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**TESTIMONY ON ELECTION BILLS IN SENATE JUDICIARY COMMITTEE  
S-229, S-335, S-413, S-418, S-598, S-619, S-770, S-792, S-793, S-796,  
S-797, S-800, S-808, S-809, AND S-834  
May 4, 2017**

Below is our testimony addressing a number of the election-related bills being considered by the Committee. We hope that our comments will be given careful consideration.

**S-229. SUPPORT.** This bill would make the state Board of Elections subject to the rule-making provisions of the Administrative Procedures Act. Attached is a memo that the ACLU and Common Cause sent the Board two years ago as to why passage of this bill was important. I am happy to remind the Committee that last year the Board agreed with our position and indicated its formal support for this change. We expect that they will be formally weighing in this year as well. For the reasons expressed in the letter, we urge the Committee to pass this bill.

**S-335. OPPOSE.** This bill would eliminate the changes that the General Assembly recently made to the “mail ballot” statute that no longer require an “excuse” to cast a vote by mail ballot. The current statute appears to work very well, and has been beneficial to voters who, for any number of reasons, may not know for sure whether they will be able to get to their polling place on election day. It is also helpful to voters who wish to take advantage of the opportunity to vote without having to wait in long lines on election day. Any legitimate concerns about abuse of mail ballots can and should be addressed in other reasonable ways, not by

substantially impeding their use. The current statute promotes the exercise of the franchise; this proposed revision to it would undermine it and should be rejected for that reason.

**S-413. SUPPORT.** This bill would provide for a system of post-election audits. We know that voting machines are not infallible, and in order to promote trust in the electoral process, an audit procedure is essential. A striking example occurred this past election with a North Kingstown referendum vote. It was only the lopsided nature of the vote – five no votes in total in the entire town – that prompted an examination of the vote and revealed an error in the ballot construction that led to this false tally. And in 2012, in a case the ACLU handled involving a current state representative, a vote count from election night and three separate recounts by the Rhode Island Board of Elections generated four different results – despite using the same electronic ballot reader for tabulating the mail ballots. In light of examples like these, the time has come to establish a formal auditing process.

**S-418. SUPPORT IN CONCEPT.** This bill would require the Department of Corrections to provide two designated non-profit groups that work with ex-offenders a list containing information about formerly incarcerated inmates who have become eligible to vote. We strongly support efforts to help ex-inmates reinstate their right to vote. However, we do not believe this information collected by the DOC should be given to specific private agencies. Instead, we believe that the DOC (and possibly the Secretary of State) should be tasked with providing discharged inmates more detailed information about their voter registration rights.

**S-598. OPPOSE.** The bill would require people submitting emergency mail ballots to supply photo ID. While there have been numerous questions raised over the years about the mail ballot process (well before the mail process law was amended to make it easier to use), this bill does not address the most common ones we are aware of. There have been allegations of witnesses coercing people to vote a certain way, and voters submitting mail ballots from

business addresses, for example. Yet this bill instead focuses on voter impersonation fraud via mail ballots. What the literature and studies tell us is that certain groups of people most likely to make use of mail ballots – the elderly, the frail and individuals with disabilities – are also the groups more likely not to have the identification required of them under the state’s voter ID law. Because this bill makes a bad law worse, we urge its rejection.

**S-619. SUPPORT AND AMEND.** This bill would establish an in-person early voting process, to be fleshed out through regulations adopted by the Board of Elections. The ACLU strongly supports this concept, as we believe that early voting is a key way of increasing the ability of the public to exercise the franchise. The long lines that awaited some voters at polling places in the last general election – and many other past elections – confirm the utility of this approach, which a majority of states have already adopted in one form or another. We particularly applaud the fact that this bill, in order to best promote its goal, contains provisions for early voting periods that include weekends and at least some late evenings. Early voting is an important supplement to expansive mail ballot voting for a number of reasons, including being able to ensure that one’s ballot has been filled out correctly and is being counted.

However, in order to ensure that the standards for implementing early voting are both clear and transparent, we urge – for the reasons we have expressed in support of S-229, but in the event S-229 does not get enacted into law – that the legislation require the Board of Elections to adopt its rules about this through the Administrative Procedures Act. Presently the Board is not subject to the APA’s rule-making requirements. It is virtually the only major state agency exempt from those provisions. As a result, the Board can adopt regulations affecting the voting process without having to go through a public notice or hearing process. While the Board presently voluntarily engages in APA rule-making hearings, that is vastly different from having remedies available should the process not be followed. There is no legitimate rationale for

exempting such an important agency from this oversight process, especially since the Board agrees, and we therefore urge an amendment to address this issue.

**S-770. SUPPORT AND AMEND.** This bill would provide for automatic voter registration at the DMV and potentially, in the future, at other locations where the public interacts with state agencies. With some important caveats, the ACLU strongly supports this proposal. AVR is a concept whose time has come. Registering to vote should be easy, and the government should take more responsibility for making it easy.

At the same time, without safeguards, people not qualified to vote — immigrants who have not yet become citizens, for example — could find themselves inadvertently registered. This could subject people to prosecution. It could be an even more serious problem if an individual doesn't understand that, even though registered, she or he is still not allowed to vote, and then casts a ballot. That could accidentally create the kind of voter "fraud" problem some people warn about but that generally does not exist.

We therefore believe that the legislation should include a clear voter attestation standard in the registration process, and one that takes into account both the needs of English language learners and persons with disabilities. The process should make clear that voting is not a condition of receiving whatever benefit the person is seeking. The registration confirmation letter that voters receive in the mail should make clear a process for correcting the error if they have been inappropriately registered. Language should also protect individuals from prosecution for their inadvertent inclusion as a registered voter due to use of an automatic voter registration system. We look forward to working with the committee and the Secretary of State to address these issues.

