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Joint Committee on Election Laws
Sen. Barry Finegold & Rep. Dan Ryan, Chairs

**SUPPORT FOR THE VOTES ACT
H.805 & S.459**

Dear Senator Finegold, Representative Ryan, and members of the committee:

The American Civil Liberties Union writes in strong support of *An Act Fostering Voting Opportunities, Trust, Equity, and Security* — H.805 and S.459, sponsored by Representative Lawn and Senator Creem — better known as the VOTES Act.

In a historical moment when elections are being undermined with lies and voting rights are under renewed attack across the country, Massachusetts should be a democratic beacon. Yet despite steady improvements over the last decade, the Commonwealth is not a stand-out when it comes to voting rights. Now is the time to act with bold resolve and shine a light over dark and troubled waters.

The VOTES Act contains a number of detailed provisions, but it aims to accomplish 3 broad goals:

- (1) Make successful 2020 reforms permanent;
- (2) Adopt new systems to enhance election integrity, security, and accuracy; and
- (3) Ensure all eligible voters can vote in practice.

All three are critical. However, in recent months, significant attention has been paid to the first two goals, so our testimony addresses them more briefly. Indeed, the last may be most crucial.

We dedicate the bulk of our testimony to the goal of ensuring that all eligible voters can vote in practice – because it is uniquely important to racial equity.

Make successful 2020 reforms permanent

During the height of the COVID-19 pandemic, the legislature stepped up to innovate and enable unprecedented democratic participation. Massachusetts not only protected public health during the election, but by enabling widespread mail-in voting and expanding in-person early voting, gave a shot in the arm of our democracy to fortify ballot access.

These innovations resulted in the highest voter turnout in memory. A record 3.7 million votes were cast in Massachusetts, and over half were early or mail ballots.

We are grateful that legislative leaders have indicated their support for making mail-in voting permanent. We urge you to also prioritize creating more opportunities for people to vote early in person: in midterm elections, primary elections, and special elections across the state.

In-person voting is an indispensable complement to voting by mail — particularly for rural voters and voters who live in large urban housing complexes where mail delivery may be less reliable. Enabling people to vote early ensures that they will not face unanticipated obstacles on Election Day itself, and reduces the likelihood that voters of color in dense urban areas will be disenfranchised by very long lines at the polls.

With the successes of 2020, we hope you will view it as a no-brainer to make these transformative reforms permanent.

Systems to enhance integrity, security, and accuracy

By all accounts, Massachusetts elections are conducted securely, with integrity. Yet we can do more to instill confidence in our elections, their outcomes, and the legitimacy of the government they produce. We need to adopt best practices for reviewing our voting lists and affirming that votes are accurately and completely tallied, because the stakes are so high.

ERIC

The Electronic Registration Information Center (ERIC) uses the voter registration rolls of member states, as well as several other databases to determine inaccuracies in voter lists: who has moved, who has died, and who is eligible to vote but is not yet registered. In 2018, the legislature took the initiative to strengthen the accuracy and security of Massachusetts voter rolls by committing the commonwealth to join the 20 other states plus Washington, D.C. already enrolled in ERIC. Unfortunately, the Secretary of the Commonwealth has not yet taken action to fulfill that commitment, so it's now necessary for the legislature to set a clear, short deadline.

Risk-Limiting Audits

Currently, Massachusetts deploys a limited, randomized post-election audit system. The percentage of precincts is fixed in state law, and regardless of the margin of victory, the same number of ballots are reviewed. Though we applauded the adoption of this rudimentary audit system years ago, the VOTES Act would update our laws to reflect current best practice by adopting risk-limiting audits instead. A risk-limiting audit is an incremental audit system: If the margin is wide, very few ballots must be reviewed; if the margin is narrow, more will be required up to the point that enough evidence is provided to confirm the declared election result. Requiring a high confidence-threshold strengthens trust in the results of highly divisive electoral outcomes.

Ensuring that all eligible voters can vote in practice

This is where the rubber meets the road and Massachusetts has real opportunities to improve systemic equality in ballot access. Unfortunately, voting in Massachusetts is not yet as accessible and equitable as it should be.

When qualified voters want to participate in our democratic process, we should facilitate their participation rather than allow outdated administrative barriers to stand in the way. Sadly, existing barriers particularly impact first-time voters, low-income workers, and voters of color. That's why the ACLU views these changes as perhaps the most important reforms in the VOTES Act.

Same Day Registration

Same Day Registration is the gold standard for voter registration, making elections more accurate, accessible, and easier to administer so that all eligible voters can have their voices heard. It's been adopted in 20 other states and has a proven, 40-year history.

