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RI State Board of Elections
2000 Plainfield Pike
Cranston, RI 02921

Dear Board Members:

I am writing in response to the proposed legislation that was discussed at the last meeting of the Board of Elections, dealing with the execution of mail ballots in the presence of others. The ACLU of Rhode Island certainly understands and appreciates the intent behind this proposal, but we have serious reservations about it and urge that it be rejected.

The key part of the bill would make it unlawful for any "candidate, political party, political action committee, or ballot question advocate [to] knowingly be present when a voter executes a mail ballot, except when the candidate or agent is a member of the immediate family of the voter or authorized by law to be present..."

Before getting to the substance of the bill, we wish to express our concerns about the felony penalties the bill establishes for violations. We recognize that many other statutes in the election laws contain felony penalties, but we believe the General Assembly has become much more sensitive in recent years to the adverse ramifications flowing from the imposition of this severe category of punishment, and that concern is applicable here as well. The harshness of the penalty seems especially problematic when one considers the specific type of conduct being penalized: merely being *consensually present* in the home of another person while they exercise their right to vote. The punishment is even more jarring when one realizes that this same conduct would be perfectly lawful if the voter invited the "agent" into *the voting booth* with them to provide assistance.

Moving to the substance of the proposal, we have concerns about both its vagueness and scope. First, it fails to define some key terms. It carves out an exception for the "immediate family" of the voter, but no definition of that term is provided. The General Laws is filled with a variety of conflicting definitions of who constitutes an immediate family member. See, e.g., R.I.G.L. § 19-14.10-3(3); § 28-44-17(a)(3)(i); § 19-5-15.1(g)(4)(ii). Also left undefined is when a voter's mail ballot is "executed." Is it when they fill out the ballot? When they sign and seal it in the envelope? When they bring it to the polling place on election day and officially place it in the mail ballot dropbox?

The breadth of the prohibition also needs to be considered. It criminalizes the presence of, for example, any person who is an "agent" of a "ballot question advocate." This

past election, over 30 organizations and hundreds of volunteers worked in opposition to a question on the ballot dealing with a state constitutional convention. Were they all ballot question advocate agents who would be committing a crime if they were present when they were asked by a neighbor to help with their mail ballot?

We are also very concerned that by criminalizing the mere presence of a person who has some stake in an election whenever a ballot is executed, this proposal could lend credence to, and encourage, efforts to take a further step and ban the collection of mail ballots by third parties – a prohibition that has been proposed by some in the past but that we believe would inappropriately end up suppressing voting rights.

Many of the problems we have cited are mitigated by the amendment suggested by the Secretary of State's office: having the bill apply only to unwanted assistance provided to a person voting by mail ballot. That admittedly narrows the bill's scope, but it focuses on what should be the conduct that is improper – a person attempting to coerce or interfere with a person's voting choices. At the same time, however, we would argue that this type of mail ballot misconduct – the only type that we believe should be barred in this context – is already covered by the statute's penalty section, R.I.G.L. § 17-20-30(a). Anything broader has the potential to unfairly inhibit a voter's private decision as to who can be present, and perhaps offer guidance, when they cast a mail ballot, something they have a right to do in almost any other context.

For all these reasons, the ACLU respectfully requests that the Board reject approval of this proposed bill.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Brown", written in a cursive style.

Steven Brown
Executive Director

cc: Miguel Nunez
Raymond Marcaccio
Rob Rock