

ELIMINATION OF STRAIGHT-TICKET VOTING

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Senate Bill 13 as enacted (implementation blocked by court)

Public Act 268 of 2015

Sponsor: Sen. Marty Knollenberg

House Committee: Elections

Senate Committee: Elections and Government Reform

Updated as of 8-2-16

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: Senate Bill 13 amended the Michigan Election Law (MCL 168.736c et al.) to eliminate the option for voters to cast a straight ticket (and to cast a "split" ticket, as described below) in the partisan section of the ballot, and appropriating \$5 million to the Department of State to update voting equipment.

[NOTE: On July 22, 2016, federal district judge Gershwin A. Drain issued an injunction to block implementation of the straight party voting ban, stating that the removal of the option would have a disproportionately negative impact on African American voters. According to the court's opinion, discussed in detail below, a final ruling on the issue must be made before August 16, at which time election officials will begin to have their ballots printed for the November general election.]

FISCAL IMPACT: The bill would have an indeterminate negative fiscal impact on the state while having a cost of at least \$5 million GF/GP. The changes would result in increased costs to train and educate county clerks and staff on the new election ballot procedures and voting instructions. \$5.0 million GF/GP would be allocated for new voting equipment purchased for local governments that may be needed as a result of longer lines due to longer lines with the elimination of the straight-ticket option.

In addition, the bill would have an indeterminate fiscal impact on local governments. New instructions for ballots would have to be created, resulting in an unknown yet increased cost to each municipality. Local governments would similarly face increased training costs in educating staff and other election-related individuals such as poll workers on the new ballot changes. Local governments could benefit through the purchase of additional voting equipment made through the \$5 million allocation for that purpose, although it is unclear how many machines would be purchased and the local governments that would receive them.

THE APPARENT PROBLEM:

Michigan general election ballots are composed of three sections: the partisan section, which includes candidates representing political parties, such as those running for the U.S. presidency, Congress, the State Legislature, or a university board; the nonpartisan section, which includes candidates for judgeships, municipal offices, and school boards, who do not identify with a political party; and the proposal section, which includes state and local ballot issues.

Currently, voters may choose from three options when voting the partisan section of the ticket, with the following instructions provided with their ballot:

- *Straight Ticket: Vote the party of your choice. Nothing further need be done in the partisan section.*
- *Split Ticket: You may vote a straight ticket AND vote for individual candidates of your choice.*
- *Mixed Ticket: Vote for the individual candidates of your choice in each office.*

In testimony, the bill sponsor expressed concern that the straight-ticket option encourages voters to make a single mark to vote for all candidates from a particular party, rather than educating themselves on individual candidates' positions and credentials. The sponsor also expressed concern that voters may make this mark in the partisan section and then overlook or choose not to vote in the nonpartisan and proposal sections of the ballot. Proponents of this bill believe that eliminating the option to vote straight-ticket will encourage voters to vote more deliberately.

THE CONTENT OF THE BILL:

Senate Bill 13 would amend the Michigan Election Law (MCL 168.736c et al.) by eliminating the option for voters to cast a straight ticket (or "split" ticket, as described above) in the partisan section of the ballot, and appropriating \$5 million to the Department of State to purchase voting equipment to implement the elimination of straight party ticket voting.

The bill would require a voter to select a candidate for each office individually. Rather than making a single selection to vote for all candidates of one political party, or selecting that party and deviating from it for a few races, both of which are currently allowed, a voter would now have to record the vote separately for each race.

Additionally, the bill would appropriate \$5 million from the General Fund to the Department of State for Fiscal Year 2015-2016 to purchase voting equipment to implement the elimination of straight party ticket voting. This equipment would include additional booths and tabulators, in response to the concern that eliminating the straight-ticket option would require voters to mark more boxes, leading to a lengthier voting process and longer lines.

HOUSE COMMITTEE ACTION:

In the House, the Elections Committee added the appropriation of an additional \$5 million for voting equipment, and also tie-barred the bill to House Bill 4724, which would allow in-person, no-reason absentee voting. The tie-bar was later removed by the Senate, with the House subsequently concurring in its removal. The full House also amended the bill to remove the initial \$1 million appropriation, but retained the \$5 million appropriation.

