

Advisory Memorandum

To: U.S. Commission on Civil Rights
From: Rhode Island Advisory Committee to the U.S. Commission on Civil Rights
Date: October 16, 2018
Subject: Advisory Memorandum on Voting Rights Briefing

In 2011, the Rhode Island legislature passed a law requiring voters to provide proof of identity before voting in a primary, special, or general election. In support of the Commission's 2018 Statutory Enforcement Report on voting rights, the Rhode Island State Advisory Committee to the United States Commission on Civil Rights (Committee) sought to examine the impact of the voter identification legislation. The Committee held videoconference briefing on May 29, 2018. To help it better understand the statute's impact on voting rights in Rhode Island, the Committee invited three advocates to share information. Briefly summarized, the issues that the speakers identified as relevant and potentially discriminatorily affecting voting rights based on race, color, sex, disability status, and national origin included the following:

- Voter identification laws disproportionately impact communities of color;
- There are issues with polling places;
- There are problems with the issuance and execution of provisional ballots;
- The state has a modern voting system, using online voter registration and automatic voter registration; but has antiquated practices in voter registration requirements and out-of-date practices in early voting.

This Advisory Memorandum provides assertions and themes based on the information provided to the Committee at the briefing.

II. Background

“Th[e] right to vote is the basic right without which all others are meaningless. It gives people, people as individuals, control over their own destinies.”¹ The fundamental right of all citizens age eighteen and over to vote is constitutionally guaranteed cumulatively by the 14th,² 15th,³ 19th,⁴ and 26th⁵ Amendments to the United States Constitution. These amendments prohibit discrimination against potential voters on the basis of race, sex, and age. Nonetheless, various legal and procedural obstacles have historically hindered the exercise of this right for certain

¹ President Lyndon B. Johnson, 1965 Signing Ceremony for the Voting Rights Act (Aug. 6, 1965) (quoting his own 1957 remarks in support of legislation to expand voting rights). The transcript of the 1965 Signing Ceremony is available at <http://www.presidency.ucsb.edu/ws/?pid=27140> (last visited Aug. 16, 2018).

² U.S. Const. amend. XIV, § 2 (voting rights for male citizens over 21, except those who “participat[e] in rebellion . . . or other crime”).

³ U.S. Const. amend. XV, § 1 (voting rights irrespective of “race, color, or previous condition of servitude.”).

⁴ U.S. Const. amend. XIX (voting rights irrespective of sex).

⁵ U.S. Const. amend. XXVI (voting rights to citizens “18 years of age or older”).

groups of potential voters. As a result, during the modern civil rights movement, federal legislation was enacted to correct the imbalance between voting rights in theory and in practice. It worked not only by guaranteeing that individuals have the right to vote regardless of their minority status, but also by ensuring they can exercise it by casting a ballot.⁶

Despite great progress in the decades that followed, many recent changes in election laws enacted by state and local governments, as well as Supreme Court decisions,⁷ have created or caused barriers to voting for communities of color and other minority groups.

Subsequent to the briefing, the Commission issued its voting rights report, “An Assessment of Minority Voting Rights Access in the United States,” which includes a comprehensive discussion about the history of voter suppression.⁸

Voting Rights in Rhode Island

To be eligible to register to vote in Rhode Island, a person must be a citizen of the United States, a resident of the Rhode Island city or town in which they plan to vote, and at least sixteen years of age (though they cannot vote until the age of eighteen).⁹ Rhode Island’s constitution also requires that a citizen is only eligible to vote if registered at least 30 days prior to an election.¹⁰ Since 2016, citizens of Rhode Island have been able to fulfil this requirement through an online registration system.¹¹ In May 2017, the Rhode Island House of Representatives unanimously passed a bill allowing automatic voter registration through the Department of Motor Vehicles (DMV)¹² and the bill was signed into law in July 2017, making Rhode Island the ninth state to approve automatic voter registration.¹³ The law requires every eligible person applying for or renewing a license at the DMV be registered to vote, unless the person declines. It also authorizes additional state agencies, to be determined by the Secretary of State, to also engage in automatic voter registration.¹⁴

⁶ Voting Rights Act of 1965 (VRA), originally codified at 42 U.S.C. § 1973 et seq.; subsequently transferred to 52 U.S.C. subtit. I, ch. 103, scattered sections.

⁷ Especially relevant are Supreme Court cases interpreting the Voting Rights Act, such as *Shelby County v. Holder*, 570 U.S. 2 (2013) (holding that the preclearance formula of the VRA was unconstitutional).

