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TESTIMONY ON
2012 PROVIDENCE CHARTER REVIEW COMMISSION PROPOSALS

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1. Section 106

The Charter Commission has proposed a new Section 106. The report describes this new section as merely “contain[ing] a statement of the charter’s intent, including maintaining the fiscal health of the city.” This new provision actually does much more. It not only blurs the lines between executive and legislative functions, but it appears to give the Mayor extraordinary authority to override with virtual abandon explicit provisions of the City Charter as well as city ordinances.

First, section 106(a) authorizes the Mayor to issue an “executive order to combine or transfer any functions between departments.” Such an order takes effect merely by filing it with the city clerk. Thus, any specific provisions in the Charter establishing and setting out the duties of particular City departments can be ignored or changed by the Mayor merely through the stroke of a pen.

We can certainly appreciate giving the Mayor some discretion in being able to combine or transfer departmental duties when it makes fiscal or organizational sense. But it should not be at the expense of explicit requirements that are contained in the City Charter and that have been adopted by a public vote. If there are particular provisions in the Charter relating to departments that are too specific and potentially hamstringing a mayor, then those provisions should be

eliminated or revised. But the Mayor should not have the power to summarily override publicly-adopted requirements contained in the City's core document of governance.

Section 106(b) appears to be even broader, and indeed breath-taking in its scope and reach. The section provides in full that "No contracts, agreements, ordinances, resolutions, rules or regulations, and/or by-laws shall limit, abridge or in any way impede the authority of the mayor and/or the council of the city to exercise organizational and managerial discretion to protect the health, safety and welfare of its residents, and to maintain the fiscal health of the city."

It is hard to think of more far-reaching and wide-ranging language that essentially allows the Mayor and the City Council to flout any laws they wish to. As worded, a Mayor can ignore a city ordinance, breach a contract or disregard a formally-adopted regulation if he or she decides in his or her "managerial discretion" that doing so will better protect the welfare of residents. The same holds true for the City Council which could, for example, effectively suspend a duly-adopted city ordinance merely by passing a resolution, without the formal requirements that repeal of an ordinance would require, in the exercise of its "discretion" to protect the city's "fiscal health" or welfare. Whatever may have been the intent of this section, it amounts to a usurpation of the democratic process and contains unbounded opportunities for mischief. The ACLU urges its rejection.

2. Section 107

Section 107 allows for the publication of legal notices online, and removes the requirement that such notices be posted in a newspaper of general circulation. While internet use

is becoming increasingly ubiquitous and many adults have easy access to the internet, access to the internet is not universal.

In April 2012, the Pew Internet and American Life project reported that one in five American adults still does not use the internet, in any capacity. Individuals least likely to have internet access include senior citizens and those individuals earning less than \$30,000 annually, but the so-called “digital divide” appears to have the largest impact on the disabled. Among those adults with disabilities, 81 percent do not go online. While we recognize the incentives to move from newspaper postings to internet postings, these individuals should not be excluded from equal information and equal participation in government simply because of their lack of internet access. Until the digital divide is nonexistent, the ACLU urges the City Council to continue requiring the posting of legal notices in a newspaper of general circulation.

3. Section 802(B).

This section creates a budget reserve fund, and allows the Mayor to appropriate monies from this fund “in the event of an emergency involving the health, safety or welfare of the citizens of the City of Providence.” While the Commission may have decided to leave the term “emergency” undefined so as to give the Mayor the broadest possible latitude to expend money from this Fund, we would at least recommend the addition of a reporting mechanism, so that the Mayor must certify the nature of the emergency and formally notify the City Council of the funds that have been appropriated.