

The Honorable Alex Marszalkowski
Rhode Island House of Representatives
State House
82 Smith Street
Providence, RI 02903

The Honorable Dawn Euer
Rhode Island Senate
State House
82 Smith Street
Providence, RI 02903

RE: Amendments to H 5891 and S 0804

Dear Representative Marszalkowski and Chair Euer:

We write to express our concerns about H 5891 and S 0804, and the proposed SubA's to those bills, that would amend the state's Open Meetings Act. As we testified at the hearings on these bills, our groups are committed to working toward a solution that maintains the advantages of online public meetings, while protecting the public interest. One of the signatories of this letter, John Marion of Common Cause Rhode Island, was a member of the working group gathered by the Department of Business regulation and we are grateful for having the opportunity to express our views in that setting. Nonetheless, we feel the need to express our concerns about that group's work product.

Our position is that members of public bodies should return to participating in person. We recognize that there is a strong desire for some public bodies to allow members to participate remotely, but for purposes of accountability we believe public bodies, particularly elected bodies, should be meeting in person.

We also oppose the two-year longevity proposed for the bill, and support a shorter sunset, of July 1, 2022, for any legislation. We fear that a sunset of two years will just allow any bad practices that emerge to continue for too long. Given that the Open Meetings Act has existed for more than a half century without allowing for widespread use of remote participation by members of public bodies this practice is still in its infancy and we are learning in real time about both best practices and ways that public bodies can abuse use of technology. In addition, the legitimate public health concerns that prompted the remote meetings will, barring another emergency, have long since passed by next July.

The amendments to H 5891 and S 0804 that were drafted by the work group allow all members of any public body to participate remotely for all meetings (§ 42-46-15(a)). We believe this, the most permissive of all positions, will be abused by some public bodies. For instance, if a city council is scheduled to take up a controversial issue it may choose to hold the meeting completely online. Fully online meetings lack a degree of democratic accountability. They make

it impossible for reporters to ask follow-up questions after controversial decisions, for instance. And fully online meetings make it impossible for constituencies to gather together in solidarity making their collective voice louder in support of a particular cause.

Other jurisdictions take one of three different approaches to remote participation by members of public bodies. Some limit the type of bodies that are allowed to have members participate remotely (e.g. statewide versus local bodies). Some limit the number of members of a public body who can participate remotely (e.g. less than a quorum). Some limit the number of meetings where there can be remote participation by members of the public body (e.g. no more than half the meetings in a year). While we do not at this time endorse any of these compromises, they demonstrate a range of possible policy alternatives.

The amendments to H 5891 and S 0804 also have a mixed record with respect to the guardrails we believe must be in place if remote access and participation will protect the public interest. They would provide adequate notice (§ 42-46-6(b)), require that access be contemporaneous (§ 42-46-2(7)), and be available at no cost (§ 42-46-2(7)). They also require that members' votes must be clearly identifiable (§ 42-46-18(d)), and which members of the public body are participating remotely (§ 42-46-18(a)).

We would like some of those guardrails to be tighter, with stronger standards, but we are pleased that as written they are mandatory, not optional. The bill should make clear that if the copy of the meeting is not posted on the Internet, but instead the public has to request a copy, that it should be provided free of charge (§ 42-46-18(e)). We believe that the timeframe for posting recordings should not be linked to the Access to Public Records Act (APRA), but rather be made available within a shorter period of time, such as two business days (§ 42-46-18(e)). Those recordings should be preserved for longer than 200 days, perhaps tied to the Secretary of State's requirements for archival records (§ 42-46-18(e)). The standard for halting meetings--"severely impeded"--is a high one (§ 42-46-18(c)).

Unfortunately the draft provides two significant loopholes for our request that documents be available to the public online by the time the public meeting begins (§ 42-46-17). First, it only requires this for documents that are in the possession of the public body by the time the agenda is posted. Second, this soft requirement is limited to documents put online by five categories of public bodies. They are important bodies, of course, but there are many other bodies that affect tax rates, property rights, civil liberties, just to name a few, that are not subject to that requirement. We strongly believe that all public bodies that are meeting in hybrid or virtual meetings should make all documents that are "reviewed, discussed, considered and/or voted on" available on the internet prior to the start of the meeting. At fully in-person meetings the public is able to make a request for those documents in real time, something that a virtual or hybrid meeting may prevent, depending on how the technology is configured.

The current proposal would also allow public bodies to provide the public an inferior form of participation than is afforded members of the public body. The public deserves the same, or better, access than members of the public body. Most states that have moved to remote

meetings require: 1) the exclusive use of videoconferencing, not telephone conferencing, for all participants, and 2) a location where the public can physically attend the meeting, even if some or all members of the public body are participating remotely, to accommodate for the digital divide. We consider it critical that the bill make clear that for hybrid meetings, the public has the right to physically attend the meeting. Furthermore, we also believe that the five categories of public bodies that are subject to posting documents should not be allowed to hold telephone meetings.

Finally, earlier drafts of the proposed amendments required that when videoconferencing is used by members of the public body their cameras remain on except when they are recusing from participation. We believe that requirement should be reinstated in this version of the amendments.

We acknowledge that the latest proposal makes several advances, including creating a right for the public to have remote access for all meetings of five categories of public bodies (§ 42-46-16(e)(1)). This is a significant step forward. Providing enhanced access to government has been one of the few unexpected benefits of the pandemic, but this is not a binary decision. Rhode Island should take a graduated approach that focuses on maintaining the good that has come from moving meetings online--the increased public participation--while protecting the public interest by closely replicating the protections available to the public in the pre-pandemic Open Meeting Act. However, passing this bill as currently proposed in its Sub A form would be a significant blow to transparency and accountability that the OMA is designed to foster.

We are happy to discuss any of the concerns we raise in this letter and appreciate your attention to this issue.

Sincerely,

Steven Brown, Executive Director, ACLU of Rhode Island
Jane Koster, President, League of Women Voters of Rhode Island
Linda Lotridge Levin, President, ACCESS/RI and Secretary, Rhode Island Press Association
John Marion, Executive Director, Common Cause Rhode Island
John Pantalone, Chair, Journalism, University of Rhode Island
Justin Silverman, Executive Director, New England First Amendment Coalition

cc: Chair Evan Shanley, House Committee on State Government and Elections
Chair Cindy Coyne, Senate Committee on Judiciary
Liz Tanner, Director, Rhode Island Department of Business Regulation
Amy Stewart, Deputy Chief of Legal Services, Rhode Island Department of Business Regulation