Today, too many people are disenfranchised by the Commonwealth's arbitrary 20-day voter cutoff. In an exhaustive 2017 ruling in *Chelsea Collaborative v. Galvin*, a case brought by the ACLU of Massachusetts, Superior Court Judge Wilkins found that the existing 20-day registration takes a heavy toll on the right to vote.¹ The court found that nearly 7,000 eligible Massachusetts voters were disenfranchised during each election in 2008, 2012, and 2016 because they registered to vote after the cutoff. Furthermore, 19.9% percent of Massachusetts residents who did not vote in 2014 identified the registration deadline as the reason why. This works out to approximately 118,000 would-be-voters who did not vote because of the deadline.²

There are many reasons why our voter cutoff law results in disenfranchisement. More and more, Americans frequently move. Unfortunately, our registration deadline does not reflect this reality. Instead, it bars eligible and registered voters from being counted and makes elections difficult to administer by forcing voters to cast provisional ballots. Veterans, active military, senior citizens, and people with disabilities may have particular difficulty meeting the existing advance registration deadline.

Anybody can find themselves on the wrong side of the voter registration deadline, especially people working multiple jobs, people experiencing housing instability, people with disabilities, and people with less reliable transportation. But these factors particularly impact historically disenfranchised groups, perpetuating existing economic and racial inequities in voter participation. Same Day Registration levels the playing field so all qualified voters are able to participate fully in our democracy.

¹ Findings of Fact, Conclusions of Law, and Order of Judgment, *Chelsea Collaborative, et al. v. William Galvin*, Suffolk Superior Court, No. 16-3354-D (7/24/2017) available at <https://aclum.org/wpcontent/uploads/2016/11/Decision-and-Order.pdf>.

² Despite these findings, the existing voter cutoff law was found to be constitutionally permissible on appeal. Just because it is permissible, however, does not make it good policy. No eligible voter who turns out when the polls are open should be turned away.

Same Day Registration also improves election administration. It allows people to update their names and addresses at the polls, makes it easier to maintain up-to-date voter registration rolls, and reduces the administrative work of local election officials who currently spend a significant amount of their time verifying addresses. In several states, election officials have indicated that up to two thirds of voters who benefit from Election Day Registration were already registered but needed to update their information in order to be able to vote, rather than individuals registering for the first time. States with SDR have experienced a sharp decline in cumbersome provisional ballots, have seen no increase in wait time, and have had the fewest problems with voter registration.³

Facilitating voting for eligible voters in custody

One small, but critical component of the VOTES Act addresses jail-based voting, because in Massachusetts the vast majority of incarcerated voters maintain the legal right to vote. That's around 3,000 individuals at any given time. People who are detained pre-trial maintain the legal right to vote. People who are serving sentences for misdemeanors maintain the legal right to vote. However, without practical assistance from the state, that right is nearly meaningless.

In Middlesex County jail, where more than 300 people are detailed pre-trial, only 13 people cast a ballot in 2020. That is appalling, but it can be fixed.

The VOTES Act begins to address this problem by placing an affirmative obligation on the officers in charge of correctional facilities to provide notice to the people in their custody about their right to vote in advance of state elections, to assist incarcerated individuals to register to vote and apply for mail-in ballots, and to enable them to complete and return their ballots in accordance with the law.⁴

These simple provisions will have an outsized positive impact on systemic racial equality because of the significant racial disparities in who is charged, detained, and prosecuted in the Commonwealth. This is a clear matter of racial justice, without which the VOTES Act would be a lesser piece of legislation.

The Commonwealth has a proud history of leadership on voting rights and expanding ballot access. Today, we're in the midst of a critical national conversation around voting rights, and Massachusetts should lean in with urgency. Political and constitutional imperatives compel us to do even more to ensure that all eligible voters who wish to cast a ballot are able to do so.

³ In the Chelsea Collaborative case, the court specifically found that EDR "has been adopted in ways that do not create significant problems with security, fraud, accuracy of assessing voter qualifications, or orderly administration of elections."

⁴ For a more comprehensive approach to jail-based voting, we commend to your attention H.836 and S.474, *An Act to protect the voting rights of eligible incarcerated people*. We would be glad to see the committee look closely at the provisions of that legislation and consider incorporating more robust language to facilitate the voting rights of incarcerated voters into any legislation it advances this session.

The VOTES Act would enable the legislature to simultaneously improve access and equity throughout our electoral system — strengthening voter registration and maintenance of the rolls; enhancing smooth ballot access and administration on the ground, in our jails, and through the mails; and making sure every vote is counted and every vote counts.

We urge you to report the VOTES Act favorably out of committee, and to maintain its substance in full. The several provisions of the Act are designed to function jointly to achieve systemic reform. We would welcome the opportunity to be a resource to the Committee as you consider this important legislation. Thank you.