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ACLU OF RI POSITION: SUPPORT

TESTIMONY IN SUPPORT OF 21-S 516, AN ACT RELATING TO ELECTIONS March 18, 2021

The ACLU of Rhode Island strongly supports this legislation, which would make some important and comprehensive changes to the state's election laws, all with the goal of making voting in the state more equitable, accessible and secure.

We will not repeat the detailed testimony being submitted in support of the bill by Common Cause RI and the RI Voting Access Coalition, of which the ACLU is an active member. Instead, our testimony will focus on one particular critical provision in the bill that is also supported by the Board of Elections. That portion of the bill would repeal the requirement that a person wishing to vote by mail ballot must obtain the signatures of two witnesses or a notary for their ballot to be valid.

As committee members are probably aware, the ACLU filed a lawsuit last summer to challenge this requirement. The lawsuit went all the way up to the U.S. Supreme Court, which affirmed lower court decisions approving waiver of the two witness/notary requirement for elections conducted during the pandemic in 2020. In fact, that requirement ended up being waived for four elections held in the state in the past year. The results of that history are notable for two things: there were no allegations whatsoever that elimination of the witness requirement led to any fraudulent conduct, and the waiver allowed hundreds of thousands of Rhode Island voters to vote more securely and safely.

Even with the end of the pandemic hopefully around the corner, this history demonstrates the need for repeal of this requirement. Pandemic or not, it is a burdensome mandate for many people and, we would argue, an invitation to fraud rather than a preventative of it.

On the first point, it is worth noting the background of just two of the plaintiffs in the ACLU's lawsuit, for their situations demonstrate that permanent repeal of the witness requirement serves the public good in making voting easier and safer.

One of the plaintiffs was a 32-year-old woman who is blind and unable to drive, and therefore must vote by absentee ballot. The burden and health risk of Covid-19 to her and to her elderly grandmother who lived with her were obvious. But even post-pandemic, the two-witness requirement is a significant barrier that makes it much harder for her to vote. She therefore has expressed her strong support for permanent repeal of this requirement.

A second plaintiff was an 88-year-old Warwick resident who lives alone and cannot drive due to a severe back condition and, also due to this condition, is unable to vote in person. She too was deeply concerned about the heightened risk of contracting COVID-19 that would arise if she were forced to break social distancing guidelines in order to have her ballot witnessed. But obtaining the signatures of two witnesses remains a burden for her, and one that would be alleviated by passage of this bill.

The only argument put forward for this onerous requirement is that it helps prevent fraud. To the contrary, we believe that the witness requirement is both ineffective and counter-productive as an anti-fraud measure. It may also explain why Alabama is the only other state in the country with a two-witness signature requirement, and why only a handful of other states require a notary to validate a mail ballot. Requiring two witnesses is ineffective because the Board of Elections does not – and does not have the ability to – confirm the signatures of the witnesses to the ballot. It therefore serves no meaningful public purpose, while severely disadvantaging some people wishing to exercise their right to vote without having to go to the polls.

We believe the requirement is also counter-productive because it can actually *promote* fraud. Mail ballot witnesses may often come from political campaigns, raising concerns about their presence being used to intimidate or mislead vulnerable voters. By eliminating the witness requirement and allowing residents to vote in the privacy of their own home, without the need for third parties to hover around them, the possibility of fraud or voter intimidation is greatly minimized. In short, there is absolutely no reason, much less a compelling one, for Rhode Island to continue to impose this requirement on voters.

For all these reasons, we urge the committee's support of repealing the two-witness/notary requirement for mail ballots. For the reasons expressed by others, we urge support of this entire legislative proposal.

Thank you for considering our views.