⁸ U.S. Commission on Civil Rights, “An Assessment of Minority Voting Rights Access in the United States,” pp. 15-26. https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf

⁹ *Register to Vote*, R.I. DEP’T OF ST., https://vote.sos.ri.gov/ovr/voters/how_to_register_to_vote (last visited June 6, 2018). It is worth noting that Rhode Island does allow same day registration for the Presidential Election. See https://vote.sos.ri.gov/ovr/voters/how_to_register_to_vote “Rhode Island allows for same day voter registration for the Presidential Election only. If you miss the voter registration deadline, you can register to vote on Election Day, but you will only be able to vote for President and Vice President. You will not be able to vote in any state, local, or other federal races. You can only register and vote on Election Day at the location designated by your local board of canvassers.”

¹⁰ R.I. CONST. art. II § 1.

¹¹ R.I. GEN. LAWS § 17-9.1-34.

¹² *Statement by Secretary of State Gorbea on House Passage of Automatic Voter Registration Bill*, R.I.GOV (May 31, 2017), <https://www.ri.gov/press/view/30522>.

¹³ *Rhode Island becomes ninth state to enact Automatic Voter Registration*, R.I.GOV (July 19, 2017), <https://www.ri.gov/press/view/30957>.

¹⁴ R.I. GEN. LAWS § 17-9.1-7.

In 2011, Rhode Island passed a law requiring voters to provide proof of identity before voting in a primary, special, or general election.¹⁵ Examples of an acceptable photo ID today include a Rhode Island driver's license, Rhode Island voter identification card, United States passport, United States school ID card, United States military card, United States or Rhode Island ID card, and government-issued medical card. The law allowed for an introductory period in which residents could use an ID that did not include a photograph, but since January 1, 2014, only a valid and current voter ID is acceptable. The law also provides an option for voters without proper identification on election day to complete a provisional ballot, which is then verified by comparing the voter's signature on the ballot and at registration.¹⁶ If the local board of elections determines that the signatures match, the provisional ballot may be counted.

The voter identification law in Rhode Island made national news because Rhode Island was the only state in which a Democrat-controlled legislature and Democrat governor passed a voter ID law.¹⁷ Proponents of the bill cited alleged but unsubstantiated¹⁸ claims of voter fraud in the state, but a perceived history of political corruption in the state and legislative anxiety over the state's changing demographics likely also contributed to the push for a voter identification law. Some argued that the recent influx of Latino immigrants threatened the political power balance in the state held by whites and some blacks, and that this law served as an attempt by those in power effectively to disenfranchise some of those new potential voters.¹⁹ Because most black and Latino legislators favored the voter ID bill, there were virtually no objections to its passage.²⁰

Rhode Island does not currently allow for in-person early voting, but a bill introduced in the 2018 state legislature would have changed that.²¹ The bill proposed allowed for in-person early voting during normal business hours throughout a twenty-day period prior to an election and for limited hours on the weekend prior to the election. It allowed local governments to provide additional early voting hours. The proposed bill modified absentee mail voting as well. The bill, however, did not pass. Both Rhode Island's House and Senate judiciary committees recommended the measure be held for further study.²²

¹⁵ R.I. GEN. LAWS § 17-19-24.2.

¹⁶ R.I. GEN. LAWS § 17-19-24.3.

¹⁷ Spencer Woodman, *The Strange Case of Rhode Island's Voter-ID Law*, VICE (Apr. 26, 2016), available at https://www.vice.com/en_us/article/qbx7j5/the-strange-case-of-rhode-islands-voter-id-law (last visited July 6, 2018) [hereinafter Woodman].

¹⁸ Simon van Zuylen-Wood, *Why Did Liberal African-Americans in Rhode Island Help Pass a Voter ID Law?*, THE NEW REPUBLIC (Feb. 7, 2012), available at <https://newrepublic.com/article/100429/rhode-island-voter-id-laws-hispanic> (last visited Aug. 14, 2018) [hereinafter Zuylen-Wood].

¹⁹ Woodman, available at https://www.vice.com/en_us/article/qbx7j5/the-strange-case-of-rhode-islands-voter-id-law (last visited July 6, 2018).

²⁰ See e.g., Zuylen-Wood, <https://newrepublic.com/article/100429/rhode-island-voter-id-laws-hispanic>; Woodman, https://www.vice.com/en_us/article/qbx7j5/the-strange-case-of-rhode-islands-voter-id-law (last visited July 6, 2018).

²¹ S. 2419, LC004341, R.I. Gen. Assem., Jan. Sess. (R.I. 2018), available at <http://webserver.rilin.state.ri.us/BillText/BillText18/SenateText18/S2419.pdf>; H. 7501, LC004521, R.I. Gen. Assem., Jan. Sess. (R.I. 2018), available at <http://webserver.rilin.state.ri.us/BillText/BillText18/HouseText18/H7501.pdf>.

