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**TESTIMONY ON 18-S 2967, AMENDING THE RULES OF THE SENATE
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This resolution seeks to revise the Senate rules to establish certain procedures for the “discipline of a member.” In light of the controversy that occurred earlier this year with the Senate’s preliminary consideration of instituting expulsion proceedings against former Senator Kettle, we commend the Senate for recognizing the need to have some formal procedures in place before undertaking such a grave matter, and to have something in place before the next controversy occurs.

However, while the ACLU has a number of preliminary specific comments and recommendations to offer, our primary message is to ask the Committee to hold off passing a rule change until it can be given more thorough consideration next session.

In February, when an expulsion resolution involving Senator Kettle was introduced, we raised concerns that the Senate was acting much too hastily on such a critical matter. That urgency is gone, but the matter is again being considered in haste: this major rule change was introduced only a week ago, and with adjournment right around the corner, acting on the resolution means acting within a week or so. However, an issue as momentous as this deserves to be considered with deliberateness, not alacrity.

On the substance of the resolution itself, we wish to offer some specific initial comments about the proposal. We do not believe that it offers sufficient due process to members who may be subject to its proceedings. This provides another reason, in our view, for taking more time in considering the rule change.

First, while titled “discipline of a member,” the proposed rule addresses only one type of discipline – and the most severe type that can be imposed – expulsion. But there are many penalties within the Senate’s authority, short of this ultimate punishment, that can be imposed to address a Senator’s misfeasance or malfeasance in office. Reprimands, censures, fines, stripping of committee memberships, or even suspensions from office are potential penalties short of expulsion that the Senate should have the option to consider and exercise. The proposed rule’s failure to offer any options other than expulsion is troubling.

The proposal states that the member shall be entitled to due process, but exactly what process is due is left unduly sketchy. It is also somewhat confusing since the proposed rule references the “customary legislative process for hearings” as the standard to follow, but those hearings have never been designed to address or reflect the uniquely adversarial process that is inherent in an expulsion proceeding.

The resolution leaves many other important questions unanswered. We recognize that some of the details can and should be left to the hearing body – in this case the Judiciary Committee – to flesh out. But some basic details should be contained in the rule itself in order to offer some structure, guidance and consistency. We cite a few examples below:

* The expulsion process begins with the introduction of a resolution by the Senate president, but there are no standards in place for how detailed the resolution must be or the

evidence that must be presented to initiate this grave proceeding. It is critical from the beginning that the accused Senator be aware of the specific nature of the charges that he or she must defend against.

* Conspicuous by its absence is any reference to the member's right to be represented by counsel during the proceedings.

* The committee's vote "shall be sent to the floor for the next legislative day available for consideration." This language is somewhat ambiguous, but it suggests that the floor debate could occur almost immediately after the committee makes its decision, giving little time for Senators who did not serve on the committee to examine and consider all the evidence.

* In a similar vein, there are no timelines in place to ensure that the accused member has sufficient time to prepare a defense. We note that the resolution introduced earlier this year regarding Senator Kettle was premised on an extremely expedited timeframe for determination that struck us as very unfair to the accused. The rule should prevent this from happening.

* The proposed rule contains no standard of proof for the committee to use in making its determination whether to bring an expulsion resolution to the floor. In sustaining the charges, must committee members consider that the evidence meets only a "preponderance of the evidence" standard, proof beyond a reasonable doubt, or something in between? Is the standard of proof meant to be up to each committee member to decide for themselves? This is a matter that should be determined by the formal rules, not on ad hoc basis by committee.

* The Judiciary Committee is given the authority to compel witnesses and subpoena evidence, but it is not made clear whether the accused member has the same right.

* Finally, we understand that Article VI, Section 7, by being so open-ended, gives the Senate fairly broad authority to determine how and why to expel members, and we appreciate the purpose behind that vagueness. At the same time, some limitations on what constitutes an expellable offense are appropriate in light of the severity of the punishment. However, this proposal, even while calling the power to expel “extraordinary,” suggests that expulsion need not be reserved for serious breaches of the law or ethics. That is, by saying only that “*generally*” the punishment should be “reserved for very serious breaches of legal or ethical responsibilities,” the rule clearly implies – inappropriately, in our view – that expulsion is available for non-serious breaches.

In short, because of the extremely serious consequences of expulsion, the ACLU of RI believes that more detailed standards and due process procedures than those present in S-2967 should be incorporated in the rules. It is important to emphasize that expulsion does not just affect one Senator – it affects thousands of residents, depriving a legislative district’s constituents of their expected representation from the person they duly elected, and potentially denying them any representation for much of a legislative session. This disenfranchisement of an entire voting district is such an extraordinary intrusion on the representative process that it should be exercised transparently and with very clear, fair and thorough procedures in place from the outset.

For all these reasons, the ACLU urges this committee and the Senate to take time during the off-season to consider this in more depth in order to develop a more detailed rule, rather than rush a rule amendment through in the waning days of the session.

Thank you for considering these views. We hope the committee finds them helpful.