



128 DORRANCE STREET, SUITE 220
PROVIDENCE, RI 02903
401.831.7171 (t)
401.831.7175 (f)
www.riaclu.org

TESTIMONY ON 2012 ELECTION ISSUES, PRESENTED TO THE
HOUSE COMMITTEE ON OVERSIGHT
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Changes to state election laws saw the simultaneous implementation last year of voter ID and new legislative districts, as well as reduced polling place hours and polling locations. Each of these new laws individually carried potential burdens to voting rights; together, they all but guaranteed problems in the 2012 election season.

As part of ongoing efforts to protect the right to vote, the RI ACLU distributed hundreds of voting rights brochures and other materials prior to the primary and November elections, including information on registration, same-day voting, rights at the polling place, and acceptable voter identification. During both elections, ACLU poll monitors also were stationed at a handful of sites across the state, and the ACLU dispatched monitors to a few sites in response to contemporaneous complaints from concerned voters. As a result, we witnessed or were made aware of a number of serious voting problems.

Below is a discussion of some of the major issues identified by the RI ACLU as a result of reviewing poll monitoring efforts, media reports, and complaints filed with our office last year. We believe that a number of changes are necessary to ensure all Rhode Islanders have the uninhibited ability to cast their vote in future elections. Some involve repealing recently-enacted laws, while others involve legislatively addressing problems that have existed for some time, and that have again been highlighted in these recent elections.

Voter ID

The implementation of voter ID was arguably the change most talked about prior to Election Day. Frequent discussions about it in local and national media and educational efforts

by the Secretary of State's office and public interest groups meant that most of the voters who turned up at the polls had their identification ready. However, particularly in light of the ACLU's view that voter ID is a solution looking for a problem, its impact on eligible voters without ID remains troublesome. Some of the responses received at the polls by voters who lacked identification or whose identification raised questions demonstrate the problems associated with implementation of this requirement, exacerbated by a failure by election officials to properly train poll workers.

In Smithfield during the primary election, an ACLU poll monitor witnessed one voter turned away for lack of identification.¹ Although state law requires provisional ballots to be given to avoid disenfranchising voters who do not possess ID, this voter was given no opportunity to cast such a ballot. Because she arrived shortly before the polls closed, she did not return with acceptable ID and thus never got to vote.

In Providence, a voter without ID was allowed to cast a provisional ballot, but was wrongly told he had to go to the Board of Canvassers the following day, with identification, in order to have his vote count.² While voters may do this to be sure their vote will be counted, the Board of Canvassers is independently required by law to count the provisional ballot cast by any person lacking identification if the signature on the ballot matches the signature on the voter rolls.

In Warwick, a voter was turned away not because he did not have identification, but because he refused to present it.³ This voter was denied a provisional ballot, and told that such ballots were available only to those *unable* to present identification. This information is also incorrect. Both state law⁴ and the Secretary of State's *Rules and Regulations for Voter Identification* clearly state that any person who does not present identification is entitled to a provisional ballot. The reason that a voter does not present ID is irrelevant, and poll workers have no authority to make judgments about a voter's reasons for not doing so.

An elderly Hispanic voter, suffering with a broken foot, was disenfranchised in Providence when poll workers told him that his Rhode Island driver's license was not a valid

¹ Report of ACLU Poll Monitor – Smithfield High School, Smithfield. September 11, 2012.

² Complaint filed with RI ACLU – Summit Nursing Center polling place, Providence. September 11, 2012.

³ Complaint filed with RI ACLU – Warwick. September 11, 2012.

⁴ R.I.G.L. § 17-19-24.2

form of identification because the address did not match his address on the voter rolls.⁵ The 2012 poll worker manual specifies that the address on photo identification is not required to match the address on file in the voter rolls. He was not given a provisional ballot, and so returned home to obtain proof of his residency. However, it was learned in follow-up contact with this resident that, suffering from continued pain related to his fractured foot, he was unable to return to the polling place and never cast his vote.