²² *Legislative Status Report*, R.I. GEN. ASSEM., S. 2149 (May 3, 2018), available at <http://status.rilin.state.ri.us/documents/agenda-14528.pdf> (last visited Aug. 14, 2018); H. 7501 (Mar. 14, 2018), available at <http://status.rilin.state.ri.us/documents/agenda-14302.pdf> (last visited Aug. 14, 2018).

Assertions and Themes from the May 29, 2018 Briefing:

1. **Modern and Antiquated Voting:** Rhode Island has taken a modern approach to its voter registration laws and voting technology, but its recent voter ID law, lack of early voting options, and certain aspects of voting administration are more antiquated.²³
2. **Voter Registration:** In 2016, Rhode Island implemented online registration. In 2017, it became the ninth state to adopt automatic registration at the DMV, also allowing possible automatic registration with other state agencies in the future.²⁴ Automatic registration makes allows many unregistered potential voters to get registered.²⁵
3. **Voting Technology:** Rhode Island was an early state to adopt the use of paper ballots, which Common Cause Rhode Island believes is a superior method of recording votes.²⁶ It also has at least one (the AutoMARK) machine²⁷ at every polling place, and in 2016 moved from optical to digital scanners.²⁸ The state Board of Elections is planning to purchase additional machines and use multiple scanners at the busiest polling places. This should reduce the wait times seen in recent elections caused by the slower processing speed of the new digital scanners. After such technical ballot issues in the 2016 election, Rhode Island also established risk-limiting post-election audit procedures.²⁹
4. **Voter ID:** Rhode Island's 2011 voter ID law has a discriminatory impact on people of color and poor voters, and was passed without any hard evidence of voter fraud.³⁰ A large number of Rhode Island citizens do not have the required ID, and communities of color are disproportionately affected.³¹ The Rhode Island Secretary of State issued over 900 District Eight identification documents for voting purposes in the first year of implementation.³² Steve Brown and Jim Vincent, however, maintain that number represents only a fraction of the total number of citizens without the kind of ID required by the law.³³ Voter advocates Brown and Vincent favor repealing the voter ID law in order to reduce its adverse impact on affected groups.³⁴
5. **Provisional Ballot Issues:**
 - a. *Evaluation of provisional ballots:* The validity of a provisional ballot depends in part on whether the signature on the ballot is judged to match the signature on the voter rolls. Vincent suggests that this process to determine the comparability of the signatures on provisional ballots is less than "pure," because it is susceptible to erroneous judgments.³⁵

²³ John Marion, testimony before the Rhode Island Advisory Committee to the U.S. Commission on Civil Rights, briefing, audio- and videoconference, May 29, 2018, transcript pp. 4-6 (hereinafter cited as *Briefing Transcript*).

²⁴ Testimony, *Briefing Transcript*, p. 5.

²⁵ Vincent Testimony, *Briefing Transcript* p. 7.

²⁶ Marion Testimony, *Briefing Transcript*, p. 4.

²⁷ According to Marion, AutoMARK machines are more accessible to voters with disabilities. Marion Testimony, *Briefing Transcript*, p. 4.

²⁸ Marion Testimony, *Briefing Transcript*, pp. 4-5.

²⁹ Marion Testimony, *Briefing Transcript*, pp. 4-5.

³⁰ Vincent Testimony, *Briefing Transcript*, pp. 6-7.

³¹ Brown Testimony, *Briefing Transcript*, pp. 2-3; Vincent Testimony, *Briefing Transcript*, p. 6.

³² Brown Testimony, *Briefing Transcript*, p. 3; Vincent Testimony, *Briefing Transcript*, p. 6.

³³ Brown Testimony, *Briefing Transcript*, p. 3; Vincent Testimony, *Briefing Transcript*, p. 6.

³⁴ Brown Testimony, *Briefing Transcript*, p. 2; Vincent Testimony, *Briefing Transcript*, pp. 6-7.

³⁵ Vincent Testimony, *Briefing Transcript*, pp. 6-7.