BACKGROUND INFORMATION:

Michigan has allowed voters to vote straight-ticket for over 100 years. In 1964 and 2001, the legislature eliminated straight-ticket voting and, in both instances, public referenda were successful in reinstating it. Because SB 13 contains an appropriations provision, it would be immune from a referendum.

According to the Secretary of State's office, approximately 50% of voters vote straight-ticket. While there is no statewide database documenting straight-ticket voting, available data reflects voting patterns in some of Michigan's most populous counties for the 2014 general (gubernatorial) election (rank in terms of population noted)¹:

	Straight ticket Republican	% of total that are Republican	Straight ticket Democrats	% of total that are Democrats	Total votes	Total straight ticket votes	% of total that are straight ticket votes
Wayne (1)	71,846	23.96%	224,806	74.97%	514,661	299,856	58.3%
Oakland (2)	108,211	49.09%	109,711	49.78%	449,989	220,412	48.9%
Genesee (5)	21,990	30.06%	50,208	68.64%	132,760	73,149	55.1%
Ottawa (8)	42,523	78.7%	10,937	20.3%	90,039	54,006	59.9%
Saginaw (10)	12,936	38.6%	20,195	60.2%	70,163	33,551	47.8%
Allegan (18)	13,133	69.49%	5,467	28.93%	31,929	18,898	59.2%

Bill Passage: This bill was passed with immediate effect on December 16, 2015, and signed by Governor Snyder on January 5, 2016, to be utilized for the first time in the November 2016 presidential election. On March 24, 2016, three Michigan voters and a civil rights organization (plaintiffs) brought suit in federal district court against Michigan Secretary of State Ruth Johnson, in her official capacity (defendant), alleging that the act violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and the Voting Rights Act. On March 27, 2016, the plaintiffs also filed a motion for preliminary injunction to halt implementation of the straight-party voting ban.

Injunction granted: U.S. District Court Judge Gershwin A. Drain granted a preliminary injunction on July 21, 2016, concluding that it was appropriate given that (1) the plaintiffs were likely to succeed on the merits of their Equal Protection claim and Voting Rights Act claim (discussed in greater detail below); (2) the plaintiffs would suffer irreparable injury without the injunction; (3) the state of Michigan would suffer minimal harm if the

¹ Wayne: <http://www.waynecounty.com/clerk/1609.htm>
Oakland: <http://results.enr.clarityelections.com/MI/Oakland/54212/149511/en/summary.html>
Genesee: http://www.gc4me.com/departments/county_clerks1/docs/Elections/201411/14NOVGEN_CANVASS_STRAIGHT.pdf
Ottawa: <http://gis.miottawa.org/ElectionResults/Election/Summary/NOV0414>
Saginaw: <http://www.saginawcounty.com/Docs/Clerk/Elections/Election%20Results/2014/NovemberElection/Straight%20Party%20Totals%202014.pdf>
Allegan: <http://cms.allegancounty.org/sites/Office/Elections/201411/Results%20Reports/GEMS%20SOVC%20REPORT.pdf>

injunction were granted; and (4) the injunction would in fact serve, rather than harm the public interest.

Primarily, the court found that eliminating straight-party voting would have a disproportionately negative impact on African-American voters, in violation of the Equal Protection clause of the 14th Amendment and the Voting Rights Act.²

Equal Protection claim: In considering the Equal Protection claim, the court weighed the *asserted injury* imposed by the act against the *state's justification* for the act, and concluded that the former outweighed the latter. Accordingly, the court concluded that the plaintiffs would likely succeed on the merits of the Equal Protection claim.

