

**COMMENTS ON 2012-H 7113,
AN ACT RELATING TO ELECTION LAW
March 6, 2012**

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 about the burdens that passage of this law would have on their duties, experience from recent elections 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, and make the Board of Elections subject to the rule-making provisions of the Administrative Procedures Act. Attached 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 some ballots to determine voter intent. Specifically, mail ballots are reviewed with that goal in mind, and the Board also manually counts provisional ballots.

Second, the Board argues that allowing provisional ballots to count in statewide, citywide and federal 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.

In terms of recounts, the Board has argued that allowing inspection of ballots would take too much time. However, of the hundreds of elections that took place six years ago, for example, only eight (8) races qualified for a manual refeed recount. Furthermore, in the 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.

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 2012-H 7113, 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 about the burdens that passage of this law would have on their duties, experience from recent elections teaches that these concerns are overblown.

The proposed legislation addresses five general election-related issues. The issues are listed below, along with the numbered sections in the explanation that follows that relate to the specified issue.

- A. THE RECOUNT PROCESS (AMENDMENTS 1, 2, 8, 9 10, 12 AND 14)**
- B. PROVISIONAL BALLOTS (AMENDMENTS 4, 5 AND 6)**
- C. ADMINISTRATIVE PROCEDURES ACT COMPLIANCE (AMENDMENT 15)**
- D. VOTER IDENTIFICATION NOTIFICATION (AMENDMENT 7)**
- E. POLLING PLACES (AMENDMENTS 3, 11 AND 13)**

AMENDMENT 1. Page 2, lines 29-31. 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 – the circumstances that justify the mandate of a physical ballot in the first place.

AMENDMENT 2. Page 6, lines 19-21. 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 7, lines 21-23. 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 7, line 33 to Page 8, line 7. Under current 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 city-wide elections.

AMENDMENT 5. Page 8, lines 8-13. 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, lines 14-18. This amendment would specify that a provisional voter who is unable to present his or her identification at the polls has 48 hours to provide that ID in order to have his or her vote counted. Presently, the voter must return with his or her ID by the close of the polls, which essentially undermines the intent behind giving them a provisional ballot.

AMENDMENT 7. Page 8, lines 19-25. This amendment establishes a process for the board to send a written notice to people who will have to present ID at the polls, reminding them of their need to do so.

AMENDMENT 8. Page 10, lines 2-3. 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.

AMENDMENT 9. Page 10, lines 6-18. This section merely clarifies that ballots should not be stored away until all disputed elections are resolved.

AMENDMENT 10. Page 10, line 21. This amendment, taken from a bill previously submitted by the Board of Elections, would clarify that a ban on tampering with sample ballots applies only to the ballots posted at polling places.

AMENDMENT 11. Page 10, lines 26-28. This amendment, also taken from a bill submitted by the Board of Elections, 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 10, lines 33 through Page 11, line 7. 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 11, lines 15-16. This amendment would simply clarify that there is no conflict between two separate election certification statutes currently in the law.

AMENDMENT 14. Page 11, line 19 through Page 13, line 4. The RI State Board of Elections is virtually the only major state agency that is exempt from the rule-making provisions of the Administrative Procedures Act. That is, the Board can adopt rules and regulations affecting the voting process without having to go through a public notice or hearing process. There is no legitimate rationale for exempting such an important agency from this oversight process, and this section would eliminate that exemption. However, the Board would continue to be exempt from the specific hearing procedures in contested cases that are set out in the APA, because separate election law statutes address those procedures.