- b. *Provisional ballots for incorrect polling place:* If a voter goes to the wrong polling place, he or she has two options: go to the correct polling place, or fill out a provisional ballot at the incorrect polling place. However, only votes for federal office are counted on provisional ballots filled out at the incorrect polling place. Thousands of provisional ballots are cast in Rhode Island each election and many are counted only partially. This is a barrier to full voting rights that the Committee believes can and should be changed.³⁶
 - c. *Need for Additional Data:* Brown suggests more data on the use and counting of provisional ballots is needed, and that advocates should continue to lobby the state Board of Elections for better informational transparency.³⁷
6. **Polling Place Training:** The voter ID law is not properly implemented, further exacerbating its discriminatory impact. Poll monitors have reported that people who came without a proper ID or who went to the wrong polling place were often not informed of their right to cast a provisional ballot or were given misinformation about this process.³⁸
7. **Polling Place Issues:**
- a. *Polling place locations:* Polling places change often and these changes are not always communicated to voters.³⁹ The Committee, like Brown, believes there should be a requirement that Rhode Island voters be provided notice of polling place changes.⁴⁰
 - b. *Polling place availability:* Determining how many and which polling places to use during an election of any sort are administrative decisions made by the Board of Elections. In the Rhode Island presidential preference primary held in April 2016, only a third of the polling places traditionally open during a general election were open for voting.⁴¹ For the upcoming elections, the Committee believes voting rights organizations should lobby the Board of Elections to ensure a more appropriate number of primary polling places is provided.⁴²
8. **Lack of Early Voting:**
- a. *Current Status:* Unlike 33 other states, Rhode Island does not offer any form of in-person early voting; the only available method to vote early is absentee. In 2011, an “excuse” category for absentee voting was added, permitting voters who “may not be able to vote at [their] polling place in [their] city or town on the day of the election” to vote absentee.⁴³ Certain communities have advertised this “excuse” category as a method of early voting, but, across the state, absentee “early voting” is still uncommon. Ninety percent of voting in Rhode Island still happens in person at precincts on Election Day.⁴⁴
 - b. *Consequences of no early voting in Rhode Island:* The traditional method of voting only on Election Day often prevents some working people from voting; the

³⁶ Brown Testimony, *Briefing Transcript*, p. 3; see also Vincent, *Briefing Transcript*, pp. 6-7.

³⁷ Brown Testimony, *Briefing Transcript*, pp. 2-3; Marion Testimony, *Briefing Transcript*, p. 9.

³⁸ Brown Testimony, *Briefing Transcript*, pp. 2-3.

³⁹ Brown Testimony, *Briefing Transcript*, pp. 2-3, 8.

⁴⁰ See Brown Testimony, *Briefing Transcript*, p. 8.

⁴¹ See Marion Testimony, *Briefing Transcript*, p. 8.

⁴² See Marion Testimony, *Briefing Transcript*, p. 8.

⁴³ R.I. GEN. LAWS § 17-19-24.2 (2011); see also Marion Testimony, *Briefing Transcript*, p. 5.

⁴⁴ Marion Testimony, *Briefing Transcript*, p. 5.

in-person early voting bill submitted in 2018 would rectify this by allowing weekend or evening voting options.⁴⁵

- c. *Benefits of early voting:* Early voting in *primary* elections also helps assess *voter interest* and needs, allowing the state to allocate its resources properly on the true Election Day.⁴⁶
9. **Thirty-Day Registration Requirement:** Rhode Island's Constitutional thirty-day registration window, whereby voters may not vote if they register less than 30 days from an upcoming election, is the longest of all states.⁴⁷ There is an exception during presidential election years when a voter can register on Election Day and complete a ballot only for president and vice president.⁴⁸
10. **Late Primary:** Rhode Island also holds its primary election in September, the latest primary in the country. In the event of a long primary recount, this late primary could potentially prevent the state from sending general election ballots overseas and to the military because the federal government requires such ballots to be sent 45 days prior to the general election.⁴⁹
11. **Wednesday Primary:** This year's primary falls on a Wednesday instead of a traditional Tuesday election day. As of the USCCR briefing on May 29, 2018, this fact had not yet been communicated to voters adequately. Brown and Marion urged voting rights organizations to contact the Secretary of State and state and local boards of elections, impressing upon them the need to announce and advertise this change to the public.⁵⁰

The Committee submits this Advisory Memorandum in support of the Commission's 2018 Statutory Enforcement Report and concludes its work on voting rights.

⁴⁵ Marion Testimony, *Briefing Transcript*, pp. 5-6.

⁴⁶ Marion Testimony, *Briefing Transcript*, p. 8.

⁴⁷ Marion Testimony, *Briefing Transcript*, p. 6.

⁴⁸ Marion Testimony, *Briefing Transcript*, p. 6.

⁴⁹ Marion Testimony, *Briefing Transcript*, p. 6.

⁵⁰ Brown Testimony, *Briefing Transcript*, p. 9; Marion Testimony, *Briefing Transcript*, p. 9.