Asserted injuries	State's justification
<ul style="list-style-type: none"> • Longer wait times and more congestion at the polls. • Confusion over the removal of the straight-ticket option, as well as the continuing use of "vignettes" (i.e., pictures that typically appear next to a straight-ticket option, and which would not be removed from ballots due to an apparent oversight in the legislation). <p>While the defendants argued that these injuries would be borne by all voters, the court found that they would especially impact those who have historically used straight-ticket voting the most: voters in the African-American community.</p>	<ul style="list-style-type: none"> • Trend away from straight-ticket voting; Michigan is now one of only 10 states which allow it. • Demand for voters to select each candidate individually (belief that this would result in a more knowledgeable electorate). • Encourage voters to make selections based on criteria other than party affiliation. <p>The court found that the first justification was irrelevant and that the other two—even assuming that they are concerns—would not be guaranteed by implementation of the act.</p>

Voting Rights Act claim: Section 2 of the Voting Rights Act prohibits a state or political subdivision of a state from using any "standard, practice, or procedure" that "results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color." Federal case law holds that the standards need not have a discriminatory *intent*, but merely a discriminatory *effect*. The court concluded that P.A. 268 likely will "interact[] with the historical and social conditions facing African Americans" in Michigan "to reduce their opportunity to participate in" Michigan's political process "relative to other groups of voters."³

² In support, the court cited an analysis from the U.S. Census Bureau, which stated that 15 counties in Michigan had a straight-ticket voting rate of about 65% or higher; of these, only two, Hamtramck and Mount Morris, were majority white. The five cities with straight-party voting rates greater than 75% were all majority African American. In sum, the court found that because African Americans utilize straight ticket voting in larger numbers, P.A. 268 would have a larger impact on African American populations than white ones.

³ *Ohio Organizing Collaborative*, 2016 WL 3248030 at

ARGUMENTS:

For:

The trend among states is away from ballots with the straight party voting option. Only ten states still offer straight-ticket voting, with 11 states having abolished or discontinued the practice in the last 21 years. As the sponsor stated in his testimony, "if it's good enough for 40 states, it's good enough for us." It is a remnant of an earlier time.

It should not be too much to ask for voters to make a deliberate, conscious choice at each position on the ballot when choosing candidates for partisan office. This practice expects and demands more knowledgeable voters, and the candidates deserve the individual consideration. Party affiliation is an important factor in determining one's vote, but the positions and values of the candidates themselves and, for incumbents, the quality of their performance in office, must weigh at least as heavy in the minds of the voters.

As the sponsor has stated, removing the straight-ticket option does not prevent voters from voting only for members of one political party. Instead, it prevents the voter from doing so with a single vote. For a reasonably well-informed voter, this should add very little time to the voting process and, in some cases, might encourage the voter to continue to the nonpartisan and proposal portions of the ballot. It is insulting to suggest that some voters or groups of voters will not be able to negotiate a full partisan ballot or will consider voting too much trouble as a result.

While party loyalty can be a positive value, knowing a candidate's party affiliation is not always informative. This might be particularly true of candidates for university trustee and the State Board of Education, candidates for such essentially administrative posts as secretary of state and county clerk, as well as local offices, such as township board members. If the bill is enacted, voters would still be free to vote solely based on party affiliation, but might be encouraged to learn more about the individual candidates, as they would be voting for each race independently.

Studies show that there is an increase in ticket splitting in states that drop the straight party option. This suggests that when voters are forced to evaluate candidates on an office-by-office basis, they make at least some of their selections based on criteria other than party affiliation. Could it be that the "convenience" of straight party voting masks true voter preferences?

In response to concerns about creating long lines at the polls on Election Day, due to the increased time needed to fill out a ballot, the House Elections Committee added an appropriations provision for \$5 million to be spent on additional booths and tabulators, which would expedite the voting process.

Further, minor party candidates and independent candidates are at a disadvantage with straight-ticket voting. Candidates from lesser known parties are more likely to get consideration from voters if evaluated individually.

Response:

Regardless of the merits of the bill, some oppose attaching an appropriation to it rather than seeking additional funding for election administration through the normal appropriations process. Because such an appropriation makes the legislation referendum-proof, it takes away the right of referendum contained in the state constitution.

Against:

Why should we eliminate a voting option that has existed in Michigan for over 100 years and is used by 50% of Michigan voters in both major parties, according to the Secretary of State? No one is currently required to vote using the straight-ticket option. It is merely one option available for those voters who identify strongly with one political party. And, given that between 1.5 and 2.5 million Michiganders utilize this option in every general election, and that 59.68% of voters voted against its elimination in the 2002 public referendum, it is an option valued and used by a majority of voters.