Anecdotal evidence from other advocacy organizations and individuals indicates voters ran into similar problems elsewhere as well. Phone bank volunteers reported voters turned away for lack of identification and not offered provisional ballots.⁶

There appeared to be some misinformation throughout the primary election as to what constituted appropriate voter identification. Prior to that election, the ACLU raised concerns with the Board of Elections about its proposed list of acceptable identification, and there was occasional confusion among at least some poll workers who incorrectly asked voters to provide a form of photo identification.⁷

The issues related to voter ID did not dissipate between the primary and general election. In November, poll monitors still witnessed mixed responses on the part of poll workers, some of whom continued to question voters about any discrepancy between the address listed on their photo identification, and the address on the voting rolls.⁸

Although a number of voter ID proponents, in pushing for passage of that law, claimed that residents were sure to have one of the acceptable forms of required identification under the law, the Secretary of State's office had to issue 908 free voter identification cards as of November 16.⁹ But this did not eliminate the problem of voters arriving at the polls without identification.

In fact, during the 2012 election season, the Secretary of State's office reports that 190 voters requested provisional ballots solely because they lacked an acceptable form of voter

⁵ Report of ACLU Poll Monitor – Dominica Manor polling place, Providence. September 11, 2012.

⁶ Complaint filed with Common Cause RI. September 11, 2012.

⁷ Complaint filed with RI ACLU. September 11, 2012.

⁸ Report of ACLU Poll Monitor – Neutaconkanut Recreation Center, Providence. November 6, 2012.

⁹ Telephone conversation with Secretary of State's Office. November 16, 2012.

identification.¹⁰ According to the Board of Elections, 89 of these requests were for the general election.¹¹ These individuals were among the fortunate who were able to obtain provisional ballots on Election Day. There is no count available of voters without identification who did not receive the provisional ballot they were entitled to receive.

Considering the absence of any prosecutions in recent memory for voter identification fraud in Rhode Island, we believe it is fair to say that, in light of the incidents of voters without ID being denied provisional ballots, voter ID clearly created more issues than it solved. What also cannot be documented is the number of voters who, because of voter ID, did not even attempt to cast their vote this past year. The problem will only increase if the stricter provisions contained in the Voter ID law – which will allow only certain designated forms of *photo* identification – take effect as scheduled in 2014.

Incorrect Poll Information

A major failure this year was the lack of accurate polling place information for registered voters, particularly since many polling places changed. In 2011 and 2012, the state underwent redistricting, resulting in the redrawing of voting district lines in response to the decennial Census. To compound this change, the General Assembly at the same time approved legislation significantly increasing the number of constituents served by each polling place, from 1,900 to 3,000 voters. Advocates, including the ACLU, expressed concern that such a change could result in confusion and unduly long lines at the polling place when done in the same year as redistricting, but the General Assembly did not heed those concerns. Unfortunately, incorrect polling place information turned out to be a very serious obstacle for some voters.

Following the redistricting process, each voter is by law¹² sent a card informing them of their new district, polling place, and legislators. But some Rhode Islanders – including ACLU staff members – never received this information, while other voters reported a conflict between what they received at home, and what was published online via the Secretary of State's website. State law does not require subsequent notification if a polling location

¹⁰ E-mail communication with Chris Barnett, Secretary of State's Office. December 17, 2012.

¹¹ E-mail communication with Robert Rapoza, Rhode Island Board of Elections. January 2, 2013.

¹² R.I.G.L. § 17-10-17

changes, as may be the case between a primary and a general election, thus understandably helping to engender confusion among some residents.

ACLU poll workers witnessed voters on the East Side,¹³ Pawtucket,¹⁴ Cranston,¹⁵ Silver Lake,¹⁶ Elmhurst,¹⁷ and other locations waiting in line for long periods of time only to be told they were at the incorrect polling place. Some protested that they had verified their polling place either online or through the Board of Canvassers, but were told they could not vote at that location.

