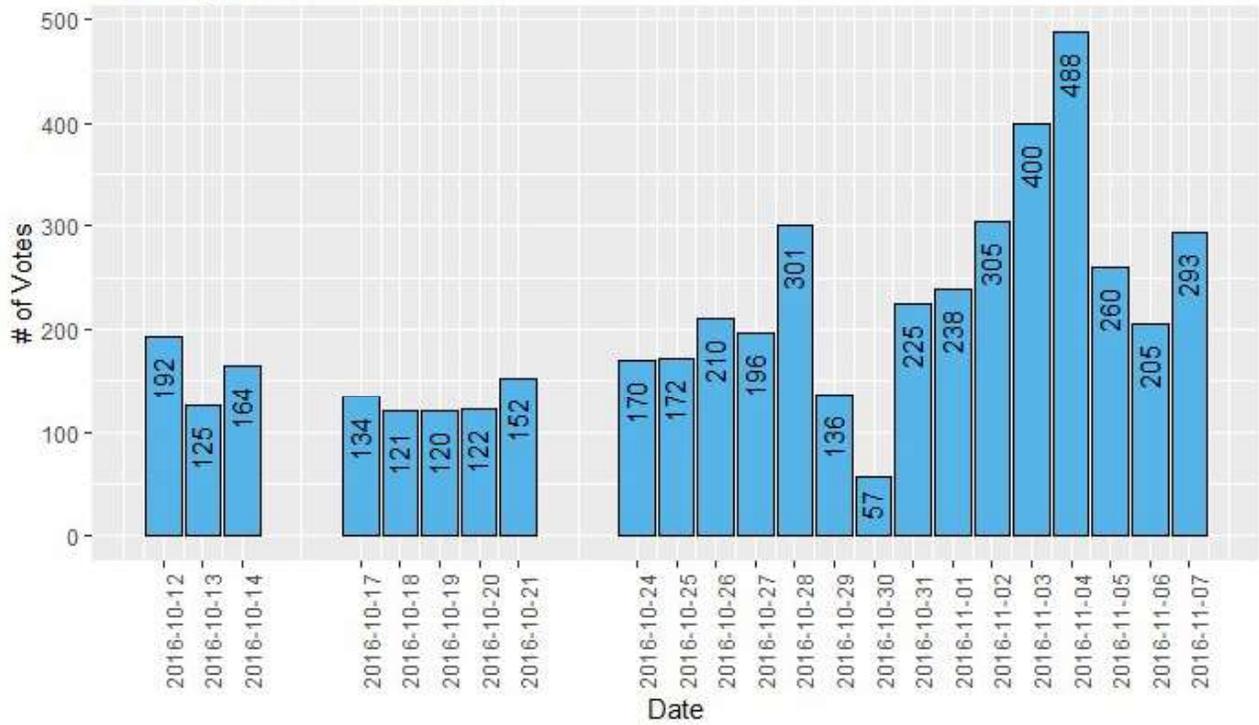
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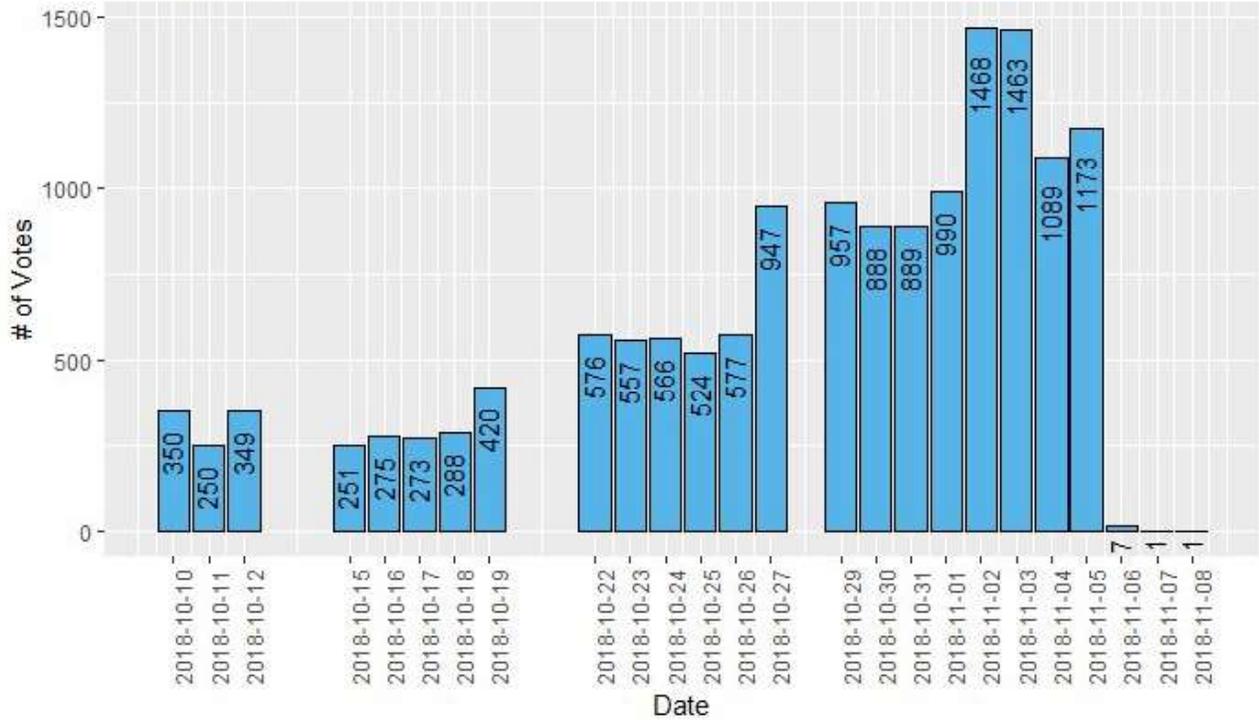
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