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TESTIMONY ON 2016-H 7249, AN ACT RELATING TO ELECTION LAW

The ACLU supports this bill, which proposes a number of changes to state election law, many of them designed to address problems that have arisen in recent elections in Rhode Island. The amendments are based on the premise that the state should try to ensure that every qualified vote is counted and that speculative concerns about administrative convenience should not trump the fundamental right to vote. Although the Board of Elections has raised objections in the past about the burdens that passage of this law would impose, experience from teaches that these concerns are vastly overblown.

The major aspects of this bill would ensure that provisional ballots are counted to the maximum extent possible, provide for a fair recount process in those small number of elections where a recount is necessary, make sure that voter intent was considered before discarding ballots that were cast by voters, establish an audit procedure to ensure the accuracy of election day vote tallies, and make the Board of Elections subject to the rule-making provisions of the Administrative Procedures Act. Attached as an appendix is an amendment-by-amendment explanation of the changes, many of which we believe should be non-controversial.

However, we do wish to briefly respond in advance to some of the arguments that have been advanced in the past by the Board of Elections against portions of the bill. First, the Board has asserted that a determination of voter intent would allow the agency to arbitrarily determine which candidate should be credited with a vote. But the Board of Elections already looks at mail ballots to determine voter intent, and similarly counts provisional ballots manually.

Second, the Board argues that allowing provisional ballots to count in statewide and citywide races, when a voter votes at the wrong precinct, would create havoc and an undue burden on the agency. But since the Board allows provisional ballots by voters at the wrong precinct to count in federal races, why not count them in statewide and citywide races? A voter who happens to go to the wrong precinct to vote simply should not see virtually all of his or her franchise rights extinguished. The scenario that Board staff has raised in the past about people going to any polling place in the state they want to if this change took effect is absurd on its face and should be rejected.

In terms of recounts, the Board has argued that allowing inspection of ballots would take too much time. But elections qualifying for recounts are few and far between. In 2006, in three races where candidates sought court intervention during the recounts, all three candidates conceded their races within 24 hours of being able to review questionable ballots. Committee members may also recall the differing machine-read recounts in September 2012's District 58 primary, and the Board's acknowledgement that the machines can read the same ballot differently, are more than sufficient reasons to provide for manual recounts and post-election audits of the machines.

This bill provides important and positive changes to promote the right to vote, and we urge the Committee's support for those changes.

AMENDMENT-BY-AMENDMENT EXPLANATION OF 2016 H-7249, THE ELECTION REFORM BILL

The ACLU supports this bill, which proposes a number of changes to state election law, many of them designed to address problems that have arisen in recent elections in Rhode Island. The amendments are based on the premise that the state should try to ensure that every qualified vote is counted and that speculative concerns about administrative convenience should not trump the fundamental right to vote. Although the Board of Elections has raised objections in the past about the burdens that passage of this law would impose on their duties, experience from recent elections teaches that these concerns are overblown.

The key issues addressed by the legislation are ensuring that provisional ballots are counted to the maximum extent possible, providing for a fair recount process in those small number of elections where a recount is necessary, establishing an audit procedure to ensure the accuracy of election day vote tallies, making sure that voter intent is considered before discarding ballots that are cast by voters, and making the Board of Elections subject to the rule-making provisions of the Administrative Procedures Act.

AMENDMENT 1. Page 3, lines 14-17. Rhode Island law presently requires that, with the introduction of electronic voting machines, a physical ballot must still be cast. In response to controversies that have arisen in recent elections, this amendment would clarify that those ballots are subject to hand-counting when there are discrepancies, in order to audit the accuracy of machines, and to ensure that voter intent is recognized – the circumstances that justify the mandate of a physical ballot in the first place.

AMENDMENT 2. Page 7, lines 3-5. The electronic voting machines are programmed to reject certain ballots or particular votes based on the way that the ballot has been marked by the voter. This amendment would simply require that those programming decisions be a matter of public record.

AMENDMENT 3. Page 8, lines 5-7. This amendment, based on an advisory previously issued by the state Board of Elections, would clarify that individuals have the right to monitor activities at polling places, provided they are not disruptive.

AMENDMENT 4. Page 8, lines 17-25. Under current BOE regulations, voters who are given provisional ballots because they have come to the wrong precinct generally have only their votes for federal office counted. This amendment provides that their ballot would be counted for all elections for which the person is qualified, by reason of residency, to vote. For example, if a voter lives in Warwick but comes to the wrong polling station, there is no reason to ignore his or her clearly valid votes for state and citywide elections.

AMENDMENT 5. Page 8, lines 26-31. This amendment would clarify that, to the extent federal law allows, provisional ballot application information would be public to the same degree that voter registration information is currently public, and the disposition of provisional ballots would be conducted in public.

AMENDMENT 6. Page 8, line 32 to Page 9, line 2. This amendment would specify that provisional voters unable to present their identification at the polls have 48 hours to provide that ID in order to have their vote counted. Presently, the voter must return with ID by the close of the polls, which essentially undermines the intent behind giving them a provisional ballot.

AMENDMENT 7. Page 9, lines 3-8. This amendment establishes a process for the board to send a reminder notice to people who will have to present ID at the polls.

AMENDMENT 8. Page 10, lines 19-23. This amendment would clarify that, during recounts, candidates and other interested individuals have the right to inspect and copy ballots that are rejected by the electronic machines. In response to a R.I. Supreme Court decision four years ago in the District 58 primary race, it would also clarify that manual recounts are authorized.

AMENDMENT 9. Page 10, line 26 through Page 11, line 5. This section merely clarifies that ballots should not be stored away until all disputed elections are resolved.

AMENDMENT 10. Page 11, line 8. This amendment would clarify that a ban on tampering with sample ballots applies only to the ballots posted at polling places.

AMENDMENT 11. Page 11, lines 13-15. This amendment, taken from BOE regulations and policy, would clarify that voters can wear political buttons into the polling place, while workers and poll observers in the polling place may not.

AMENDMENT 12. Page 11, lines 20 through 28. This amendment would specify that ballots voted at the polls would be treated the same way as mail ballots in terms of determining voter intent when a ballot is rejected. The language of this section is taken directly from current state law for mail ballots, §17-20-24.

AMENDMENT 13. Page 12, lines 3-4. This amendment would simply clarify that there is no conflict between two separate election certification statutes currently in the law.

AMENDMENT 14. Page 12, lines 7-11. This proposed amendment simply further clarifies that people waiting in line to vote at a polling place, whether or not they are actually in the building, remain entitled to vote past 8 o'clock.

AMENDMENT 15. Page 11, line 14 through Page 13, line 19. The RI State Board of Elections is virtually the only major state agency exempt from the rule-making provisions of the Administrative Procedures Act. That is, the Board can adopt regulations affecting the voting process without having to go through a public notice or hearing process. This section, supported by the Board of Elections, would eliminate that exemption. However, the Board would remain exempt from the APA's hearing procedures, because separate election law statutes address those procedures.

AMENDMENT 16. Page 13, line 20 through Page 14, line 31. This new section would establish an audit pilot program to review the accuracy of election day vote tallies.