Similar to voter ID, the response to displaced voters was extremely varied across polling places. In most instances witnessed, these voters were referred to another poll location. While certainly helpful, this placed a burden on voters who had already taken time out of their day and waited in line to cast their ballot. Voters directed to new polling locations were required to spend additional time traveling to a new location and spend just as long waiting in another line to cast their vote. The Board of Elections reports that 2,041 voters cast provisional ballots because they were not on their precinct's voting list on Election Day. Of these provisional ballots, 421 were counted in full. A further 331 ballots were only partially counted, meaning the votes cast for federal offices were counted, but the votes cast for local elections were discounted entirely, most likely because they had shown up at the wrong precinct.

Very few voters showing up at the wrong location were advised of the option of voting by provisional ballot if they might not have the time or ability to go to the correct one. For reasons explained below, voting by provisional ballot is very problematic, but it is an option that should clearly be offered when the alternative is not getting to vote at all.

As a result, a number of voters were disenfranchised because of the apparent failure of election officials to distribute accurate, or any, information about polling locations. Those voters sent elsewhere were forced to weigh the burdens of increased travel time and a second long period in waiting in line in order to cast their ballot. And those who were alternatively

¹³ Report of ACLU Poll Monitor – Jewish Community Center, Providence. September 11, 2012.

¹⁴ Report of ACLU Poll Monitor – St. Cecelia's Church polling place, Pawtucket. September 11, 2012.

¹⁵ Report of ACLU Poll Monitor – Stadium Elementary School polling place, Cranston. November 6, 2012.

¹⁶ Report of ACLU Poll Monitor – Neutaconkanut Recreation Center polling place, Providence. November 6, 2012.

¹⁷ Report of ACLU Poll Monitor – Nathan Bishop Middle School polling place, Providence. November 6, 2012.

permitted to cast a provisional ballot were only partially enfranchised because of a state Board of Elections policy that counts only the votes for federal office if a person votes in the wrong polling location – even if it is undisputed that they are a resident of the municipality where they are casting the ballot. Thus, Board policy has a very real impact on whether and when voters’ votes will actually be counted.

Provisional Ballots

According to the Board of Elections, a total 2,216 provisional ballots were cast statewide on Election Day.¹⁸ Of these, only 1,043 provisional ballots were accepted by the Boards of Canvassers and counted.¹⁹ This does not include the Dunkin’ Donuts Center, where 3,770 Presidential-only ballots were cast on Election Day.²⁰

Under BOE regulations, voters may cast provisional ballots for any of four reasons: their name does not appear on the rolls or appears on the rolls in another precinct, they have applied for a mail or emergency ballot, an election official believes they are not eligible to vote, or they do not produce identification.²¹

A common response to the concerns raised about voter ID was that Rhode Island was going to rely on a fail-safe – the provisional ballot program – to ensure that every voter could cast their ballot if they did not have acceptable identification. But as noted in the section on “Voter ID,” this mechanism was less than perfect when implemented by poll workers.

In addition, as noted in the previous section, provisional ballots are also problematic for voters who inadvertently go to the wrong polling locations because most of their votes will (for no good reason) not be counted. At the same time, monitors saw numerous instances when voters were not given even that option if going to another polling place would have been impossible.

¹⁸ See note 11.

¹⁹ Telephone conversation with Board of Elections, December 17, 2012.

²⁰ Testimony of Tomas Ávila. Providence City Council Meeting. December 5, 2012.

²¹ Rhode Island Board of Elections. *Rules and Regulations for Provisional Voting*. Promulgated February 22, 2012.