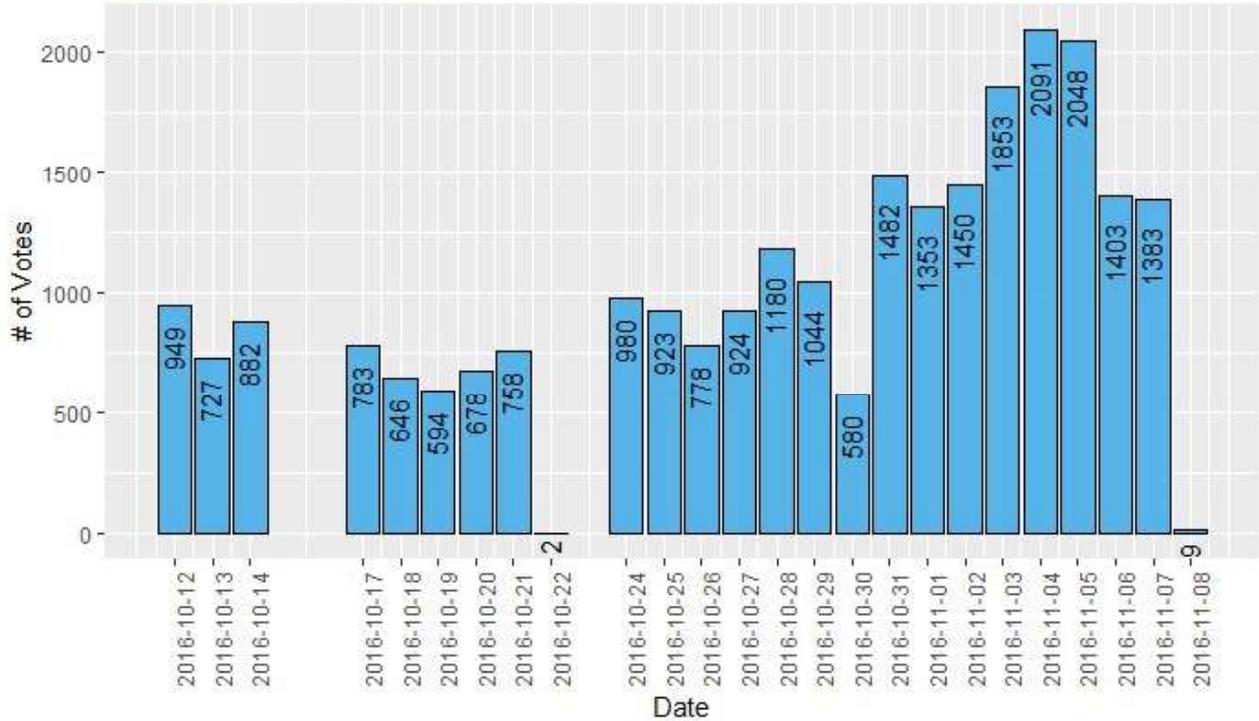
### Washington 2016 General



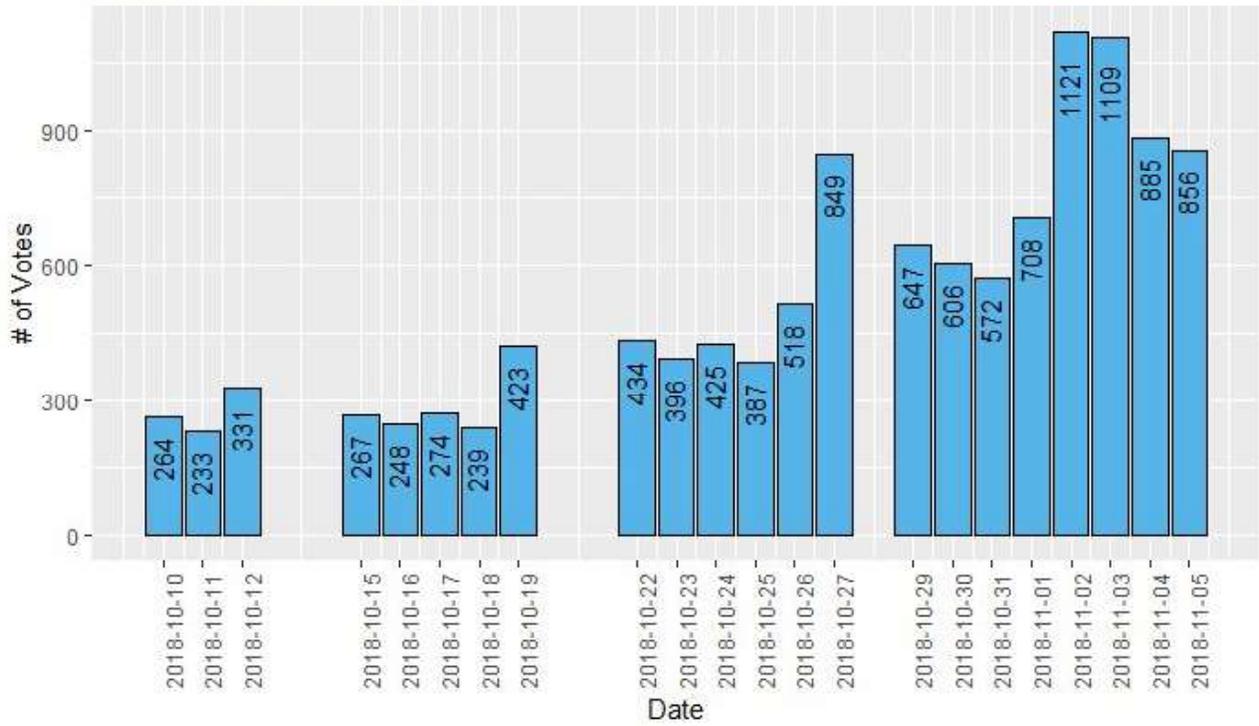
### Summit 2018 General



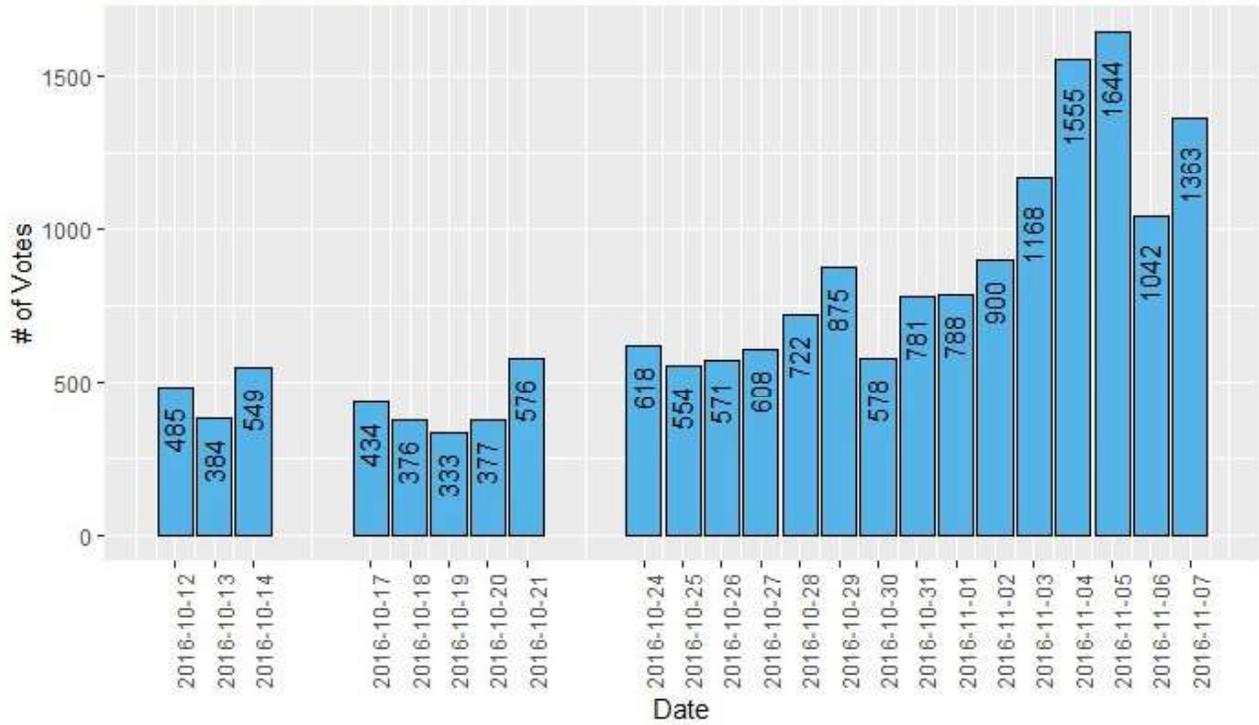