**S-792. AMEND.** This bill would clarify that voting precincts can have more than one ballot counting machine, a clarification that the ACLU supports. However, the bill goes on to

eliminate a specific minimum number of booths per number of voters and allows the Board of Elections to establish a quantity of voting booths for precincts through rule-making. The ACLU has concerns about eliminating the statutory floor for the minimum number of booths available at polling locations. We recognize the Board's interest in having some flexibility in determining how many polling booths are needed at any particular precinct, but exercising that flexibility should be based both on guidance imposed by a statutory floor and some concrete regulatory standards. Providing broad and open-ended discretion to a state agency in this regard can easily be used to promote voter suppression as much as voter enfranchisement. We believe a statutory minimum should remain, and Board of Elections' regulations should set some standards for allocation of polling booths as a supplement to the statute. Also, please see our comments on S-229 and S-619 below regarding the APA rule-making process.

**S-793. SUPPORT.** This bill would allow people who are employed by the federal, state or local government to serve as poll workers in party primaries. It makes no sense to bar individuals qualified to work in general elections from engaging in the same duties for primaries, especially in light of the difficulty that many municipalities have in finding a sufficient number of poll workers.

**S-796. OPPOSE.** This bill would bar a person from running for office if he or she has failed to properly file a campaign finance report and a civil complaint has been filed against them, or a referral to the Attorney General has been made. The ACLU opposes this legislation for a number of reasons. First, we believe it raises constitutional concerns. The R.I. Constitution sets the standards for qualification for running for office, and as a consequence, we do not believe that the General Assembly can expand those requirements in such a drastic manner.

It is also very important to emphasize the significant remedies that are already in place for candidates who fail to comply with reporting requirements or other aspects of the campaign

finance laws. It is a criminal offense for a candidate to “willfully and knowingly” violate the campaign finance statute. R.I.G.L. 17-25-13. The law further authorizes courts to issue injunctive relief against violations of this statute and, more importantly, to impose a civil penalty of up to three times the amount of the contributions or expenditures not reported by the elected official. R.I.G.L. 17-25-16. The use of civil proceedings to follow up on non-reporting would help ensure fiscal consequences for violations. To additionally bar an individual from running for office, however, impinges on the rights of not only the candidate, but also the voters.

There are also practical concerns with the legislation. Candidates who fail to file reports closest to the election, when reporting is most critical, are the ones most likely not to be taken off the ballot based solely on the timing.

Finally, we find it deeply troubling that the mere filing of a civil action by an administrative agency could lead to the disqualification of a candidate and the disenfranchisement of potentially thousands of voters from voting for the candidate of their choice. Such a momentous decision – if it is ever to be allowed – should be made only by judicial authorities, after proper notice and hearing, not by an administrative body.

In short, the State should make use of its civil authority and the criminal penalties already in the law to go after purported scofflaws. But it should be left up to the voters to decide whether they want to elect somebody who is in alleged violation of campaign finance laws. For all these reasons, we urge rejection of this bill.

**S-797. SUPPORT.** This proposed revision to the law would allow a voter who moves from one municipality to another municipality 30 days or more prior to an election to complete an affirmation form and vote a full ballot in their new precinct. Limited ballots at the Board of Canvassers would be eliminated under this change. We support this revision as it will better promote the franchise for people who have neglected to change their address for voting purposes. Presently, they are limited to voting by provisional ballot, which for numerous reasons

are often not counted. This bill would have the added benefit of better keeping the voting rolls up to date.

**S-800. SUPPORT.** This bill would repeal an archaic and unconstitutional law requiring signatures to appear on all political posters and fliers. The statute is in direct conflict with a 1995 U.S. Supreme Court decision striking down a very similar Ohio law. More to the point, based on that decision, this Rhode Island statute was specifically ruled unconstitutional in a lawsuit brought by the ACLU. *Blakeslee v. St. Sauveur*, 51 F.Supp.3d 210 (2014). The law should be formally removed from the books to prevent any confusion among police and municipal officials about its unenforceability, since its continued unconstitutional enforcement is what led to the need for litigation in Rhode Island in the first place.

**S-808. SUPPORT.** This bill would, among other things, eliminate aggregate limits on campaign contributions. The ACLU supports amending the current statutes to eliminate aggregate limits. Repealing these sections would put Rhode Island law into compliance with the U.S. Supreme Court's decision three years ago in *McCutcheon v. Federal Election Commission*.

**S-809.** The exact intent of this bill is unclear to us. To the extent it would limit the state's obligation to tally and report on write-in votes, the ACLU opposes it. We believe voters should have the right to have their votes counted, even if it is for an obviously losing cause. A voter is making a statement by deciding to cast a write-in vote, regardless of whom that vote is for. It should be respected and counted.

We understand that many of these votes may seem silly, but they nonetheless remain a valid exercise of a person's individual right to vote. People using this option are attempting to make a point, and while the time spent tallying them may seem wasteful, it should be considered part of the process of recognizing the role of the franchise. If we truly believe that

each vote counts in a democracy, write-ins should not be ignored or uniformly treated as frivolous.

**S-834. OPPOSE IN PART.** The ACLU of RI opposes the first section of this bill, which would bar candidates from being on the ballot if they fail to certify at the time of declaration that they are up to date on their reporting requirements and have no unpaid fines on campaign finance-related matters. We oppose this bill for the same reasons we oppose S-796, the Board of Elections' effort to keep candidates off the ballot.

Submitted by: Steven Brown, Executive Director