The law allows for same-day registration and voting for President and Vice-President (generally at the City or Town Hall) for those individuals who had not registered in time to cast a full ballot. However, ACLU poll monitors witnessed only one voter told of that right.²²

In short, although the Board of Elections issued updated rules and regulations for provisional voting in February of 2012, well in advance of the election season, adherence to these regulations or to the state and federal laws governing provisional ballots was uneven at best.

Broken Machines

Tremendous threats to the sanctity of the voting process also came from outside the burdensome laws passed by the General Assembly. One of the best known and most troubling of these was the issue of broken voting machines.

Inspection and repair of the optical scanners, as well as protection of the votes contained therein, is governed by several statutes under the Rhode Island General Laws, including a requirement that each machine be tested in advance of the election, and right before the polls open.²³ Despite these required checks, broken voting machines seemed too commonplace during both the primary and general election.

Purchased in 1997, the state's Optech 3P Eagle scanners are undoubtedly at the end of their life span. The Board of Elections has for several years requested funds to purchase new machines, but the General Assembly has thus far refused to update the technology, even when federal money was made available for that express purpose.²⁴ Reliable equipment is certainly the first step in avoiding future breakdowns, though the state must be careful to ensure that appropriate new equipment is purchased that ensures a paper record is kept of each vote, allows for easy auditing, and gives voters the opportunity to confirm that they have filled out their ballot correctly.

Voters who contacted the ACLU complained less about the broken machines, as with the response by election officials. A few witnessed unscanned ballots being placed into an

²²Report of ACLU Poll Monitor – Summit Commons polling place, Providence. November 6, 2012.

²³ R.I.G.L. § 17-19-14.

²⁴ Testimony of Robert Kando. State of Rhode Island Voter Choice Act Study Commission. December 13, 2012.

unsecure stack or into the machines, with voters told their ballots would be scanned later in the evening.²⁵ State law dictates that each voting machine is to have an emergency drawer for this exact circumstance, in which poll officials are to store uncounted ballots until the machine can be fixed or replaced.²⁶ Voters may have actually witnessed poll officials depositing the ballots into this drawer in accordance with procedure, but by being given no explanation, some voters worried that their uncounted ballots would be piled with scanned ballots, resulting in confusion, double counting, or ignored ballots, and opted to return to the polls later instead of casting a ballot that they feared might not get counted.

This confusion indicates that more transparency is necessary regarding these emergency processes, so voters may better understand what they are witnessing and election staff may be held appropriately accountable for any deviations from procedure. It also further highlights the need for new equipment that will lead to fewer of these scenarios in the first place.

However, the proper process was not always followed. In a hearing before the Voter Choice Commission, Common Cause executive director John Marion reported he witnessed a scanner at his polling place repeatedly spitting back ballots, unable to read them.²⁷ Instead of following appropriate procedure and emptying the machine, poll workers simply opened the machine, tamped down the ballots, and fed more in. Inevitably, the machine jammed again just a few votes later.

In another hearing before the Providence City Council, Councilman Luis Aponte reported that the scanner in Washington Park filled up several times throughout the day.²⁸ Board of Elections' executive director Robert Kando readily acknowledged that filled optical scanners are liable to jam. Failure by poll workers to adhere to proper procedure and empty the ballot boxes when they became full likely contributed to some of the optical scanner issues that cropped up statewide.

Voters complained to the ACLU of long waits between when the scanners broke down and when maintenance arrived.²⁹ There are currently 31 optical scanner technicians hired by

²⁵ Complaint filed with RI ACLU – Providence Water Board polling place, Providence. November 6, 2012.

²⁶ R.I.G.L. § 17-19-19

²⁷ State of Rhode Island Voter Choice Act Study Commission. December 13, 2012.

²⁸ Providence City Council Meeting. December 5, 2012.