### Summit 2016 General



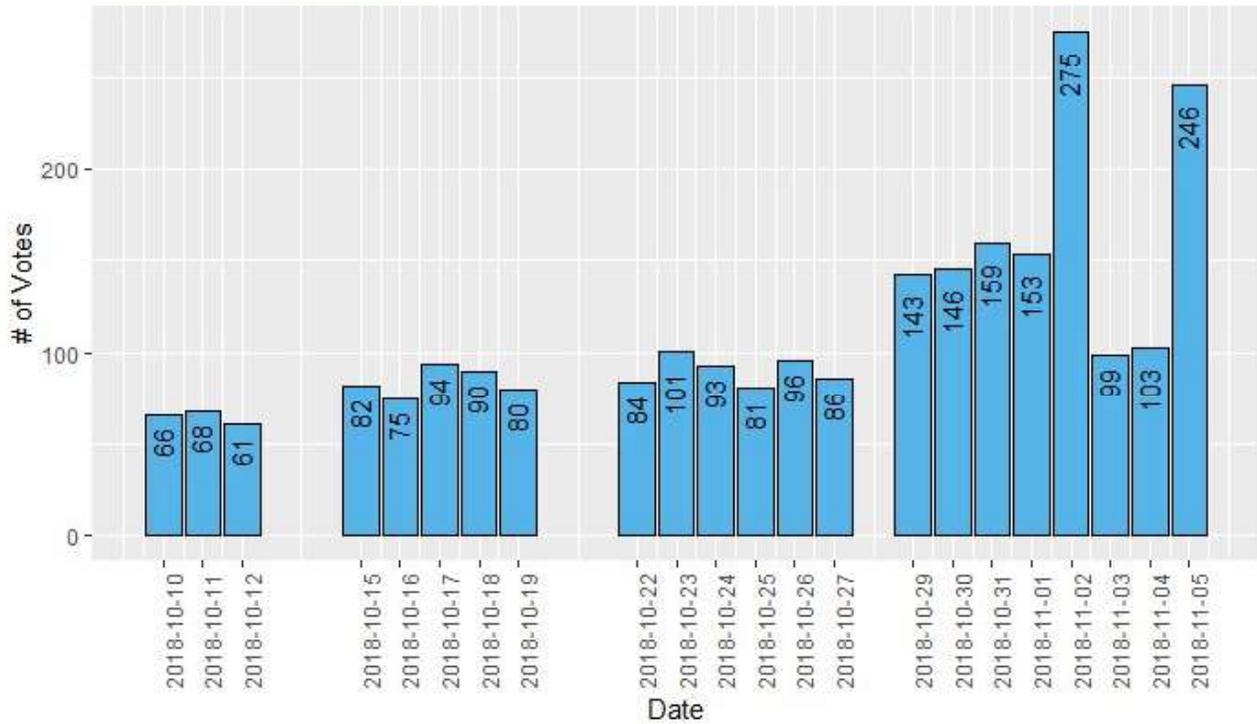
### Delaware 2018 General



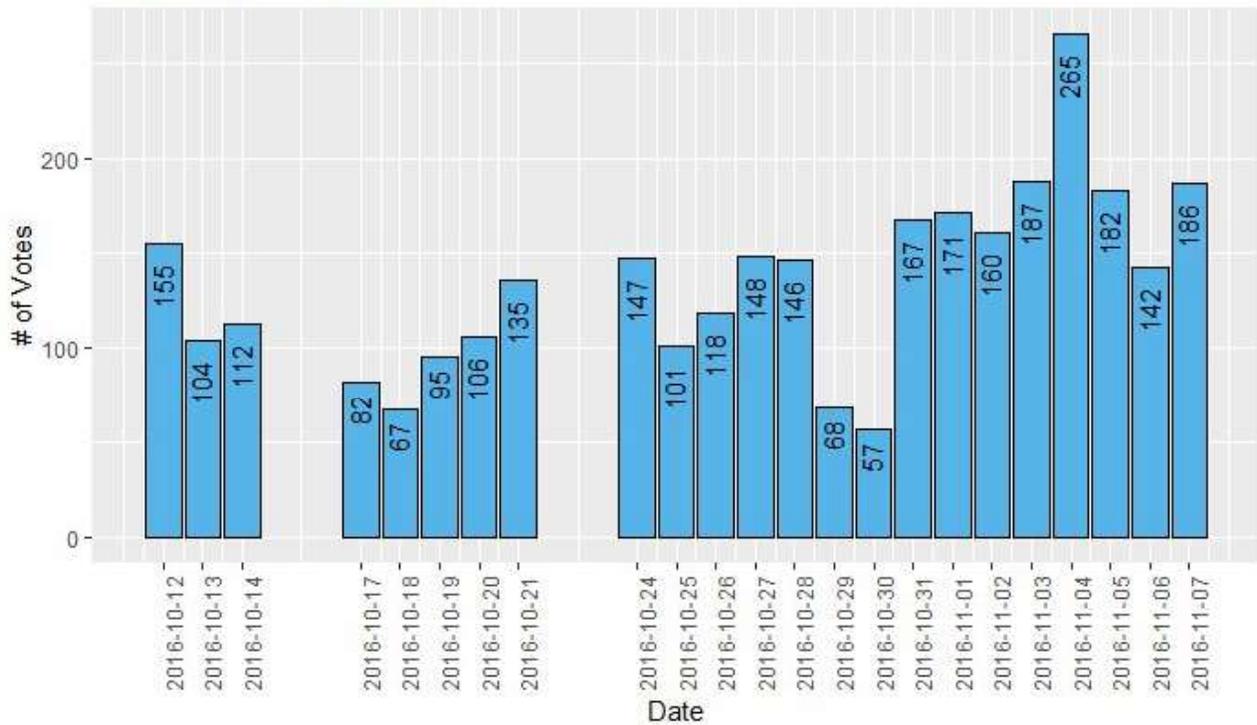
### Delaware 2016 General



### Defiance 2018 General



### Defiance 2016 General



Prepared by All Voting is Local - January 2019.

Data are from Franklin County Board of Elections. Data from all other counties pulled from the following website/s (e.g.) <https://athens.ohioboe.com/apps/avreport.aspx> (<https://athens.ohioboe.com/apps/avreport.aspx>)