There is no reason to believe that a voter who decides to choose, at one stroke, to vote only and entirely for the candidates of one party is a less informed, less thoughtful, or less engaged citizen than one who consistently splits a ticket. Indeed, it is presumptuous and demeaning to assert that a person's vote is somehow less valid simply because that person identifies exclusively with one political party.

One could argue that given the partisan nature of many of our institutions, it makes sense for people to vote so that the candidates of the party whose platform (ideas, values, and proposals) they most agree with are in the majority within a particular institution (a legislature, commission, or board). It is not unreasonable to vote based on a candidate's willingness to support the party platform rather than based on the candidate's background, abilities, and personality.

City and county clerks testified that the average wait time to vote in Michigan is already 22 minutes, and that this measure could double that wait. Given that some members of the committee noted that they almost never wait in line, one must conclude that others are waiting far longer than 22 minutes in order to average out to that number, and that wait time would only grow.

Some noted that this may also be a civil rights issue, as voters in high-density areas, who tend to be minorities, already vote in the most populous precincts. While precinct sizes are capped at 3,000 voters, clerks acknowledged that most precincts encompass fewer than that number. More populous counties are at the upper end of that range. Committee members and witnesses argued that the bill would have a disproportionately negative, discouraging, impact on voting in minority communities.

Additionally, clerks testified that with the increased number of races that one would have to manually select under the bill, the number of ballots spoiled would increase, leading to still longer lines and voter frustration. They noted that the equipment needed to combat the long lines could cost approximately \$30 million; this bill allocates \$5 million for equipment.

Against:

A number of amendments were advanced in committee as counterweights to the elimination of straight party voting. (Some were declared not be germane by the chair and a majority of the committee.) These included eliminating the appropriation section; delaying the effective date to beyond the next election, to allow election officials more preparation time; expanding absentee voting; allowing early voting for 30 days before Election Day; expanding registration opportunities by allowing later deadlines for registration and allowing young people to register while getting a driver license in advance of reaching 18; providing alternatives to picture ID requirements; making Election Day a holiday; and allowing elderly and disabled voters to move to the front of voting lines. Additionally, tie-bars were proposed to other bills introduced and referred to the Committee on Elections, including those that would create an independent redistricting commission.

Response:

Each of these proposals should be evaluated independently, not as part of this legislation.

POSITIONS:

Advance Michigan supports this bill. (12-8-15)

The Clinton Township (Macomb County) Clerk submitted a letter in support. (12-8-15)

The Michigan Secretary of State is neutral on this bill. (12-3-15)

The Michigan Association of Municipal Clerks testified in opposition to this bill. (12-3-15)

The Michigan Townships Association testified in opposition to this bill. (12-3-15)

The Ingham County Clerk testified in opposition to this bill. (12-3-15)

The Michigan Association of County Clerks testified in opposition to this bill. (12-3-15)

A representative of Grand Rapids testified in opposition to this bill. (12-3-15)

Voices Not Heard in Michigan testified in opposition to this bill. (12-3-15)

Catholics for Choice testified in opposition to this bill. (12-3-15)

The Kent County Board of Canvassers opposes this bill. (12-3-15)

The Macomb County Clerk/Register of Deeds opposes this bill. (12-3-15)

The AFL-CIO opposes this bill. (12-3-15)

The Michigan chapter of the American Federation of State, County and Municipal Employees (AFCSME) opposes this bill. (12-3-15)

The Creston Neighborhood Association opposes this bill. (12-3-15)

The National Association of Social Workers opposes this bill. (12-3-15)

Canton Township opposes this bill. (12-8-15)

Delta Charter Township opposes this bill. (12-8-15)

Michigan State University opposes this bill. (12-8-15)

Representative Howrylak submitted written testimony requesting that the appropriation provisions be removed. (12-3-15)

Legislative Analyst: Jennifer McInerney

Fiscal Analyst: Perry Zielak

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.