²⁹ See note 25.

the state for Election Day; the BOE's Kando hopes to hire twice as many for the next election.³⁰ Each technician is assigned to a certain geographic area on Election Day, and some technicians may simply have been too busy dealing with broken machines elsewhere to respond immediately to new issues. Some voters, however, complained that when technicians did respond, they did little or no work on the scanners at all. The Providence City Council reported the machines at the Providence Water Board were broken for an hour and a half before a technician responded, and then broke down again shortly after the technician left.³¹

While uncounted ballots generally may have been handled appropriately by poll workers, these broken machines undoubtedly contributed to slower processing of voters, longer lines, and more voters disenfranchised when they had to choose between waiting indefinitely in line and returning to work or other responsibilities. In Mount Pleasant, for instance, all three voting machines at one polling place broke down at the same time.³² For many concerned voters, this meant leaving the poll and returning at a later time, when the lines were even longer.

Incorrect Ballots Delivered

Another major, avoidable roadblock to voting occurred when incorrect ballots were delivered to some polling locations. Voters in South Kingstown and West Warwick with the hopes of casting ballots before work were in for a surprise when poll workers discovered they had received ballots meant for North Kingstown and Woonsocket. Voters were forced to choose between casting a provisional ballot for the federal offices only at another location, wait indefinitely for new ballots to be delivered, or leave the polls and return later in the day. Some administrative errors are inevitable and understandable, but errors like these are not.

Long Waits

Prohibitively long lines are a common complaint in Presidential election years; such was the case this year, when the high turnout combined with the issues discussed herein created

³⁰ See note 28.

³¹ See note 28.

³² See note 25.

lines which sometimes stretched outside or around buildings, and on occasion lasted for hours. Rhode Island does not guarantee employees the right to time off from work to vote and, with schools closed for Election Day, many parents found themselves forced to bring their children along to the polls; as a result, voters caught in long lines had to weigh their desire to cast their ballot with work and family obligations.

The Board of Elections has since the election placed blame for these long lines largely on the length of the ballots, particularly in Providence. BOE director Kando has repeatedly stated the long lines were the result of voters arriving at the polls without knowing exactly how they would vote, and taking up to 15 minutes in the voting booth. Providence, for instance, did not send out sample ballots prior to the election.³³ Voters who did not know to look for the ballot online may have evaluated the issues for the first time inside the ballot box. However, an emphasis on the length of the ballots is problematic, and voters should not be faulted for admirably taking the opportunity to read what they vote before they vote on it.

If the issue were solely the length of the ballot, we would expect to see uniform long lines across polling places with similar ballots. And, yet, some polling locations saw lines and chaos while others did not. The Juanita Sanchez location saw 1,284 ballots cast and lines lasting up to three hours, and we received a report of voters waiting an hour in the morning to vote at the Salvation Army polling place on the East Side where more than 1,000 votes were cast. Yet at another polling place on the East Side, Temple Beth El, no similarly excessive lines were reported – even though almost 1,600 ballots were cast at that location.³⁴

In fact, long lines were not unique to Providence. In Newport, the line at the William J. Donovan Manor was more than 90 minutes long.³⁵ Many voters left after 30 minutes, unable to devote the time in their day to the excessive wait. Voters clearly identified the problem in Newport to be with the poll workers – the site had only two poll workers, both of whom appeared overwhelmed and confused at how best to process the 1,928 residents who cast ballots at that location.

³³ See note 28.

³⁴ 2012 Election Results. Rhode Island Board of Elections. Accessed January 31, 2013.
http://www.ri.gov/election/results/2012/general_election/

³⁵ Report of Brennan Center/Common Cause RI poll monitor – William J. Donovan Manor polling place, Newport. November 6, 2012.

The combination of a Presidential election, which automatically brings higher rates of turn-out, increased constituents served at individual polling places, confusion regarding polling place location, fewer open poll hours, and insufficient training of poll workers conspired to produce these frustratingly long lines. Simply producing shorter ballots next time around will not alleviate these issues.

