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ACLU OF RHODE ISLAND TESTIMONY ON ELECTION-RELATED LEGISLATION

HOUSE JUDICIARY COMMITTEE
January 27, 2016

1. H-7030, Relating to Term Limits -- Oppose in Part.

2. H-7031, Relating to Lobbyist Contributions -- Oppose

3. H-7146, Relating to Campaign Finance Compliance -- Oppose

4. H-7089, Relating to the State Merit System -- Support

5. H-7248, Relating to Early Voting – Support/Amend

6. H 7024, Relating to Electronic Voter Registration – Support

TESTIMONY ON 16-H 7030, A RESOLUTION RELATING TO TERM LIMITS FOR LEGISLATORS

The ACLU has no position on the provisions of this proposed constitutional amendment that would expand House and Senate terms to four years. However, we do oppose the provision that would set term limits for both state Senators and Representatives.

The ACLU has long argued against attempts to establish term limits for political office. Rhode Island, like every other state, already has a term limit mechanism in place: Election Day. If voters are dissatisfied with their elected officials, they can make that dissatisfaction known at election time. Term limits can penalize some of the most qualified officials who earn the public's trust to serve for a long period of time and who also develop necessary expertise through their length of service. In states where term limits have been established for legislative office, we have heard anecdotally that the net effect is often to give third parties, such as lobbyists and government bureaucrats, even more influence in the process than they otherwise have.

If the concern prompting this proposal is that too many elections are uncontested, that is a legitimate concern. However, in our view, the solution is not to limit the public's choices, but to find ways to encourage more people to run.

TESTIMONY ON 16-H 7031, RELATING TO LOBBYIST POLITICAL CONTRIBUTIONS

This bill would bar lobbyists from making political donations to legislators during the legislative session. The ACLU opposes this bill because we believe lobbyists retain First Amendment rights to participate in the political process by making contributions to both incumbent legislators and challengers.

In striking down a Connecticut statute that banned lobbyists from making donations to state legislators, a federal appeals court noted: "The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt, and favoritism and influence are unavoidable in representative politics. Influence and access, moreover, are not sinister in nature. Some influence, such as wise counsel from a trusted advisor—even if that advisor is a lobbyist—can enhance the effectiveness of our representative government." *Green Party of Connecticut v. Garfield*, 616 F.3d 189, 206-207 (2nd Cir. 2010) (quotation marks and citations omitted).

We recognize that this bill is not a total ban on lobbyist contributions, but rather a durational one. However, it remains unclear to us what such a restriction actually accomplishes. Any concerns about impropriety – or even the appearance of impropriety – with lobbyists giving donations during the session are hardly resolved if the donations are given the week before the session starts or immediately after the session ends.

Last year, we examined practices in Maryland, which has a similar law. We were able to obtain a list of scheduled legislative fundraisers from January 3rd through January 7th of 2014, the week right before that state's legislative session began. The list showed that over 30 fundraisers were scheduled during that one-week period.

While a bill like H-7031 is certainly well intentioned and may have the beneficial effect of freeing up the nights of lobbyists during the legislative session, we submit that it does not address issues of corruption in any meaningful way, but it does impede the exercise of First Amendment rights.

TESTIMONY ON 16-H 7146, RELATING TO CAMPAIGN FINANCE COMPLIANCE

This bill would bar any candidate who owes $2,000 or more in fines to the state board of elections from running for office.

The ACLU opposes this legislation for a number of reasons. First, it raises significant 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, by statute, expand those requirements in such a drastic manner.

Second, it is important to emphasize the significant remedies that are already in place for candidates who fail to pay fines. 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. To additionally bar an individual from running for office, however, impinges on the rights of not only the candidate, but also the voters.

Finally, however unintended, this legislation would give the Board of Elections the power to decide which candidates who owe fines can run for office. That is because the Board routinely exercises discretion in trying to settle outstanding fines. By being tougher or more lenient in deciding what constitutes a reasonable settlement for any particular candidate, the Board could, in effect, decide who does and does not get to run for office. For all these reasons, the ACLU opposes this bill.

TESTIMONY ON 16 H-7089, RELATING TO THE STATE MERIT SYSTEM

This bill would repeal a statute that bars classified employees from seeking nomination or becoming a candidate for elective state office, and instead require their resignation from employment only if they win the election. The ACLU supports this bill as a piece of compromise legislation, although we strongly believe that a complete repeal of this ban would be more appropriate.

Passage of H-7089 is a matter of basic fairness. There is no logical basis for allowing unclassified and non-classified employees to run for state office but to bar classified employees from doing so. It is especially unfair since it is the former categories that are likely to be political positions and create much greater potential for conflicts of interest. A nurse in a state facility, for example, should have just as much right to run for state office as a professor at URI's school of pharmacy or a policy-making employee at the Department of Health, both of whom presently would, unlike the nurse, be able to run for office. Rank-and-file state employees deserve the right to run for state office just as their often higher-paid colleagues can.

For the same reasons, we also believe that classified employees should be allowed to hold an office they win without resigning their job. We nonetheless support this bill's efforts to bring a modicum of fairness to the process.

TESTIMONY ON 16-H 7248, RELATING TO EARLY VOTING

The ACLU supports H-7248, 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 confirm the utility of this approach, which a majority of states have already adopted in one form of 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.

However, we have two suggestions for amendments. First, the language should be more

explicit in requiring, absent special circumstances, that voting take place in accessible locations (both to voters with disabilities and to the general public). As written, the bill simply allows municipalities to seek authorization from the Board of Elections to have voting performed in "non-conforming buildings," which we assume means non-accessible buildings.

Second, in order to ensure that the standards for implementing early voting are both clear and uniform, we would urge that the legislation require the Board of Elections to adopt formal regulations, through the Administrative Procedures Act, governing the procedures and standards to be used for early voting. 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. That is, the Board can adopt regulations affecting the voting process without having to go through a public notice or hearing process. There is no legitimate rationale for exempting such an important agency from this oversight process, and we therefore urge an amendment to address this issue.

TESTIMONY ON 16-H 7024,
RELATING TO ELECTRONIC VOTER REGISTRATION

The ACLU strongly supports this bill, establishing an electronic voter registration system. We especially appreciate the fact that it ensures that the website is accessible to individuals with disabilities. This legislation is an important step in making the voter registration process more accessible and available to a generation used to online activity, and we urge the Committee's passage of this bill.