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Ross Cheit, Chairman
Rhode Island Ethics Commission
40 Fountain Street
Providence, RI 02903

Dear Chairman Cheit:

News reports indicate that the Ethics Commission is planning next week to initiate rule-making proceedings to establish a moratorium on the filing of ethics complaints with the Commission during a specified time period before elections. You have apparently raised this idea in the past, and in a recent letter Common Cause Rhode Island also expressed support for a moratorium. However, before the Commission takes this step, the ACLU of Rhode Island urges more thorough consideration of the consequences of such an approach.

Let me begin by noting that we understand and fully appreciate the concern that has prompted this suggestion. We recognize that, during the heat of election campaigns, some complaints of dubious merit may get filed with the Commission in an attempt to score political points. Even so, we disagree with the premise that a moratorium is the proper response to this scenario. Rather, we believe it would likely be ineffective and potentially harmful. Alternatives to a moratorium should instead be considered.

The Common Cause letter notes that there is apparently a large spike in the number of pending complaints reported at October and November meetings of the Commission. This leads them to conclude that the “complaint process is being used in a political manner during elections.” But even if so, that hardly strikes us as reason to create a moratorium. The fact that the process for challenging the ethical conduct of elected officials – i.e., politicians – may be used in a “political manner” should not be surprising, nor should it ultimately matter. The motivation of a complainant should not be relevant to the Commission’s deliberations. When, for example, the Republican Party files a complaint against a Democratic office-holder, or vice-versa, one can assume that there are, at least in part, political motivations for doing so, but that says nothing about the validity of the complaint. Politically motivated complaints simply are not synonymous with unwarranted complaints.

Nor should it be a surprise that there is a spike in complaints to the Commission around election time. That is the time when people become most engaged in politics and have the greatest interest in holding politicians accountable and in examining their record and conduct.

Even when one focuses solely on frivolous complaints, there are at least two problems with using a moratorium in an attempt to stifle them. First, it does not stop unfounded allegations

against political figures; it just prevents them from being formally filed with your agency. Will an allegation of impropriety receive that much less public attention if an accuser waves around a complaint form that he claims he would file with the Commission were it not for the moratorium? Indeed, accusers may be much more reckless with their allegations if they *don't* have to commit them to writing, notarize them and file them with an agency that can fine them for filing a frivolous complaint. There is therefore potentially *less* accountability when news releases, social media or campaign flyers become the sole vehicle for pursuing allegations of ethical lapses.

More importantly, while a moratorium eliminates the filing of frivolous complaints, it bars the filing of any *meritorious* complaints as well. It strikes us as strange, to say the least, to have a state agency designed to investigate ethics complaints put up a "Closed for Business" sign during what should be the busiest time of the year. To do so because some of the complaints it receives may not be valid is the quintessential example of throwing the baby out with the bathwater.

The ability of the citizenry to file complaints with an agency like the Ethics Commission is central to their First Amendment right to petition government for the redress of grievances. Because a moratorium would undercut this important principle, we urge the Commission to refrain from relying on this "solution" to address the problem of frivolous complaints. We believe more appropriate approaches are quicker dispositive action by the Commission to promptly weed out frivolous allegations, and a public acknowledgement that mere acceptance of a complaint says nothing about its validity. They may not eliminate the problem, but they do much less harm to the public's petition rights and the Commission's mission.*

We therefore urge the Commission to carefully weigh these concerns before formally initiating rule-making proceedings on this issue. I would appreciate your sharing this letter with the rest of the Commission. Thank you in advance for considering our views.

Sincerely,

Steven Brown
Executive Director

cc: Kent Willever
Jason Gramitt

* The ACLU agrees with Common Cause and the Commission that a moratorium on the filing of ethics complaints does not belong in our state Constitution. However, for the reasons noted above, we don't believe it belongs in regulation either.