In any event, none of these factors should have been a surprise to election officials, who were well aware of the size of the ballot and the likelihood of increased voter turnout long before the polls opened. The Board of Elections considers the length of the ballot when assigning the number of voting booths at each polling place.³⁶ Knowing full well that turnout would be high, lines long, and voting machines fragile, election officials did not take sufficient steps to facilitate easier voting, either on Election Day or in advance of the election. While poll monitors reported a number of slowing factors at the polls, none reported that voting check-in had to stop because there were too many people taking too long in the voting booth. Instead, the queue began at the check-in point, where many waited for lengthy periods just to get their ballot.

The long lines created particular problems for disabled and elderly voters. While state law allows priority for disabled and elderly voters,³⁷ ACLU poll monitors routinely witnessed these individuals standing in the middle of long lines. While no poll monitor witnessed disabled or elderly voters being refused priority voting, poll workers also did not appear to make an attempt to inform disabled and elderly voters that this right was available. At the above Newport location, a man in his 80s shook with frustration when he realized the line was longer than he would be able to stand, and worried that he would not be able to cast his vote.³⁸ A poll monitor encouraged him to go inside and request priority voting. He cast his ballot, but silence from election officials may have left other disabled and elderly voters disenfranchised.

³⁶ See note 28.

³⁷ R.I.G.L. § 17-19-51 and 17-19-52

³⁸ See note 35.

Slow Mail Ballot Counts

Unfortunately, the problems extended beyond Election Day itself. Although mail ballots would clearly determine the outcome of three General Assembly races as well as a number of other local races, the Board of Elections was still counting ballots two days after Election Day.

The influx of mail ballots was not unexpected. Rhode Islanders took advantage of the new any-reason mail ballot law, taking out 28,850 mail ballots statewide prior to the general election.³⁹ Eighteen thousand of these ballots were returned and certified prior to Election Day, ready to be counted as soon as the polls opened. Under Rhode Island law, mail ballot counting may not commence until the polls open.⁴⁰ While polls opened at 7am, however, the Board of Elections did not begin counting the mail ballots until 9am. With four optical scan machines, they operated only slightly faster than the most crowded polling places. When counting concluded at 11pm, 3,141 ballots remained.⁴¹

Counting did not conclude the following day. The Board of Elections anticipated finishing mail ballot counting between 2 and 4pm that afternoon but, just after 2pm on Wednesday, announced it was suspending mail ballot counting until Thursday, even though several elections hinged solely on the results of these mail ballots.⁴² Counting resumed again between 9am and 10am on Thursday.

While the Board of Elections believes the law should be altered to allow mail ballot counting prior to Election Day, it seems likely that more voting machines and slightly increased hours on Wednesday could have allowed voters to know sooner who would be representing them, and to get underway the recounts which followed.

³⁹ Edgar, Randal. "Mail ballot counting expected to finish Thursday, will determine 3 GA races." *The Providence Journal*. November 8, 2012.

⁴⁰ R.I.G.L. § 17-20-26

⁴¹ Davis, Paul. "Board of Elections closes up shop for the day with 3,141 mail ballots left to count." *The Providence Journal*. November 6, 2012.

⁴² Parker, Paul Edward. "R.I. Elections panel quits counting mail ballots for the day." *The Providence Journal*. November 7, 2012.

Recounts

Several local elections came down to just a few votes this year, with four races in the general election requiring recounts to ensure the validity of the outcome. No race was as close, or as rife with complications, as the House District 58 primary election.

When the polls closed on September 11, incumbent Rep. William San Bento had amassed 543 votes, while challenger Carlos Tobon had 540 votes. Because 11 provisional ballots had yet to be counted, the race could not be called. As the margin was already slim, state law required the Board of Elections to conduct an automatic recount of the ballots, consisting of feeding the ballots back through the optical scanner.

Almost a week later, on September 17, the Board of Elections conducted the recount, this time including the provisional ballots. The Board of Elections determined only three of the eleven provisional ballots to be validly cast. Two of these provisional ballots were for challenger Tobon and one for San Bento, but one of the existing ballots for incumbent San Bento had disappeared. The race was tied.

