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ACLU OF RI POSITION: OPPOSE

TESTIMONY ON 23-H 5266, AN ACT RELATING TO STATE AFFAIRS AND GOVERNMENT – OPEN MEETINGS February 7, 2023

This bill would allow any member of a public body who is 65 years of age or older to participate in the meetings of the body remotely, by phone or video. The ACLU of Rhode Island opposes this significant expansion of the current limited waiver exemption in the law for remote participation by public body members.

Presently, the Open Meetings Act allows public body members to participate remotely only under two specific and narrow circumstances: if they are on active duty in the armed forces; or they have a disability as defined in state disability law, the disability prevents them from being physically present, and remote participation is the only reasonable accommodation.

As a matter of policy, we have argued during the post-lockdown Covid regime that there is a strong public benefit to having public bodies meet in person, while at the same time encouraging greater remote access to meetings *by the public*. In effect, however, this bill takes the opposite approach.

Accountability and transparency are enhanced when public bodies meet in person, allowing the public and the media to see the interaction among the public body members and to follow up with them on matters that get discussed – something that cannot happen when members of the public bodies are insulated from direct contact with the public. This bill would undermine this accountability goal by drastically expanding the ability of public officials to meet remotely.

There is no compelling reason to single out public officials by their age in this way and allow them to avoid the greater accountability that occurs by meeting in public. At a time when this country has an 80-year-old President, treating all senior citizens as unduly vulnerable or in need of special treatment as public officials is simply untenable.¹

Perhaps this proposal is generated in part by concerns that older people are more susceptible to severe illness if they contract Covid-19. But being masked, fully vaccinated and boosted remains the best protection against hospitalization, and age is only one of many factors that can make a person more at risk of illness from the disease.

According to the CDC, innumerable medical conditions – not just age – make a person with Covid-19 more vulnerable to serious illness. Among the conditions cited by the CDC are the

¹ The solicitude for age codified in this proposal could just as easily be used as an argument to allow all *legislators* 65 years of age or older to be able to vote by proxy now that the House rules have established an “illness” proxy process.

presence *or a history* of any type of cancer; moderate asthma; type 1 or type 2 diabetes; ADHD; high blood pressure; obesity; and mood disorders, including depression.² Similarly, innumerable medications have the potential to weaken a person’s immune system and thereby potentially make them more vulnerable. They include all corticosteroids and other drugs that can be used to treat such medical conditions as allergies, arthritis, and inflammatory bowel disease.³ If 65-year-old public body members deserve the solicitude offered by this bill, there are many others who will be able to make similar pleas.

The unfairness of the proposal is highlighted by the fact that *members of the public* who are 65 years of age are not given the same opportunity to watch and participate in meetings remotely. They therefore would continue to face the purported burdens – medical or otherwise – of physical attendance that members of the public body would be exempt from.

In short, this expanded standard for qualifying for a waiver would allow many more public officials to meet remotely than are currently authorized to do so, and would thus undercut the benefit of having public officials meet and deliberate in person. Therefore, notwithstanding its laudable intentions, the ACLU urges rejection of this bill because of its adverse impact on the OMA’s goal of having “public business be performed in an open and public manner.”⁴

Thank you for considering our views.

Submitted by: Steven Brown, Executive Director

² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

³ <https://www.webmd.com/cold-and-flu/ss/slideshow-how-you-suppress-immune-system>

⁴ R.I.G.L. § 42-46-1.