The missing ballot was soon recovered and the ballots were run through the scanners again. This time, San Bento proved victorious – by two votes. After a third recount, the Board of Elections certified Rep. San Bento the winner, this time by a single vote. Throughout the process, the ballots were counted only by machine. The provisional ballots, in contrast, were counted with voter intent in mind, although almost three-quarters of them were rejected as invalid. Candidate Tobon requested a manual hand recount of the machine-fed ballots but, even with three different vote counts and a race called by a single vote, Tobon’s request was denied.

The RI ACLU filed a petition in the state Supreme Court on Tobon’s behalf, requesting a manual recount of the ballots.⁴³ Although District 58 epitomized the need for each ballot to be counted purposefully and honestly, the Supreme Court denied the petition, concluding by a 3-2 vote that state law did not authorize manual recounts.

In a revealing exchange at the Board of Elections hearing on the Tobon case, a BOE staff person was asked what would “account for a change in the votes on the ballot being sent into

⁴³ *Tobon v. R.I. Board of Elections*. (October 5, 2012).

the same machine?” He responded that “the ballots have gone through the machine numerous times, and there may have been a mark in the pathway that was not picked up on the second reread but was picked up on the fourth reread or vice versa.” In other words, the machines can make mistakes, and only a manual review of the ballots (as is currently required by law for provisional and absentee ballots) can be counted on to catch them.

The Tobon case was not unique in that regard. In 2006, contested elections in Cranston and East Providence showed changes in the vote count in 31 of 73 precincts when machine recounts took place.

Recommendations

The ACLU would like to offer a number of solutions to prevent Rhode Island from facing so many Election Day problems again.

Training of Poll Workers

Many of the problems that occurred were the result of insufficient training of poll workers. Poll workers were not well versed in the voter ID or provisional ballot laws, which seriously infringed the rights of voters with whom they came in contact. A short period of training and a large manual were insufficient to prepare poll workers for the difficulties of Election Day. More thorough training is necessary to ensure these issues do not arise again.

Kando and Providence Board of Canvassers Executive Secretary Tomás Ávila also agreed before the Providence City Council that an increase in poll workers is necessary.⁴⁴ Kando proposes requiring a larger number of poll workers at each location, while Ávila has a number of pilot programs in the works to recruit more high school students to work as poll workers; high school students, they both acknowledge, very often make the best poll workers.

Repeal Voter ID

Voter ID remains a barrier between many Rhode Islanders and their vote – particularly elderly, minority, disabled and low-income voters. Although 908 free voter identification cards

⁴⁴ See note 28.

were issued prior to the election, many voters still found their way to the polls without acceptable identification, demonstrating that any voter ID law will leave some voters disenfranchised.

Repealing Voter ID or allowing the law to sunset is critical to restoring the election process in Rhode Island. At a minimum, the General Assembly should preserve the status quo, and prevent the more onerous and restrictive provisions of the Voter ID law, which would further limit the types of acceptable identification, from taking effect in 2014.

Revise the Practices Governing the Counting of Provisional Ballots

The large number of provisional ballots cast highlights the need to reform BOE practices that severely limit the meaningfulness of those ballots. As previously mentioned, under current state regulations, voters who are given provisional ballots because they have come to the wrong precinct generally have only their votes for federal office counted. The ACLU strongly believes that a person's ballot should 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 in that city, there is no reason to ignore his or her clearly valid votes for state and city-wide elections. The BOE's claim that this would impose an administrative burden is simply insufficient in light of the unnecessary and substantial disenfranchisement this policy causes.

Authorize Manual Recounts

The Tobon case, like other contested elections in the past, demonstrates that state law needs to be amended to allow for manual recounting of ballots in particularly close elections. The machines are fallible. The BOE's position that hand-counted ballots are more fallible simply does not jibe with the practice currently in place with ballots that are already subject to manual review to determine voter intent. There is no reason a person who votes by absentee ballot should have a better chance of having his or her vote counted, because of the way the ballot has been marked, than a person who has voted at the polls.

Establish an Auditing Process

In the same vein, Rhode Island should join other states in establishing a random auditing process after each election in order to promote more confidence in final vote counts. Members of the public should also be able to inspect ballots once elections have been concluded. It is similarly unacceptable that the programming standards for the machines – which determine whether and how submitted ballots will be counted – are not public. Legislation should make those standards a matter of public record.

Make the BOE subject to the Administrative Procedures Act

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. That includes such a significant policy as the extent to which provisional ballots are counted when cast by a voter at an incorrect precinct. Although the BOE often voluntarily holds hearings as a matter of practice, it remains solely at their discretion until the law is revised. There is no legitimate rationale for exempting such an important agency from this oversight process, and legislation should make their rule-making process formally subject to this important open government law.

Decrease the Number of Voters Assigned to Polling Locations

When the General Assembly recently increased the number of voters at each polling place from 1,900 to 3,000, they did so under the belief that turnout is always low and that some polling locations get very little traffic. While increased polling size did not increase the traffic in some locations, it created significant problems at others, unduly burdening many voters and preventing others from casting their vote. In order to avoid these long lines in the next high-turnout election, the number of constituents served by each polling place must be decreased.

The BOE's Kando has also discussed dividing the poll books in more rational ways, to avoid one line of voters moving more rapidly than the other. He also hopes, pending funding, to secure electronic poll books for each polling place, which would allow any voter to use a single line.

Increase Polling Place Hours

As with polling place size, polling place hours were changed because officials felt the last hour of voting was empty time. Yet in 2012, some polling places served voters up to the last minute they were open, and beyond. Later polling place hours gives flexibility to those voters who are unable to cast ballots earlier in the day, and should be reinstated. In addition, the law allowing for people to vote if the polling closing time arises while they are waiting in line to vote should be clarified. As currently worded, it technically extends to only those inside the building, not those waiting outside to vote. This could have been a serious problem at the Sanchez Complex this past year.

Issue Sample Ballots in Advance

While many cities and towns do issue a sample paper ballot prior to the election, at least one city – Providence – does not. This not only contributed, in Kando's belief, to longer lines at the polls, but made it difficult for voters to make thorough, educated decisions about the individuals and issues on the ballot. Beginning with the next election, each city and town should be required by law to provide each voter a sample ballot by mail well in advance of Election Day.

New Voting Machines, More Technicians

The State of Rhode Island should ensure all voting machines are up-to-date and reliable, although effort must be made to ensure physical copies of ballots are still available regardless of the technology adopted. Increased numbers of technicians, particularly in those areas operating more voting machines than others, will also alleviate any disenfranchisement resulting from broken machines.

Early Voting

Secretary of State Ralph Mollis may seek legislation allowing early voting, enabling voters to cast their ballots in advance of Election Day, as is permitted in 32 states and the

District of Columbia. While early voting could raise concerns about ballot security if not handled appropriately, the program could alleviate some of the issues related to high voter turnout.

Conclusion

Although near-record numbers of Rhode Islanders turned out to exercise their fundamental right to vote, many qualified citizens found their right to vote abridged or unduly burdened, blocked by the very election laws which should have made the process easier and more streamlined.

Recent elections have demonstrated time and again the power of a single vote, and the importance of ensuring that each voter's voice is heard on Election Day. Yet in 2012, Rhode Islanders had to fight to be heard, navigating unnecessary and often insurmountable barriers simply to participate in the democratic process.

History need not repeat itself. By acknowledging the problems of the 2012 elections, election officials and the General Assembly have the opportunity to right serious errors in Rhode Island's voting process. The recommendations we have offered would, we believe, go a long way in doing that.